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REVISED CODE OF WASHINGTON

2004 Edition

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CERTIFICATE

The 2004 edition of the Revised Code of Washington, published officially by the Statute Law Committee, is, in accordance with RCW 1.08.037, certified to comply with the current specifications of the committee.



JOHN G. SCHULTZ, Chair
STATUTE LAW COMMITTEE

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PREFACE

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

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

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

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

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

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

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

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

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

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

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

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

TITLES OF THE REVISED CODE OF WASHINGTON

| | | | |
|-----|---|-----|---|
| 1 | General provisions | | |
| | Judicial | 46 | Highways and motor vehicles |
| 2 | Courts of record | 47 | Motor vehicles |
| 3 | District courts—Courts of limited jurisdiction | 47 | Public highways and transportation |
| 4 | Civil procedure | 48 | Insurance |
| 5 | Evidence | | Labor |
| 6 | Enforcement of judgments | 49 | Labor regulations |
| 7 | Special proceedings and actions | 50 | Unemployment compensation |
| 8 | Eminent domain | 51 | Industrial insurance |
| 9 | Crimes and punishments | | Local service districts |
| 9A | Washington Criminal Code | 52 | Fire protection districts |
| 10 | Criminal procedure | 53 | Port districts |
| 11 | Probate and trust law | 54 | Public utility districts |
| 12 | District courts—Civil procedure | 55 | Sanitary districts |
| 13 | Juvenile courts and juvenile offenders | 57 | Water-sewer districts |
| 14 | Aeronautics | | Property rights and incidents |
| | Agriculture | 58 | Boundaries and plats |
| 15 | Agriculture and marketing | 59 | Landlord and tenant |
| 16 | Animals and livestock | 60 | Liens |
| 17 | Weeds, rodents, and pests | 61 | Mortgages, deeds of trust, and real estate contracts |
| | Businesses and professions | 62A | Uniform Commercial Code |
| 18 | Businesses and professions | 63 | Personal property |
| 19 | Business regulations—Miscellaneous | 64 | Real property and conveyances |
| 20 | Commission merchants—Agricultural products | 65 | Recording, registration, and legal publication |
| 21 | Securities and investments | | Public health, safety, and welfare |
| 22 | Warehousing and deposits | 66 | Alcoholic beverage control |
| | Corporations, associations, and partnerships | 67 | Sports and recreation—Convention facilities |
| 23 | Corporations and associations (Profit) | 68 | Cemeteries, morgues, and human remains |
| 23B | Washington business corporation act | 69 | Food, drugs, cosmetics, and poisons |
| 24 | Corporations and associations (Nonprofit) | 70 | Public health and safety |
| 25 | Partnerships | 71 | Mental illness |
| 26 | Domestic relations | 71A | Developmental disabilities |
| | Education | 72 | State institutions ⁷³ Veterans and veterans' affairs |
| 27 | Libraries, museums, and historical activities | 74 | Public assistance |
| 28A | Common school provisions | | Public resources |
| 28B | Higher education | 76 | Forests and forest products |
| 28C | Vocational education | 77 | Fish and wildlife |
| 29A | Elections | 78 | Mines, minerals, and petroleum |
| | Financial institutions | 79 | Public lands |
| 30 | Banks and trust companies | 79A | Public recreational lands |
| 31 | Miscellaneous loan agencies | | Public service |
| 32 | Mutual savings banks | 80 | Public utilities |
| 33 | Savings and loan associations | 81 | Transportation |
| | Government | | Taxation |
| 34 | Administrative law | 82 | Excise taxes |
| 35 | Cities and towns | 83 | Estate taxation |
| 35A | Optional Municipal Code | 84 | Property taxes |
| 36 | Counties | | Waters |
| 37 | Federal areas—Indians | 85 | Diking and drainage |
| 38 | Militia and military affairs | 86 | Flood control |
| 39 | Public contracts and indebtedness | 87 | Irrigation |
| 40 | Public documents, records, and publications | 88 | Navigation and harbor improvements |
| 41 | Public employment, civil service, and pensions | 89 | Reclamation, soil conservation, and land settlement |
| 42 | Public officers and agencies | 90 | Water rights—Environment |
| 43 | State government—Executive | 91 | Waterways |
| 44 | State government—Legislative | | |

Title 63

PERSONAL PROPERTY

Chapters

- 63.10** Consumer leases.
- 63.14** Retail installment sales of goods and services.
- 63.18** Lease or rental of personal property—Disclaimer of warranty of merchantability or fitness.
- 63.19** Lease-purchase agreements.
- 63.21** Lost and found property.
- 63.24** Unclaimed property in hands of bailee.
- 63.26** Unclaimed property held by museum or historical society.
- 63.29** Uniform Unclaimed Property Act.
- 63.32** Unclaimed property in hands of city police.
- 63.35** Unclaimed property in hands of state patrol.
- 63.40** Unclaimed property in hands of sheriff.
- 63.42** Unclaimed inmate personal property.
- 63.44** Joint tenancies.
- 63.48** Escheat of postal savings system accounts.
- 63.52** Dies, molds, and forms.
- 63.60** Personality rights.

Attachment: Chapter 6.25 RCW.

Chattel mortgages: Article 62A.9A RCW.

Community property: Chapter 26.16 RCW.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Corporate shares issued or transferred in joint tenancy form—Presumption—Transfer pursuant to direction of survivor: RCW 23B.07.240.

County property: Chapter 36.34 RCW.

Credit life insurance and credit accident and health insurance: Chapter 48.34 RCW.

Duration of trusts for employee benefits: Chapter 49.64 RCW.

Enforcement of judgments: Title 6 RCW.

Fox, mink, marten declared personalty: RCW 16.72.030.

Frauds and swindles—Encumbered, leased or rented personal property: RCW 9.45.060.

Intergovernmental disposition of personal property: Chapter 39.33 RCW.

Leases, satisfaction: Chapter 61.16 RCW.

Liens: Title 60 RCW.

Personal property sales, regulation of, generally: Titles 18 and 19 RCW.

Powers of appointment: Chapter 11.95 RCW.

Probate and trust law: Title 11 RCW.

Quieting title to personalty: RCW 7.28.310, 7.28.320.

Real property and conveyances: Title 64 RCW.

Replevin: Chapters 7.64, 12.28 RCW.

Safe deposit companies: Chapter 22.28 RCW.

Separate property: Chapter 26.16 RCW.

State institutions, property of inmates, residents: RCW 72.23.230 through 72.23.250.

Taxation

estate: Title 83 RCW.

excise: Title 82 RCW.

property: Title 84 RCW.

The Washington Principal and Income Act of 2002: Chapter 11.104A RCW.

Timeshare regulation: Chapter 64.36 RCW.

Transfers in trust: RCW 19.36.020.

Uniform transfers to minors act: Chapter 11.114 RCW.

Chapter 63.10 RCW CONSUMER LEASES

Sections

- 63.10.010 Legislative declaration.
- 63.10.020 Definitions.
- 63.10.030 Liability at expiration of lease—Residual value—Attorneys' fees—Lease terms.
- 63.10.040 Lease contracts—Disclosure requirements.
- 63.10.045 Unlawful acts or practices—Consumer lease of a motor vehicle.
- 63.10.050 Violations—Unfair acts under consumer protection act—Damages.
- 63.10.055 Remedies—Effect of chapter.
- 63.10.060 Defense or action of usury—Limitations.
- 63.10.900 Severability—1983 c 158.
- 63.10.901 Severability—1995 c 112.
- 63.10.902 Effective date—1995 c 112.

Installment sales contracts: Chapter 63.14 RCW.

63.10.010 Legislative declaration. The leasing of motor vehicles, furniture and fixtures, appliances, commercial equipment, and other personal property has become an important and widespread form of business transaction that is beneficial to the citizens and to the economy of the state. Users of personal property of all types and lessors throughout the state have relied upon the distinct nature of leasing as a modern means of transacting business that creates different relationships and legal consequences from those of lender and borrower in loan transactions and those of seller and buyer in installment sale transactions. The utility of lease transactions and the well-being of the state's economy and of the leasing industry require that leasing be a legally recognized and distinct form of transaction, creating legal relationships and having legal consequences different from loans or installment sales. [1983 c 158 § 1.]

63.10.020 Definitions. As used in this chapter, unless the context otherwise requires:

(1) The term "adjusted capitalized cost" means the agreed-upon amount that serves as the basis for determining the periodic lease payment, computed by subtracting from the gross capitalized cost any capitalized cost reduction.

(2) The term "gross capitalized cost" means the amount ascribed by the lessor to the vehicle including optional equipment, plus taxes, title, license fees, lease acquisition and administrative fees, insurance premiums, warranty charges, and any other product, service, or amount amortized in the lease. However, any definition of gross capitalized cost adopted by the federal reserve board to be used in the context of mandatory disclosure of the gross capitalized cost to lessees in consumer motor vehicle lease transactions supersedes the definition of gross capitalized cost in this subsection.

(3) The term "capitalized cost reduction" means any payment made by cash, check, or similar means, any manufacturer rebate, and net trade in allowance granted by the lessor at the inception of the lease for the purpose of reducing the gross capitalized cost but does not include any periodic lease payments due at the inception of the lease or all of the periodic lease payments if they are paid at the inception of the lease.

(4) The term "consumer lease" means a contract of lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding twenty-five thousand dollars, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any lease which meets the definition of a retail installment contract under RCW 63.14.010 or the definition of a lease-purchase agreement under chapter 63.19 RCW. The twenty-five thousand dollar total contractual obligation in this subsection shall not apply to consumer leases of motor vehicles. The inclusion in a lease of a provision whereby the lessee's or lessor's liability, at the end of the lease period or upon an earlier termination, is based on the value of the leased property at that time, shall not be deemed to make the transaction other than a consumer lease. The term "consumer lease" does not include a lease for agricultural, business, or commercial purposes, or to a government or governmental agency or instrumentality, or to an organization.

(5) The term "lessee" means a natural person who leases or is offered a consumer lease.

(6) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease. [1998 c 113 § 1; 1995 c 112 § 1; 1992 c 134 § 15; 1983 c 158 § 2.]

Short title—Severability—1992 c 134: See RCW 63.19.900 and 63.19.901.

63.10.030 Liability at expiration of lease—Residual value—Attorneys' fees—Lease terms. (1) Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property, such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorneys' fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual

value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

(2) Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

(3) If a lease has a residual value provision at the termination of the lease, the lessee may obtain, at his expense, a professional appraisal of the leased property by an independent third party agreed to be both parties. Such appraisal shall be final and binding on the parties. [1983 c 158 § 3.]

63.10.040 Lease contracts—Disclosure requirements. (1) In any lease contract subject to this chapter, the following items, as applicable, shall be disclosed:

(a) A brief description of the leased property, sufficient to identify the property to the lessee and lessor.

(b) The total amount of any payment, such as a refundable security deposit paid by cash, check, or similar means, advance payment, capitalized cost reduction, or any trade-in allowance, appropriately identified, to be paid by the lessee at consummation of the lease.

(c) The number, amount, and due dates or periods of payments scheduled under the lease and the total amount of the periodic payments.

(d) The total amount paid or payable by the lessee during the lease term for official fees, registration, certificate of title, license fees, or taxes.

(e) The total amount of all other charges, individually itemized, payable by the lessee to the lessor, which are not included in the periodic payments. This total includes the amount of any liabilities the lease imposes upon the lessee at the end of the term, but excludes the potential difference between the estimated and realized values required to be disclosed under (m) of this subsection.

(f) A brief identification of insurance in connection with the lease including (i) if provided or paid for by the lessor, the types and amounts of coverages and cost to the lessee, or (ii) if not provided or paid for by the lessor, the types and amounts of coverages required of the lessee.

(g) A statement identifying any express warranties or guarantees available to the lessee made by the lessor or manufacturer with respect to the leased property.

(h) An identification of the party responsible for maintaining or servicing the leased property together with a brief description of the responsibility, and a statement of reasonable standards for wear and use, if the lessor sets such standards.

(i) A description of any security interest, other than a security deposit disclosed under (b) of this subsection, held or to be retained by the lessor in connection with the lease and a

clear identification of the property to which the security interest relates.

(j) The amount or method of determining the amount of any penalty or other charge for delinquency, default, or late payments.

(k) A statement of whether or not the lessee has the option to purchase the leased property and, if at the end of the lease term, at what price, and, if prior to the end of the lease term, at what time, and the price or method of determining the price.

(l) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the lease term and the amount or method of determining the amount of any penalty or other charge for early termination.

(m) A statement that the lessee shall be liable for the difference between the estimated value of the property and its realized value at early termination or the end of the lease term, if such liability exists.

(n) Where the lessee's liability at early termination or at the end of the lease term is based on the estimated value of the leased property, a statement that the lessee may obtain at the end of the lease term or at early termination, at the lessee's expense, a professional appraisal of the value which could be realized at sale of the leased property by an independent third party agreed to by the lessee and the lessor, which appraisal shall be final and binding on the parties.

(o) Where the lessee's liability at the end of the lease term is based upon the estimated value of the leased property:

(i) The value of the property at consummation of the lease, the itemized total lease obligation at the end of the lease term, and the difference between them.

(ii) That there is a rebuttable presumption that the estimated value of the leased property at the end of the lease term is unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average payment allocable to a monthly period, and that the lessor cannot collect the amount of such excess liability unless the lessor brings a successful action in court in which the lessor pays the lessee's attorney's fees, and that this provision regarding the presumption and attorney's fees does not apply to the extent the excess of estimated value over realized value is due to unreasonable wear or use, or excessive use.

(iii) A statement that the requirements of (o)(ii) of this subsection do not preclude the right of a willing lessee to make any mutually agreeable final adjustment regarding such excess liability.

(p) In consumer leases of motor vehicles:

(i) The gross capitalized cost stated as a total and the identity of the components listed in the definition of gross capitalized cost and the respective amount of each component;

(ii) Any capitalized cost reduction stated as a total;

(iii) A statement of adjusted capitalized cost;

(iv) If the lessee trades in a motor vehicle, the amount of any sales tax exemption for the agreed value of the traded vehicle and any reduction in the periodic payments resulting from the application of the sales tax exemption shall be disclosed in the lease contract; and

(v) A statement of the total amount to be paid prior to or at consummation or by delivery, if delivery occurs after consummation. The lessor shall itemize each component by type

and amount and shall itemize how the total amount will be paid, by type and amount.

(2) Where disclosures required under this chapter are the same as those required under Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, as of the date upon which the consumer lease is executed, disclosures complying with the federal consumer leasing act shall be deemed to comply with the disclosure requirements of this chapter. [1998 c 113 § 2; 1995 c 112 § 2; 1983 c 158 § 4.]

63.10.045 Unlawful acts or practices—Consumer lease of a motor vehicle. Each of the following acts or practices are unlawful in the context of offering a consumer lease of a motor vehicle:

(1) Advertising that is false, deceptive, misleading, or in violation of 12 C.F.R. Sec. 213.5 (a) through (d) and 15 U.S.C. 1667, Regulation M;

(2) Misrepresenting any of the following:

(a) The material terms or conditions of a lease agreement;

(b) That the transaction is a purchase agreement as opposed to a lease agreement; or

(c) The amount of any equity or value the leased vehicle will have at the end of the lease; and

(3) Failure to comply with the disclosure requirements of Title I of the federal consumer protection act (90 Stat. 257, 15 U.S.C. Sec. 1667 et seq.), which is also known as the federal consumer leasing act, including, but not limited to, failure to disclose all fees that will be due when a consumer exercises the option to purchase. [1995 c 112 § 3.]

63.10.050 Violations—Unfair acts under consumer protection act—Damages. The legislature finds that the practices covered by this chapter are matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Violations of this chapter are not reasonable in relation to the development and preservation of business. A violation of this chapter is an unfair or deceptive act or practice in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW.

Regarding damages awarded under this section, the court may award damages allowed under chapter 19.86 RCW or 15 U.S.C. Sec. 1667d (a) and 15 U.S.C. Sec. 1640, but not both. [1995 c 112 § 4; 1983 c 158 § 5.]

63.10.055 Remedies—Effect of chapter. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law or in equity. [1995 c 112 § 5.]

63.10.060 Defense or action of usury—Limitations. No person may plead the defense of usury or maintain any action thereon based upon a transaction heretofore entered into if such transaction:

(1) Constitutes a "consumer lease" as defined in RCW 63.10.020; or

(2) Would constitute such a consumer lease but for the fact that:

- (i) The lessee was not a natural person;
- (ii) The lease was not primarily for personal, family, or household purposes; or
- (iii) The total contractual obligation exceeded twenty-five thousand dollars. [1983 c 158 § 8.]

63.10.900 Severability—1983 c 158. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 158 § 9.]

63.10.901 Severability—1995 c 112. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 112 § 6.]

63.10.902 Effective date—1995 c 112. This act shall take effect January 1, 1996. [1995 c 112 § 7.]

Chapter 63.14 RCW

RETAIL INSTALLMENT SALES OF GOODS AND SERVICES

Sections

- 63.14.010 Definitions.
- 63.14.020 Retail installment contracts—Number of documents—Promissory notes—Date—Signatures—Completion—Type size.
- 63.14.030 Retail installment contracts—Delivery to buyer of copy—Acknowledgment of delivery.
- 63.14.040 Retail installment contracts—Contents.
- 63.14.050 Retail installment contracts—Multiple documents permissible where original applies to purchases from time to time.
- 63.14.060 Retail installment contracts—Mail orders based on catalog or other printed solicitation.
- 63.14.070 Retail installment contracts—Seller not to obtain buyer's signature when essential blank spaces not filled—Exceptions.
- 63.14.080 Retail installment contracts—Prepayment in full of unpaid time balance—Refund of unearned service charge—"Rule of seventy-eighths".
- 63.14.090 Retail installment contracts, retail charge agreements, and lender credit card agreements—Delinquency or collection charges—Attorney's fees, court costs—Other provisions not inconsistent with chapter are permissible.
- 63.14.100 Receipt for cash payment—Retail installment contracts, statement of payment schedule and total amount unpaid.
- 63.14.110 Consolidation of subsequent purchases with previous contract.
- 63.14.120 Retail charge agreements and lender credit card agreements—Information to be furnished by seller.
- 63.14.123 Restrictions on electronically printed credit card receipts.
- 63.14.125 Lender credit card agreements—Security interests prohibited.
- 63.14.130 Retail installment contracts, retail charge agreements, and lender credit card agreements—Service charge agreed to by contract—Other fees and charges prohibited.
- 63.14.136 Retail installment transaction—Unconscionable—Judicial action.
- 63.14.140 Retail installment contracts, retail charge agreements, and lender credit card agreements—Insurance.
- 63.14.145 Retail installment contracts and charge agreements—Sale, transfer, or assignment.
- 63.14.150 Retail installment contracts, retail charge agreements, and lender credit card agreements—Agreements by buyer not to assert claim or defense or to submit to suit in another county invalid.
- 63.14.151 Retail installment contracts, retail charge agreements, and lender credit card agreements—Compliance with disclosure requirements of federal consumer protection act deemed compliance with chapter 63.14 RCW.
- 63.14.152 Declaratory judgment action to establish if service charge is excessive.
- 63.14.154 Cancellation of transaction by buyer—Procedure.
- 63.14.156 Extension or deferment of payments—Agreement, charges.

- 63.14.158 Refinancing agreements—Costs—Contents.
- 63.14.159 New payment schedule—When authorized.
- 63.14.160 Conduct or agreement of buyer does not waive remedies.
- 63.14.165 Financial institution credit card agreement not subject to chapter 63.14 RCW, but subject to chapter 19.52 RCW.
- 63.14.167 Lender credit card agreements and financial institution credit card agreements—Credit to account for returned goods or forgiveness of a debit for services—Statement of credit to card issuer—Notice to cardholder.
- 63.14.170 Violations—Penalties.
- 63.14.175 Violations—Remedies.
- 63.14.180 Noncomplying person barred from recovery of service charge, etc.—Remedy of buyer—Extent of recovery.
- 63.14.190 Restraint of violations.
- 63.14.200 Assurance of discontinuance of unlawful practices.
- 63.14.210 Violation of order or injunction—Penalty.
- 63.14.900 Severability—1963 c 236.
- 63.14.901 Severability—1967 c 234.
- 63.14.902 Severability—1981 c 77.
- 63.14.903 Application, saving—1981 c 77.
- 63.14.904 Severability—1984 c 280.
- 63.14.910 Saving—1963 c 236.
- 63.14.920 Effective date—1963 c 236.
- 63.14.921 Effective date—Saving—1967 c 234.
- 63.14.922 Effective date—1993 sp.s. c 5.
- 63.14.923 Severability—1993 sp.s. c 5.
- 63.14.924 Application—1995 c 249.
- 63.14.925 Savings—1995 c 249.
- 63.14.926 Effective date—1995 c 249.

Consumer leases: Chapter 63.10 RCW.

Interest—Usury: Chapter 19.52 RCW.

63.14.010 Definitions. In this chapter, unless the context otherwise requires:

(1) "Goods" means all chattels personal when purchased primarily for personal, family, or household use and not for commercial or business use, but not including money or, except as provided in the next sentence, things in action. The term includes but is not limited to merchandise certificates or coupons, issued by a retail seller, to be used in their face amount in lieu of cash in exchange for goods or services sold by such a seller and goods which, at the time of sale or subsequently, are to be so affixed to real property as to become a part thereof, whether or not severable therefrom;

(2) "Lender credit card" means a card or device under a lender credit card agreement pursuant to which the issuer gives to a cardholder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not: (a) Principally engaged in the business of selling goods; or (b) a financial institution;

(3) "Lender credit card agreement" means an agreement entered into or performed in this state prescribing the terms of retail installment transactions pursuant to which the issuer may, with the buyer's consent, purchase or acquire one or more retail sellers' indebtedness of the buyer under a sales slip or memorandum evidencing the purchase, lease, loan, or otherwise to be paid in accordance with the agreement. The issuer of a lender credit card agreement shall not be principally engaged in the business of selling goods or be a financial institution;

(4) "Financial institution" means any bank or trust company, mutual savings bank, credit union, or savings and loan association organized pursuant to the laws of any one of the United States of America or the United States of America, or the laws of a foreign country if also qualified to conduct business in any one of the United States of America or pursuant to the laws of the United States of America;

(5) "Services" means work, labor, or services of any kind when purchased primarily for personal, family, or household use and not for commercial or business use whether or not furnished in connection with the delivery, installation, servicing, repair, or improvement of goods and includes repairs, alterations, or improvements upon or in connection with real property, but does not include services for which the price charged is required by law to be determined or approved by or to be filed, subject to approval or disapproval, with the United States or any state, or any department, division, agency, officer, or official of either as in the case of transportation services;

(6) "Retail buyer" or "buyer" means a person who buys or agrees to buy goods or obtain services or agrees to have services rendered or furnished, from a retail seller;

(7) "Retail seller" or "seller" means a person engaged in the business of selling goods or services to retail buyers;

(8) "Retail installment transaction" means any transaction in which a retail buyer purchases goods or services from a retail seller pursuant to a retail installment contract, a retail charge agreement, or a lender credit card agreement, as defined in this section, which provides for a service charge, as defined in this section, and under which the buyer agrees to pay the unpaid principal balance in one or more installments or which provides for no service charge and under which the buyer agrees to pay the unpaid balance in more than four installments;

(9) "Retail installment contract" or "contract" means a contract, other than a retail charge agreement, a lender credit card agreement, or an instrument reflecting a sale made pursuant thereto, entered into or performed in this state for a retail installment transaction. The term "retail installment contract" may include a chattel mortgage, a conditional sale contract, and a contract in the form of a bailment or a lease if the bailee or lessee contracts to pay as compensation for their use a sum substantially equivalent to or in excess of the value of the goods sold and if it is agreed that the bailee or lessee is bound to become, or for no other or a merely nominal consideration, has the option of becoming the owner of the goods upon full compliance with the provisions of the bailment or lease. The term "retail installment contract" does not include: (a) A "consumer lease," heretofore or hereafter entered into, as defined in RCW 63.10.020; (b) a lease which would constitute such "consumer lease" but for the fact that: (i) It was entered into before April 29, 1983; (ii) the lessee was not a natural person; (iii) the lease was not primarily for personal, family, or household purposes; or (iv) the total contractual obligations exceeded twenty-five thousand dollars; or (c) a lease-purchase agreement under chapter 63.19 RCW;

(10) "Retail charge agreement," "revolving charge agreement," or "charge agreement" means an agreement between a retail buyer and a retail seller that is entered into or performed in this state and that prescribes the terms of retail installment transactions with one or more sellers which may be made thereunder from time to time and under the terms of which a service charge, as defined in this section, is to be computed in relation to the buyer's unpaid balance from time to time;

(11) "Service charge" however denominated or expressed, means the amount which is paid or payable for the privilege of purchasing goods or services to be paid for by the

buyer in installments over a period of time. It does not include the amount, if any, charged for insurance premiums, delinquency charges, attorneys' fees, court costs, any vehicle dealer administrative fee under RCW 46.12.042, any vehicle dealer documentary service fee under RCW 46.70.180(2), or official fees;

(12) "Sale price" means the price for which the seller would have sold or furnished to the buyer, and the buyer would have bought or obtained from the seller, the goods or services which are the subject matter of a retail installment transaction. The sale price may include any taxes, registration and license fees, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and charges for transferring vehicle titles, delivery, installation, servicing, repairs, alterations, or improvements;

(13) "Official fees" means the amount of the fees prescribed by law and payable to the state, county, or other governmental agency for filing, recording, or otherwise perfecting, and releasing or satisfying, a retained title, lien, or other security interest created by a retail installment transaction;

(14) "Time balance" means the principal balance plus the service charge;

(15) "Principal balance" means the sale price of the goods or services which are the subject matter of a retail installment contract less the amount of the buyer's down payment in money or goods or both, plus the amounts, if any, included therein, if a separate identified charge is made therefor and stated in the contract, for insurance, any vehicle dealer administrative fee, any vehicle dealer documentary service fee, and official fees; and the amount actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;

(16) "Person" means an individual, partnership, joint venture, corporation, association, or any other group, however organized;

(17) "Rate" means the percentage which, when multiplied times the outstanding balance for each month or other installment period, yields the amount of the service charge for such month or period. [2003 c 368 § 2; 1999 c 113 § 1; 1997 c 331 § 6; 1993 sp.s. c 5 § 1; 1992 c 134 § 16; 1984 c 280 § 1; 1983 c 158 § 7; 1981 c 77 § 1; 1972 ex.s. c 47 § 1; 1963 c 236 § 1.]

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

Short title—Severability—1992 c 134: See RCW 63.19.900 and 63.19.901.

Severability—1983 c 158: See RCW 63.10.900.

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

Effective date—1972 ex.s. c 47: "This 1972 amendatory act shall take effect on January 1, 1973." [1972 ex.s. c 47 § 5.]

63.14.020 Retail installment contracts—Number of documents—Promissory notes—Date—Signatures—Completion—Type size. Every retail installment contract shall be contained in a single document which shall contain the entire agreement of the parties including any promissory notes or other evidences of indebtedness between the parties relating to the transaction, except as provided in RCW

63.14.050, 63.14.060 and 63.14.110: PROVIDED, That where the buyer's obligation to pay the time balance is represented by a promissory note secured by a chattel mortgage, the promissory note may be a separate instrument if the mortgage recites the amount and terms of payment of such note and the promissory note recites that it is secured by a mortgage: PROVIDED FURTHER, That any such promissory note or other evidence of indebtedness executed by the buyer shall not, when assigned or negotiated, cut off as to third parties any right of action or defense which the buyer may have against the seller, and each such promissory note or other evidence of indebtedness shall contain a statement to that effect: AND PROVIDED FURTHER, That in a transaction involving the repair, alteration or improvement upon or in connection with real property, the contract may be secured by a mortgage on the real property contained in a separate document. Home improvement retail sales transactions which are financed or insured by the Federal Housing Administration are not subject to this chapter.

The contract shall be dated, signed by the retail buyer and completed as to all essential provisions, except as otherwise provided in RCW 63.14.060 and 63.14.070. The printed or typed portion of the contract, other than instructions for completion, shall be in a size equal to at least eight point type. [1967 c 234 § 1; 1963 c 236 § 2.]

63.14.030 Retail installment contracts—Delivery to buyer of copy—Acknowledgment of delivery. The retail seller shall deliver to the retail buyer, at the time the buyer signs the contract a copy of the contract as signed by the buyer, unless the contract is completed by the buyer in situations covered by RCW 63.14.060, and if the contract is accepted at a later date by the seller the seller shall mail to the buyer at his address shown on the retail installment contract a copy of the contract as accepted by the seller or a copy of the memorandum as required in RCW 63.14.060. Until the seller does so, the buyer shall be obligated to pay only the sale price. Any acknowledgment by the buyer of delivery of a copy of the contract shall be in a size equal to at least ten point bold type and, if contained in the contract, shall appear directly above the buyer's signature. [1981 c 77 § 2; 1967 c 234 § 2; 1963 c 236 § 3.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.040 Retail installment contracts—Contents.

(1) The retail installment contract shall contain the names of the seller and the buyer, the place of business of the seller, the residence or other address of the buyer as specified by the buyer and a description or identification of the goods sold or to be sold, or service furnished or rendered or to be furnished or rendered. The contract also shall contain the following items, which shall be set forth in the sequence appearing below:

- (a) The sale price of each item of goods or services;
- (b) The amount of the buyer's down payment, if any, identifying the amounts paid in money and allowed for goods traded in;
- (c) The difference between items (a) and (b);

(d) The aggregate amount, if any, included for insurance, specifying the type or types of insurance and the terms of coverage;

(e) The aggregate amount of official fees, if any;

(f) The amount, if any, actually paid or to be paid by the retail seller pursuant to an agreement with the buyer to discharge a security interest or lien on like-kind goods traded in or lease interest in the circumstance of a lease for like goods being terminated in conjunction with the sale pursuant to a retail installment contract;

(g) The principal balance, which is the sum of items (c), (d), (e), and (f);

(h) The dollar amount or rate of the service charge;

(i) The amount of the time balance owed by the buyer to the seller, which is the sum of items (g) and (h), if (h) is stated in a dollar amount; and

(j) Except as otherwise provided in the next two sentences, the maximum number of installment payments required and the amount of each installment and the due date of each payment necessary to pay such balance. If installment payments other than the final payment are stated as a series of equal scheduled amounts and if the amount of the final installment payment does not substantially exceed the scheduled amount of each preceding installment payment, the maximum number of payments and the amount and due date of each payment need not be separately stated and the amount of the scheduled final installment payment may be stated as the remaining unpaid balance. The due date of the first installment payment may be fixed by a day or date or may be fixed by reference to the date of the contract or to the time of delivery or installation.

Additional items may be included to explain the calculations involved in determining the balance to be paid by the buyer.

(2) Every retail installment contract shall contain the following notice in ten point bold face type or larger directly above the space reserved in the contract for the signature of the buyer: "NOTICE TO BUYER:

(a) Do not sign this contract before you read it or if any spaces intended for the agreed terms, except as to unavailable information, are blank.

(b) You are entitled to a copy of this contract at the time you sign it.

(c) You may at any time pay off the full unpaid balance due under this contract, and in so doing you may receive a partial rebate of the service charge.

(d) The service charge does not exceed . . . % (must be filled in) per annum computed monthly.

(e) You may cancel this contract if it is solicited in person, and you sign it, at a place other than the seller's business address shown on the contract, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the contract which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing this contract. If you choose to cancel this contract, you must return or make available to the seller at the place of delivery any merchandise, in its original condition, received by you under this contract."

Clause (2)(e) needs to be included in the notice only if the contract is solicited in person by the seller or his represen-

tative, and the buyer signs it, at a place other than the seller's business address shown on the contract. [1999 c 113 § 2; 1981 c 77 § 3; 1972 ex.s. c 47 § 2; 1969 c 2 § 1 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 3; 1963 c 236 § 4.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.050 Retail installment contracts—Multiple documents permissible where original applies to purchases from time to time. A retail installment contract may be contained in more than one document, provided that one such document shall be an original document signed by the retail buyer, stated to be applicable to purchases of goods or services to be made by the retail buyer from time to time. In such case such document, together with the sales slip, account book or other written statement relating to each purchase, shall set forth all of the information required by RCW 63.14.040 and shall constitute the retail installment contract for each purchase. On each succeeding purchase pursuant to such original document, the sales slip, account book or other written statement may at the option of the seller constitute the memorandum required by RCW 63.14.110. [1963 c 236 § 5.]

63.14.060 Retail installment contracts—Mail orders based on catalog or other printed solicitation. Retail installment contracts negotiated and entered into by mail or telephone without solicitation in person by salesmen or other representatives of the seller and based upon a catalog of the seller, or other printed solicitation of business, if such catalog or other printed solicitation clearly sets forth the cash sale prices and other terms of sales to be made through such medium, may be made as provided in this section. The provisions of this chapter with respect to retail installment contracts shall be applicable to such sales, except that the retail installment contract, when completed by the buyer need not contain the items required by RCW 63.14.040.

When the contract is received from the retail buyer, the seller shall prepare a written memorandum containing all of the information required by RCW 63.14.040 to be included in a retail installment contract. In lieu of delivering a copy of the contract to the retail buyer as provided in RCW 63.14.030, the seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment payable under the contract: PROVIDED, That if the catalog or other printed solicitation does not set forth all of the other terms of sales in addition to the cash sales prices, such memorandum shall be delivered to the buyer prior to or at the time of delivery of the goods or services. [1967 c 234 § 4; 1963 c 236 § 6.]

63.14.070 Retail installment contracts—Seller not to obtain buyer's signature when essential blank spaces not filled—Exceptions. The seller shall not obtain the signature of the buyer to any contract when it contains blank spaces of items which are essential provisions of the transaction except as provided in RCW 63.14.060: PROVIDED, HOWEVER, That if delivery of the goods is not made at the time of the execution of the contract, the identifying numbers or marks of the goods or similar information and the due date of the first installment may be inserted by the seller in the seller's

counterpart of the contract after it has been signed by the buyer. [1963 c 236 § 7.]

63.14.080 Retail installment contracts—Prepayment in full of unpaid time balance—Refund of unearned service charge—"Rule of seventy-eighths". For the purpose of this section "periodic time balance" means the unpaid portion of the time balance as of the last day of each month, or other uniform time interval established by the regular consecutive payment period scheduled in a retail installment contract.

Notwithstanding the provisions of any retail installment contract to the contrary, and if the rights of the purchaser have not been terminated or forfeited under the terms of the contract, any buyer may prepay in full the unpaid portion of the time balance thereof at any time before its final due date and, if he does so, he shall receive a refund credit of the unearned portion of the service charge for such prepayment. The amount of such refund credit shall be computed according to the "rule of seventy-eighths", that is it shall represent at least as great a portion of the original service charge, as the sum of the periodic time balances not yet due bears to the sum of all the periodic time balances under the schedule of payments in the contract: PROVIDED, That where the earned service charge (total service charge minus refund credit) thus computed is less than the following minimum service charge: fifteen dollars where the principal balance is not in excess of two hundred and fifty dollars, twenty-five dollars where the principal balance exceeds two hundred and fifty dollars but is not in excess of five hundred dollars, thirty-seven dollars and fifty cents where the principal balance exceeds five hundred dollars but is not in excess of one thousand dollars, and fifty dollars where the principal balance exceeds one thousand dollars; then such minimum service charge shall be deemed to be the earned service charge: AND PROVIDED FURTHER, That where the amount of such refund credit is less than one dollar, no refund credit need be made. [1967 c 234 § 5; 1963 c 236 § 8.]

63.14.090 Retail installment contracts, retail charge agreements, and lender credit card agreements—Delinquency or collection charges—Attorney's fees, court costs—Other provisions not inconsistent with chapter are permissible. (1) The holder of any retail installment contract, retail charge agreement, or lender credit card agreement may not collect any delinquency or collection charges, including any attorney's fee and court costs and disbursements, unless the contract, charge agreement, or lender credit card agreement so provides. In such cases, the charges shall be reasonable, and no attorney's fee may be recovered unless the contract, charge agreement, or lender credit card agreement is referred for collection to an attorney not a salaried employee of the holder.

(2) The contract, charge agreement, or lender credit card agreement may contain other provisions not inconsistent with the purposes of this chapter, including but not limited to provisions relating to refinancing, transfer of the buyer's equity, construction permits, and title reports.

(3) Notwithstanding subsection (1) of this section, where the minimum payment is received within the ten days follow-

ing the payment due date, delinquency charges for the late payment of a retail charge agreement or lender credit card agreement may not be more than ten percent of the average balance of the delinquent account for the prior thirty-day period when the average balance of the account for the prior thirty-day period is less than one hundred dollars, except that a minimum charge of up to two dollars shall be allowed. This subsection (3) shall not apply in cases where the payment on the account is more than thirty days overdue. [1993 c 481 § 1; 1984 c 280 § 2; 1963 c 236 § 9.]

63.14.100 Receipt for cash payment—Retail installment contracts, statement of payment schedule and total amount unpaid. A buyer shall be given a written receipt for any payment when made in cash. Upon written request of the buyer, the holder of a retail installment contract shall give or forward to the buyer a written statement of the dates and amounts of payments and the total amount unpaid under the contract. Such a statement shall be given the buyer once without charge; if any additional statement is requested by the buyer, it shall be supplied by the holder at a charge not in excess of one dollar for each additional statement so supplied. [1963 c 236 § 10.]

63.14.110 Consolidation of subsequent purchases with previous contract. (1) If, in a retail installment transaction, a retail buyer makes any subsequent purchases of goods or services from a retail seller from whom he has previously purchased goods or services under one or more retail installment contracts, and the amounts under such previous contract or contracts have not been fully paid, the subsequent purchases may, at the seller's option, be included in and consolidated with one or more of the previous contracts. All the provisions of this chapter with respect to retail installment contracts shall be applicable to such subsequent purchases except as hereinafter stated in this subsection. In the event of such consolidation, in lieu of the buyer's executing a retail installment contract respecting each subsequent purchase, as provided in this section, it shall be sufficient if the seller shall prepare a written memorandum of each such subsequent purchase, in which case the provisions of RCW 63.14.020, 63.14.030 and 63.14.040 shall not be applicable. Unless previously furnished in writing to the buyer by the seller, by sales slip, memoranda or otherwise, such memorandum shall set forth with respect to each subsequent purchase items (a) to (h) inclusive of RCW 63.14.040(1), and in addition, if the service charge is stated as a dollar amount, the amount of the time balance owed by the buyer to the seller for the subsequent purchase, the outstanding balance of the previous contract or contracts, the consolidated time balance, and the revised installments applicable to the consolidated time balance, if any, in accordance with RCW 63.14.040. If the service charge is not stated in a dollar amount, in addition to the items (a) to (h) inclusive of RCW 63.14.040(1), the memorandum shall set forth the outstanding balance of the previous contract or contracts, the consolidated outstanding balance and the revised installments applicable to the consolidated outstanding balance, in accordance with RCW 63.14.040.

The seller shall deliver to the buyer a copy of such memorandum prior to the due date of the first installment of such consolidated contract.

(2) When such subsequent purchases are made, if the seller has retained title or taken a lien or other security interest in any of the goods purchased under any one of the contracts included in the consolidation:

(a) The entire amount of all payments made prior to such subsequent purchases shall be deemed to have been applied on the previous purchases;

(b) The amount of any down payment on the subsequent purchase shall be allocated in its entirety to such subsequent purchase;

(c) Each payment received after the subsequent purchase shall be deemed to be allocated to all of the various time balances in the same proportion or ratio as the original cash sale prices of the various retail installment transactions bear to one another: PROVIDED, That the seller may elect, where the amount of each installment payment is increased in connection with the subsequent purchase, to allocate only the increased amount to the time balance of the subsequent retail installment transaction, and to allocate the amount of each installment payment prior to the increase to the time balance(s) existing at the time of the subsequent purchase.

The provisions of this subsection shall not apply to cases where such previous and subsequent purchases involve equipment, parts, or other goods attached or affixed to goods previously purchased and not fully paid, or to services in connection therewith rendered by the seller at the buyer's request. [1999 c 113 § 3; 1967 c 234 § 6; 1963 c 236 § 11.]

63.14.120 Retail charge agreements and lender credit card agreements—Information to be furnished by seller. (1) At or prior to the time a retail charge agreement or lender credit card agreement is made the seller shall advise the buyer in writing, on the application form or otherwise, or orally that a service charge will be computed on the outstanding balance for each month (which need not be a calendar month) or other regular period agreed upon, the schedule or rate by which the service charge will be computed, and that the buyer may at any time pay his or her total unpaid balance: PROVIDED, That if this information is given orally, the seller shall, upon approval of the buyer's credit, deliver to the buyer or mail to the buyer's address, a memorandum setting forth this information.

(2) The seller or holder of a retail charge agreement or lender credit card agreement shall promptly supply the buyer with a statement as of the end of each monthly period (which need not be a calendar month) or other regular period agreed upon, in which there is any unpaid balance thereunder, which statement shall set forth the following:

(a) The unpaid balance under the retail charge agreement or lender credit card agreement at the beginning and at the end of the period;

(b) Unless otherwise furnished by the seller to the buyer by sales slip, memorandum, or otherwise, a description or identification of the goods or services purchased during the period, the sale price, and the date of each purchase;

(c) The payments made by the buyer to the seller and any other credits to the buyer during the period;

(d) The amount, if any, of any service charge for such period; and

(e) A legend to the effect that the buyer may at any time pay his or her total unpaid balance.

(3) Every retail charge agreement shall contain the following notice in ten point bold face type or larger directly above the space reserved in the charge agreement for the signature of the buyer: NOTICE TO BUYER:

(a) Do not sign this retail charge agreement before you read it or if any spaces intended for the agreed terms are left blank.

(b) You are entitled to a copy of this charge agreement at the time you sign it.

(c) You may at any time pay off the full unpaid balance under this charge agreement.

(d) You may cancel any purchases made under this charge agreement if the seller or his representative solicited in person such purchase, and you sign an agreement for such purchase, at a place other than the seller's business address shown on the charge agreement, by sending notice of such cancellation by certified mail return receipt requested to the seller at his address shown on the charge agreement, which notice shall be posted not later than midnight of the third day (excluding Sundays and holidays) following your signing of the purchase agreement. If you choose to cancel this purchase, you must return or make available to seller at the place of delivery any merchandise, in its original condition, received by you under this purchase agreement. [1984 c 280 § 3; 1981 c 77 § 4; 1972 ex.s. c 47 § 3; 1969 c 2 § 2 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 7; 1963 c 236 § 12.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.123 Restrictions on electronically printed credit card receipts. (1) A retailer shall not print more than the last five digits of the credit card account number or print the credit card expiration date on a credit card receipt to the cardholder.

(2) This section shall apply only to receipts that are electronically printed and shall not apply to transactions in which the sole means of recording the credit card number is by handwriting or by an imprint or copy of the credit card.

(3) This section applies on July 1, 2001, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service on or after July 1, 2001, and on July 1, 2004, to any cash register or other machine or device that electronically prints receipts on credit card transactions and is placed into service prior to July 1, 2001. [2000 c 163 § 2.]

Severability—Effective date—2000 c 163: See RCW 19.200.900 and 19.200.901.

63.14.125 Lender credit card agreements—Security interests prohibited. A lender credit card agreement may not contain any provision for a security interest in real or personal property or fixtures of the buyer to secure payment of performance of the buyer's obligation under the lender credit card agreement. [1984 c 280 § 4.]

(2004 Ed.)

63.14.130 Retail installment contracts, retail charge agreements, and lender credit card agreements—Service charge agreed to by contract—Other fees and charges prohibited. The service charge shall be inclusive of all charges incident to investigating and making the retail installment contract or charge agreement and for the privilege of making the installment payments thereunder and no other fee, expense or charge whatsoever shall be taken, received, reserved or contracted therefor from the buyer, except for any vehicle dealer administrative fee under RCW 46.12.042 or for any vehicle dealer documentary service fee under RCW 46.70.180(2).

(1) The service charge, in a retail installment contract, shall not exceed the dollar amount or rate agreed to by contract and disclosed under RCW 63.14.040(1)(h).

(2) The service charge in a retail charge agreement, revolving charge agreement, lender credit card agreement, or charge agreement, shall not exceed the schedule or rate agreed to by contract and disclosed under RCW 63.14.120(1). If the service charge so computed is less than one dollar for any month, then one dollar may be charged. [2003 c 368 § 3; 1999 c 113 § 4; 1997 c 331 § 7; 1992 c 193 § 1. Prior: 1989 c 112 § 1; 1989 c 14 § 5; 1987 c 318 § 1; 1984 c 280 § 5; 1981 c 77 § 5; 1969 c 2 § 3 (Initiative Measure No. 245, approved November 5, 1968); 1967 c 234 § 8; 1963 c 236 § 13.]

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

Effective date—1987 c 318: "This act shall take effect January 1, 1988." [1987 c 318 § 2.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.136 Retail installment transaction—Unconscionable—Judicial action. (1) With respect to a retail installment transaction, as defined in RCW 63.14.010(8), if the court as a matter of law finds the agreement or contract, or any clause in the agreement or contract, to have been unconscionable at the time it was made, the court may refuse to enforce the agreement or contract, may enforce the remainder of the agreement or contract, or may limit the application of any unconscionable clause to avoid an unconscionable result.

(2) If it is claimed or it appears to the court that the agreement or contract, or any clause in the agreement or contract, may be unconscionable, the parties shall be given a reasonable opportunity to present evidence as to its setting, purpose, and effect to assist the court in making a determination regarding unconscionability.

(3) For the purpose of this section, a charge or practice expressly permitted by this chapter is not in itself unconscionable. [1995 c 249 § 4.]

63.14.140 Retail installment contracts, retail charge agreements, and lender credit card agreements—Insurance. If the cost of any insurance is included in the retail installment contract, retail charge agreement, or lender credit card agreement:

(1) The contract or agreement shall state the nature, purpose, term, and amount of such insurance, and in connection with the sale of a motor vehicle, the contract shall state that the insurance coverage ordered under the terms of this con-

tract does not include "bodily injury liability," "public liability," and "property damage liability" coverage, where such coverage is in fact not included;

(2) The contract or agreement shall state whether the insurance is to be procured by the buyer or the seller;

(3) The amount, included for such insurance, shall not exceed the premiums chargeable in accordance with the rate fixed for such insurance by the insurer, except where the amount is less than one dollar;

(4) If the insurance is to be procured by the seller or holder, he shall, within forty-five days after delivery of the goods or furnishing of the services under the contract, deliver, mail or cause to be mailed to the buyer, at his or her address as specified in the contract, a notice thereof or a copy of the policy or policies of insurance or a certificate or certificates of the insurance so procured. [1984 c 280 § 6; 1963 c 236 § 14.]

63.14.145 Retail installment contracts and charge agreements—Sale, transfer, or assignment. (1) A retail seller may sell, transfer, or assign a retail installment contract or charge agreement. After such sale, transfer, or assignment, the retail installment contract or charge agreement remains a retail installment contract or charge agreement.

(2) Nothing contained in this chapter shall be deemed to limit any charge made by an assignee of a retail installment contract or charge agreement to the seller-assignor upon the sale, transfer, assignment, or discount of the contract or agreement, notwithstanding retention by the assignee of recourse rights against the seller-assignor and notwithstanding duties retained by the seller-assignor to service delinquencies, perform service or warranty agreements regarding the property which is the subject matter of the assigned or discounted contracts or charge agreements, or to do or perform any other duty with respect to the contract or agreement assigned or the subject matter of such contract or agreement. [1993 sp.s. c 5 § 2.]

63.14.150 Retail installment contracts, retail charge agreements, and lender credit card agreements—Agreements by buyer not to assert claim or defense or to submit to suit in another county invalid. No provision of a retail installment contract, retail charge agreement, or lender credit card agreement is valid by which the buyer agrees not to assert against the seller or against an assignee a claim or defense arising out of the sale, or by which the buyer agrees to submit to suit in a county other than the county where the buyer signed the contract or where the buyer resides or has his principal place of business. [1984 c 280 § 7; 1967 c 234 § 9; 1963 c 236 § 15.]

63.14.151 Retail installment contracts, retail charge agreements, and lender credit card agreements—Compliance with disclosure requirements of federal consumer protection act deemed compliance with chapter 63.14 RCW. Any retail installment contract, retail charge agreement, or lender credit card agreement that complies with the disclosure requirements of Title I of the federal consumer protection act (82 Stat. 146, 15 U.S.C. 1601) which is also known as the truth in lending act, as of the date upon which

said retail installment contract, revolving charge agreement, or lender credit card agreement is executed, shall be deemed to comply with the disclosure provisions of chapter 63.14 RCW. [1984 c 280 § 8; 1981 c 77 § 9.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.152 Declaratory judgment action to establish if service charge is excessive. The seller, holder, or buyer may bring an action for declaratory judgment to establish whether service charges contracted for or received in connection with a retail installment transaction are in excess of those allowed by chapter 234, Laws of 1967. Such an action shall be brought against the current holder or against the buyer or his successor in interest or, if the entire principal balance has been fully paid, by the buyer or his successor in interest against the holder to whom the final payment was made. No such action shall be commenced after six months following the date the final payment becomes due, whether by acceleration or otherwise, nor after six months following the date the principal balance is fully paid, whichever first occurs. If the buyer commences such an action and fails to establish that the service charge is in excess of that allowed by RCW 63.14.130, and if the court finds the action was frivolously commenced, the defendant or defendants may, in the court's discretion, recover reasonable attorney's fees and costs from the buyer. [1967 c 234 § 11.]

63.14.154 Cancellation of transaction by buyer—Procedure. (1) In addition to any other rights he may have, the buyer shall have the right to cancel a retail installment transaction for other than the seller's breach by sending notice of such cancellation to the seller at his place of business as set forth in the contract or charge agreement by certified mail, return receipt requested, which shall be posted not later than midnight of the third day (excluding Sundays and holidays) following the date the buyer signs the contract or charge agreement:

(a) If the retail installment transaction was entered into by the buyer and solicited in person or by a commercial telephone solicitation as defined by chapter 20, Laws of 1989 by the seller or his representative at a place other than the seller's address, which may be his main or branch office, shown on the contract; and

(b) If the buyer returns goods received or makes them available to the seller as provided in clause (b) of subsection (2) of this section.

(2) In the event of cancellation pursuant to this section:

(a) The seller shall, without request, refund to the buyer within ten days after such cancellation all deposits, including any down payment, made under the contract or charge agreement and shall return all goods traded in to the seller on account or in contemplation of the contract less any reasonable costs actually incurred in making ready for sale the goods so traded in;

(b) The seller shall be entitled to reclaim and the buyer shall return or make available to the seller at the place of delivery in its original condition any goods received by the buyer under the contract or charge agreement;

(c) The buyer shall incur no additional liability for such cancellation. [1989 c 20 § 18; 1989 c 14 § 8; 1972 ex.s. c 47 § 4; 1967 c 234 § 12.]

Reviser's note: This section was amended by 1989 c 14 § 8 and by 1989 c 20 § 18, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—1989 c 20: See RCW 19.158.900 and 19.158.901.

63.14.156 Extension or deferment of payments—Agreement, charges. The holder of a retail installment contract may, upon agreement with the buyer, extend the scheduled due date or defer a scheduled payment of all or of any part of any installment or installments payable thereunder. No charge shall be made for any such extension or deferment unless a written acknowledgment of such extension or deferment is sent or delivered to the buyer. The holder may charge and contract for the payment of an extension or deferral charge by the buyer and collect and receive the same, but such charge may not exceed those permitted by *RCW 63.14.130 (a), (b), or (c) on the amount of the installment or installments, or part thereof, extended or deferred for the period of extension or deferral. Such period shall not exceed the period from the date when such extended or deferred installment or installments, or part thereof, would have been payable in the absence of such extension or deferral, to the date when such installment or installments, or part thereof, are made payable under the agreement of extension or deferral; except that a minimum charge of one dollar for the period of extension or deferral may be made in any case where the extension or deferral charge, when computed at such rate, amounts to less than one dollar. Such agreement may also provide for the payment by the buyer of the additional cost to the holder of the contract of premiums for continuing in force, until the end of such period of extension or deferral, any insurance coverages provided for in the contract, subject to the provisions of RCW 63.14.140. [1967 c 234 § 13.]

***Reviser's note:** The reference to RCW 63.14.130 (a), (b), or (c) is erroneous. RCW 63.14.130(1) (a) or (b) is apparently intended. Subsequently, RCW 63.14.130 was amended by 1992 c 193 § 2, changing the subsection numbering.

63.14.158 Refinancing agreements—Costs—Contents. The holder of a retail installment contract or contracts may, upon agreement in writing with the buyer, refinance the payment of the unpaid time balance or balances of the contract or contracts by providing for a new schedule of installment payments.

The holder may charge and contract for the payment of a refinance charge by the buyer and collect and receive the same but such refinance charge (1) shall be based upon the amount refinanced, plus any additional cost of insurance and of official fees incident to such refinancing, after the deduction of a refund credit in an amount equal to that to which the buyer would have been entitled under RCW 63.14.080 if he had prepaid in full his obligations under the contract or contracts, but in computing such refund credit there shall not be allowed the minimum earned service charge as authorized by clause (d) of subsection (1) of such section, and (2) may not exceed the rate of service charge provided under RCW

(2004 Ed.)

63.14.130. Such agreement for refinancing may also provide for the payment by the buyer of the additional cost to the holder of the contract or contracts of premiums for continuing in force, until the maturity of the contract or contracts as refinanced, any insurance coverages provided for therein, subject to the provisions of RCW 63.14.140.

The refinancing agreement shall set forth the amount of the unpaid time balance or balances to be refinanced, the amount of any refund credit, the amount to be refinanced after the deduction of the refund credit, the amount or rate of the service charge under the refinancing agreement, any additional cost of insurance and of official fees to the buyer, the new unpaid time balance, if the service charge is stated as a dollar amount, and the new schedule of installment payments. Where there is a consolidation of two or more contracts then the provisions of RCW 63.14.110 shall apply. [1967 c 234 § 14.]

Minimum earned service charges: RCW 63.14.080.

63.14.159 New payment schedule—When authorized. In the event a contract provides for the payment of any installment which is more than double the amount of the average of the preceding installments the buyer upon default of this installment, shall be given an absolute right to obtain a new payment schedule. Unless agreed to by the buyer, the periodic payments under the new schedule shall not be substantially greater than the average of the preceding installments. This section shall not apply if the payment schedule is adjusted to the seasonal or irregular income of the buyer or to accommodate the nature of the buyer's employment. [1967 c 234 § 15.]

63.14.160 Conduct or agreement of buyer does not waive remedies. No act or agreement of the retail buyer before or at the time of the making of a retail installment contract, retail charge agreement, lender credit card agreement, or purchases thereunder shall constitute a valid waiver of any of the provisions of this chapter or of any remedies granted to the buyer by law. [1984 c 280 § 9; 1963 c 236 § 16.]

63.14.165 Financial institution credit card agreement not subject to chapter 63.14 RCW, but subject to chapter 19.52 RCW. A financial institution credit card is a card or device issued under an arrangement pursuant to which the issuing financial institution gives to a card holder residing in this state the privilege of obtaining credit from the issuer or other persons in purchasing or leasing property or services, obtaining loans, or otherwise, and the issuer of which is not principally engaged in the business of selling goods.

Except as provided in RCW 63.14.167, a financial institution credit card agreement and credit extended pursuant to it is not subject to the provisions of this chapter but shall be subject to the provisions of chapter 19.52 RCW. [1984 c 280 § 10; 1981 c 77 § 10.]

Application, saving—Severability—1981 c 77: See RCW 63.14.902 and 63.14.903.

63.14.167 Lender credit card agreements and financial institution credit card agreements—Credit to account for returned goods or forgiveness of a debit for

services—Statement of credit to card issuer—Notice to cardholder. (1) Pursuant to a lender credit card or financial institution credit card transaction in which a credit card has been used to obtain credit, the seller is a person other than the card issuer, and the seller accepts or allows a return of goods or forgiveness of a debit for services that were the subject of the sale, credit shall be applied to the obligor's account as provided by this section.

(2) Within seven working days after a transaction in which an obligor becomes entitled to credit, the seller shall transmit a statement to the card issuer through the normal channels established by the card issuer for the transmittal of such statements. The credit card issuer shall credit the obligor's account within three working days following receipt of a credit statement from the seller.

(3) The obligor is not responsible for payment of any service charges resulting from the seller's or card issuer's failure to comply with subsection (2) of this section.

(4) An issuer issuing a lender credit card or financial institution credit card shall mail or deliver a notice of the provisions of this section at least once per calendar year, at intervals of not less than six months nor more than eighteen months, either to all cardholders or to each cardholder entitled to receive a periodic statement for any one billing cycle. The notice shall state that the obligor is not responsible for payment of any service charges resulting from the seller's or card issuer's failure to comply with subsection (2) of this section. [1989 c 11 § 24; 1984 c 280 § 11.]

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

63.14.170 Violations—Penalties. Any person who shall wilfully and intentionally violate any provision of this chapter shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment for not more than six months, or both. Violation of any order or injunction issued pursuant to this chapter shall constitute prima facie proof of a violation of this section. [1963 c 236 § 17.]

63.14.175 Violations—Remedies. No person may pursue any remedy alleging a violation of this chapter on the basis of any act or omission that does not constitute a violation of this chapter as amended by chapter 5, Laws of 1993 sp. sess. For purposes of this section, the phrase "pursue any remedy" includes pleading a defense, asserting a counterclaim or right of offset or recoupment, commencing, maintaining, or continuing any legal action, or pursuing or defending any appeal. [1993 sp.s. c 5 § 3.]

63.14.180 Noncomplying person barred from recovery of service charge, etc.—Remedy of buyer—Extent of recovery. Any person who enters into a retail installment contract, charge agreement, or lender credit card agreement that does not comply with the provisions of this chapter or who violates any provision of this chapter except as a result of an accidental or bona fide error shall be barred from the recovery of any service charge, official fees, or any delinquency or collection charge under or in connection with the related retail installment contract or purchases under a retail charge agreement or lender credit card agreement; but such

person may nevertheless recover from the buyer an amount equal to the cash price of the goods or services and the cost to such person of any insurance included in the transaction: PROVIDED, That if the service charge is in excess of that allowed by RCW 63.14.130, except as the result of an accidental or bona fide error, the buyer shall be entitled to an amount equal to the total of (1) twice the amount of the service charge paid, and (2) the amount of the service charge contracted for and not paid, plus (3) costs and reasonable attorneys' fees. The reduction in the cash price by the application of the above sentence shall be applied to diminish pro rata each future installment of principal amount payable under the terms of the contract or agreement. [1984 c 280 § 12; 1967 c 234 § 10; 1963 c 236 § 18.]

63.14.190 Restraint of violations. The attorney general or the prosecuting attorney may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1963 c 236 § 19.]

63.14.200 Assurance of discontinuance of unlawful practices. In the enforcement of this chapter, the attorney general may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter, from any person engaging in, or who has engaged in, such act or practice. Any such assurance shall be in writing and be filed with and subject to the approval of the superior court of the county in which the alleged violator resides or has his principal place of business, or in Thurston county. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter for the purpose of securing any injunction as provided in RCW 63.14.190 and for the purpose of RCW 63.14.180 hereof: PROVIDED, That after commencement of any action by a prosecuting attorney, as provided herein, the attorney general may not accept an assurance of discontinuance without the consent of the prosecuting attorney. [1963 c 236 § 20.]

63.14.210 Violation of order or injunction—Penalty. Any person who violates any order or injunction issued pursuant to this chapter shall forfeit and pay a civil penalty of not more than one thousand dollars. For the purpose of this section the superior court issuing any injunction shall retain jurisdiction, and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. [1963 c 236 § 21.]

63.14.900 Severability—1963 c 236. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1963 c 236 § 23.]

63.14.901 Severability—1967 c 234. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1967 c 234 § 16.]

63.14.902 Severability—1981 c 77. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 77 § 12.]

63.14.903 Application, saving—1981 c 77. This act applies only to loans, forbearances, or transactions which are entered into after May 8, 1981, or to existing loans, forbearances, contracts, or agreements which were not primarily for personal, family, or household use in which there is an addition to the principal amount of the credit outstanding after May 8, 1981. [1981 c 77 § 13.]

63.14.904 Severability—1984 c 280. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 280 § 13.]

63.14.910 Saving—1963 c 236. The provisions of this chapter shall not invalidate or make unlawful retail installment contracts or retail charge agreements executed prior to the effective date hereof. [1963 c 236 § 24.]

63.14.920 Effective date—1963 c 236. This chapter shall take effect October 1, 1963. [1963 c 236 § 25.]

63.14.921 Effective date—Saving—1967 c 234. This 1967 amendatory act shall take effect on January 1, 1968. Nothing in this 1967 amendatory act shall be construed to affect the validity of any agreement or contractual relationship entered into prior to such date, except that the rate of any service charge computed periodically on the outstanding balance in excess of that allowed by this 1967 amendatory act shall be reduced to a permissible rate on or before January 1, 1968. [1967 c 234 § 17.]

63.14.922 Effective date—1993 sp.s. c 5. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 28, 1993]. [1993 sp.s. c 5 § 4.]

63.14.923 Severability—1993 sp.s. c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 sp.s. c 5 § 5.]

63.14.924 Application—1995 c 249. This act applies prospectively only and not retroactively. It applies only to retail installment transactions entered into on or after May 5, 1995. [1995 c 249 § 2.]

63.14.925 Savings—1995 c 249. The repeals in section 1, chapter 249, Laws of 1995 shall not be construed as affecting any existing right acquired or liability or obligation incurred under the statutes repealed or under any rule or order

adopted pursuant to those statutes; nor as affecting any proceeding instituted under them. [1995 c 249 § 3.]

63.14.926 Effective date—1995 c 249. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 5, 1995]. [1995 c 249 § 5.]

Chapter 63.18 RCW

LEASE OR RENTAL OF PERSONAL PROPERTY— DISCLAIMER OF WARRANTY OF MERCHANTABILITY OR FITNESS

Sections

63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions.

63.18.010 Lease or rental agreement for lease of personal property—Disclaimer of warranty of merchantability or fitness—Limitation—Exceptions. In any lease or rental agreement for the lease of movable personal property for use primarily in this state (other than a lease under which the lessee is authorized to use such property at no charge), if the rental or other consideration paid or payable thereunder is at a rate which if computed on an annual basis would be six thousand dollars per year or less, no provision thereof purporting to disclaim any warranty of merchantability or fitness for particular purposes which may be implied by law shall be enforceable unless either (1) the disclaimer sets forth with particularity the qualities and characteristics which are not being warranted, or (2) the lessee is engaged in a public utility business or a public service business subject to regulation by the United States or this state. [1974 ex.s. c 180 § 3.]

Exclusion or modification of warranties: RCW 62A.2-316.

Chapter 63.19 RCW

LEASE-PURCHASE AGREEMENTS

Sections

63.19.010 Definitions.
63.19.020 Chapter application.
63.19.030 Disclosure by lessor—Requirement.
63.19.040 Disclosure by lessor—Contents.
63.19.050 Agreement—Restrictions.
63.19.060 Consumer—Reinstatement of agreement—Terms.
63.19.070 Written receipt—Lessor's duty.
63.19.080 Renegotiation—Same lessor and consumer.
63.19.090 Advertising—Requirements—Liability.
63.19.100 Upholstered furniture or bedding.
63.19.110 Violation—Application of chapter 19.86 RCW.
63.19.900 Short title—1992 c 134.
63.19.901 Severability—1992 c 134.

63.19.010 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Advertisement" means a commercial message in any medium that aids, promotes, or assists, directly or indirectly, a lease-purchase agreement.

(2) "Cash price" means the price at which the lessor would have sold the property to the consumer for cash on the date of the lease-purchase agreement.

(3) "Consumer" means a natural person who rents personal property under a lease-purchase agreement to be used primarily for personal, family, or household purposes.

(4) "Consummation" means the time a consumer becomes contractually obligated on a lease-purchase agreement.

(5) "Lease-purchase agreement" means an agreement for the use of personal property by a natural person primarily for personal, family, or household purposes, for an initial period of four months or less that is automatically renewable with each payment after the initial period, but does not obligate or require the consumer to continue leasing or using the property beyond the initial period, and that permits the consumer to become the owner of the property.

(6) "Lessor" means a person who regularly provides the use of property through lease-purchase agreements and to whom lease payments are initially payable on the face of the lease-purchase agreement. [1992 c 134 § 2.]

63.19.020 Chapter application. (1) Lease-purchase agreements that comply with this chapter are not governed by the laws relating to:

- (a) A consumer lease as defined in chapter 63.10 RCW;
- (b) A retail installment sale of goods or services as regulated under chapter 63.14 RCW;
- (c) A security interest as defined in Title 62A RCW; or
- (d) Loans, forbearances of money, goods, or things in action as governed by chapter 19.52 RCW.

(2) This chapter does not apply to the following:

- (a) Lease-purchase agreements primarily for business, commercial, or agricultural purposes, or those made with governmental agencies or instrumentalities or with organizations;
- (b) A lease of a safe deposit box;
- (c) A lease or bailment of personal property that is incidental to the lease of real property, and that provides that the consumer has no option to purchase the leased property; or
- (d) A lease of an automobile. [1992 c 134 § 3.]

63.19.030 Disclosure by lessor—Requirement. (1) The lessor shall disclose to the consumer the information required under this chapter. In a transaction involving more than one lessor, only one lessor need make the disclosures, but all lessors shall be bound by such disclosures.

(2) The disclosure shall be made at or before consummation of the lease-purchase agreement.

(3) The disclosure shall be made clearly and conspicuously in writing and a copy of the lease-purchase agreement provided to the consumer. The disclosures required under RCW 63.19.040(1) shall be made on the face of the contract above the line for the consumer's signature.

(4) If a disclosure becomes inaccurate as the result of any act, occurrence, or agreement by the consumer after delivery of the required disclosures, the resulting inaccuracy is not a violation of this chapter. [1992 c 134 § 4.]

63.19.040 Disclosure by lessor—Contents. (1) For each lease-purchase agreement, the lessor shall disclose in the agreement the following items, as applicable:

(a) The total number, total amount, and timing of all payments necessary to acquire ownership of the property;

(b) A statement that the consumer will not own the property until the consumer has made the total payment necessary to acquire ownership;

(c) A statement that the consumer is responsible for the fair market value of the property if, and as of the time, it is lost, stolen, damaged, or destroyed;

(d) A brief description of the leased property, sufficient to identify the property to the consumer and the lessor, including an identification number, if applicable, and a statement indicating whether the property is new or used, but a statement that indicates new property is used is not a violation of this chapter;

(e) A brief description of any damage to the leased property;

(f) A statement of the cash price of the property. Where the agreement involves a lease of five or more items as a set, in one agreement, a statement of the aggregate cash price of all items shall satisfy this requirement;

(g) The total of initial payments paid or required at or before consummation of the agreement or delivery of the property, whichever is later;

(h) A statement that the total of payments does not include other charges, such as late payment, default, pickup, and reinstatement fees, which fees shall be separately disclosed in the contract;

(i) A statement clearly summarizing the terms of the consumer's option to purchase, including a statement that the consumer has the right to exercise an early purchase option and the price, formula, or method for determining the price at which the property may be so purchased;

(j) A statement identifying the party responsible for maintaining or servicing the property while it is being leased, together with a description of that responsibility, and a statement that if any part of a manufacturer's express warranty covers the lease property at the time the consumer acquires ownership of the property, it shall be transferred to the consumer, if allowed by the terms of the warranty;

(k) The date of the transaction and the identities of the lessor and consumer;

(l) A statement that the consumer may terminate the agreement without penalty by voluntarily surrendering or returning the property in good repair upon expiration of any lease term along with any past due rental payments; and

(m) Notice of the right to reinstate an agreement as herein provided.

(2) With respect to matters specifically governed by the federal consumer credit protection act, compliance with the act satisfies the requirements of this section. [1992 c 134 § 5.]

63.19.050 Agreement—Restrictions. A lease-purchase agreement may not contain:

- (1) A confession of judgment;
- (2) A negotiable instrument;
- (3) A security interest or any other claim of a property interest in any goods except those goods delivered by the lessor pursuant to the lease-purchase agreement;
- (4) A wage assignment;
- (5) A waiver by the consumer of claims or defenses; or

(6) A provision authorizing the lessor or a person acting on the lessor's behalf to enter upon the consumer's premises or to commit any breach of the peace in the repossession of goods. [1992 c 134 § 6.]

63.19.060 Consumer—Reinstatement of agreement—Terms. (1) A consumer who fails to make a timely rental payment may reinstate the agreement, without losing any rights or options that exist under the agreement, by the payment of:

- (a) All past due rental charges;
- (b) If the property has been picked up, the reasonable costs of pickup and redelivery; and
- (c) Any applicable late fee, within ten days of the renewal date if the consumer pays monthly, or within five days of the renewal date if the consumer pays more frequently than monthly.

(2) In the case of a consumer who has paid less than two-thirds of the total of payments necessary to acquire ownership and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable reinstatement period set forth in subsection (1) of this section, the consumer may reinstate the agreement during a period of not less than twenty-one days after the date of the return of the property.

(3) In the case of a consumer who has paid two-thirds or more of the total of payments necessary to acquire ownership, and where the consumer has returned or voluntarily surrendered the property, other than through judicial process, during the applicable period set forth in subsection (1) of this section, the consumer may reinstate the agreement during a period of not less than forty-five days after the date of the return of the property.

(4) Nothing in this section shall prevent a lessor from attempting to repossess property during the reinstatement period, but such a repossession shall not affect the consumer's right to reinstate. Upon reinstatement, the lessor shall provide the consumer with the same property or substitute property of comparable quality and condition. [1992 c 134 § 7.]

63.19.070 Written receipt—Lessor's duty. A lessor shall provide the consumer a written receipt for each payment made by cash or money order. [1992 c 134 § 8.]

63.19.080 Renegotiation—Same lessor and consumer. (1) A renegotiation shall occur when an existing lease-purchase agreement is satisfied and replaced by a new agreement undertaken by the same lessor and consumer. A renegotiation shall be considered a new agreement requiring new disclosures. However, events such as the following shall not be treated as renegotiations:

- (a) The addition or return of property in a multiple-item agreement or the substitution of the lease property, if in either case the average payment allocable to a payment period is not changed by more than twenty-five percent;
- (b) A deferral or extension of one or more periodic payments, or portions of a periodic payment;
- (c) A reduction in charges in the lease or agreement; and
- (d) A lease or agreement involved in a court proceeding.

(2004 Ed.)

(2) No disclosures are required for any extension of a lease-purchase agreement. [1992 c 134 § 9.]

63.19.090 Advertising—Requirements—Liability.

(1) If an advertisement for a lease-purchase agreement refers to or states the dollar amount of any payment and the right to acquire ownership for any one specific item, the advertisement shall also clearly and conspicuously state the following items, as applicable:

- (a) That the transaction advertised is a lease-purchase agreement;
- (b) The total of payments necessary to acquire ownership; and
- (c) That the consumer acquires no ownership rights if the total amount necessary to acquire ownership is not paid.

(2) Any owner or personnel of any medium in which an advertisement appears or through which it is disseminated shall not be liable under this section.

(3) The provisions of subsection (1) of this section shall not apply to an advertisement that does not refer to or state the amount of any payment, or which is published in the yellow pages of a telephone directory or in any similar directory of business. [1992 c 134 § 10.]

63.19.100 Upholstered furniture or bedding. Upon the return of leased upholstered furniture or bedding, the lessor shall sanitize the property. A lessor shall not lease used upholstered furniture or bedding that has not been sanitized. [1992 c 134 § 11.]

63.19.110 Violation—Application of chapter 19.86 RCW. The Washington lease-purchase agreement act is a matter affecting the public interest for the purpose of applying chapter 19.86 RCW. The violation of this chapter is not reasonable in relation to the development and preservation of business. A violation of this chapter constitutes an unfair or deceptive act or practice in trade or commerce for the purpose of applying chapter 19.86 RCW. [1992 c 134 § 12.]

63.19.900 Short title—1992 c 134. This act may be known and cited as the Washington lease-purchase agreement act. [1992 c 134 § 1.]

63.19.901 Severability—1992 c 134. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 134 § 18.]

Chapter 63.21 RCW

LOST AND FOUND PROPERTY

Sections

- 63.21.010 Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication.
- 63.21.020 Circumstances extinguishing finder's claim to property.
- 63.21.030 Release of property to finder—Limitations—Payment to governmental entity—Expiration of finder's claim.
- 63.21.040 Failure to comply with chapter—Forfeiture of right to property.

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| 63.21.050 | Duties of chief law enforcement officer receiving found property. |
| 63.21.060 | Duties of governmental entity acquiring lost property—Disposal of property. |
| 63.21.070 | Claim to found property by employee, officer, or agent of governmental entity—Limitation. |
| 63.21.080 | Chapter not applicable to certain unclaimed property. |
| 63.21.900 | Severability—1979 ex.s. c 85. |

63.21.010 Procedure where finder wishes to claim found property—Appraisal—Surrender of property—Notice of intent to claim—Publication. (1) Any person who finds property that is not unlawful to possess, the owner of which is unknown, and who wishes to claim the found property, shall:

(a) Within seven days of the finding acquire a signed statement setting forth an appraisal of the current market value of the property prepared by a qualified person engaged in buying or selling like items or by a district court judge, unless the found property is cash; and

(b) Within seven days report the find of property and surrender, if requested, the property and a copy of the evidence of the value of the property to the chief law enforcement officer, or his or her designated representative, of the governmental entity where the property was found, and serve written notice upon the officer of the finder's intent to claim the property if the owner does not make out his or her right to it under this chapter.

(2) Within thirty days of the report the governmental entity shall cause notice of the finding to be published at least once a week for two successive weeks in a newspaper of general circulation in the county where the property was found, unless the appraised value of the property is less than the cost of publishing notice. If the value is less than the cost of publishing notice, the governmental entity may cause notice to be posted or published in other media or formats that do not incur expense to the governmental entity. [1997 c 237 § 1; 1979 ex.s. c 85 § 1.]

63.21.020 Circumstances extinguishing finder's claim to property. The finder's claim to the property shall be extinguished:

(1) If the owner satisfactorily establishes, within sixty days after the find was reported to the appropriate officer, the owner's right to possession of the property; or

(2) If the chief law enforcement officer determines and so informs the finder that the property is illegal for the finder to possess. [1979 ex.s. c 85 § 2.]

63.21.030 Release of property to finder—Limitations—Payment to governmental entity—Expiration of finder's claim. (1) The found property shall be released to the finder and become the property of the finder sixty days after the find was reported to the appropriate officer if no owner has been found, or sixty days after the final disposition of any judicial or other official proceeding involving the property, whichever is later. The property shall be released only after the finder has presented evidence of payment to the treasurer of the governmental entity handling the found property, the amount of ten dollars plus the amount of the cost of publication of notice incurred by the government [governmental] entity pursuant to RCW 63.21.010, which amount shall be deposited in the general fund of the governmental

entity. If the appraised value of the property is less than the cost of publication of notice of the finding, then the finder is not required to pay any fee.

(2) When ninety days have passed after the found property was reported to the appropriate officer, or ninety days after the final disposition of a judicial or other proceeding involving the found property, and the finder has not completed the requirements of this chapter, the finder's claim shall be deemed to have expired and the found property may be disposed of as unclaimed property under chapter 63.32 or 63.40 RCW. Such laws shall also apply whenever a finder states in writing that he or she has no intention of claiming the found property. [1997 c 237 § 2; 1979 ex.s. c 85 § 3.]

63.21.040 Failure to comply with chapter—Forfeiture of right to property. Any finder of property who fails to discharge the duties imposed by this chapter shall forfeit all right to the property and shall be liable for the full value of the property to its owner. [1979 ex.s. c 85 § 4.]

63.21.050 Duties of chief law enforcement officer receiving found property. The chief law enforcement officer or his or her designated representative to whom a finder surrenders property, shall:

(1) Advise the finder if the found property is illegal for him or her to possess;

(2) Advise the finder if the found property is to be held as evidence in judicial or other official proceedings;

(3) Advise the finder in writing of the procedures to be followed in claiming the found property;

(4) If the property is valued at twenty-five dollars or less, allow the finder to retain the property if it is determined there is no reason for the officer to retain the property;

(5) If the property exceeds twenty-five dollars in value and has been requested to be surrendered to the law enforcement agency, retain the property for sixty days before it can be claimed by the finder under this chapter, unless the owner shall have recovered the property;

(6) If the property is held as evidence in judicial or other official proceedings, retain the property for sixty days after the final disposition of the judicial or other official proceeding, before it can be claimed by the finder or owner under the provisions of this chapter;

(7) After the required number of days have passed, and if no owner has been found, surrender the property to the finder according to the requirements of this chapter; or

(8) If neither the finder nor the owner claim the property retained by the officer within thirty days of the time when the claim can be made, the property shall be disposed of as unclaimed property under chapter 63.32 or 63.40 RCW. [1979 ex.s. c 85 § 5.]

63.21.060 Duties of governmental entity acquiring lost property—Disposal of property. Any governmental entity that acquires lost property shall attempt to notify the apparent owner of the property. If the property is not returned to a person validly establishing ownership or right to possession of the property, the governmental entity shall forward the lost property within thirty days but not less than ten days after the time the governmental entity acquires the lost prop-

erty to the chief law enforcement officer, or his or her designated representative, of the county in which the property was found, except that if the property is found within the borders of a city or town the property shall be forwarded to the chief law enforcement officer of the city or town or his or her designated representative. A governmental entity may elect to retain property which it acquires and dispose of the property as provided by chapter 63.32 or 63.40 RCW. [1979 ex.s. c 85 § 6.]

63.21.070 Claim to found property by employee, officer, or agent of governmental entity—Limitation. An employee, officer, or agent of a governmental entity who finds or acquires any property covered by this chapter while acting within the course of his or her employment may not claim possession of the lost property as a finder under this chapter unless the governing body of the governmental entity has specifically provided, by ordinance, resolution, or rule for such a claim. [1979 ex.s. c 85 § 7.]

63.21.080 Chapter not applicable to certain unclaimed property. This chapter shall not apply to:

- (1) Motor vehicles under chapter 46.52 RCW;
- (2) Unclaimed property in the hands of a bailee under chapter 63.24 RCW;
- (3) Uniform disposition of unclaimed property under chapter 63.29 RCW; and
- (4) Secured vessels under *chapter 88.27 RCW. [1994 c 51 § 6; 1985 c 7 § 125; 1979 ex.s. c 85 § 8.]

*Reviser's note: Chapter 88.27 RCW was recodified as chapter 79A.65 RCW pursuant to 1999 c 249 § 1601.

Severability—1994 c 51: See RCW 79A.65.900.

63.21.900 Severability—1979 ex.s. c 85. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 85 § 11.]

Chapter 63.24 RCW

UNCLAIMED PROPERTY IN HANDS OF BAILEE

Sections

- 63.24.150 Notice to owner.
- 63.24.160 Disposition of unclaimed property—Donation to charitable organization or transmittal to police or sheriff.
- 63.24.170 Bailee not liable to owner—Reimbursed for reasonable costs.

Abandoned inmate personal property: Chapter 63.42 RCW.

Unclaimed property in hands of state patrol: Chapter 63.35 RCW.

63.24.150 Notice to owner. Unless otherwise provided between the parties, if personal property deposited with a bailee is unclaimed for a period of thirty days, the bailee shall notify the owner, if known, either personally or by mail that the property is subject to disposition under RCW 63.24.160. [1981 c 154 § 4.]

63.24.160 Disposition of unclaimed property—Donation to charitable organization or transmittal to police or sheriff. If property not covered by chapter 63.26 RCW remains unclaimed sixty days after notice is given, or, if the

owner's identity or address is unknown, sixty days from when notice was attempted, the bailee shall:

(1) If the reasonable aggregate value of the unclaimed property is less than one hundred dollars, donate the property, or proceeds thereof, to a charitable organization exempt from federal income tax under the federal internal revenue code; or

(2) If the reasonable aggregate value of the unclaimed property is one hundred dollars or more, forward the property to the chief of police or sheriff for disposition as unclaimed property under chapter 63.32 or 63.40 RCW. [1988 c 226 § 1; 1981 c 154 § 5.]

63.24.170 Bailee not liable to owner—Reimbursed for reasonable costs. A bailee is not liable to the owner for unclaimed property disposed of in good faith in accordance with the requirements of this chapter. A bailee shall be reimbursed from the proceeds of sale of any unclaimed property disposed of under RCW 63.24.160 for the reasonable costs or charges for any goods or services provided by the bailee regarding the property, and for the costs to provide notice to the owner. [1990 c 41 § 1; 1981 c 154 § 6.]

Chapter 63.26 RCW

UNCLAIMED PROPERTY HELD BY MUSEUM OR HISTORICAL SOCIETY

Sections

- 63.26.010 Definitions.
- 63.26.020 Abandoned property—Notice.
- 63.26.030 Loaned property deemed donated—Notice of owner's change of address—Notice of provisions of chapter.
- 63.26.040 Notice of abandonment of property.
- 63.26.050 Vesting of title in museum or historical society—Subsequent purchase from museum or historical society.

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

(1) "Museum or historical society" means an institution operated by a nonprofit corporation, nonprofit association, or public agency, primarily educational, scientific, historic, or aesthetic in purpose, which owns, borrows, studies, or cares for tangible objects, including archives, and exhibits them as appropriate.

(2) "Property" includes all documents and tangible objects, animate and inanimate, under the care of a museum or historical society which have intrinsic scientific, historic, artistic, or cultural value. [1988 c 226 § 3.]

63.26.020 Abandoned property—Notice. Any property held by a museum or historical society within the state, other than by terms of a loan agreement, that has been held for five years or more and has remained unclaimed shall be deemed to be abandoned. Such property shall become the property of the museum or historical society if the museum or society has given notice pursuant to RCW 63.26.040 and no assertion of title has been filed for the property within ninety days from the date of the second published notice. [1988 c 226 § 4.]

63.26.030 Loaned property deemed donated—Notice of owner's change of address—Notice of provisions of

chapter. (1) Property subject to a loan agreement which is on loan to a museum or historical society shall be deemed to be donated to the museum or society if no claim is made or action filed to recover the property after termination or expiration of the loan and if the museum or society has given notice pursuant to RCW 63.26.040 and no assertion of title has been filed within ninety days from the date of the second published notice.

(2) A museum or society may terminate a loan of property if the property was loaned to the museum or society for an indefinite term and the property has been held by the museum or society for five years or more. Property on "permanent loan" shall be deemed to be loaned for an indefinite term.

(3) If property was loaned to the museum or society for a specified term, the museum or society may give notice of termination of the loan at any time after expiration of the specified term.

(4) It is the responsibility of the owner of property on loan to a museum or society to notify the museum or society promptly in writing of any change of address or change in ownership of the property.

(5) When a museum or society accepts a loan of property, the museum or society shall inform the owner in writing of the provisions of this chapter. [1988 c 226 § 5.]

63.26.040 Notice of abandonment of property. (1) When a museum or historical society is required to give notice of abandonment of property or of termination of a loan, the museum or historical society shall mail such notice by certified mail, return receipt requested, to the last known owner at the most recent address of such owner as shown on the museum's or society's records. If the museum or society has no address on record, or the museum or society does not receive written proof of receipt of the mailed notice within thirty days of the date the notice was mailed, the museum or society shall publish notice, at least once each week for two consecutive weeks, in a newspaper of general circulation in both the county in which the museum is located and the county in which the last known address, if available, of the owner is located.

(2) The published notice shall contain:

(a) A description of the unclaimed property;

(b) The name and last known address of the owner;

(c) A request that all persons who may have any knowledge of the whereabouts of the owner provide written notice to the museum or society; and

(d) A statement that if written assertion of title is not presented by the owner to the museum or society within ninety days from the date of the second published notice, the property shall be deemed abandoned or donated and shall become the property of the museum or society.

(3) For purposes of this chapter, if the loan of property was made to a branch of a museum or society, the museum or society is deemed to be located in the county in which the branch is located. Otherwise the museum or society is located in the county in which it has its principal place of business. [1988 c 226 § 6.]

63.26.050 Vesting of title in museum or historical society—Subsequent purchase from museum or historical society.

(1) If no written assertion of title has been presented by the owner to the museum or society within ninety days from the date of the second published notice, title to the property shall vest in the museum or historical society, free of all claims of the owner and of all persons claiming under the owner.

(2) One who purchases or otherwise acquires property from a museum or historical society acquires good title to the property if the museum or society has acquired title to the property under this chapter. [1988 c 226 § 7.]

Chapter 63.29 RCW

UNIFORM UNCLAIMED PROPERTY ACT

Sections

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| 63.29.010 | Definitions and use of terms. |
| 63.29.020 | Property presumed abandoned—General rule. |
| 63.29.030 | General rules for taking custody of intangible unclaimed property. |
| 63.29.033 | Property presumed abandoned—State or subdivision is originator or issuer. |
| 63.29.040 | Travelers checks and money orders. |
| 63.29.050 | Checks, drafts, and similar instruments issued or certified by banking and financial organizations. |
| 63.29.060 | Bank deposits and funds in financial organizations. |
| 63.29.070 | Funds owing under life insurance policies. |
| 63.29.080 | Deposits held by utilities. |
| 63.29.090 | Refunds held by business associations. |
| 63.29.100 | Stock and other intangible interests in business associations. |
| 63.29.110 | Property of business associations held in course of dissolution. |
| 63.29.120 | Property held by agents and fiduciaries. |
| 63.29.130 | Property held by courts and public agencies. |
| 63.29.133 | Property held by landlord. |
| 63.29.135 | Abandoned intangible property held by local government. |
| 63.29.140 | Gift certificates and credit memos. |
| 63.29.150 | Wages. |
| 63.29.160 | Contents of safe deposit box or other safekeeping repository. |
| 63.29.165 | Property in self-storage facility. |
| 63.29.170 | Report of abandoned property. |
| 63.29.180 | Notice and publication of lists of abandoned property. |
| 63.29.190 | Payment or delivery of abandoned property. |
| 63.29.200 | Custody by state—Holder relieved from liability—Reimbursement of holder paying claim—Reclaiming for owner—Defense of holder—Payment of safe deposit box or repository charges. |
| 63.29.210 | Crediting of dividends, interest, or increments to owner's account. |
| 63.29.220 | Public sale of abandoned property. |
| 63.29.230 | Deposit of funds. |
| 63.29.240 | Filing of claim with department. |
| 63.29.250 | Claim of another state to recover property—Procedure. |
| 63.29.260 | Action to establish claim. |
| 63.29.270 | Election to take payment or delivery. |
| 63.29.280 | Destruction or disposition of property having insubstantial commercial value—Immunity from liability. |
| 63.29.290 | Periods of limitation. |
| 63.29.300 | Requests for reports and examination of records. |
| 63.29.310 | Retention of records. |
| 63.29.320 | Enforcement. |
| 63.29.330 | Interstate agreements and cooperation—Joint and reciprocal actions with other states. |
| 63.29.340 | Interest and penalties. |
| 63.29.350 | Penalty for excessive fee for locating abandoned property. |
| 63.29.360 | Foreign transactions. |
| 63.29.370 | Rules. |
| 63.29.380 | Information and records confidential. |
| 63.29.900 | Effect of new provisions—Clarification of application. |
| 63.29.901 | Captions not law—1983 c 179. |
| 63.29.902 | Uniformity of application and construction. |
| 63.29.903 | Short title. |
| 63.29.904 | Severability—1983 c 179. |
| 63.29.905 | Effective date—1983 c 179. |
| 63.29.906 | Effective date—1996 c 45. |

Abandoned inmate personal property: Chapter 63.42 RCW.

Unclaimed property in hands of state patrol: Chapter 63.35 RCW.

63.29.010 Definitions and use of terms. As used in this chapter, unless the context otherwise requires:

(1) "Department" means the department of revenue established under RCW 82.01.050.

(2) "Apparent owner" means the person whose name appears on the records of the holder as the person entitled to property held, issued, or owing by the holder.

(3) "Attorney general" means the chief legal officer of this state referred to in chapter 43.10 RCW.

(4) "Banking organization" means a bank, trust company, savings bank, land bank, safe deposit company, private banker, or any organization defined by other law as a bank or banking organization.

(5) "Business association" means a nonpublic corporation, joint stock company, investment company, business trust, partnership, or association for business purposes of two or more individuals, whether or not for profit, including a banking organization, financial organization, insurance company, or utility.

(6) "Domicile" means the state of incorporation of a corporation and the state of the principal place of business of an unincorporated person.

(7) "Financial organization" means a savings and loan association, cooperative bank, building and loan association, or credit union.

(8) "Gift certificate" has the same meaning as in RCW 19.240.010.

(9) "Holder" means a person, wherever organized or domiciled, who is:

- (a) In possession of property belonging to another,
- (b) A trustee, or
- (c) Indebted to another on an obligation.

(10) "Insurance company" means an association, corporation, fraternal or mutual benefit organization, whether or not for profit, which is engaged in providing insurance coverage, including accident, burial, casualty, credit life, contract performance, dental, fidelity, fire, health, hospitalization, illness, life (including endowments and annuities), malpractice, marine, mortgage, surety, and wage protection insurance.

(11) "Intangible property" does not include contract claims which are unliquidated but does include:

(a) Moneys, checks, drafts, deposits, interest, dividends, and income;

(b) Credit balances, customer overpayments, gift certificates, security deposits, refunds, credit memos, unpaid wages, unused airline tickets, and unidentified remittances, but does not include discounts which represent credit balances for which no consideration was given;

(c) Stocks, and other intangible ownership interests in business associations;

(d) Moneys deposited to redeem stocks, bonds, coupons, and other securities, or to make distributions;

(e) Liquidated amounts due and payable under the terms of insurance policies; and

(f) Amounts distributable from a trust or custodial fund established under a plan to provide health, welfare, pension, vacation, severance, retirement, death, stock purchase, profit sharing, employee savings, supplemental unemployment insurance, or similar benefits.

(2004 Ed.)

(12) "Last known address" means a description of the location of the apparent owner sufficient for the purpose of the delivery of mail.

(13) "Owner" means a depositor in the case of a deposit, a beneficiary in case of a trust other than a deposit in trust, a creditor, claimant, or payee in the case of other intangible property, or a person having a legal or equitable interest in property subject to this chapter or his legal representative.

(14) "Person" means an individual, business association, state or other government, governmental subdivision or agency, public corporation, public authority, estate, trust, two or more persons having a joint or common interest, or any other legal or commercial entity.

(15) "State" means any state, district, commonwealth, territory, insular possession, or any other area subject to the legislative authority of the United States.

(16) "Third party bank check" means any instrument drawn against a customer's account with a banking organization or financial organization on which the banking organization or financial organization is only secondarily liable.

(17) "Utility" means a person who owns or operates for public use any plant, equipment, property, franchise, or license for the transmission of communications or the production, storage, transmission, sale, delivery, or furnishing of electricity, water, steam, or gas. [2004 c 168 § 13; 1983 c 179 § 1.]

Effective date—2004 c 168 §§ 13 and 14: "Sections 13 and 14 of this act take effect July 1, 2004." [2004 c 168 § 19.]

63.29.020 Property presumed abandoned—General rule. (1) Except as otherwise provided by this chapter, all intangible property, including any income or increment derived therefrom, less any lawful charges, that is held, issued, or owing in the ordinary course of the holder's business and has remained unclaimed by the owner for more than three years after it became payable or distributable is presumed abandoned.

(2) Property, with the exception of unredeemed Washington state lottery tickets and unrepresented winning parimutuel tickets, is payable and distributable for the purpose of this chapter notwithstanding the owner's failure to make demand or to present any instrument or document required to receive payment.

(3) This chapter does not apply to claims drafts issued by insurance companies representing offers to settle claims unliquidated in amount or settled by subsequent drafts or other means.

(4) This chapter does not apply to property covered by chapter 63.26 RCW.

(5) This chapter does not apply to used clothing, umbrellas, bags, luggage, or other used personal effects if such property is disposed of by the holder as follows:

(a) In the case of personal effects of negligible value, the property is destroyed; or

(b) The property is donated to a bona fide charity.

(6) This chapter does not apply to a gift certificate subject to the prohibition against expiration dates under RCW 19.240.020 or to a gift certificate subject to RCW 19.240.030 through 19.240.060. However, this chapter applies to gift certificates presumed abandoned under RCW 63.29.110.

[Title 63 RCW—page 19]

[2004 c 168 § 14; 2003 1st sp.s. c 13 § 1; 1992 c 122 § 1; 1988 c 226 § 2; 1983 c 179 § 2.]

Effective date—2004 c 168 §§ 13 and 14: See note following RCW 63.29.010.

Effective dates—2003 1st sp.s. c 13: "(1) Sections 8 through 10 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect August 1, 2003.

(2) Sections 11 through 16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2003.

(3) Sections 1 through 7 of this act take effect January 1, 2004." [2003 1st sp.s. c 13 § 17.]

63.29.030 General rules for taking custody of intangible unclaimed property. Unless otherwise provided in this chapter or by other statute of this state, intangible property is subject to the custody of this state as unclaimed property if the conditions raising a presumption of abandonment under RCW 63.29.020 and 63.29.050 through 63.29.160 are satisfied and:

(1) The last known address, as shown on the records of the holder, of the apparent owner is in this state;

(2) The records of the holder do not reflect the identity of the person entitled to the property and it is established that the last known address of the person entitled to the property is in this state;

(3) The records of the holder do not reflect the last known address of the apparent owner, and it is established that:

(a) The last known address of the person entitled to the property is in this state, or

(b) The holder is a domiciliary or a government or governmental subdivision or agency of this state and has not previously paid or delivered the property to the state of the last known address of the apparent owner or other person entitled to the property;

(4) The last known address, as shown on the records of the holder, of the apparent owner is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property and the holder is a domiciliary or a government or governmental subdivision or agency of this state: PROVIDED, That a holder may rely, with acquittance, upon a list of such states which shall be provided by the department;

(5) The last known address, as shown on the records of the holder, of the apparent owner is in a foreign nation and the holder is a domiciliary or a government or governmental subdivision or agency of this state; or

(6) The transaction out of which the property arose occurred in this state; and

(a)(i) The last known address of the apparent owner or other person entitled to the property is unknown, or

(ii) The last known address of the apparent owner or other person entitled to the property is in a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property: PROVIDED, That a holder may rely, with acquittance, upon a list of such states which shall be provided by the department, and

(b) The holder is a domiciliary of a state that does not provide by law for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property. [1983 c 179 § 3.]

63.29.033 Property presumed abandoned—State or subdivision is originator or issuer. (1) All intangible property, including but not limited to securities, principal, interest, dividends, or other earnings thereon, less any lawful charges, held by a business association, federal, state or local government or governmental subdivision, agency or entity, or any other person or entity, regardless of where the holder may be found, if the owner has not claimed such property or corresponded in writing with the holder concerning the property within three years after the date prescribed for payment or delivery by the issuer, unless the holder is a state that has taken custody pursuant to its own unclaimed property laws, in which case no additional period of holding beyond that of such state is necessary hereunder is presumed abandoned and subject to the custody of the state of Washington as unclaimed property if:

(a) The last known address of the owner is unknown; and

(b) The person or entity originating or issuing the intangible property is the state of Washington or any political subdivision of the state of Washington, or is incorporated, organized, created, or otherwise located in the state of Washington.

(2) The provisions of subsection (1) of this section shall not apply to property that is or may be presumed abandoned and subject to the custody of the state of Washington pursuant to any other provision of law containing a dormancy period different than that prescribed in subsection (1) of this section.

(3) The provisions of subsection (1) of this section shall apply to all property held on June 11, 1992, or at any time thereafter, regardless of when the property became or becomes presumptively abandoned. [1992 c 48 § 1.]

63.29.040 Travelers checks and money orders. (1) Subject to subsection (4) of this section, any sum payable on a travelers check that has been outstanding for more than fifteen years after its issuance is presumed abandoned unless the owner, within fifteen years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(2) Subject to subsection (4) of this section, any sum payable on a money order or similar written instrument, other than a third party bank check, that has been outstanding for more than five years after its issuance is presumed abandoned unless the owner, within five years, has communicated in writing with the issuer concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the issuer.

(3) A holder may not deduct from the amount of a travelers check or money order any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the issuer and the owner of the instrument pursuant to which the issuer may impose a charge and the issuer regularly imposes such

charges and does not regularly reverse or otherwise cancel them.

(4) No sum payable on a travelers check, money order, or similar written instrument, other than a third party bank check, described in subsections (1) and (2) of this section may be subjected to the custody of this state as unclaimed property unless:

(a) The records of the issuer show that the travelers check, money order, or similar written instrument was purchased in this state;

(b) The issuer has its principal place of business in this state and the records of the issuer do not show the state in which the travelers check, money order, or similar written instrument was purchased; or

(c) The issuer has its principal place of business in this state, the records of the issuer show the state in which the travelers check, money order, or similar written instrument was purchased and the laws of the state of purchase do not provide for the escheat or custodial taking of the property or its escheat or unclaimed property law is not applicable to the property. The department shall provide to the issuer a list of all such states and the issuer may rely with acquittance upon such list.

(5) Notwithstanding any other provision of this chapter, subsection (4) of this section applies to sums payable on travelers checks, money orders, and similar written instruments presumed abandoned on or after February 1, 1965, except to the extent that those sums have been paid over to a state. [1983 c 179 § 4.]

63.29.050 Checks, drafts, and similar instruments issued or certified by banking and financial organizations.

(1) Any sum payable on a check, draft, or similar instrument, except those subject to RCW 63.29.040, on which a banking or financial organization is directly liable, including a cashier's check and a certified check, which has been outstanding for more than three years after it was payable or after its issuance if payable on demand, is presumed abandoned, unless the owner, within three years, has communicated in writing with the banking or financial organization concerning it or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee thereof.

(2) A holder may not deduct from the amount of any instrument subject to this section any charge imposed by reason of the failure to present the instrument for payment unless there is a valid and enforceable written contract between the holder and the owner of the instrument pursuant to which the holder may impose a charge, and the holder regularly imposes such charges and does not regularly reverse or otherwise cancel them. [2003 1st sp.s. c 13 § 2; 1983 c 179 § 5.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.060 Bank deposits and funds in financial organizations.

(1) Any demand, savings, or matured time deposit with a banking or financial organization, including a deposit that is automatically renewable, and any funds paid toward the purchase of a share, a mutual investment certificate, or any other interest in a banking or financial organization is

(2004 Ed.)

presumed abandoned unless the owner, within three years, has:

(a) In the case of a deposit, increased or decreased its amount or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(b) Communicated in writing with the banking or financial organization concerning the property;

(c) Otherwise indicated an interest in the property as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization;

(d) Owned other property to which subsection (1)(a), (b), or (c) of this section applies and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be presumed abandoned under this subsection at the address to which communications regarding the other property regularly are sent; or

(e) Had another relationship with the banking or financial organization concerning which the owner has:

(i) In the case of a deposit, increased or decreased the amount of the deposit or presented the passbook or other similar evidence of the deposit for the crediting of interest;

(ii) Communicated in writing with the banking or financial organization; or

(iii) Otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the banking or financial organization and if the banking or financial organization communicates in writing with the owner with regard to the property that would otherwise be abandoned under this subsection at the address to which communications regarding the other relationship regularly are sent.

(2) For purposes of subsection (1) of this section property includes interest and dividends.

(3) This chapter shall not apply to deposits made by a guardian or decedent's personal representative with a banking organization when the deposit is subject to withdrawal only upon the order of the court in the guardianship or estate proceeding.

(4) A holder may not impose with respect to property described in subsection (1) of this section any charge due to dormancy or inactivity or cease payment of interest unless:

(a) There is an enforceable written contract between the holder and the owner of the property pursuant to which the holder may impose a charge or cease payment of interest;

(b) For property in excess of ten dollars, the holder, no more than three months before the initial imposition of those charges or cessation of interest, has given written notice to the owner of the amount of those charges at the last known address of the owner stating that those charges will be imposed or that interest will cease, but the notice provided in this section need not be given with respect to charges imposed or interest ceased before June 30, 1983; and

(c) The holder regularly imposes such charges or ceases payment of interest and does not regularly reverse or otherwise cancel them or retroactively credit interest with respect to the property.

(5) Any property described in subsection (1) of this section that is automatically renewable is matured for purposes of subsection (1) of this section upon the expiration of its initial time period, or after one year if the initial period is less

than one year, but in the case of any renewal to which the owner consents at or about the time of renewal by communicating in writing with the banking or financial organization or otherwise indicating consent as evidenced by a memorandum or other record on file prepared by an employee of the organization, the property is matured upon the expiration of the last time period for which consent was given. If, at the time provided for delivery in RCW 63.29.190, a penalty or forfeiture in the payment of interest would result from the delivery of the property, the time for delivery is extended until the time when no penalty or forfeiture would result. [2003 1st sp.s. c 13 § 3; 1983 c 179 § 6.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.070 Funds owing under life insurance policies.

(1) Funds held or owing under any life or endowment insurance policy or annuity contract that has matured or terminated are presumed abandoned if unclaimed for more than three years after the funds became due and payable as established from the records of the insurance company holding or owing the funds, but property described in subsection (3)(b) of this section is presumed abandoned if unclaimed for more than two years.

(2) If a person other than the insured or annuitant is entitled to the funds and an address of the person is not known to the company or it is not definite and certain from the records of the company who is entitled to the funds, it is presumed that the last known address of the person entitled to the funds is the same as the last known address of the insured or annuitant according to the records of the company.

(3) For purposes of this chapter, a life or endowment insurance policy or annuity contract not matured by actual proof of the death of the insured or annuitant according to the records of the company is matured and the proceeds due and payable if:

(a) The company knows that the insured or annuitant has died; or

(b)(i) The insured has attained, or would have attained if he were living, the limiting age under the mortality table on which the reserve is based;

(ii) The policy was in force at the time the insured attained, or would have attained, the limiting age specified in subparagraph (i) of this subsection; and

(iii) Neither the insured nor any other person appearing to have an interest in the policy within the preceding two years, according to the records of the company, has assigned, readjusted, or paid premiums on the policy, subjected the policy to a loan, corresponded in writing with the company concerning the policy, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by an employee of the company.

(4) For purposes of this chapter, the application of an automatic premium loan provision or other nonforfeiture provision contained in an insurance policy does not prevent a policy from being matured or terminated under subsection (1) of this section if the insured has died or the insured or the beneficiaries of the policy otherwise have become entitled to the proceeds thereof before the depletion of the cash surrender value of a policy by the application of those provisions.

(5) If the laws of this state or the terms of the life insurance policy require the company to give notice to the insured or owner that an automatic premium loan provision or other nonforfeiture provision has been exercised and the notice, given to an insured or owner whose last known address according to the records of the company is in this state, is undeliverable, the company shall make a reasonable search to ascertain the policyholder's correct address to which the notice must be mailed.

(6) Notwithstanding any other provision of law, if the company learns of the death of the insured or annuitant and the beneficiary has not communicated with the insurer within four months after the death, the company shall take reasonable steps to pay the proceeds to the beneficiary.

(7) Commencing two years after June 30, 1983, every change of beneficiary form issued by an insurance company under any life or endowment insurance policy or annuity contract to an insured or owner who is a resident of this state must request the following information:

(a) The name of each beneficiary, or if a class of beneficiaries is named, the name of each current beneficiary in the class;

(b) The address of each beneficiary; and

(c) The relationship of each beneficiary to the insured. [2003 1st sp.s. c 13 § 4; 1983 c 179 § 7.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.080 Deposits held by utilities. (1) A deposit, including any interest thereon, made by a subscriber with a utility to secure payment or any sum paid in advance for utility services to be furnished, less any lawful deductions, that remains unclaimed by the owner for more than one year after termination of the services for which the deposit or advance payment was made is presumed abandoned.

(2) Any sum which a utility has been ordered to refund and which was received for utility services rendered in this state, together with any interest thereon, less any lawful deductions, that has remained unclaimed by the person appearing on the records of the utility entitled thereto for more than one year after the date it became payable in accordance with the final determination or order providing for the refund is presumed abandoned. [1983 c 179 § 8.]

63.29.090 Refunds held by business associations. Except to the extent otherwise ordered by the court or administrative agency, any sum that a business association has been ordered to refund by a court or administrative agency which has remained unclaimed by the owner for more than one year after it became payable in accordance with the final determination or order providing for the refund, whether or not the final determination or order requires any person entitled to a refund to make a claim for it, is presumed abandoned. [1983 c 179 § 9.]

63.29.100 Stock and other intangible interests in business associations. (1) Except as provided in subsections (2) and (5) of this section, stock or other intangible ownership interest in a business association, the existence of which is evidenced by records available to the association, is pre-

sumed abandoned and, with respect to the interest, the association is the holder, if a dividend, distribution, or other sum payable as a result of the interest has remained unclaimed by the owner for three years and the owner within three years has not:

(a) Communicated in writing with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest; or

(b) Otherwise communicated with the association regarding the interest or a dividend, distribution, or other sum payable as a result of the interest, as evidenced by a memorandum or other record on file with the association prepared by an employee of the association.

(2) At the expiration of a three-year period following the failure of the owner to claim a dividend, distribution, or other sum payable to the owner as a result of the interest, the interest is not presumed abandoned unless there have been at least five dividends, distributions, or other sums paid during the period, none of which has been claimed by the owner. If five dividends, distributions, or other sums are paid during the three-year period, the period leading to a presumption of abandonment commences on the date payment of the first such unclaimed dividend, distribution, or other sum became due and payable. If five dividends, distributions, or other sums are not paid during the presumptive period, the period continues to run until there have been five dividends, distributions, or other sums that have not been claimed by the owner.

(3) The running of the three-year period of abandonment ceases immediately upon the occurrence of a communication referred to in subsection (1) of this section. If any future dividend, distribution, or other sum payable to the owner as a result of the interest is subsequently not claimed by the owner, a new period of abandonment commences and relates back to the time a subsequent dividend, distribution, or other sum became due and payable.

(4) At the time any interest is presumed abandoned under this section, any dividend, distribution, or other sum then held for or owing to the owner as a result of the interest, and not previously presumed abandoned, is presumed abandoned.

(5) This chapter shall not apply to any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest unless:

(a) The records available to the administrator of the plan show, with respect to any intangible ownership interest not enrolled in the reinvestment plan, that the owner has not within three years communicated in any manner described in subsection (1) of this section; or

(b) Three years have elapsed since the location of the owner became unknown to the association, as evidenced by the return of official shareholder notifications or communications by the postal service as undeliverable, and the owner has not within those three years communicated in any manner described in subsection (1) of this section. The three-year period from the return of official shareholder notifications or communications shall commence from the earlier of the return of the second such mailing or the date the holder discontinues mailings to the shareholder. [2003 1st sp.s. c 13 § 5; 1996 c 45 § 1; 1983 c 179 § 10.]

(2004 Ed.)

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.110 Property of business associations held in course of dissolution. Intangible property distributable in the course of a dissolution of a business association which remains unclaimed by the owner for more than one year after the date specified for final distribution is presumed abandoned. [1983 c 179 § 11.]

63.29.120 Property held by agents and fiduciaries. (1) Intangible property and any income or increment derived therefrom held in a fiduciary capacity for the benefit of another person is presumed abandoned unless the owner, within three years after it has become payable or distributable, has increased or decreased the principal, accepted payment of principal or income, communicated concerning the property, or otherwise indicated an interest as evidenced by a memorandum or other record on file prepared by the fiduciary.

(2) Funds in an individual retirement account or a retirement plan for self-employed individuals or similar account or plan established pursuant to the internal revenue laws of the United States are not payable or distributable within the meaning of subsection (1) of this section unless, under the terms of the account or plan, distribution of all or part of the funds would then be mandatory.

(3) For the purpose of this section, a person who holds property as an agent for a business association is deemed to hold the property in a fiduciary capacity for that business association alone, unless the agreement between him and the business association provides otherwise.

(4) For the purposes of this chapter, a person who is deemed to hold property in a fiduciary capacity for a business association alone is the holder of the property only insofar as the interest of the business association in the property is concerned, and the business association is the holder of the property insofar as the interest of any other person in the property is concerned. [2003 1st sp.s. c 13 § 6; 1983 c 179 § 12.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.130 Property held by courts and public agencies. Intangible property held for the owner by a court, state or other government, governmental subdivision or agency, public corporation, public authority, or the United States or any instrumentality of the United States that remains unclaimed by the owner for more than two years after becoming payable or distributable is presumed abandoned. [1993 c 498 § 2; 1983 c 179 § 13.]

63.29.133 Property held by landlord. Intangible property held by a landlord as a result of a sheriff's sale pursuant to RCW 59.18.312 that remains unclaimed for a period of one year from the date of the sale is presumed abandoned. [1992 c 38 § 9.]

Intent—Effective date—1992 c 38: See notes following RCW 59.18.352.

63.29.135 Abandoned intangible property held by local government. A local government holding abandoned

intangible property that is not forwarded to the department of revenue, as authorized under RCW 63.29.190, shall not be required to maintain current records of this property for longer than five years after the property is presumed to be abandoned, and at that time may archive records of this intangible property and transfer the intangible property to its general fund. However, the local government shall remain liable to pay the intangible property to a person or entity subsequently establishing its ownership of this intangible property. [1990 2nd ex.s. c 1 § 301.]

Applicability—1990 2nd ex.s. c 1: "Any funds covered by RCW 63.29.190 that were received by the state prior to June 6, 1990, shall be retained by the state of Washington, and any such funds not remitted to the state prior to June 6, 1990, may be retained as provided for under RCW 63.29.190." [1990 2nd ex.s. c 1 § 303.]

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

63.29.140 Gift certificates and credit memos. (Effective until January 1, 2005.) (1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than three years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo. [2003 1st sp.s. c 13 § 7; 1983 c 179 § 14.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.140 Gift certificates and credit memos. (Effective January 1, 2005.) (1) A gift certificate or a credit memo issued in the ordinary course of an issuer's business which remains unclaimed by the owner for more than three years after becoming payable or distributable is presumed abandoned.

(2) In the case of a gift certificate, the amount presumed abandoned is the price paid by the purchaser for the gift certificate. In the case of a credit memo, the amount presumed abandoned is the amount credited to the recipient of the memo.

(3) A gift certificate that is presumed abandoned under this section may, but need not be, included in the report as provided under RCW 63.29.170(4). If a gift certificate that is presumed abandoned under this section is not timely reported as provided under RCW 63.29.170(4), RCW 19.240.005 through 19.240.110 apply to the gift certificate. [2004 c 168 § 15; 2003 1st sp.s. c 13 § 7; 1983 c 179 § 14.]

Effective date—2004 c 168 §§ 15 and 16: "Sections 15 and 16 of this act take effect January 1, 2005." [2004 c 168 § 20.]

Effective dates—2003 1st sp.s. c 13: See note following RCW 63.29.020.

63.29.150 Wages. Unpaid wages, including wages represented by un-presented payroll checks, owing in the ordinary course of the holder's business which remain unclaimed by the owner for more than one year after becoming payable are presumed abandoned. [1983 c 179 § 15.]

63.29.160 Contents of safe deposit box or other safe-keeping repository. All tangible and intangible property held in a safe deposit box or any other safekeeping repository in this state in the ordinary course of the holder's business and proceeds resulting from the sale of the property permitted by other law, which remain unclaimed by the owner for more than five years after the lease or rental period on the box or other repository has expired, are presumed abandoned. [1983 c 179 § 16.]

63.29.165 Property in self-storage facility. The excess proceeds of a sale conducted pursuant to RCW 19.150.080 by an owner of a self-service storage facility to satisfy the lien and costs of storage which are not claimed by the occupant of the storage space or any other person which remains unclaimed for more than six months are presumed abandoned. [1993 c 498 § 4; 1988 c 240 § 21.]

Severability—1988 c 240: See RCW 19.150.904.

63.29.170 Report of abandoned property. (Effective until January 1, 2005.) (1) A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property with a value of more than fifty dollars presumed abandoned under this chapter;

(b) In the case of unclaimed funds of more than fifty dollars held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and where it may be inspected by the department, and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items with a value of fifty dollars or less each may be reported in the aggregate;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the department prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his or her name while holding the property, the holder shall file with the report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1st of each year and shall include all property presumed abandoned and subject to custody as unclaimed property under this chapter that is in the holder's possession as of the preceding June

30th. On written request by any person required to file a report, the department may postpone the reporting date.

(5) After May 1st, but before August 1st, of each year in which a report is required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at the last known address informing him or her that the holder is in possession of property subject to this chapter if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) The claim of the apparent owner is not barred by the statute of limitations; and

(c) The property has a value of more than seventy-five dollars. [2003 c 237 § 1; 1996 c 45 § 2; 1993 c 498 § 7; 1983 c 179 § 17.]

63.29.170 Report of abandoned property. (*Effective January 1, 2005.*) (1) A person holding property presumed abandoned and subject to custody as unclaimed property under this chapter shall report to the department concerning the property as provided in this section.

(2) The report must be verified and must include:

(a) Except with respect to travelers checks and money orders, the name, if known, and last known address, if any, of each person appearing from the records of the holder to be the owner of property with a value of more than fifty dollars presumed abandoned under this chapter;

(b) In the case of unclaimed funds of more than fifty dollars held or owing under any life or endowment insurance policy or annuity contract, the full name and last known address of the insured or annuitant and of the beneficiary according to the records of the insurance company holding or owing the funds;

(c) In the case of the contents of a safe deposit box or other safekeeping repository or in the case of other tangible property, a description of the property and the place where it is held and where it may be inspected by the department, and any amounts owing to the holder;

(d) The nature and identifying number, if any, or description of the property and the amount appearing from the records to be due, but items with a value of fifty dollars or less each may be reported in the aggregate;

(e) The date the property became payable, demandable, or returnable, and the date of the last transaction with the apparent owner with respect to the property; and

(f) Other information the department prescribes by rule as necessary for the administration of this chapter.

(3) If the person holding property presumed abandoned and subject to custody as unclaimed property is a successor to other persons who previously held the property for the apparent owner or the holder has changed his or her name while holding the property, the holder shall file with the report all known names and addresses of each previous holder of the property.

(4) The report must be filed before November 1st of each year and shall include, except as provided in RCW 63.29.140(3), all property presumed abandoned and subject to custody as unclaimed property under this chapter that is in the holder's possession as of the preceding June 30th. On

(2004 Ed.)

written request by any person required to file a report, the department may postpone the reporting date.

(5) After May 1st, but before August 1st, of each year in which a report is required by this section, the holder in possession of property presumed abandoned and subject to custody as unclaimed property under this chapter shall send written notice to the apparent owner at the last known address informing him or her that the holder is in possession of property subject to this chapter if:

(a) The holder has in its records an address for the apparent owner which the holder's records do not disclose to be inaccurate;

(b) The claim of the apparent owner is not barred by the statute of limitations; and

(c) The property has a value of more than seventy-five dollars. [2004 c 168 § 16; 2003 c 237 § 1; 1996 c 45 § 2; 1993 c 498 § 7; 1983 c 179 § 17.]

Effective date—2004 c 168 §§ 15 and 16: See note following RCW 63.29.140.

63.29.180 Notice and publication of lists of abandoned property. (1) The department shall cause a notice to be published not later than November 1st, immediately following the report required by RCW 63.29.170 in a newspaper of general circulation in the county of this state in which is located the last known address of any person to be named in the notice. If no address is listed or the address is outside this state, the notice must be published in the county in which the holder of the property has its principal place of business within this state.

(2) The published notice must be entitled "Notice of Names of Persons Appearing to be Owners of Abandoned Property" and contain:

(a) The names in alphabetical order and last known address, if any, of persons listed in the report and entitled to notice within the county as specified in subsection (1) of this section; and

(b) A statement that information concerning the property and the name and last known address of the holder may be obtained by any person possessing an interest in the property by addressing an inquiry to the department.

(3) The department is not required to publish in the notice any items of seventy-five dollars or less unless the department considers their publication to be in the public interest.

(4) Not later than September 1st, immediately following the report required by RCW 63.29.170, the department shall mail a notice to each person whose last known address is listed in the report and who appears to be entitled to property with a value of more than seventy-five dollars presumed abandoned under this chapter and any beneficiary of a life or endowment insurance policy or annuity contract for whom the department has a last known address.

(5) The mailed notice must contain:

(a) A statement that, according to a report filed with the department, property is being held to which the addressee appears entitled; and

(b) The name and last known address of the person holding the property and any necessary information regarding the changes of name and last known address of the holder.

(6) This section is not applicable to sums payable on travelers checks, money orders, and other written instruments presumed abandoned under RCW 63.29.040. [2003 c 237 § 2; 1993 c 498 § 9; 1986 c 84 § 1; 1983 c 179 § 18.]

63.29.190 Payment or delivery of abandoned property. (1) Except as otherwise provided in subsections (2) and (3) of this section, a person who is required to file a report under RCW 63.29.170 shall pay or deliver to the department all abandoned property required to be reported at the time of filing the report.

(2) Counties, cities, towns, and other municipal and quasi-municipal corporations that hold funds representing warrants canceled pursuant to RCW 36.22.100 and 39.56.040, uncashed checks, excess proceeds from property tax and irrigation district foreclosures, and property tax overpayments or refunds may retain the funds until the owner notifies them and establishes ownership as provided in RCW 63.29.135. Counties, cities, towns, or other municipal or quasi-municipal corporations shall provide to the department a report of property it is holding pursuant to this section. The report shall identify the property and owner in the manner provided in RCW 63.29.170 and the department shall publish the information as provided in RCW 63.29.180.

(3) The contents of a safe deposit box or other safekeeping repository presumed abandoned under RCW 63.29.160 and reported under RCW 63.29.170 shall be paid or delivered to the department within six months after the final date for filing the report required by RCW 63.29.170.

If the owner establishes the right to receive the abandoned property to the satisfaction of the holder before the property has been delivered or it appears that for some other reason the presumption of abandonment is erroneous, the holder need not pay or deliver the property to the department, and the property will no longer be presumed abandoned. In that case, the holder shall file with the department a verified written explanation of the proof of claim or of the error in the presumption of abandonment.

(4) The holder of an interest under RCW 63.29.100 shall deliver a duplicate certificate or other evidence of ownership if the holder does not issue certificates of ownership to the department. Upon delivery of a duplicate certificate to the department, the holder and any transfer agent, registrar, or other person acting for or on behalf of a holder in executing or delivering the duplicate certificate is relieved of all liability of every kind in accordance with RCW 63.29.200 to every person, including any person acquiring the original certificate or the duplicate of the certificate issued to the department, for any losses or damages resulting to any person by the issuance and delivery to the department of the duplicate certificate. [1993 c 498 § 8; 1991 c 311 § 7; 1990 2nd ex.s. c 1 § 302; 1983 c 179 § 19.]

Severability—1991 c 311: See note following RCW 82.14.310.

Applicability—1990 2nd ex.s. c 1: See note following RCW 63.29.135.

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

63.29.200 Custody by state—Holder relieved from liability—Reimbursement of holder paying claim—Reclaiming for owner—Defense of holder—Payment of

safe deposit box or repository charges. (1) Upon the payment or delivery of property to the department, the state assumes custody and responsibility for the safekeeping of the property. A person who pays or delivers property to the department in good faith is relieved of all liability to the extent of the value of the property paid or delivered for any claim then existing or which thereafter may arise or be made in respect to the property.

(2) A holder who has paid money to the department pursuant to this chapter may make payment to any person appearing to the holder to be entitled to payment and, upon filing proof of payment and proof that the payee was entitled thereto, the department shall promptly reimburse the holder for the payment without imposing any fee or other charge. If reimbursement is sought for a payment made on an instrument, including a travelers check or money order, the holder must be reimbursed under this subsection upon filing proof that the instrument was duly presented and that payment was made to a person who appeared to the holder to be entitled to payment. The holder must be reimbursed for payment made under this subsection even if the payment was made to a person whose claim was barred under RCW 63.29.290(1).

(3) A holder who has delivered property (including a certificate of any interest in a business association) other than money to the department pursuant to this chapter may reclaim the property if still in the possession of the department, without paying any fee or other charge, upon filing proof that the owner has claimed the property from the holder.

(4) The department may accept the holder's affidavit as sufficient proof of the facts that entitle the holder to recover money and property under this section.

(5) If the holder pays or delivers property to the department in good faith and thereafter another person claims the property from the holder or another state claims the money or property under its laws relating to escheat or abandoned or unclaimed property, the department, upon written notice of the claim, shall defend the holder against the claim and indemnify the holder against any liability on the claim.

(6) For the purposes of this section, "good faith" means that:

(a) Payment or delivery was made in a reasonable attempt to comply with this chapter;

(b) The person delivering the property was not a fiduciary then in breach of trust in respect to the property and had a reasonable basis for believing, based on the facts then known to him, that the property was abandoned for the purposes of this chapter; and

(c) There is no showing that the records pursuant to which the delivery was made did not meet reasonable commercial standards of practice in the industry.

(7) Property removed from a safe deposit box or other safekeeping repository is received by the department subject to the holder's right under this subsection to be reimbursed for the actual cost of the opening and to any valid lien or contract providing for the holder to be reimbursed for unpaid rent or storage charges. The department shall reimburse or pay the holder out of the proceeds remaining after deducting the department's selling cost. The liability of the department for this reimbursement to the holder shall be limited to the pro-

ceeds of the sale of the property remaining after the deduction of the department's costs. [1983 c 179 § 20.]

63.29.210 Crediting of dividends, interest, or increments to owner's account. Whenever property other than money is paid or delivered to the department under this chapter, the owner is entitled to receive from the department any dividends, interest, or other increments realized or accruing on the property at or before liquidation or conversion thereof into money. [1983 c 179 § 21.]

63.29.220 Public sale of abandoned property. (1) Except as provided in subsections (2), (3), and (6) of this section the department, within five years after the receipt of abandoned property, shall sell it to the highest bidder at public sale in whatever city in the state affords in the judgment of the department the most favorable market for the property involved. The department may decline the highest bid and reoffer the property for sale if in the judgment of the department the bid is insufficient. If in the judgment of the department the probable cost of sale exceeds the value of the property, it need not be offered for sale. Any sale held under this section must be preceded by a single publication of notice, at least three weeks in advance of sale, in a newspaper of general circulation in the county in which the property is to be sold.

(2) Securities listed on an established stock exchange must be sold at prices prevailing at the time of sale on the exchange. Other securities may be sold over the counter at prices prevailing at the time of sale or by any other method the department considers advisable. All securities may be sold over the counter at prices prevailing at the time of the sale, or by any other method the department deems advisable.

(3) Unless the department considers it to be in the best interest of the state to do otherwise, all securities, other than those presumed abandoned under RCW 63.29.100, delivered to the department must be held for at least one year before being sold.

(4) Unless the department considers it to be in the best interest of the state to do otherwise, all securities presumed abandoned under RCW 63.29.100 and delivered to the department must be held for at least three years before being sold. If the department sells any securities delivered pursuant to RCW 63.29.100 before the expiration of the three-year period, any person making a claim pursuant to this chapter before the end of the three-year period is entitled to either the proceeds of the sale of the securities or the market value of the securities at the time the claim is made, whichever amount is greater, less any deduction for fees pursuant to RCW 63.29.230(2). A person making a claim under this chapter after the expiration of this period is entitled to receive either the securities delivered to the department by the holder, if they still remain in the hands of the department, or the proceeds received from sale, less any amounts deducted pursuant to RCW 63.29.230(2), but no person has any claim under this chapter against the state, the holder, any transfer agent, registrar, or other person acting for or on behalf of a holder for any appreciation in the value of the property occurring after delivery by the holder to the department.

(2004 Ed.)

(5) The purchaser of property at any sale conducted by the department pursuant to this chapter takes the property free of all claims of the owner or previous holder thereof and of all persons claiming through or under them. The department shall execute all documents necessary to complete the transfer of ownership.

(6) The department shall not sell any stock or other intangible ownership interest enrolled in a plan that provides for the automatic reinvestment of dividends, distributions, or other sums payable as a result of the interest. [1996 c 45 § 3; 1993 c 498 § 10; 1983 c 179 § 22.]

63.29.230 Deposit of funds. (1) Except as otherwise provided by this section, the department shall promptly deposit in the general fund of this state all funds received under this chapter, including the proceeds from the sale of abandoned property under RCW 63.29.220. The department shall retain in a separate trust fund an amount not less than two hundred fifty thousand dollars from which prompt payment of claims duly allowed must be made by the department. Before making the deposit, the department shall record the name and last known address of each person appearing from the holders' reports to be entitled to the property and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or contract listed in the report of an insurance company its number, and the name of the company. The record must be available for public inspection at all reasonable business hours.

(2) The department of revenue may pay from the trust fund provided in subsection (1) of this section any costs of administering this chapter. [1983 c 179 § 23.]

63.29.240 Filing of claim with department. (1) A person, excluding another state, claiming an interest in any property paid or delivered to the department may file with it a claim on a form prescribed by it and verified by the claimant.

(2) The department shall consider each claim within ninety days after it is filed and give written notice to the claimant if the claim is denied in whole or in part. The notice may be given by mailing it to the last address, if any, stated in the claim as the address to which notices are to be sent. If no address for notices is stated in the claim, the notice may be mailed to the last address, if any, of the claimant as stated in the claim. No notice of denial need be given if the claim fails to state either the last address to which notices are to be sent or the address of the claimant.

(3) If a claim is allowed, the department shall pay over or deliver to the claimant the property or the amount the department actually received or the net proceeds if it has been sold by the department, together with any additional amount required by RCW 63.29.210. If the claim is for property presumed abandoned under RCW 63.29.100 which was sold by the department within three years after the date of delivery, the amount payable for that claim is the value of the property at the time the claim was made or the net proceeds of sale, whichever is greater. If the property claimed was interest-bearing to the owner on the date of surrender by the holder, the department also shall pay interest at the legal rate or any lesser rate the property earned while in the possession of the holder. Interest begins to accrue when the property is delivered.

ered to the department and ceases on the earlier of the expiration of ten years after delivery or the date on which payment is made to the owner. No interest on interest-bearing property is payable for any period before June 30, 1983.

(4) Any holder who pays the owner for property that has been delivered to the state and which, if claimed from the department, would be subject to subsection (3) of this section shall add interest as provided in subsection (3) of this section. The added interest must be repaid to the holder by the department in the same manner as the principal. [1983 c 179 § 24.]

63.29.250 Claim of another state to recover property—Procedure. (1) At any time after property has been paid or delivered to the department under this chapter another state may recover the property if:

(a) The property was subjected to custody by this state because the records of the holder did not reflect the last known address of the apparent owner when the property was presumed abandoned under this chapter, and the other state establishes that the last known address of the apparent owner or other person entitled to the property was in that state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(b) The last known address of the apparent owner or other person entitled to the property, as reflected by the records of the holder, is in the other state and under the laws of that state the property has escheated to or become subject to a claim of abandonment by that state;

(c) The records of the holder were erroneous in that they did not accurately reflect the actual owner of the property and the last known address of the actual owner is in the other state and under the laws of that state the property escheated to or was subject to a claim of abandonment by that state;

(d) The property was subjected to custody by this state under RCW 63.29.030(6) and under the laws of the state of domicile of the holder the property has escheated to or become subject to a claim of abandonment by that state; or

(e) The property is the sum payable on a travelers check, money order, or other similar instrument that was subjected to custody by this state under RCW 63.29.040, and the instrument was purchased in the other state, and under the laws of that state the property escheated to or became subject to a claim of abandonment by that state.

(2) The claim of another state to recover escheated or abandoned property must be presented in a form prescribed by the department, who shall decide the claim within ninety days after it is presented. The department shall allow the claim if it determines that the other state is entitled to the abandoned property under subsection (1) of this section.

(3) The department shall require a state, before recovering property under this section, to agree to indemnify this state and its officers and employees against any liability on a claim for the property. [1983 c 179 § 25.]

63.29.260 Action to establish claim. A person aggrieved by a decision of the department or whose claim has not been acted upon within ninety days after its filing may bring an action to establish the claim in the superior court of Thurston county naming the department as a defendant. The action must be brought within ninety days after the decision

of the department or within one hundred eighty days after the filing of the claim if the department has failed to act on it. [1983 c 179 § 26.]

63.29.270 Election to take payment or delivery. (1) The department may decline to receive any property reported under this chapter which it considers to have a value less than the expense of giving notice and of sale. If the department elects not to receive custody of the property, the holder shall be notified within one hundred twenty days after filing the report required under RCW 63.29.170. The holder then may dispose of the property in such manner as it sees fit. No action or proceeding may be maintained against the holder for or on account of any action taken by the holder pursuant to this subsection with respect to the property.

(2) A holder, with the written consent of the department and upon conditions and terms prescribed by it, may report and deliver property before the property is presumed abandoned. Property delivered under this subsection must be held by the department and is not presumed abandoned until such time as it otherwise would be presumed abandoned under this chapter. [1983 c 179 § 27.]

63.29.280 Destruction or disposition of property having insubstantial commercial value—Immunity from liability. If the department determines after investigation that any property delivered under this chapter has insubstantial commercial value, the department may destroy or otherwise dispose of the property at any time. No action or proceeding may be maintained against the state or any officer or against the holder for or on account of any action taken by the department pursuant to this section. Documents which are to be destroyed shall be copied on film and retained for ten years. Original documents which the department has identified to be destroyed and which have legal significance or historical interest may be surrendered to the state historical museum or to the state library. [1983 c 179 § 28.]

63.29.290 Periods of limitation. (1) The expiration, after September 1, 1979, of any period of time specified by contract, statute, or court order, during which a claim for money or property can be made or during which an action or proceeding may be commenced or enforced to obtain payment of a claim for money or to recover property, does not prevent the money or property from being presumed abandoned or affect any duty to file a report or to pay or deliver abandoned property to the department as required by this chapter.

(2) No action or proceeding may be commenced by the department with respect to any duty of a holder under this chapter more than six years after the duty arose. [1983 c 179 § 29.]

63.29.300 Requests for reports and examination of records. (1) The department may require any person who has not filed a report to file a verified report stating whether or not the person is holding any unclaimed property reportable or deliverable under this chapter. Nothing in this chapter requires reporting of property which is not subject to payment or delivery.

(2) The department, at reasonable times and upon reasonable notice, may examine the records of any person to determine whether the person has complied with the provisions of this chapter. The department may conduct the examination even if the person believes it is not in possession of any property reportable or deliverable under this chapter.

(3) If a person is treated under RCW 63.29.120 as the holder of the property only insofar as the interest of the business association in the property is concerned, the department, pursuant to subsection (2) of this section, may examine the records of the person if the department has given the notice required by subsection (2) of this section to both the person and the business association at least ninety days before the examination.

(4) If an examination of the records of a person results in the disclosure of property reportable and deliverable under this chapter, the department may assess the cost of the examination against the holder at the rate of one hundred forty dollars a day for each examiner, but in no case may the charges exceed the lesser of three thousand dollars or the value of the property found to be reportable and deliverable. No assessment shall be imposed where the person proves that failure to report and deliver property was inadvertent. The cost of examination made pursuant to subsection (3) of this section may be imposed only against the business association.

(5) If a holder fails after June 30, 1983, to maintain the records required by RCW 63.29.310 and the records of the holder available for the periods subject to this chapter are insufficient to permit the preparation of a report, the department may require the holder to report and pay such amounts as may reasonably be estimated from any available records. [1983 c 179 § 30.]

63.29.310 Retention of records. (1) Every holder required to file a report under RCW 63.29.170, as to any property for which it has obtained the last known address of the owner, shall maintain a record of the name and last known address of the owner for six years after the property becomes reportable, except to the extent that a shorter time is provided in subsection (2) of this section or by rule of the department.

(2) Any business association that sells in this state its travelers checks, money orders, or other similar written instruments, other than third-party bank checks on which the business association is directly liable, or that provides such instruments to others for sale in this state, shall maintain a record of those instruments while they remain outstanding, indicating the state and date of issue for three years after the date the property is reportable. [1983 c 179 § 31.]

63.29.320 Enforcement. The department may bring an action in a court of competent jurisdiction to enforce this chapter. [1983 c 179 § 32.]

63.29.330 Interstate agreements and cooperation—Joint and reciprocal actions with other states. (1) The department may enter into agreements with other states to exchange information needed to enable this or another state to audit or otherwise determine unclaimed property that it or another state may be entitled to subject to a claim of custody. The department by rule may require the reporting of informa-

(2004 Ed.)

tion needed to enable compliance with agreements made pursuant to this section and prescribe the form.

(2) To avoid conflicts between the department's procedures and the procedures of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act, the department, so far as is consistent with the purposes, policies, and provisions of this chapter, before adopting, amending or repealing rules, shall advise and consult with administrators in other jurisdictions that enact substantially the Uniform Unclaimed Property Act and take into consideration the rules of administrators in other jurisdictions that enact the Uniform Unclaimed Property Act.

(3) The department may join with other states to seek enforcement of this chapter against any person who is or may be holding property reportable under this chapter.

(4) At the request of another state, the attorney general of this state may bring an action in the name of the administrator of the other state in any court of competent jurisdiction to enforce the unclaimed property laws of the other state against a holder in this state of property subject to escheat or a claim of abandonment by the other state, if the other state has agreed to pay expenses incurred by the attorney general in bringing the action.

(5) The department may request that the attorney general of another state or any other person bring an action in the name of the department in the other state. This state shall pay all expenses including attorney's fees in any action under this subsection. The department may agree to pay the person bringing the action attorney's fees based in whole or in part on a percentage of the value of any property recovered in the action. Any expenses paid pursuant to this subsection may not be deducted from the amount that is subject to the claim by the owner under this chapter. [1983 c 179 § 33.]

63.29.340 Interest and penalties. (1) A person who fails to pay or deliver property within the time prescribed by this chapter shall be required to pay to the department interest at the rate as computed under RCW 82.32.050(2) from the date the property should have been paid or delivered until the property is paid or delivered, unless the department finds that the failure to pay or deliver the property within the time prescribed by this chapter was the result of circumstances beyond the person's control sufficient for waiver or cancellation of interest under RCW 82.32.105.

(2) A person who willfully fails to render any report, to pay or deliver property, or to perform other duties required under this chapter shall pay a civil penalty of one hundred dollars for each day the report is withheld or the duty is not performed, but not more than five thousand dollars, plus one hundred percent of the value of the property which should have been reported, paid or delivered.

(3) A person who willfully refuses after written demand by the department to pay or deliver property to the department as required under this chapter or who enters into a contract to avoid the duties of this chapter is guilty of a gross misdemeanor and upon conviction may be punished by a fine of not more than one thousand dollars or imprisonment for not more than one year, or both. [1996 c 149 § 11; 1996 c 45 § 4; 1983 c 179 § 34.]

Reviser's note: This section was amended by 1996 c 45 § 4 and by 1996 c 149 § 11, each without reference to the other. Both amendments are

incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Effective date—1996 c 149: See notes following RCW 82.32.050.

63.29.350 Penalty for excessive fee for locating abandoned property. It is unlawful for any person to seek or receive from any person or contract with any person for any fee or compensation for locating or purporting to locate any property which he knows has been reported or paid or delivered to the department of revenue pursuant to this chapter in excess of five percent of the value thereof returned to such owner. Any person violating this section is guilty of a misdemeanor and shall be fined not less than the amount of the fee or charge he has sought or received or contracted for, and not more than ten times such amount, or imprisoned for not more than thirty days, or both. [1983 c 179 § 35.]

63.29.360 Foreign transactions. This chapter does not apply to any property held, due, and owing in a foreign country and arising out of a foreign transaction. [1983 c 179 § 36.]

63.29.370 Rules. The department may adopt necessary rules in accordance with chapter 34.05 RCW to carry out the provisions of this chapter. [1983 c 179 § 38.]

63.29.380 Information and records confidential. Any information or records required to be furnished to the department of revenue as provided in this chapter shall be confidential and shall not be disclosed to any person except the person who furnished the same to the department of revenue, and except as provided in RCW 63.29.180 and 63.29.230, or as may be necessary in the proper administration of this chapter. [1983 c 179 § 39.]

63.29.900 Effect of new provisions—Clarification of application. (1) This chapter does not relieve a holder of a duty that arose before June 30, 1983, to report, pay, or deliver property. A holder who did not comply with the law in effect before June 30, 1983, is subject to the applicable enforcement and penalty provisions that then existed and they are continued in effect for the purpose of this subsection, subject to RCW 63.29.290(2).

(2) The initial report to be filed under this chapter shall include all property which is presumed abandoned under this chapter. The report shall include property that was not required to be reported before June 30, 1983, but which would have been presumed abandoned on or after September 1, 1979 under the terms of chapter 63.29 RCW.

(3) It shall be a defense to any action by the department that facts cannot be established because a holder, prior to January 1, 1983, destroyed or lost records or did not then keep records, if the destruction, loss, or failure to keep records did not violate laws existing at the time of the destruction, loss or failure. [1983 c 179 § 37.]

63.29.901 Captions not law—1983 c 179. Captions as used in sections of this act shall not constitute any part of the law. [1983 c 179 § 40.]

63.29.902 Uniformity of application and construction. This chapter shall be applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1983 c 179 § 41.]

63.29.903 Short title. This chapter may be cited as the Uniform Unclaimed Property Act of 1983. [1983 c 179 § 42.]

63.29.904 Severability—1983 c 179. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 179 § 43.]

63.29.905 Effective date—1983 c 179. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1983. [1983 c 179 § 47.]

63.29.906 Effective date—1996 c 45. This act shall take effect July 1, 1996. [1996 c 45 § 5.]

Chapter 63.32 RCW

UNCLAIMED PROPERTY IN HANDS OF CITY POLICE

Sections

| | |
|-----------|---|
| 63.32.010 | Methods of disposition—Notice—Sale, retention, destruction, or trade. |
| 63.32.020 | Notice of sale. |
| 63.32.030 | Disposition of proceeds. |
| 63.32.040 | Reimbursement to owner. |
| 63.32.050 | Donation of unclaimed bicycles and toys to charity. |

63.32.010 Methods of disposition—Notice—Sale, retention, destruction, or trade. Whenever any personal property shall come into the possession of the police authorities of any city in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the police department, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said city may:

(1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the police department subject to giving notice in the manner prescribed in RCW 63.32.020 and the right of the owner, or the owner's legal representative, to reclaim the property within one year after receipt of notice, without compensation for ordinary

wear and tear if, in the opinion of the chief of police, the property consists of firearms or other items specifically usable in law enforcement work: PROVIDED, That at the end of each calendar year during which there has been such a retention, the police department shall provide the city's mayor or council and retain for public inspection a list of such retained items and an estimation of each item's replacement value. At the end of the one-year period any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2);

(3) Destroy an item of personal property at the discretion of the chief of police if the chief of police determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The chief of police has determined that the item is unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in RCW 63.32.020, may be offered by the chief of police to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

(5) If the item is not unsafe or illegal to possess or sell, but has been, or may be used, in the judgment of the chief of police, in a manner that is illegal, such item may be destroyed. [1988 c 223 § 3; 1988 c 132 § 1; 1981 c 154 § 2; 1973 1st ex.s. c 44 § 1; 1939 c 148 § 1; 1925 ex.s. c 100 § 1; RRS § 8999-1.]

Reviser's note: This section was amended by 1988 c 132 § 1 and by 1988 c 223 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

63.32.020 Notice of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in the official newspaper of said city at least ten days prior to the date fixed for said sale. The notice shall be signed by the chief or other head of the police department of such city. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief or other head of the police department shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1988 c 132 § 2; 1925 ex.s. c 100 § 2; RRS § 8999-2.]

63.32.030 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be paid into the police pension fund of said city if such

fund exists; otherwise into the city current expense fund. [1939 c 148 § 2; 1925 ex.s. c 100 § 3; RRS § 8999-3.]

63.32.040 Reimbursement to owner. If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in said police pension fund or the city current expense fund, furnish satisfactory evidence to the police pension fund board or the city treasurer of said city of the ownership of said personal property he or they shall be entitled to receive from said police pension fund or city current expense fund the amount so deposited therein with interest. [1939 c 148 § 3; 1925 ex.s. c 100 § 4; RRS § 899-4.]

63.32.050 Donation of unclaimed bicycles and toys to charity. In addition to any other method of disposition of unclaimed property provided under this chapter, the police authorities of a city or town may donate unclaimed bicycles, tricycles, and toys to nonprofit charitable organizations for use by needy persons. [1987 c 182 § 1.]

Severability—1987 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 182 § 3.]

Chapter 63.35 RCW

UNCLAIMED PROPERTY IN HANDS OF STATE PATROL

Sections

| | |
|-----------|--|
| 63.35.010 | Definitions. |
| 63.35.020 | Methods of disposition—Sale, retention, destruction, or trade. |
| 63.35.030 | Notice of sale. |
| 63.35.040 | Disposition of proceeds. |
| 63.35.050 | Reimbursement to owner. |
| 63.35.060 | Applicability of other statutes. |
| 63.35.900 | Severability—1989 c 222. |

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

(1) "Agency" means the Washington state patrol.

(2) "Chief" means the chief of the Washington state patrol or designee.

(3) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes, among other property, contraband and money.

(4) "Contraband" means any property which is unlawful to produce or possess.

(5) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(6) "Owner" means the person in whom is vested the ownership, dominion, or title of the property.

(7) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(8) "Illegal items" means those items unlawful to be possessed. [1989 c 222 § 1.]

63.35.020 Methods of disposition—Sale, retention, destruction, or trade. Whenever any personal property shall come into the possession of the officers of the state patrol in connection with the official performance of their duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from the date of written notice to the owner thereof, if known, which notice shall inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the state agency, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said agency may:

(1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the state patrol subject to giving notice in the manner prescribed in RCW 63.35.030 and the right of the owner, or the owner's legal representative, to reclaim the property within one year after receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the chief, the property consists of firearms or other items specifically usable in law enforcement work: PROVIDED, That at the end of each calendar year during which there has been such a retention, the state patrol shall provide the office of financial management and retain for public inspection a list of such retained items and an estimation of each item's replacement value;

(3) Destroy an item of personal property at the discretion of the chief if the chief determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The chief has determined that the item is illegal to possess or sell or unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in this section may be offered by the chief to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

(5) At the end of one year, any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2). Any other item which is not unsafe or illegal to possess or sell, but has been, or may be used, in the judgment of the chief, in a manner that is illegal, may be destroyed. [1989 c 222 § 2.]

63.35.030 Notice of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in a newspaper of general circulation in the county in which the

property is to be sold at least ten days prior to the date fixed for the auction. The notice shall be signed by the chief. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the chief shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1989 c 222 § 3.]

63.35.040 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keep of said personal property and the balance, if any, shall be forwarded to the state treasurer to be deposited into the state patrol highway account. [1989 c 222 § 4.]

63.35.050 Reimbursement to owner. If the owner of said personal property so sold, or the owner's legal representative, shall, at any time within three years after such money shall have been deposited in the state patrol highway account, furnish satisfactory evidence to the state treasurer of the ownership of said personal property, the owner or the owner's legal representative shall be entitled to receive from said state patrol highway account the amount so deposited therein with interest. [1989 c 222 § 5.]

63.35.060 Applicability of other statutes. (1) Chapter 63.24 RCW, unclaimed property in hands of bailee, does not apply to personal property in the possession of the state patrol.

(2) The uniform unclaimed property act, chapter 63.29 RCW, does not apply to personal property in the possession of the state patrol. [1989 c 222 § 6.]

63.35.900 Severability—1989 c 222. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 222 § 9.]

Chapter 63.40 RCW

UNCLAIMED PROPERTY IN HANDS OF SHERIFF

Sections

| | |
|-----------|---|
| 63.40.010 | Methods of disposition—Notice—Sale, retention, destruction, or trade. |
| 63.40.020 | Notice of sale, form, contents—Conduct of sale. |
| 63.40.030 | Disposition of proceeds. |
| 63.40.040 | Reimbursement to owner. |
| 63.40.050 | Uniform unclaimed property act not applicable. |
| 63.40.060 | Donation of unclaimed bicycles and toys to charity. |

63.40.010 Methods of disposition—Notice—Sale, retention, destruction, or trade. Whenever any personal property, other than vehicles governed by chapter 46.52 RCW, shall come into the possession of the sheriff of any county in connection with the official performance of his duties and said personal property shall remain unclaimed or not taken away for a period of sixty days from date of written notice to the owner thereof, if known, which notice shall

inform the owner of the disposition which may be made of the property under this section and the time that the owner has to claim the property and in all other cases for a period of sixty days from the time said property came into the possession of the sheriff's office, unless said property has been held as evidence in any court, then, in that event, after sixty days from date when said case has been finally disposed of and said property released as evidence by order of the court, said county sheriff may:

(1) At any time thereafter sell said personal property at public auction to the highest and best bidder for cash in the manner hereinafter provided;

(2) Retain the property for the use of the sheriff's office subject to giving notice in the manner prescribed in RCW 63.40.020 and the right of the owner, or his or her legal representative, to reclaim the property within one year after the receipt of notice, without compensation for ordinary wear and tear if, in the opinion of the county sheriff, the property consists of firearms or other items specifically usable in law enforcement work: PROVIDED, That at the end of each calendar year during which there has been such a retention, the sheriff shall provide the county's executive or legislative authority and retain for public inspection a list of such retained items and an estimation of each item's replacement value. At the end of the one-year period any unclaimed firearm shall be disposed of pursuant to RCW 9.41.098(2);

(3) Destroy an item of personal property at the discretion of the county sheriff if the county sheriff determines that the following circumstances have occurred:

(a) The property has no substantial commercial value, or the probable cost of sale exceeds the value of the property;

(b) The item has been unclaimed by any person after notice procedures have been met, as prescribed in this section; and

(c) The county sheriff has determined that the item is unsafe and unable to be made safe for use by any member of the general public;

(4) If the item is not unsafe or illegal to possess or sell, such item, after satisfying the notice requirements as prescribed in RCW 63.40.020, may be offered by the county sheriff to bona fide dealers, in trade for law enforcement equipment, which equipment shall be treated as retained property for purpose of annual listing requirements of subsection (2) of this section; or

(5) If the item is not unsafe or illegal to possess or sell, but has been, or may be used, in the discretion of the county sheriff, in a manner that is illegal, such item may be destroyed. [1988 c 223 § 4; 1988 c 132 § 3; 1981 c 154 § 3; 1973 1st ex.s. c 44 § 4; 1961 c 104 § 1.]

Reviser's note: This section was amended by 1988 c 132 § 3 and by 1988 c 223 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

63.40.020 Notice of sale, form, contents—Conduct of sale. Before said personal property shall be sold, a notice of such sale fixing the time and place thereof which shall be at a suitable place, which will be noted in the advertisement for sale, and containing a description of the property to be sold shall be published at least once in an official newspaper in said county at least ten days prior to the date fixed for said

(2004 Ed.)

sale. The notice shall be signed by the sheriff or his deputy. If the owner fails to reclaim said property prior to the time fixed for the sale in such notice, the sheriff or his deputy shall conduct said sale and sell the property described in the notice at public auction to the highest and best bidder for cash, and upon payment of the amount of such bid shall deliver the said property to such bidder. [1988 c 132 § 4; 1961 c 104 § 2.]

63.40.030 Disposition of proceeds. The moneys arising from sales under the provisions of this chapter shall be first applied to the payment of the costs and expenses of the sale and then to the payment of lawful charges and expenses for the keeping of said personal property and the balance, if any, shall be paid into the county current expense fund. [1961 c 104 § 3.]

63.40.040 Reimbursement to owner. If the owner of said personal property so sold, or his legal representative, shall, at any time within three years after such money shall have been deposited in the county current expense fund, furnish satisfactory evidence to the county treasurer of said county of the ownership of said personal property he or they shall be entitled to receive from said county current expense fund the amount so deposited therein. [1961 c 104 § 4.]

63.40.050 Uniform unclaimed property act not applicable. The provisions of chapter 63.29 RCW shall not apply to personal property in the possession of the office of county sheriff. [1985 c 7 § 126; 1961 c 104 § 5.]

63.40.060 Donation of unclaimed bicycles and toys to charity. In addition to any other method of disposition of unclaimed property provided under this chapter, the county sheriff may donate unclaimed bicycles, tricycles, and toys to nonprofit charitable organizations for use by needy persons. [1987 c 182 § 2.]

Severability—1987 c 182: See note following RCW 63.32.050.

Chapter 63.42 RCW

UNCLAIMED INMATE PERSONAL PROPERTY

Sections

| | |
|-----------|---|
| 63.42.010 | Legislative intent. |
| 63.42.020 | Definitions. |
| 63.42.030 | Personal property presumed abandoned—Illegal items retained as evidence or destroyed. |
| 63.42.040 | Disposition of property presumed abandoned—Inventory—Notice. |
| 63.42.050 | Chapter not applicable if prior written agreement. |
| 63.42.060 | Application of chapters 63.24 and 63.29 RCW. |
| 63.42.900 | Severability—1983 1st ex.s. c 52. |

63.42.010 Legislative intent. It is the intent of the legislature to relieve the department of corrections from unacceptable burdens of cost related to storage space and manpower in the preservation of inmate personal property if the property has been abandoned by the inmate and to enhance the security and safety of the institutions. [1983 1st ex.s. c 52 § 1.]

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

(1) "Secretary" means the secretary of the department of corrections or the secretary's designees.

(2) "Personal property" or "property" includes both corporeal and incorporeal personal property and includes among others contraband and money.

(3) "Contraband" means all personal property including, but not limited to, alcoholic beverages and other items which a resident of a correctional institution may not have in the resident's possession, as defined in rules adopted by the secretary.

(4) "Money" means all currency, script, personal checks, money orders, or other negotiable instruments.

(5) "Owner" means the inmate, the inmate's legal representative, or any person claiming through or under the inmate entitled to title and possession of the property.

(6) "Unclaimed" means that no owner of the property has been identified or has requested, in writing, the release of the property to themselves nor has the owner of the property designated an individual to receive the property or paid the required postage to effect delivery of the property.

(7) "Inmate" means a person committed to the custody of the department of corrections or transferred from other states or the federal government.

(8) "Institutions" means those facilities set forth in RCW 72.01.050(2) and all community residential programs under the department's jurisdiction operated pursuant to chapter 72.65 RCW.

(9) "Department" means the department of corrections.

(10) "Illegal items" means those items unlawful to be possessed.

(11) "Nonprofit" has the meaning prescribed by state or federal law or rules. [1983 1st ex.s. c 52 § 2.]

63.42.030 Personal property presumed abandoned—Illegal items retained as evidence or destroyed. (1) All personal property, and any income or increment which has accrued thereon, held for the owner by an institution that has remained unclaimed for more than six months from the date the owner terminated without authorization from work training release, transferred to a different institution, or when the owner is unknown or deceased, from the date the property was placed in the custody of the institution, is presumed abandoned: PROVIDED, That the provisions of this section shall be extended for up to six months for any inmate, transferred to another institution, who has no recorded next of kin, or person to whom the unclaimed property can be sent.

(2) All personal property, and any income or increment which has accrued thereon, the inmate owner of which has been placed on escape status is presumed abandoned and shall be held for three months by the institution from which the inmate escaped. If the inmate owner remains on escape status for three months or if no other person claims ownership within three months, the property shall be disposed of as set forth in this chapter.

(3) All illegal items owned by and in the possession of an inmate shall be confiscated and held by the institution to which the inmate is assigned. Such items shall be held as required for evidence for law enforcement authorities. Illegal

items not retained for evidence shall be destroyed. [1983 1st ex.s. c 52 § 3.]

Property of deceased inmates: RCW 11.08.101, 11.08.111, and 11.08.120.

63.42.040 Disposition of property presumed abandoned—Inventory—Notice. (1) All personal property, other than money, presumed abandoned shall be destroyed unless, in the opinion of the secretary, the property may be used or has value to a charitable or nonprofit organization, in which case the property may be donated to the organization. A charitable or nonprofit organization does not have a claim nor shall the department or any employee thereof be held liable to any charitable or nonprofit organization for property which is destroyed rather than donated or for the donation of property to another charitable or nonprofit organization.

(2) Money presumed abandoned under this chapter shall be paid into the revolving fund set up in accordance with RCW 9.95.360.

(3) The department shall inventory all personal property prior to its destruction or donation.

(4) Before personal property is donated or destroyed, if the name and address of the owner thereof is known or if deceased, the address of the heirs as known, at least thirty days' notice of the donation or destruction of the personal property shall be given to the owner at the owner's residence or place of business or to some person of suitable age and discretion residing or employed therein. If the name or residence of the owner or the owner's heirs is not known, a notice of the action fixing the time and place thereof shall be published at least once in an official newspaper in the county at least thirty days prior to the date fixed for the action. The notice shall be signed by the secretary. The notice need not contain a description of property, but shall contain a general statement that the property is unclaimed personal property of inmates, specifying the institution at which the property is held. If the owner fails to reclaim the property prior to the time fixed in the notice, the property shall be donated or destroyed. [1983 1st ex.s. c 52 § 4.]

Property of deceased inmates: RCW 11.08.101, 11.08.111, and 11.08.120.

63.42.050 Chapter not applicable if prior written agreement. This chapter does not apply if the inmate and the department have reached an agreement in writing regarding the disposition of the personal property. [1983 1st ex.s. c 52 § 5.]

63.42.060 Application of chapters 63.24 and 63.29 RCW. (1) The uniform unclaimed property act, chapter 63.29 RCW, does not apply to personal property in the possession of the department of corrections.

(2) Chapter 63.24 RCW, unclaimed property in hands of bailee, does not apply to personal property in the possession of the department of corrections. [1985 c 7 § 127; 1983 1st ex.s. c 52 § 6.]

63.42.900 Severability—1983 1st ex.s. c 52. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 52 § 9.]

Chapter 63.44 RCW
JOINT TENANCIES

Sections

63.44.010 Joint tenancies in property.

63.44.010 Joint tenancies in property. See chapter 64.28 RCW.

Chapter 63.48 RCW
ESCHEAT OF POSTAL SAVINGS
SYSTEM ACCOUNTS

Sections

63.48.010 Accounts presumed abandoned and to escheat to state.
63.48.020 Director to request federal records.
63.48.030 Escheat proceedings brought in Thurston county.
63.48.040 Notice to depositors whose accounts are to be escheated.
63.48.050 Copy of judgment presented for payment—Disposition of proceeds.
63.48.060 Indemnification for losses as result of escheat proceedings—Source.

63.48.010 Accounts presumed abandoned and to escheat to state. All postal savings system accounts created by the deposits of persons whose last known addresses are in the state which have not been claimed by the persons entitled thereto before May 1, 1971, are presumed to have been abandoned by their owners and are declared to escheat and become the property of this state. [1971 ex.s. c 68 § 1.]

63.48.020 Director to request federal records. The director of revenue shall request from the bureau of accounts of the United States treasury department records providing the following information: The names of depositors at the post offices of this state whose accounts are unclaimed, their last addresses as shown by the records of the post office department, and the balance in each account. He shall agree to return to the bureau of accounts promptly all account cards showing last addresses in another state. [1971 ex.s. c 68 § 2.]

63.48.030 Escheat proceedings brought in Thurston county. The director of revenue may bring proceedings in the superior court for Thurston county to escheat unclaimed postal savings system accounts held by the United States treasury. A single proceeding may be used to escheat as many accounts as may be available for escheat at one time. [1971 ex.s. c 68 § 3.]

63.48.040 Notice to depositors whose accounts are to be escheated. The director of revenue shall notify depositors whose accounts are to be escheated as follows:

(1) A letter advising that a postal savings system account in the name of the addressee is about to be escheated and setting forth the procedure by which a deposit may be claimed shall be mailed by first class mail to the named depositor at the last address shown on the account records for each account to be escheated having an unpaid principal balance of more than twenty-five dollars.

(2) A general notice of intention to escheat postal savings system accounts shall be published once in each of three

(2004 Ed.)

successive weeks in one or more newspapers which combine to provide general circulation throughout this state.

(3) A special notice of intention to escheat the unclaimed postal savings system accounts originally deposited in each post office must be published once in each of three successive weeks in a newspaper published in the county in which the post office is located or, if there is none, in a newspaper having general circulation in the county. This notice must list the names of the owners of each unclaimed account to be escheated having a principal balance of three dollars or more. [1971 ex.s. c 68 § 4.]

63.48.050 Copy of judgment presented for payment—Disposition of proceeds. The director of revenue shall present a copy of each final judgment of escheat to the United States treasury department for payment of the principal due and the interest computed under regulations of the United States treasury department. The payment received shall be deposited in the general fund in the state treasury. [1971 ex.s. c 68 § 5.]

63.48.060 Indemnification for losses as result of escheat proceedings—Source. This state shall indemnify the United States for any losses suffered as a result of the escheat of unclaimed postal savings system accounts. The burden of the indemnification falls upon the fund into which the proceeds of the escheated accounts have been paid. [1971 ex.s. c 68 § 6.]

Chapter 63.52 RCW
DIES, MOLDS, AND FORMS

Sections

63.52.005 Definitions.
63.52.010 Customer has title and all rights—Written exception—Failure to claim within three years after the last use—Notice to customer—Title and all rights may transfer to the molder.

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

(1) "Customer" means an individual or entity that causes or did cause a molder to fabricate, cast, or otherwise make a die, mold, or form.

(2) "Molder" means an individual or entity, including but not limited to a tool or die maker, that fabricates, casts, or otherwise makes a die, mold, or form.

(3) "Within three years after the last use" means the three-year period after the last use of a die, mold, or form, regardless of whether or not any portion of that period pre-dates June 6, 1996. [1996 c 235 § 1.]

63.52.010 Customer has title and all rights—Written exception—Failure to claim within three years after the last use—Notice to customer—Title and all rights may transfer to the molder. (1) In the absence of a written agreement otherwise, the customer has title and all rights to a die, mold, or form in the molder's possession.

(2) If a customer does not claim possession from a molder of a die, mold, or form within three years after the last use of the die, mold, or form, title and all rights to the die,

[Title 63 RCW—page 35]

mold, or form may be transferred to the molder for the purpose of destroying or otherwise disposing of the die, mold, or form.

(3) At least one hundred twenty days before seeking title and rights to a die, mold, or form in its possession, a molder shall send notice, via registered or certified mail, to the chief executive officer of the customer or, if the customer is not a business entity, to the customer's last known address. The notice must state that the molder intends to seek title and rights to the die, mold, or form. The notice must also include the name, address, and phone number of the molder.

(4) If a customer does not respond in person or by mail within one hundred twenty days after the date the notice was sent, or does not make other contractual arrangements with the molder for storage of the die, mold, or form, title and all rights of the customer transfer by operation of law to the molder. Thereafter, the molder may destroy or otherwise dispose of the die, mold, or form without any risk of liability to the customer. [1996 c 235 § 2.]

Chapter 63.60 RCW PERSONALITY RIGHTS

Sections

| | |
|-----------|--|
| 63.60.010 | Use of name, voice, signature, photograph, or likeness is a property right. |
| 63.60.020 | Definitions. |
| 63.60.030 | Right is transferable, assignable, and licensable—Does not expire upon death—Exists without exploitation during lifetime. |
| 63.60.040 | Right is exclusive for individuals and personalities. |
| 63.60.050 | Infringement of right—Use without consent—Profit or not for profit. |
| 63.60.060 | Infringement of right—Superior courts—Injunctions—Liability for damages and profits—Impoundment—Destruction—Attorneys' fees. |
| 63.60.070 | Exemptions from use restrictions—When chapter does not apply. |
| 63.60.080 | Community property rights. |

63.60.010 Use of name, voice, signature, photograph, or likeness is a property right. Every individual or personality, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer, including without limitation a will, trust, contract, community property agreement, or cotenancy with survivorship provisions or payable-on-death provisions, or, if none is applicable, under the laws of intestate succession applicable to interests in intangible personal property. The property right does not expire upon the death of the individual or personality, as the case may be. The right exists whether or not it was commercially exploited by the individual or the personality during the individual's or the personality's lifetime. [1998 c 274 § 1.]

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

(1) "Deceased personality" means any individual whose name, voice, signature, photograph, or likeness had commercial value at the time of his or her death, whether or not during the lifetime of that individual he or she used his or her

name, voice, signature, photograph, or likeness on or in products, merchandise or goods, or for purposes of advertising or selling, or soliciting the purchase or sale of, products, merchandise, goods, or services. A "deceased personality" includes, without limitation, any such individual who has died within fifty years before January 1, 1998.

(2) "Fund raising" means an organized activity to solicit donations of money or other goods or services from persons or entities by an organization, company, or public entity. A fund-raising activity does not include a live, public performance by an individual or group of individuals for which money is received in solicited or unsolicited gratuities.

(3) "Individual" means a natural person, living or dead.

(4) "Likeness" means an image, painting, sketching, model, diagram, or other clear representation, other than a photograph, of an individual's face, body, or parts thereof, or the distinctive appearance, gestures, or mannerisms of an individual.

(5) "Name" means the actual or assumed name, or nickname, of a living or deceased individual that is intended to identify that individual.

(6) "Person" means any natural person, firm, association, partnership, corporation, joint stock company, syndicate, receiver, common law trust, conservator, statutory trust, or any other concern by whatever name known or however organized, formed, or created, and includes not-for-profit corporations, associations, educational and religious institutions, political parties, and community, civic, or other organizations.

(7) "Personality" means any individual whose name, voice, signature, photograph, or likeness has commercial value, whether or not that individual uses his or her name, voice, signature, photograph, or likeness on or in products, merchandise, or goods, or for purposes of advertising or selling, or solicitation of purchase of, products, merchandise, goods, or services.

(8) "Photograph" means any photograph or photographic reproduction, still or moving, or any videotape, online or live television transmission, of any individual, so that the individual is readily identifiable.

(9) "Signature" means the one handwritten or otherwise legally binding form of an individual's name, written or authorized by that individual, that distinguishes the individual from all others. [2004 c 71 § 1; 1998 c 274 § 2.]

63.60.030 Right is transferable, assignable, and licensable—Does not expire upon death—Exists without exploitation during lifetime. (1) Every individual or personality, as the case may be, has a property right in the use of his or her name, voice, signature, photograph, or likeness, and such right shall be freely transferable, assignable, and licensable, in whole or in part, by contract or inter vivos transfer, and shall not expire upon the death of the individual or personality, as the case may be, so protected but shall pass:

(a) Under the deceased individual's or personality's, as the case may be, last will and testament or, if none, then under the laws of intestate succession applicable to interests in intangible personal property of the individual's or personality's, as the case may be, domicile; or

(b) If the individual or personality, as the case may be, transferred or assigned any interest in the personality rights

during his or her life, then the transferred or assigned interest shall pass as follows:

(i) If the transferred or assigned interest was held in trust, in accordance with the terms of the trust;

(ii) If the interest is subject to a cotenancy with any survivorship provisions or payable-on-death provisions, in accordance with those provisions;

(iii) If the interest is subject to any contract, including without limitation a community property agreement, in accordance with the terms of the applicable contract or contracts;

(iv) If the interest has been transferred or assigned to a third person in a form that is not addressed earlier in this section, then the interest may be transferred, assigned, or licensed by such third person, in whole or in part, by any otherwise permissible form of inter vivos or testamentary transfer or, if none is applicable, under the laws of intestate succession applicable to interests in intangible personal property of the third person's domicile.

(2) A property right exists whether or not such rights were commercially exploited by the individual or the personality during the individual's or the personality's, as the case may be, lifetime. [1998 c 274 § 3.]

63.60.040 Right is exclusive for individuals and personalities. (1) For individuals, except to the extent that the individual may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the individual, subject to the assignment or licensing of such rights, during such individual's lifetime and are exclusive to the persons entitled to such rights under RCW 63.60.030 for a period of ten years after the death of the individual except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(2) For personalities, except to the extent that the personality may have assigned or licensed such rights, the rights protected in this chapter are exclusive to the personality, subject to the assignment or licensing of such rights, during such personality's lifetime and to the persons entitled to such rights under RCW 63.60.030 for a period of seventy-five years after the death of the personality except to the extent that the persons entitled to such rights under RCW 63.60.030 may have assigned or licensed such rights to others.

(3) The rights granted in this chapter may be exercised by a personal representative, attorney in fact, parent of a minor child, or guardian, or as authorized by a court of competent jurisdiction. The terms "personal representative," "attorney in fact," and "guardian" shall have the same meanings in this chapter as they have in Title 11 RCW. [2004 c 71 § 2; 1998 c 274 § 4.]

63.60.050 Infringement of right—Use without consent—Profit or not for profit. Any person who uses or authorizes the use of a living or deceased individual's or personality's name, voice, signature, photograph, or likeness, on or in goods, merchandise, or products entered into commerce in this state, or for purposes of advertising products, merchandise, goods, or services, or for purposes of fund raising or solicitation of donations, or if any person disseminates or publishes such advertisements in this state, without written or

oral, express or implied consent of the owner of the right, has infringed such right. An infringement may occur under this section without regard to whether the use or activity is for profit or not for profit. [1998 c 274 § 5.]

63.60.060 Infringement of right—Superior courts—Injunctions—Liability for damages and profits—Impoundment—Destruction—Attorneys' fees. (1) The superior courts of this state may grant injunctions on reasonable terms to prevent or restrain the unauthorized use of the rights in a living or deceased individual's or personality's name, voice, signature, photograph, or likeness.

(2) Any person who infringes the rights under this chapter shall be liable for the greater of one thousand five hundred dollars or the actual damages sustained as a result of the infringement, and any profits that are attributable to the infringement and not taken into account when calculating actual damages. To prove profits under this section, the injured party or parties must submit proof of gross revenues attributable to the infringement, and the infringing party is required to prove his or her deductible expenses. For the purposes of computing statutory damages, use of a name, voice, signature, photograph, and/or likeness in or related to one work constitutes a single act of infringement regardless of the number of copies made or the number of times the name, voice, signature, photograph, or likeness is displayed.

(3) At any time while an action under this chapter is pending, the court may order the impounding, on reasonable terms, of all materials or any part thereof claimed to have been made or used in violation of the injured party's rights, and the court may enjoin the use of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(4) As part of a final judgment or decree, the court may order the destruction or other reasonable disposition of all materials found to have been made or used in violation of the injured party's rights, and of all plates, molds, matrices, masters, tapes, film negatives, or other articles by means of which such materials may be reproduced.

(5) The prevailing party may recover reasonable attorneys' fees, expenses, and court costs incurred in recovering any remedy or defending any claim brought under this section.

(6) The remedies provided for in this section are cumulative and are in addition to any others provided for by law. [1998 c 274 § 6.]

63.60.070 Exemptions from use restrictions—When chapter does not apply. (1) For purposes of RCW 63.60.050, the use of a name, voice, signature, photograph, or likeness in connection with matters of cultural, historical, political, religious, educational, newsworthy, or public interest, including, without limitation, comment, criticism, satire, and parody relating thereto, shall not constitute a use for which consent is required under this chapter. A matter exempt from consent under this subsection does not lose such exempt status because it appears in the form of a paid advertisement if it is clear that the principal purpose of the advertisement is to comment on such matter.

(2) This chapter does not apply to the use or authorization of use of an individual's or personality's name, voice, signature, photograph, or likeness, in any of the following:

(a) Single and original works of fine art, including but not limited to photographic, graphic, and sculptural works of art that are not published in more than five copies;

(b) A literary work, theatrical work, musical composition, film, radio, online or television program, magazine article, news story, public affairs report, or sports broadcast or account, or with any political campaign when the use does not inaccurately claim or state an endorsement by the individual or personality;

(c) An advertisement or commercial announcement for a use permitted by subsections (1) and (7) of this section and (a) or (b) of this subsection;

(d) An advertisement, commercial announcement, or packaging for the authorized sale, distribution, performance, broadcast, or display of a literary, musical, cinematographic, or other artistic work using the name, voice, signature, photograph, or likeness of the writer, author, composer, director, actor, or artist who created the work, where such individual or personality consented to the use of his or her name, voice, signature, photograph, or likeness on or in connection with the initial sale, distribution, performance, or display thereof; and

(e) The advertisement or sale of a rare or fine product, including but not limited to books, which incorporates the signature of the author.

(3) It is no defense to an infringement action under this chapter that the use of an individual's or personality's name, voice, signature, photograph, or likeness includes more than one individual or personality so identifiable. However, the individuals or personalities complaining of the use shall not bring their cause of action as a class action.

(4) RCW 63.60.050 does not apply to the owners or employees of any medium used for advertising, including but not limited to, newspapers, magazines, radio and television stations, on-line service providers, billboards, and transit ads, who have published or disseminated any advertisement or solicitation in violation of this chapter, unless the advertisement or solicitation was intended to promote the medium itself.

(5) This chapter does not apply to a use or authorization of use of an individual's or personality's name that is merely descriptive and used fairly and in good faith only to identify or describe something other than the individual or personality, such as, without limitation, to describe or identify a place, a legacy, a style, a theory, an ownership interest, or a party to a transaction or to accurately describe the goods or services of a party.

(6) This chapter does not apply to the use of an individual's or personality's name, voice, signature, photograph, or likeness when the use of the individual's or personality's name, voice, signature, photograph, or likeness is an insignificant, de minimis, or incidental use.

(7) This chapter does not apply to the distribution, promotion, transfer, or license of a photograph or other material containing an individual's or personality's name, voice, signature, photograph, or likeness to a third party for use in a manner which is lawful under this chapter, or to a third party for further distribution, promotion, transfer, or license for use in

a manner which is lawful under this chapter. [2004 c 71 § 3; 1998 c 274 § 7.]

63.60.080 Community property rights. Nothing contained in this chapter is intended to invalidate any community property rights. [1998 c 274 § 8.]

Title 64

REAL PROPERTY AND CONVEYANCES

Chapters

- 64.04** **Conveyances.**
- 64.06** **Residential real property transfers—Seller's disclosures.**
- 64.08** **Acknowledgments.**
- 64.12** **Waste and trespass.**
- 64.16** **Alien land law.**
- 64.20** **Alienation of land by Indians.**
- 64.28** **Joint tenancies.**
- 64.32** **Horizontal property regimes act (Condominiums).**
- 64.34** **Condominium act.**
- 64.35** **Condominiums—Qualified warranties.**
- 64.36** **Timeshare regulation.**
- 64.38** **Homeowners' associations.**
- 64.40** **Property rights—Damages from governmental actions.**
- 64.44** **Contaminated properties.**
- 64.50** **Construction defect claims.**

Actions, where commenced: RCW 4.12.010.

Actions or claims arising from construction, alteration, repair, design, planning, etc., of improvements upon real property: RCW 4.16.300 through 4.16.320.

Adverse possession: Chapter 7.28 RCW.

Alien property custodian: RCW 4.28.330.

Attachment: Chapter 6.25 RCW.

Boundaries and plats: Title 58 RCW.

Cemetery plats, title and right to: Chapter 68.32 RCW.

Cemetery property: Chapter 68.28 RCW.

Commissioners to convey real estate: Chapter 6.28 RCW.

Community property: Chapter 26.16 RCW.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

Default in rent: Chapter 59.08 RCW.

Discrimination—Human rights commission: Chapter 49.60 RCW.

District courts, proceedings where land title involved: RCW 12.20.070.

Donation law, conflicting claims: RCW 7.28.280.

Ejectment: Chapter 7.28 RCW.

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

Estates of absentees: Chapter 11.80 RCW.

Excise tax, real estate sales: Chapter 82.45 RCW.

Execution and redemptions, sales under: Chapter 6.21 RCW.

Executions: Chapter 6.17 RCW.

Federal areas

acquisition of land by United States: RCW 37.04.010.

jurisdiction in special cases: Chapter 37.08 RCW.

Federal property, purchase of: Chapter 39.32 RCW.

Federally assisted housing: Chapter 59.28 RCW.

Fences: Chapter 16.60 RCW.

Forcible entry: Chapter 59.12 RCW.

Foreign corporations: Chapters 23B.01 and 23B.15 RCW.

Forests and forest products: Title 76 RCW.

Geological survey, entry on lands: RCW 43.92.080.

Homesteads: Chapter 6.13 RCW.

Housing authorities law: Chapter 35.82 RCW.

Housing cooperation law: Chapter 35.83 RCW.

Indians and Indian lands: Chapter 37.12 RCW.

Intergovernmental disposition of property: Chapter 39.33 RCW.

Joint tenants, simultaneous death: RCW 11.05.030.

Landlord and tenant: Title 59 RCW.

Legal publications: Chapter 65.16 RCW.

Legislative, special legislation prohibited: State Constitution Art. 2 § 28.

Liens

landlord's: Chapter 60.72 RCW.

mechanics' and materialmen's: Chapter 60.04 RCW.

orchard lands: Chapter 60.16 RCW.

timber and lumber: Chapter 60.24 RCW.

Limitation of actions: Chapter 4.16 RCW.

Limitation on liability of landowners for injuries to recreation users: RCW 4.24.210.

Lis pendens: RCW 4.28.160, 4.28.320.

Mortgages and trust receipts: Title 61 RCW.

Nuisances: Chapters 7.48, 9.66 RCW.

Partition: Chapter 7.52 RCW.

Personal exemptions: Chapter 6.15 RCW.

Power of attorney, recording of revocation: RCW 65.08.130.

Probate and trust law: Title 11 RCW.

Property taxes: Title 84 RCW.

Public lands: Title 79 RCW.

Public lands, trespass: Chapter 79.02 RCW.

Quieting title: Chapter 7.28 RCW.

Real estate brokers and salespersons: Chapter 18.85 RCW.

Real property, false representation concerning title: RCW 9.38.020.

Recording: Chapters 65.04, 65.08 RCW.

Registration of land titles (Torrens Act): Chapter 65.12 RCW.

Rents and profits constitute real property for purposes of mortgages, trust deeds or assignments: RCW 7.28.230.

Residential Landlord-Tenant Act: Chapter 59.18 RCW.

Retail installment sales of goods and services: Chapter 63.14 RCW.

Separate property: Chapter 26.16 RCW.

Tenancies: Chapter 59.04 RCW.

The Washington Principal and Income Act of 2002: Chapter 11.104A RCW.

Unlawful entry and detainer: Chapter 59.16 RCW.

Validity of agreement to indemnify against liability for negligence relative to construction or improvement of real property: RCW 4.24.115.

Water rights: Title 90 RCW.

Chapter 64.04 RCW CONVEYANCES

Sections

- 64.04.005 Earnest money deposit—Exclusive remedy—Definition.
- 64.04.010 Conveyances and encumbrances to be by deed.
- 64.04.020 Requisites of a deed.
- 64.04.030 Warranty deed—Form and effect.
- 64.04.040 Bargain and sale deed—Form and effect.
- 64.04.050 Quitclaim deed—Form and effect.

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| 64.04.055 | Deeds for conveyance of apartments under horizontal property regimes act. |
| 64.04.060 | Word "heirs" unnecessary. |
| 64.04.070 | After acquired title follows deed. |
| 64.04.080 | Purchaser of community real property protected by record title. |
| 64.04.090 | Private seals abolished. |
| 64.04.100 | Private seals abolished—Validation. |
| 64.04.105 | Corporate seals—Effect of absence from instrument. |
| 64.04.120 | Registration of land titles. |
| 64.04.130 | Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances. |
| 64.04.135 | Criteria for monitoring historical conformance not to exceed those in original donation agreement—Exception. |
| 64.04.140 | Legislative declaration—Solar energy systems—Solar easements authorized. |
| 64.04.150 | Solar easements—Definitions. |
| 64.04.160 | Solar easements—Creation. |
| 64.04.170 | Interference with solar easement—Remedies. |
| 64.04.175 | Easements established by dedication—Extinguishing or altering. |
| 64.04.180 | Railroad properties as public utility and transportation corridors—Declaration of availability for public use—Acquisition of reversionary interest. |
| 64.04.190 | Public utility and transportation corridors—Defined. |
| 64.04.200 | Existing rate or charge for energy conservation—Seller's duty to disclose. |

Validating—1929 c 33: "All instruments in writing purporting to convey or encumber real estate situated in this state, or any interest therein, or other instrument in writing required to be acknowledged, heretofore executed and acknowledged according to the provisions of this act are hereby declared legal and valid." [1929 c 33 § 7; RRS § 10563, part.]

Validating—1891 p 178: "In all cases where real estate has been heretofore duly sold by a sheriff in pursuance of law by virtue of an execution or other process, and no deed having been made therefor in the manner required by law to the purchaser therefor [thereof] or other person entitled to the same by the sheriff making the sale, the successor in office of the sheriff making the sale having made a deed of the premises so sold to the purchaser or other person entitled to the same, such deed shall be valid and effectual to convey to the grantee the lands or premises so sold: PROVIDED, That this act shall not be construed to affect the equities of third parties in the premises." [1891 p 178 § 1; RRS § 10569.]

Validating—1890 p 89: "All deeds, mortgages or other instruments in writing heretofore executed to convey real estate, or any interest therein, and which have no subscribing witness or witnesses thereto, are hereby cured of such defect and made valid, notwithstanding such omission: PROVIDED, Nothing in this act shall be construed to affect vested rights or impair contracts made in good faith between parties prior to the passage of this act: AND PROVIDED FURTHER, That nothing in this act shall be construed to give validity to, or in any manner affect, the sale or transfer of real estate made by the territory or state of Washington, or any officer, agent or employee thereof prior to the passage of this act." [1890 p 89 § 1; RRS § 10570.]

Reviser's note: The two sections below were repealed by 1929 c 33 § 15 but are retained for their historical value.

Validating—Code 1881: "All deeds, mortgages, or other instruments in writing, which, prior to the passage of this chapter may have been acknowledged before either of the foregoing named officers, or deputies, or before the clerk of any court, or his deputies, heretofore established by the laws of this territory, are hereby declared legal and valid, in so far as such acknowledgment is concerned." [Code 1881 § 2318; RRS § 10562.]

Validating—Code 1881: "That all deeds, mortgages, and other instruments at any time heretofore acknowledged according to the provisions of this chapter are hereby declared legal and valid." [Code 1881 § 2322; RRS § 10568.]

Recording of deeds and conveyances: Title 65 RCW.

64.04.005 Earnest money deposit—Exclusive remedy—Definition. (1)(a) A provision in a written agreement for the purchase and sale of real estate which provides for the forfeiture of an earnest money deposit to the seller as the seller's sole and exclusive remedy if the purchaser fails, without legal excuse, to complete the purchase, is valid and

enforceable, regardless of whether the seller incurs any actual damages, PROVIDED That:

(i) The total earnest money deposit to be forfeited does not exceed five percent of the purchase price; and

(ii) The agreement includes an express provision in substantially the following form: "In the event the purchaser fails, without legal excuse, to complete the purchase of the property, the earnest money deposit made by the purchaser shall be forfeited to the seller as the sole and exclusive remedy available to the seller for such failure."

(b) If the real estate which is the subject of the agreement is being purchased by the purchaser primarily for the purchaser's personal, family, or household purposes, then the agreement provision required by (a)(ii) of this subsection must be:

(i) In typeface no smaller than other text provisions of the agreement; and

(ii) Must be separately initialed or signed by the purchaser and seller.

(2) If an agreement for the purchase and sale of real estate does not satisfy the requirements of subsection (1) of this section, then the seller shall have all rights and remedies otherwise available at law or in equity as a result of the failure of the purchaser, without legal excuse, to complete the purchase.

(3) Nothing in subsection (1) of this section shall affect or limit the rights of any party to an agreement for the purchase and sale of real estate with respect to:

(a) Any cause of action arising from any other breach or default by either party under the agreement; or

(b) The recovery of attorneys' fees in any action commenced with respect to the agreement, if the agreement so provides.

(4) For purposes of this section, "earnest money deposit" means any deposit, deposits, payment, or payments of a part of the purchase price for the property, made in the form of cash, check, promissory note, or other things of value for the purpose of binding the purchaser to the agreement and identified in the agreement as an earnest money deposit, and does not include other deposits or payments made by the purchaser. [1991 c 210 § 1.]

Application—1991 c 210: "The provisions of this act apply only to written agreements entered on or after July 28, 1991." [1991 c 210 § 2.]

64.04.010 Conveyances and encumbrances to be by deed. Every conveyance of real estate, or any interest therein, and every contract creating or evidencing any encumbrance upon real estate, shall be by deed: PROVIDED, That when real estate, or any interest therein, is held in trust, the terms and conditions of which trust are of record, and the instrument creating such trust authorizes the issuance of certificates or written evidence of any interest in said real estate under said trust, and authorizes the transfer of such certificates or evidence of interest by assignment by the holder thereof by a simple writing or by endorsement on the back of such certificate or evidence of interest or delivery thereof to the vendee, such transfer shall be valid, and all such assignments or transfers hereby authorized and heretofore made in accordance with the provisions of this section are hereby declared to be legal and valid. [1929 c 33 § 1; RRS § 10550. Prior: 1888 p 50 § 1; 1886 p 177 § 1; Code 1881 § 2311;

1877 p 312 § 1; 1873 p 465 § 1; 1863 p 430 § 1; 1860 p 299 § 1; 1854 p 402 § 1.]

64.04.020 Requisites of a deed. Every deed shall be in writing, signed by the party bound thereby, and acknowledged by the party before some person authorized by *this act to take acknowledgments of deeds. [1929 c 33 § 2; RRS § 10551. Prior: 1915 c 172 § 1; 1888 p 50 § 2; 1886 p 177 § 2; Code 1881 § 2312; 1854 p 402 § 2.]

***Reviser's note:** The language "this act" appears in 1929 c 33, which is codified in RCW 64.04.010-64.04.050, 64.08.010-64.08.070, 64.12.020, and 65.08.030.

64.04.030 Warranty deed—Form and effect. Warranty deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert the name or names and place or residence) for and in consideration of (here insert consideration) in hand paid, conveys and warrants to (here insert the grantee's name or names) the following described real estate (here insert description), situated in the county of, state of Washington. Dated this day of, 19. . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a conveyance in fee simple to the grantee, his heirs and assigns, with covenants on the part of the grantor: (1) That at the time of the making and delivery of such deed he was lawfully seized of an indefeasible estate in fee simple, in and to the premises therein described, and had good right and full power to convey the same; (2) that the same were then free from all encumbrances; and (3) that he warrants to the grantee, his heirs and assigns, the quiet and peaceable possession of such premises, and will defend the title thereto against all persons who may lawfully claim the same, and such covenants shall be obligatory upon any grantor, his heirs and personal representatives, as fully and with like effect as if written at full length in such deed. [1929 c 33 § 9; RRS § 10552. Prior: 1886 p 177 § 3.]

64.04.040 Bargain and sale deed—Form and effect. Bargain and sale deeds for the conveyance of land may be substantially in the following form, without express covenants:

The grantor (here insert name or names and place of residence), for and in consideration of (here insert consideration) in hand paid, bargains, sells and conveys to (here insert the grantee's name or names) the following described real estate (here insert description) situated in the county of, state of Washington. Dated this day of, 19. . .

Every deed in substance in the above form when otherwise duly executed, shall convey to the grantee, his heirs or assigns an estate of inheritance in fee simple, and shall be adjudged an express covenant to the grantee, his heirs or assigns, to wit: That the grantor was seized of an indefeasible estate in fee simple, free from encumbrances, done or suffered from the grantor, except the rents and services that may be reserved, and also for quiet enjoyment against the grantor, his heirs and assigns, unless limited by express words contained in such deed; and the grantee, his heirs, executors,

(2004 Ed.)

administrators and assigns may recover in any action for breaches as if such covenants were expressly inserted. [1929 c 33 § 10; RRS § 10553. Prior: 1886 p 178 § 4.]

64.04.050 Quitclaim deed—Form and effect. Quitclaim deeds may be in substance in the following form:

The grantor (here insert the name or names and place of residence), for and in consideration of (here insert consideration) conveys and quitclaims to (here insert grantee's name or names) all interest in the following described real estate (here insert description), situated in the county of, state of Washington. Dated this day of, 19. . .

Every deed in substance in the above form, when otherwise duly executed, shall be deemed and held a good and sufficient conveyance, release and quitclaim to the grantee, his heirs and assigns in fee of all the then existing legal and equitable rights of the grantor in the premises therein described, but shall not extend to the after acquired title unless words are added expressing such intention. [1929 c 33 § 11; RRS § 10554. Prior: 1886 p 178 § 5.]

64.04.055 Deeds for conveyance of apartments under horizontal property regimes act. All deeds for the conveyance of apartments as provided for in chapter 64.32 RCW shall be substantially in the form required by law for the conveyance of any other land or real property and shall in addition thereto contain the contents described in RCW 64.32.120. [1963 c 156 § 29.]

64.04.060 Word "heirs" unnecessary. The term "heirs", or other technical words of inheritance, shall not be necessary to create and convey an estate in fee simple. All conveyances heretofore made omitting the word "heirs", or other technical words of inheritance, but not limiting the estate conveyed, are hereby validated as and are declared to be conveyances of an estate in fee simple. [1931 c 20 § 1; RRS § 10558. Prior: 1888 p 51 § 4.]

64.04.070 After acquired title follows deed. Whenever any person or persons having sold and conveyed by deed any lands in this state, and who, at the time of such conveyance, had no title to such land, and any person or persons who may hereafter sell and convey by deed any lands in this state, and who shall not at the time of such sale and conveyance have the title to such land, shall acquire a title to such lands so sold and conveyed, such title shall inure to the benefit of the purchasers or conveyee or conveyees of such lands to whom such deed was executed and delivered, and to his and their heirs and assigns forever. And the title to such land so sold and conveyed shall pass to and vest in the conveyee or conveyees of such lands and to his or their heirs and assigns, and shall thereafter run with such land. [1871 p 195 § 1; RRS § 10571. Cf. Code 1881 (Supp.) p 25 § 1.]

64.04.080 Purchaser of community real property protected by record title. See RCW 26.16.095.

64.04.090 Private seals abolished. The use of private seals upon all deeds, mortgages, leases, bonds, and other

instruments, and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, is hereby abolished, and the addition of a private seal to any such instrument or contract in writing hereafter made, shall not affect its validity or legality in any respect. [1923 c 23 § 1; RRS § 10556. Prior: 1888 p 184 § 1; 1888 p 50 § 3; 1886 p 165 § 1; 1871 p 83 §§ 1, 2.]

64.04.100 Private seals abolished—Validation. All deeds, mortgages, leases, bonds and other instruments and contracts in writing, including deeds from a husband to his wife and from a wife to her husband for their respective community right, title, interest or estate in all or any portion of their community real property, which have heretofore been executed without the use of a private seal, are, notwithstanding, hereby declared to be legal and valid. [1923 c 23 § 2; RRS § 10557. Prior: 1888 p 184 § 2.]

64.04.105 Corporate seals—Effect of absence from instrument. The absence of a corporate seal on any deed, mortgage, lease, bond or other instrument or contract in writing shall not affect its validity, legality or character in any respect. [1957 c 200 § 1.]

64.04.120 Registration of land titles. See chapter 65.12 RCW.

64.04.130 Interests in land for purposes of conservation, protection, preservation, etc.—Ownership by certain entities—Conveyances. A development right, easement, covenant, restriction, or other right, or any interest less than the fee simple, to protect, preserve, maintain, improve, restore, limit the future use of, or conserve for open space purposes, any land or improvement on the land, whether the right or interest be appurtenant or in gross, may be held or acquired by any state agency, federal agency, county, city, town, or metropolitan municipal corporation, nonprofit historic preservation corporation, or nonprofit nature conservancy corporation. Any such right or interest shall constitute and be classified as real property. All instruments for the conveyance thereof shall be substantially in the form required by law for the conveyance of any land or other real property.

As used in this section, "nonprofit nature conservancy corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) (of the United States Internal Revenue Code of 1954, as amended) as it existed on June 25, 1976, and which has as one of its principal purposes the conducting or facilitating of scientific research; the conserving of natural resources, including but not limited to biological resources, for the general public; or the conserving of natural areas including but not limited to wildlife or plant habitat.

As used in this section, "nonprofit historic preservation corporation" means an organization which qualifies as being tax exempt under 26 U.S.C. section 501(c)(3) of the United States Internal Revenue Code of 1954, as amended, and which has as one of its principal purposes the conducting or facilitating of historic preservation activities within the state,

including conservation or preservation of historic sites, districts, buildings, and artifacts. [1987 c 341 § 1; 1979 ex.s. c 21 § 1.]

Acquisition of open space, land, or rights to future development by certain entities: RCW 84.34.200 through 84.34.250.

Property tax exemption for conservation futures on agricultural land: RCW 84.36.500.

64.04.135 Criteria for monitoring historical conformance not to exceed those in original donation agreement—Exception. The criteria for monitoring historical conformance shall not exceed those included in the original donation agreement, unless agreed to in writing between grantor and grantee. [1987 c 341 § 4.]

64.04.140 Legislative declaration—Solar energy systems—Solar easements authorized. The legislature declares that the potential economic and environmental benefits of solar energy use are considered to be in the public interest; therefore, local governments are authorized to encourage and protect access to direct sunlight for solar energy systems. The legislature further declares that solar easements appropriate to assuring continued access to direct sunlight for solar energy systems may be created and may be privately negotiated. [1979 ex.s. c 170 § 1.]

Severability—1979 ex.s. c 170: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 170 § 15.]

64.04.150 Solar easements—Definitions. (1) As used in this chapter:

(a) "Solar energy system" means any device or combination of devices or elements which rely upon direct sunlight as an energy source, including but not limited to any substance or device which collects sunlight for use in:

- (i) The heating or cooling of a structure or building;
- (ii) The heating or pumping of water;
- (iii) Industrial, commercial, or agricultural processes; or
- (iv) The generation of electricity.

A solar energy system may be used for purposes in addition to the collection of solar energy. These uses include, but are not limited to, serving as a structural member or part of a roof of a building or structure and serving as a window or wall; and

(b) "Solar easement" means a right, expressed as an easement, restriction, covenant, or condition contained in any deed, contract, or other written instrument executed by or on behalf of any landowner for the purpose of assuring adequate access to direct sunlight for solar energy systems.

(2) A solar easement is an interest in real property, and shall be created in writing and shall be subject to the same conveyancing and instrument recording requirements as other easements.

(3) A solar easement shall be appurtenant and run with the land or lands benefited and burdened, unless otherwise provided in the easement.

(4) Any instrument creating a solar easement shall include but not be limited to:

(a) A description of the real property subject to the solar easement and a description of the real property benefiting from the solar easement; and

(b) A description of the extent of the solar easement which is sufficiently certain to allow the owner of the real property subject to the easement to ascertain the extent of the easement. Such description may be made by describing the vertical and horizontal angles, expressed in degrees, at which the solar easement extends over the real property subject to the easement and the points from which those angles are to be measured, or the height over the property above which the solar easement extends, or a prohibited shadow pattern, or any other reasonably certain description.

(5) Any instrument creating a solar easement may include:

(a) The terms or conditions or both under which the solar easement is granted or will be terminated; and

(b) Any provisions for compensation to the owner of property benefiting from the solar easement in the event of interference with the enjoyment of the solar easement, or compensation to the owner of the property subject to the solar easement for maintaining the solar easement. [1979 ex.s. c 170 § 12.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.160 Solar easements—Creation. A solar easement created under this chapter may only be created by written agreement. Nothing in this chapter shall be deemed to create or authorize the creation of an implied easement or a prescriptive easement. [1979 ex.s. c 170 § 14.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.170 Interference with solar easement—Remedies. In any action for interference with a solar easement, if the instrument creating the easement does not specify any appropriate and applicable remedies, the court may choose one or more remedies including but not limited to the following:

(1) Actual damages as measured by increased charges for supplemental energy, the capital cost of the solar energy system, and/or the cost of additional equipment necessary to supply sufficient energy:

(a) From the time the interference began until the actual or expected cessation of the interference; or

(b) If the interference is not expected to cease, in a lump sum which represents the present value of the damages from the time the interference began until the normally expected end of the useful life of the equipment which was interfered with;

(2) Reasonable and necessary attorney's fees as fixed by the court; and

(3) An injunction against the interference. [1979 ex.s. c 170 § 13.]

Severability—1979 ex.s. c 170: See note following RCW 64.04.140.

64.04.175 Easements established by dedication—Extinguishing or altering. Easements established by a dedication are property rights that cannot be extinguished or altered without the approval of the easement owner or owners, unless the plat or other document creating the dedicated

easement provides for an alternative method or methods to extinguish or alter the easement. [1991 c 132 § 1.]

64.04.180 Railroad properties as public utility and transportation corridors—Declaration of availability for public use—Acquisition of reversionary interest. Railroad properties, including but not limited to rights-of-way, land held in fee and used for railroad operations, bridges, tunnels, and other facilities, are declared to be suitable for public use upon cessation of railroad operations on the properties. It is in the public interest of the state of Washington that such properties retain their character as public utility and transportation corridors, and that they may be made available for public uses including highways, other forms of mass transportation, conservation, energy production or transmission, or recreation. Nothing in this section or in RCW 64.04.190 authorizes a public agency or utility to acquire reversionary interests in public utility and transportation corridors without payment of just compensation. [1988 c 16 § 1; 1984 c 143 § 22.]

64.04.190 Public utility and transportation corridors—Defined. Public utility and transportation corridors are railroad properties (1) on which railroad operations have ceased; (2) that have been found suitable for public use by an order of the Interstate Commerce Commission of the United States; and (3) that have been acquired by purchase, lease, donation, exchange, or other agreement by the state, one of its political subdivisions, or a public utility. [1988 c 16 § 2; 1984 c 143 § 23.]

64.04.200 Existing rate or charge for energy conservation—Seller's duty to disclose. Prior to closing, the seller of real property subject to a rate or charge for energy conservation measures, services, or payments provided under a tariff approved by the utilities and transportation commission pursuant to RCW 80.28.065 shall disclose to the purchaser of the real property the existence of the obligation and the possibility that the purchaser may be responsible for the payment obligation. [1993 c 245 § 3.]

Findings—Intent—1993 c 245: See note following RCW 80.28.065.

Chapter 64.06 RCW

RESIDENTIAL REAL PROPERTY TRANSFERS—SELLER'S DISCLOSURES

Sections

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| 64.06.005 | Application—Definition of residential real property. |
| 64.06.010 | Application—Exceptions for certain transfers of residential real property. |
| 64.06.020 | Seller's duty—Format of disclosure statement—Minimum information. |
| 64.06.021 | Notice regarding sex offenders. |
| 64.06.030 | Delivery of disclosure statement—Buyer's options—Time frame. |
| 64.06.040 | After delivery of disclosure statement—Additional information—Seller's duty—Buyer's options—Closing the transaction. |
| 64.06.050 | Error, inaccuracy, or omission in disclosure statement—Actual knowledge—Liability. |
| 64.06.060 | Consumer protection act does not apply. |
| 64.06.070 | Buyer's rights or remedies. |
| 64.06.900 | Effective date—1994 c 200. |

64.06.005 Application—Definition of residential real property. This chapter applies only to residential real property. For purposes of this chapter, residential real property means:

- (1) Real property consisting of, or improved by, one to four dwelling units;
- (2) A residential condominium as defined in RCW 64.34.020(9), unless the sale is subject to the public offering statement requirement in the Washington condominium act, chapter 64.34 RCW;
- (3) A residential timeshare, as defined in RCW 64.36.010(11), unless subject to written disclosure under the Washington timeshare act, chapter 64.36 RCW; or
- (4) A mobile or manufactured home, as defined in RCW 43.22.335 or 46.04.302, that is personal property. [2002 c 268 § 8; 1994 c 200 § 1.]

Purpose—Finding—Effective dates—2002 c 268: See notes following RCW 43.22.434.

64.06.010 Application—Exceptions for certain transfers of residential real property. This chapter does not apply to the following transfers of residential real property:

- (1) A foreclosure, deed-in-lieu of foreclosure, or a sale by a lienholder who acquired the residential real property through foreclosure or deed-in-lieu of foreclosure;
- (2) A gift or other transfer to a parent, spouse, or child of a transferor or child of any parent or spouse of a transferor;
- (3) A transfer between spouses in connection with a marital dissolution;
- (4) A transfer where a buyer had an ownership interest in the property within two years of the date of the transfer including, but not limited to, an ownership interest as a partner in a partnership, a limited partner in a limited partnership, a shareholder in a corporation, a leasehold interest, or transfers to and from a facilitator pursuant to a tax deferred exchange;
- (5) A transfer of an interest that is less than fee simple, except that the transfer of a vendee's interest under a real estate contract is subject to the requirements of this chapter; and
- (6) A transfer made by the personal representative of the estate of the decedent or by a trustee in bankruptcy. [1994 c 200 § 2.]

64.06.020 Seller's duty—Format of disclosure statement—Minimum information. (Effective until January 1, 2005.) (1) In a transaction for the sale of residential property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement, or unless the transfer is exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA". If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the dis-

closure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT..... ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . is/ . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

- Yes No Don't know A. Do you have legal authority to sell the property? If no, please explain.
- Yes No Don't know *B. Is title to the property subject to any of the following?
 - (1) First right of refusal
 - (2) Option
 - (3) Lease or rental agreement

- (4) Life estate?
* C. Are there any encroachments, boundary agreements, or boundary disputes?
* D. Are there any rights of way, easements, or access limitations that may affect the Buyer's use of the property?
* E. Are there any written agreements for joint maintenance of an easement or right of way?
* F. Is there any study, survey project, or notice that would adversely affect the property?
* G. Are there any pending or existing assessments against the property?
* H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?
* I. Is there a boundary survey for the property?
* J. Are there any covenants, conditions, or restrictions which affect the property?

2. WATER

A. Household Water

- (1) The source of water for the property is:
Private or publicly owned water system
Private well serving only the subject property
Other water system
If shared, are there any written agreements?
(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
(3) Are there any known problems or repairs needed?
(4) During your ownership, has the source provided an adequate year round supply of potable water? If no, please explain.
(5) Are there any water treatment systems for the property? If yes, are they Leased Owned

B. Irrigation

- (1) Are there any water rights for the property, such as a water right, permit, certificate, or claim?
(a) If yes, have the water rights been used during the last five years?
(b) If so, is the certificate available?

C. Outdoor Sprinkler System

- (1) Is there an outdoor sprinkler system for the property?
(2) If yes, are there any defects in the system?
(3) If yes, is the sprinkler system connected to irrigation water?

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by: Public sewer system, On-site sewage system (including pipes, tanks, drainfields, and all other component parts) Other disposal system, please describe:

- B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.
C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?
D. If the property is connected to an on-site sewage system:

- Foundations Decks Exterior Walls
Chimneys Interior Walls Fire Alarm
Doors Windows Patio
Ceilings Slab Floors Driveways
Pools Hot Tub Sauna
Sidewalks Outbuildings Fireplaces
Garage Floors Walkways Siding
Other Wood Stoves

- *G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?
H. During your ownership, has the property had any wood destroying organism or pest infestation?
I. Is the attic insulated?
J. Is the basement insulated?

5. SYSTEMS AND FIXTURES

*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.
Electrical system, including wiring, switches, outlets, and service

- Yes No Don't know

Plumbing system, including pipes, faucets, fixtures, and toilets
 Hot water tank
 Garbage disposal
 Appliances
 Sump pump
 Heating and cooling systems
 Security system
 Owned Leased
 Other

The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)

- Yes No Don't know
- Yes No Don't know
- Yes No Don't know

Security system
 Tanks (type):
 Satellite dish
 Other:

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

6. COMMON INTERESTS

- Yes No Don't know

A. Is there a Home Owners' Association? Name of Association

B. Are there regular periodic assessments?
 \$. . . per Month Year
 Other

*C. Are there any pending special assessments?

*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

7. GENERAL

- Yes No Don't know

*A. Have there been any drainage problems on the property?

*B. Does the property contain fill material?

*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

D. Is the property in a designated flood plain?

*E. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

*G. Has the property ever been used as an illegal drug manufacturing site?

*H. Are there any radio towers in the area that may cause interference with telephone reception?

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

- Yes No Don't know
- Yes No Don't know
- Yes No Don't know

*A. Did you make any alterations to the home? If yes, please describe the alterations:

*B. Did any previous owner make any alterations to the home? If yes, please describe the alterations:

*C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

- Yes No Don't know

A. Other conditions or defects:
 *Are there any other existing material defects affecting the property that a prospective buyer should know about?

B. Verification:

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2003 c 200 § 1; 1996 c 301 § 2; 1994 c 200 § 3.]

Effective date—1996 c 301 § 2: "Section 2 of this act shall take effect July 1, 1996." [1996 c 301 § 7.]

64.06.020 Seller's duty—Format of disclosure statement—Minimum information. (Effective January 1, 2005.) (1) In a transaction for the sale of residential property, the seller shall, unless the buyer has expressly waived the right to receive the disclosure statement, or unless the transfer is exempt under RCW 64.06.010, deliver to the buyer a completed seller disclosure statement in the following format and that contains, at a minimum, the following information:

INSTRUCTIONS TO THE SELLER

Please complete the following form. Do not leave any spaces blank. If the question clearly does not apply to the property write "NA". If the answer is "yes" to any * items, please explain on attached sheets. Please refer to the line number(s) of the question(s) when you provide your explanation(s). For your protection you must date and sign each page of this disclosure statement and each attachment. Delivery of the disclosure statement must occur not later than five business days, unless otherwise agreed, after mutual acceptance of a written contract to purchase between a buyer and a seller.

NOTICE TO THE BUYER

THE FOLLOWING DISCLOSURES ARE MADE BY SELLER ABOUT THE CONDITION OF THE PROPERTY LOCATED AT..... ("THE PROPERTY"), OR AS LEGALLY DESCRIBED ON ATTACHED EXHIBIT A.

SELLER MAKES THE FOLLOWING DISCLOSURES OF EXISTING MATERIAL FACTS OR MATERIAL DEFECTS TO BUYER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS YOU AND SELLER OTHERWISE AGREE IN WRITING, YOU HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO YOU TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

THE FOLLOWING ARE DISCLOSURES MADE BY SELLER AND ARE NOT THE REPRESENTATIONS OF ANY REAL ESTATE LICENSEE OR OTHER PARTY. THIS INFORMATION IS FOR DISCLOSURE ONLY AND IS NOT INTENDED TO BE A PART OF ANY WRITTEN AGREEMENT BETWEEN BUYER AND SELLER.

FOR A MORE COMPREHENSIVE EXAMINATION OF THE SPECIFIC CONDITION OF THIS PROPERTY YOU ARE ADVISED TO OBTAIN AND PAY FOR THE SERVICES OF QUALIFIED EXPERTS TO INSPECT THE PROPERTY, WHICH MAY INCLUDE, WITHOUT LIMITATION, ARCHITECTS, ENGINEERS, LAND SURVEYORS, PLUMBERS, ELECTRICIANS, ROOFERS, BUILDING INSPECTORS, ON-SITE WASTEWATER TREATMENT INSPECTORS, OR STRUCTURAL PEST INSPECTORS. THE PROSPECTIVE BUYER AND

SELLER MAY WISH TO OBTAIN PROFESSIONAL ADVICE OR INSPECTIONS OF THE PROPERTY OR TO PROVIDE APPROPRIATE PROVISIONS IN A CONTRACT BETWEEN THEM WITH RESPECT TO ANY ADVICE, INSPECTION, DEFECTS OR WARRANTIES.

Seller . . . is/ . . . is not occupying the property.

I. SELLER'S DISCLOSURES:

If you answer "Yes" to a question with an asterisk (), please explain your answer and attach documents, if available and not otherwise publicly recorded. If necessary, use an attached sheet.

1. TITLE

- A. Do you have legal authority to sell the property? If no, please explain.
*B. Is title to the property subject to any of the following?
(1) First right of refusal
(2) Option
(3) Lease or rental agreement
(4) Life estate?
*C. Are there any encroachments, boundary agreements, or boundary disputes?
*D. Are there any rights of way, easements, or access limitations that may affect the Buyer's use of the property?
*E. Are there any written agreements for joint maintenance of an easement or right of way?
*F. Is there any study, survey project, or notice that would adversely affect the property?
*G. Are there any pending or existing assessments against the property?
*H. Are there any zoning violations, nonconforming uses, or any unusual restrictions on the property that would affect future construction or remodeling?
*I. Is there a boundary survey for the property?
*J. Are there any covenants, conditions, or restrictions which affect the property?

2. WATER

- A. Household Water
(1) The source of water for the property is:
[] Private or publicly owned water system
[] Private well serving only the subject property
*[] Other water system
*If shared, are there any written agreements?
*(2) Is there an easement (recorded or unrecorded) for access to and/or maintenance of the water source?
*(3) Are there any known problems or repairs needed?
(4) During your ownership, has the source provided an adequate year round supply of potable water? If no, please explain.
*(5) Are there any water treatment systems for the property? If yes, are they []Leased []Owned
B. Irrigation
(1) Are there any water rights for the property, such as a water right, permit, certificate, or claim?
*(a) If yes, have the water rights been used during the last five years?
*(b) If so, is the certificate available?
C. Outdoor Sprinkler System
(1) Is there an outdoor sprinkler system for the property?
(2) If yes, are there any defects in the system?
*(3) If yes, is the sprinkler system connected to irrigation water?

3. SEWER/ON-SITE SEWAGE SYSTEM

A. The property is served by: [] Public sewer system, [] On-site sewage system (including pipes, tanks, drainfields, and all other component parts) [] Other disposal system, please describe:

[] Yes [] No [] Don't know

B. If public sewer system service is available to the property, is the house connected to the sewer main? If no, please explain.

[] Yes [] No [] Don't know

C. Is the property subject to any sewage system fees or charges in addition to those covered in your regularly billed sewer or on-site sewage system maintenance service?

[] Yes [] No [] Don't know

D. If the property is connected to an on-site sewage system: (1) Was a permit issued for its construction, and was it approved by the local health department or district following its construction?

- [] Garage Floors [] Walkways [] Siding [] Other [] Wood Stoves

(2) When was it last pumped:

[] Yes [] No [] Don't know

(3) Are there any defects in the operation of the on-site sewage system?

[] Yes [] No [] Don't know

(4) When was it last inspected?

[] Yes [] No [] Don't know

By Whom:

[] Yes [] No [] Don't know

(5) For how many bedrooms was the on-site sewage system approved?

[] Yes [] No [] Don't know

bedrooms

[] Yes [] No [] Don't know

E. Are all plumbing fixtures, including laundry drain, connected to the sewer/on-site sewage system? If no, please explain:

[] Yes [] No [] Don't know

*F. Have there been any changes or repairs to the on-site sewage system?

[] Yes [] No [] Don't know

G. Is the on-site sewage system, including the drainfield, located entirely within the boundaries of the property? If no, please explain.

[] Yes [] No [] Don't know

H. Does the on-site sewage system require monitoring and maintenance services more frequently than once a year? If yes, please explain.

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

NOTICE: IF THIS RESIDENTIAL REAL PROPERTY DISCLOSURE STATEMENT IS BEING COMPLETED FOR NEW CONSTRUCTION WHICH HAS NEVER BEEN OCCUPIED, THE SELLER IS NOT REQUIRED TO COMPLETE THE QUESTIONS LISTED IN ITEM 4. STRUCTURAL OR ITEM 5. SYSTEMS AND FIXTURES

4. STRUCTURAL

[] Yes [] No [] Don't know

*A. Has the roof leaked?

[] Yes [] No [] Don't know

*B. Has the basement flooded or leaked?

[] Yes [] No [] Don't know

*C. Have there been any conversions, additions, or remodeling?

[] Yes [] No [] Don't know

(1) If yes, were all building permits obtained?

[] Yes [] No [] Don't know

(2) If yes, were all final inspections obtained?

[] Yes [] No [] Don't know

D. Do you know the age of the house? If yes, year of original construction:

[] Yes [] No [] Don't know

*E. Has there been any settling, slippage, or sliding of the property or its improvements?

[] Yes [] No [] Don't know

*F. Are there any defects with the following: (If yes, please check applicable items and explain.)

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

- [] Foundations [] Decks [] Exterior Walls [] Chimneys [] Interior Walls [] Fire Alarm [] Doors [] Windows [] Patio [] Ceilings [] Slab Floors [] Driveways [] Pools [] Hot Tub [] Sauna [] Sidewalks [] Outbuildings [] Fireplaces

[] Yes [] No [] Don't know

- [] Walkways [] Siding [] Wood Stoves

*G. Was a structural pest or "whole house" inspection done? If yes, when and by whom was the inspection completed?

H. During your ownership, has the property had any wood destroying organism or pest infestation?

I. Is the attic insulated?

J. Is the basement insulated?

5. SYSTEMS AND FIXTURES

*A. If any of the following systems or fixtures are included with the transfer, are there any defects? If yes, please explain.

Electrical system, including wiring, switches, outlets, and service

Plumbing system, including pipes, faucets, fixtures, and toilets

Hot water tank

Garbage disposal

Appliances

Sump pump

Heating and cooling systems

Security system

[] Owned [] Leased

Other

*B. If any of the following fixtures or property is included with the transfer, are they leased? (If yes, please attach copy of lease.)

Security system

Tanks (type):

Satellite dish

Other:

6. COMMON INTERESTS

A. Is there a Home Owners' Association? Name of Association

B. Are there regular periodic assessments:

\$. . . per [] Month [] Year

[] Other

*C. Are there any pending special assessments?

*D. Are there any shared "common areas" or any joint maintenance agreements (facilities such as walls, fences, landscaping, pools, tennis courts, walkways, or other areas co-owned in undivided interest with others)?

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

7. GENERAL

*A. Have there been any drainage problems on the property?

*B. Does the property contain fill material?

*C. Is there any material damage to the property from fire, wind, floods, beach movements, earthquake, expansive soils, or landslides?

D. Is the property in a designated flood plain?

*E. Are there any substances, materials, or products on the property that may be environmental concerns, such as asbestos, formaldehyde, radon gas, lead-based paint, fuel or chemical storage tanks, or contaminated soil or water?

*G. Has the property ever been used as an illegal drug manufacturing site?

*H. Are there any radio towers in the area that may cause interference with telephone reception?

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

[] Yes [] No [] Don't know

8. MANUFACTURED AND MOBILE HOMES

If the property includes a manufactured or mobile home,

*A. Did you make any alterations to the home? If yes, please describe the alterations:

- Yes No Don't know *B. Did any previous owner make any alterations to the home? If yes, please describe the alterations:
- Yes No Don't know *C. If alterations were made, were permits or variances for these alterations obtained?

9. FULL DISCLOSURE BY SELLERS

- Yes No Don't know A. Other conditions or defects: *Are there any other existing material defects affecting the property that a prospective buyer should know about?
- B. Verification: The foregoing answers and attached explanations (if any) are complete and correct to the best of my/our knowledge and I/we have received a copy hereof. I/we authorize all of my/our real estate licensees, if any, to deliver a copy of this disclosure statement to other real estate licensees and all prospective buyers of the property.

DATE SELLER SELLER

NOTICE TO THE BUYER
INFORMATION REGARDING REGISTERED SEX OFFENDERS MAY BE OBTAINED FROM LOCAL LAW ENFORCEMENT AGENCIES. THIS NOTICE IS INTENDED ONLY TO INFORM YOU OF WHERE TO OBTAIN THIS INFORMATION AND IS NOT AN INDICATION OF THE PRESENCE OF REGISTERED SEX OFFENDERS.

II. BUYER'S ACKNOWLEDGMENT

- A. Buyer hereby acknowledges that: Buyer has a duty to pay diligent attention to any material defects that are known to Buyer or can be known to Buyer by utilizing diligent attention and observation.
- B. The disclosures set forth in this statement and in any amendments to this statement are made only by the Seller and not by any real estate licensee or other party.
- C. Buyer acknowledges that, pursuant to RCW 64.06.050(2), real estate licensees are not liable for inaccurate information provided by Seller, except to the extent that real estate licensees know of such inaccurate information.
- D. This information is for disclosure only and is not intended to be a part of the written agreement between the Buyer and Seller.
- E. Buyer (which term includes all persons signing the "Buyer's acceptance" portion of this disclosure statement below) has received a copy of this Disclosure Statement (including attachments, if any) bearing Seller's signature.

DISCLOSURES CONTAINED IN THIS DISCLOSURE STATEMENT ARE PROVIDED BY SELLER BASED ON SELLER'S ACTUAL KNOWLEDGE OF THE PROPERTY AT THE TIME SELLER COMPLETES THIS DISCLOSURE STATEMENT. UNLESS BUYER AND SELLER OTHERWISE AGREE IN WRITING, BUYER SHALL HAVE THREE BUSINESS DAYS FROM THE DAY SELLER OR SELLER'S AGENT DELIVERS THIS DISCLOSURE STATEMENT TO RESCIND THE AGREEMENT BY DELIVERING A SEPARATELY SIGNED WRITTEN STATEMENT OF RESCISSION TO SELLER OR SELLER'S AGENT. IF THE SELLER DOES NOT GIVE YOU A COMPLETED DISCLOSURE STATEMENT, THEN YOU MAY WAIVE THE RIGHT TO RESCIND PRIOR TO OR AFTER THE TIME YOU ENTER INTO A SALE AGREEMENT.

BUYER HEREBY ACKNOWLEDGES RECEIPT OF A COPY OF THIS DISCLOSURE STATEMENT AND ACKNOWLEDGES THAT THE DISCLOSURES MADE HEREIN ARE THOSE OF THE SELLER ONLY, AND NOT OF ANY REAL ESTATE LICENSEE OR OTHER PARTY.

DATE BUYER BUYER

(2) If the disclosure statement is being completed for new construction which has never been occupied, the disclosure statement is not required to contain and the seller is not required to complete the questions listed in item 4. Structural or item 5. Systems and Fixtures.

(3) The seller disclosure statement shall be for disclosure only, and shall not be considered part of any written agreement between the buyer and seller of residential property. The seller disclosure statement shall be only a disclosure made by the seller, and not any real estate licensee involved in the transaction, and shall not be construed as a warranty of any kind by the seller or any real estate licensee involved in the transaction. [2004 c 114 § 1; 2003 c 200 § 1; 1996 c 301 § 2; 1994 c 200 § 3.]

Application—Effective date—2004 c 114: See notes following RCW 64.06.021.

Effective date—1996 c 301 § 2: "Section 2 of this act shall take effect July 1, 1996." [1996 c 301 § 7.]

64.06.021 Notice regarding sex offenders. (Effective January 1, 2005.) The notice regarding sex offenders under RCW 64.06.020 does not create any legal duty on the part of the seller, or on the part of any real estate licensee, to investigate or to provide the buyer with information regarding the actual presence, or lack thereof, of registered sex offenders in the area of any property, including but not limited to any property that is the subject of a disclosure or waiver of disclosure under this chapter, or that is exempt from disclosure under RCW 64.06.010. [2004 c 114 § 2.]

Application—2004 c 114: "This act applies prospectively only and not retroactively. It applies only to residential real property purchase and sale agreements entered into on or after January 1, 2005, without regard to when the agreements are closed or finalized." [2004 c 114 § 3.]

Effective date—2004 c 114: "This act takes effect January 1, 2005." [2004 c 114 § 4.]

64.06.030 Delivery of disclosure statement—Buyer's options—Time frame. Unless the buyer has expressly waived the right to receive the disclosure statement, not later than five business days or as otherwise agreed to, after mutual acceptance of a written agreement between a buyer and a seller for the purchase and sale of residential real property, the seller shall deliver to the buyer a completed, signed, and dated real property transfer disclosure statement. Within three business days, or as otherwise agreed to, of receipt of the real property transfer disclosure statement, the buyer shall have the right to exercise one of the following two options: (1) Approving and accepting the real property transfer disclosure statement; or (2) rescinding the agreement for the purchase and sale of the property, which decision may be made by the buyer in the buyer's sole discretion. If the buyer elects to rescind the agreement, the buyer must deliver written notice of rescission to the seller within the three-business-day period, or as otherwise agreed to, and upon delivery of the written rescission notice the buyer shall be entitled to immediate return of all deposits and other considerations less any agreed disbursements paid to the seller, or to the seller's agent or an escrow agent for the seller's account, and the agreement for purchase and sale shall be void. If the buyer does not deliver a written rescission notice to [the] seller within the three-business-day period, or as otherwise agreed to, the real

property transfer disclosure statement will be deemed approved and accepted by the buyer. [1996 c 301 § 3; 1994 c 200 § 4.]

64.06.040 After delivery of disclosure statement—Additional information—Seller's duty—Buyer's options—Closing the transaction. (1) If, after the date that a seller of residential real property completes a real property transfer disclosure statement, the seller becomes aware of additional information, or an adverse change occurs which makes any of the disclosures made inaccurate, the seller shall amend the real property transfer disclosure statement, and deliver the amendment to the buyer. No amendment shall be required, however, if the seller takes whatever corrective action is necessary so that the accuracy of the disclosure is restored, or the adverse change is corrected, at least three business days prior to the closing date. Unless the corrective action is completed by the seller prior to the closing date, the buyer shall have the right to exercise one of the following two options: (a) Approving and accepting the amendment, or (b) rescinding the agreement of purchase and sale of the property within three business days after receiving the amended real property transfer disclosure statement. Acceptance or rescission shall be subject to the same procedures described in RCW 64.06.030. If the closing date provided in the purchase and sale agreement is scheduled to occur within the three-business-day rescission period provided for in this section, the closing date shall be extended until the expiration of the three-business-day rescission period. The buyer shall have no right of rescission if the seller takes whatever action is necessary so that the accuracy of the disclosure is restored at least three business days prior to the closing date.

(2) In the event any act, occurrence, or agreement arising or becoming known after the closing of a residential real property transfer causes a real property transfer disclosure statement to be inaccurate in any way, the seller of such property shall have no obligation to amend the disclosure statement, and the buyer shall not have the right to rescind the transaction under this chapter.

(3) If the seller in a residential real property transfer fails or refuses to provide to the prospective buyer a real property transfer disclosure statement as required under this chapter, the prospective buyer's right of rescission under this section shall apply until the earlier of three business days after receipt of the real property transfer disclosure statement or the date the transfer has closed, unless the buyer has otherwise waived the right of rescission in writing. Closing is deemed to occur when the buyer has paid the purchase price, or down payment, and the conveyance document, including a deed or real estate contract, from the seller has been delivered and recorded. After closing, the seller's obligation to deliver the real property transfer disclosure statement and the buyer's rights and remedies under this chapter shall terminate. [1996 c 301 § 4; 1994 c 200 § 5.]

64.06.050 Error, inaccuracy, or omission in disclosure statement—Actual knowledge—Liability. (1) The seller of residential real property shall not be liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the seller had no actual knowledge of

the error, inaccuracy, or omission. Unless the seller of residential real property has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the seller shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor.

(2) Any licensed real estate salesperson or broker involved in a residential real property transaction is not liable for any error, inaccuracy, or omission in the real property transfer disclosure statement if the licensee had no actual knowledge of the error, inaccuracy, or omission. Unless the salesperson or broker has actual knowledge of an error, inaccuracy, or omission in a real property transfer disclosure statement, the salesperson or broker shall not be liable for such error, inaccuracy, or omission if the disclosure was based on information provided by public agencies, or by other persons providing information within the scope of their professional license or expertise, including, but not limited to, a report or opinion delivered by a land surveyor, title company, title insurance company, structural inspector, pest inspector, licensed engineer, or contractor. [1996 c 301 § 5; 1994 c 200 § 6.]

64.06.060 Consumer protection act does not apply. The legislature finds that the practices covered by this chapter are not matters vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1994 c 200 § 7.]

64.06.070 Buyer's rights or remedies. Except as provided in RCW 64.06.050, nothing in this chapter shall extinguish or impair any rights or remedies of a buyer of real estate against the seller or against any agent acting for the seller otherwise existing pursuant to common law, statute, or contract; nor shall anything in this chapter create any new right or remedy for a buyer of residential real property other than the right of rescission exercised on the basis and within the time limits provided in this chapter. [1996 c 301 § 6; 1994 c 200 § 8.]

64.06.900 Effective date—1994 c 200. This act shall take effect on January 1, 1995. [1994 c 200 § 10.]

Chapter 64.08 RCW ACKNOWLEDGMENTS

Sections

| | |
|-----------|---|
| 64.08.010 | Who may take acknowledgments. |
| 64.08.020 | Acknowledgments out of state—Certificate. |
| 64.08.040 | Foreign acknowledgments, who may take. |
| 64.08.050 | Certificate of acknowledgment—Evidence. |
| 64.08.060 | Form of certificate for individual. |
| 64.08.070 | Form of certificate for corporation. |
| 64.08.090 | Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure. |
| 64.08.100 | Acknowledgments by persons unable to sign name. |

Validating: See notes following chapter 64.04 RCW digest.

Acknowledgments

merchant seamen: RCW 73.20.010.

persons in the armed services: RCW 73.20.010.

persons outside United States in connection with war: RCW 73.20.010.

64.08.010 Who may take acknowledgments.

Acknowledgments of deeds, mortgages and other instruments in writing, required to be acknowledged may be taken in this state before a justice of the supreme court, or the clerk thereof, or the deputy of such clerk, before a judge of the court of appeals, or the clerk thereof, before a judge of the superior court, or qualified court commissioner thereof, or the clerk thereof, or the deputy of such clerk, or a county auditor, or the deputy of such auditor, or a qualified notary public, or a qualified United States commissioner appointed by any district court of the United States for this state, and all said instruments heretofore executed and acknowledged according to the provisions of this section are hereby declared legal and valid. [1971 c 81 § 131; 1931 c 13 § 1; 1929 c 33 § 3; RRS § 10559. Prior: 1913 c 14 § 1; Code 1881 § 2315; 1879 p 110 § 1; 1877 p 317 § 5; 1875 p 107 § 1; 1873 p 466 § 5.]

64.08.020 Acknowledgments out of state—Certificate.

Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein, and other instruments in writing, required to be acknowledged, may be taken in any other state or territory of the United States, the District of Columbia, or in any possession of the United States, before any person authorized to take the acknowledgments of deeds by the laws of the state, territory, district or possession wherein the acknowledgment is taken, or before any commissioner appointed by the governor of this state, for that purpose, but unless such acknowledgment is taken before a commissioner so appointed by the governor, or before the clerk of a court of record of such state, territory, district or possession, or before a notary public or other officer having a seal of office, the instrument shall have attached thereto a certificate of the clerk of a court of record of the county, parish, or other political subdivision of such state, territory, district or possession wherein the acknowledgment was taken, under the seal of said court, certifying that the person who took the acknowledgment, and whose name is subscribed to the certificate thereof, was at the date thereof such officer as he represented himself to be, authorized by law to take acknowledgments of deeds, and that the clerk verily believes the signature of the person subscribed to the certificate of acknowledgment to be genuine. [1929 c 33 § 4; RRS §§ 10560, 10561. Prior: Code 1881 §§ 2316, 2317; 1877 p 313 §§ 6, 7; 1873 p 466 §§ 6, 7; 1867 pp 93, 94 §§ 1, 2; 1866 p 89 § 1; 1865 p 25 § 1. Formerly RCW 64.08.020 and 64.08.030.]

64.08.040 Foreign acknowledgments, who may take.

Acknowledgments of deeds conveying or encumbering real estate situated in this state, or any interest therein and other instruments in writing, required to be acknowledged, may be taken in any foreign country before any minister, plenipotentiary, secretary of legation, charge d'affaires, consul general, consul, vice consul, consular agent, or commercial agent appointed by the United States government, or before any

(2004 Ed.)

notary public, or before the judge, clerk, or other proper officer of any court of said country, or before the mayor or other chief magistrate of any city, town or other municipal corporation therein. [1929 c 33 § 5; RRS § 10563, part. Prior: 1901 c 53 § 1; 1888 p 1 § 1; Code 1881 § 2319; 1875 p 108 § 2.]

64.08.050 Certificate of acknowledgment—Evidence.

The officer, or person, taking an acknowledgment as in this chapter provided, shall certify the same by a certificate written upon or annexed to the instrument acknowledged and signed by him or her and sealed with his or her official seal, if any, and reciting in substance that the person, or persons, known to him or her as, or determined by satisfactory evidence to be, the person, or persons, whose name, or names, are signed to the instrument as executing the same, acknowledged before him or her on the date stated in the certificate that he, she, or they, executed the same freely and voluntarily. Such certificate shall be prima facie evidence of the facts therein recited. The officer or person taking the acknowledgment has satisfactory evidence that a person is the person whose name is signed on the instrument if that person: (1) Is personally known to the officer or person taking the acknowledgment; (2) is identified upon the oath or affirmation of a credible witness personally known to the officer or person taking the acknowledgment; or (3) is identified on the basis of identification documents. [1988 c 69 § 1; 1929 c 33 § 6; RRS §§ 10564, 10565. Prior: Code 1881 §§ 2320, 2321; 1879 p 158 §§ 2, 3.]

64.08.060 Form of certificate for individual. A certificate of acknowledgment for an individual, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(1), shall be sufficient for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

State of }
County of } ss.

On this day personally appeared before me (here insert the name of grantor or grantors) to me known to be the individual, or individuals described in and who executed the within and foregoing instrument, and acknowledged that he (she or they) signed the same as his (her or their) free and voluntary act and deed, for the uses and purposes therein mentioned. Given under my hand and official seal this . . . day of . . . , 19. . . (Signature of officer and official seal)

If acknowledgment is taken before a notary public of this state the signature shall be followed by substantially the following: Notary Public in and for the state of Washington, residing at, (giving place of residence). [1988 c 69 § 2; 1929 c 33 § 13; RRS § 10566. Prior: 1888 p 51 § 2; 1886 p 179 § 7.]

64.08.070 Form of certificate for corporation. A certificate of acknowledgment for a corporation, substantially in the following form or, after December 31, 1985, substantially in the form set forth in RCW 42.44.100(2), shall be sufficient

for the purposes of this chapter and for any acknowledgment required to be taken in accordance with this chapter:

| | | |
|-----------|-------|-------|
| State of | | } ss. |
| County of | | |

On this day of , 19. . . , before me personally appeared , to me known to be the (president, vice president, secretary, treasurer, or other authorized officer or agent, as the case may be) of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

In Witness Whereof I have hereunto set my hand and affixed my official seal the day and year first above written. (Signature and title of officer with place of residence of notary public.) [1988 c 69 § 3; 1929 c 33 § 14; RRS § 10567. Prior: 1903 c 132 § 1.]

64.08.090 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure. The superintendents, associate and assistant superintendents, business managers, records officers and camp superintendents of any correctional institution or facility operated by the state of Washington are hereby authorized and empowered to take acknowledgments on any instruments of writing, and certify the same in the manner required by law, and to administer all oaths required by law to be administered, all of the foregoing acts to have the same effect as if performed by a notary public: PROVIDED, That such authority shall only extend to taking acknowledgments for and administering oaths to officers, employees and residents of such institutions and facilities. None of the individuals herein empowered to take acknowledgments and administer oaths shall demand or accept any fee or compensation whatsoever for administering or taking any oath, affirmation, or acknowledgment under the authority conferred by this section.

In certifying any oath or in signing any instrument officially, an individual empowered to do so under this section shall, in addition to his name, state in writing his place of residence, the date of his action, and affix the seal of the institution where he is employed: PROVIDED, That in certifying any oath to be used in any of the courts of this state, it shall not be necessary to append an impression of the official seal of the institution. [1972 ex.s. c 58 § 1.]

64.08.100 Acknowledgments by persons unable to sign name. Any person who is otherwise competent but is physically unable to sign his or her name or make a mark may make an acknowledgment authorized under this chapter by orally directing the notary public or other authorized officer taking the acknowledgment to sign the person's name on his or her behalf. In taking an acknowledgment under this section, the notary public or other authorized officer shall, in addition to stating his or her name and place of residence,

state that the signature in the acknowledgment was obtained under the authority of this section. [1987 c 76 § 2.]

**Chapter 64.12 RCW
WASTE AND TRESPASS**

Sections

- 64.12.010 Waste actionable.
- 64.12.020 Waste by guardian or tenant, action for.
- 64.12.030 Injury to or removing trees, etc.—Damages.
- 64.12.035 Cutting or removing vegetation—Electric utility—Liability—Definitions.
- 64.12.040 Mitigating circumstances—Damages.
- 64.12.045 Cutting, breaking, removing Christmas trees from state lands—Compensation.
- 64.12.050 Injunction to prevent waste on public land.
- 64.12.060 Action by occupant of unsurveyed land.

Actions to be commenced where subject is situated: RCW 4.12.010.

Damages for waste after injunction issued: RCW 7.40.200.

Injunctions, generally: Chapter 7.40 RCW.

Trespass

- animals: Title 16 RCW.*
- criminal: Chapter 9A.52 RCW.*
- public lands: Chapter 79.02 RCW.*
- theft: Chapter 9A.56 RCW.*
- waste, executor or administrator may sue: RCW 11.48.010.*

Waste

- option contracts and coal leases on state lands: RCW 79.01.696.*
- restraining during redemption period: RCW 6.23.100.*
- trespass on state lands: Chapter 79.02 RCW.*

64.12.010 Waste actionable. Wrongs heretofore remediable by action of waste shall be subjects of actions as other wrongs. [Code 1881 § 600; 1877 p 125 § 605; 1869 p 143 § 554; 1854 p 206 § 403; RRS § 937.]

64.12.020 Waste by guardian or tenant, action for. If a guardian, tenant in severalty or in common, for life or for years, or by sufferance, or at will, or a subtenant, of real property commit waste thereon, any person injured thereby may maintain an action at law for damages therefor against such guardian or tenant or subtenant; in which action, if the plaintiff prevails, there shall be judgment for treble damages, or for fifty dollars, whichever is greater, and the court, in addition may decree forfeiture of the estate of the party committing or permitting the waste, and of eviction from the property. The judgment, in any event, shall include as part of the costs of the prevailing party, a reasonable attorney's fee to be fixed by the court. But judgment of forfeiture and eviction shall only be given in favor of the person entitled to the reversion against the tenant in possession, when the injury to the estate in reversion is determined in the action to be equal to the value of the tenant's estate or unexpired term, or to have been done or suffered in malice. [1943 c 22 § 1; Code 1881 § 601; 1877 p 125 § 606; 1869 p 143 § 555; 1854 p 206 § 403; Rem. Supp. 1943 § 938.]

64.12.030 Injury to or removing trees, etc.—Damages. Whenever any person shall cut down, girdle or otherwise injure, or carry off any tree, timber or shrub on the land of another person, or on the street or highway in front of any person's house, village, town or city lot, or cultivated grounds, or on the commons or public grounds of any village, town or city, or on the street or highway in front thereof,

without lawful authority, in an action by such person, village, town or city against the person committing such trespasses or any of them, if judgment be given for the plaintiff, it shall be given for treble the amount of damages claimed or assessed therefor, as the case may be. [Code 1881 § 602; 1877 p 125 § 607; 1869 p 143 § 556; RRS § 939.]

Trespass, public lands: Chapter 79.02 RCW.

64.12.035 Cutting or removing vegetation—Electric utility—Liability—Definitions. (1) An electric utility is immune from liability under RCW 64.12.030, 64.12.040, and 4.24.630 and any claims for general or special damages, including claims of emotional distress, for cutting or removing vegetation located on or originating from land or property adjacent to electric facilities that:

(a) Has come in contact with or caused damage to electric facilities;

(b) Poses an imminent hazard to the general public health, safety, or welfare and the electric utility provides notice and makes a reasonable effort to obtain an agreement from the resident or property owner present on the property to trim or remove such hazard. For purposes of this subsection (1)(b), notice may be provided by posting a notice or flier in a conspicuous location on the affected property that gives a good faith estimate of the time frame in which the electric utility's trimming or removal work must occur, specifies how the electric utility may be contacted, and explains the responsibility of the resident or property owner to respond pursuant to the requirements of the notice. An electric utility may act without agreement if the resident or property owner fails to respond pursuant to the requirements of the notice. No notice or agreement is necessary if the electric utility's action is necessary to protect life, property, or restore electric service; or

(c) Poses a potential threat to damage electric facilities and the electric utility attempts written notice by mail to the last known address of record indicating the intent to act or remove vegetation and secures agreement from the affected property owner of record for the cutting, removing, and disposition of the vegetation. Such notice shall include a brief statement of the need and nature of the work intended that will impact the owner's property or vegetation, a good faith estimate of the time frame in which such work will occur, and how the utility can be contacted regarding the cutting or removal of vegetation. If the affected property owner fails to respond to a notice from the electric utility within two weeks of the date the electric utility provided notice, the electric utility may secure agreement from a resident of the affected property for the cutting, removing, and disposition of vegetation.

(2)(a) A hazard to the general public health, safety, or welfare is deemed to exist when:

(i) Vegetation has encroached upon electric facilities by overhanging or growing in such close proximity to overhead electric facilities that it constitutes an electrical hazard under applicable electrical construction codes or state and federal health and safety regulations governing persons who are employed or retained by, or on behalf of, an electric utility to construct, maintain, inspect, and repair electric facilities or to trim or remove vegetation; or

(ii) Vegetation is visibly diseased, dead, or dying and has been determined by a qualified forester or certified arborist employed or retained by, or on behalf of, an electric utility to be of such proximity to electric facilities that trimming or removal of the vegetation is necessary to avoid contact between the vegetation and electric facilities.

(b) The factors to be considered in determining the extent of trimming required to remove a hazard to the general public health, safety, or welfare may include normal tree growth, the combined movement of trees and conductors under adverse weather conditions, voltage, and sagging of conductors at elevated temperatures.

(3) A potential threat to damage electric facilities exists when vegetation is of such size, condition, and proximity to electric facilities that it can be reasonably expected to cause damage to electric facilities and, based upon this standard, the vegetation has been determined to pose a potential threat by a qualified forester or certified arborist employed or retained by or on behalf of an electric utility.

(4) For the purposes of this section:

(a) "Electric facilities" means lines, conduits, ducts, poles, wires, pipes, conductors, cables, cross-arms, receivers, transmitters, transformers, instruments, machines, appliances, instrumentalities, and all devices and apparatus used, operated, owned, or controlled by an electric utility, for the purposes of manufacturing, transforming, transmitting, distributing, selling, or furnishing electricity.

(b) "Electric utility" means an electrical company, as defined under RCW 80.04.010, a municipal electric utility formed under Title 35 RCW, a public utility district formed under Title 54 RCW, an irrigation district formed under chapter 87.03 RCW, a cooperative formed under chapter 23.86 RCW, and a mutual corporation or association formed under chapter 24.06 RCW, that is engaged in the business of distributing electricity in the state.

(c) "Vegetation" means trees, timber, or shrubs. [1999 c 248 § 1.]

Severability—1999 c 248: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 248 § 3.]

64.12.040 Mitigating circumstances—Damages. If upon trial of such action it shall appear that the trespass was casual or involuntary, or that the defendant had probable cause to believe that the land on which such trespass was committed was his own, or that of the person in whose service or by whose direction the act was done, or that such tree or timber was taken from uninclosed woodlands, for the purpose of repairing any public highway or bridge upon the land or adjoining it, judgment shall only be given for single damages. [Code 1881 § 603; 1877 p 125 § 608; 1869 p 143 § 557; RRS § 940.]

64.12.045 Cutting, breaking, removing Christmas trees from state lands—Compensation. See RCW 79.02.340.

64.12.050 Injunction to prevent waste on public land. When any two or more persons are opposing claimants under the laws of the United States to any land in this state, and one

is threatening to commit upon such land waste which tends materially to lessen the value of the inheritance and which cannot be compensated by damages and there is imminent danger that unless restrained such waste will be committed, the party, on filing his complaint and satisfying the court or judge of the existence of the facts, may have an injunction to restrain the adverse party. In all cases he shall give notice and bond as is provided in other cases where injunction is granted, and the injunction when granted shall be set aside or modified as is provided generally for injunction and restraining orders. [Code 1881 § 604; 1877 p 125 § 609; 1869 p 144 § 558; 1854 p 206 § 404; RRS § 941.]

Injunction, generally: Chapter 7.40 RCW.

64.12.060 Action by occupant of unsurveyed land.

Any person now occupying and settled upon, or who may hereafter occupy or settle upon any of the unsurveyed public lands not to exceed one hundred sixty acres in this territory, for the purpose of holding and cultivating the same, may commence and maintain any action, in any court of competent jurisdiction, for interference with or injuries done to his or her possessions of said lands, against any person or persons so interfering with or injuring such lands or possessions: PROVIDED, ALWAYS, That if any of the aforesaid class of settlers are absent from their claims continuously, for a period of six months in any one year, the said person or persons shall be deemed to have forfeited all rights under this act. [1883 p 70 § 1; RRS § 942.]

Reviser's note: The preamble and sections 2 and 3 of the 1883 act, section 1 of which is codified above as RCW 64.12.060, read as follows:

Preamble: "WHEREAS, A great many citizens of the United States are now settling upon and cultivating the unsurveyed government lands in this territory; and, as many years may elapse before the government surveys will be extended over the said lands, so that the settlers upon the same, can take them under the laws of the United States, and defend them against the trespass of others, therefore:"

"Sec. 2. Any person or persons, who shall wilfully and maliciously disturb, or in any wise injure, or destroy the dwelling house or other building, or any fence inclosing, or being on the claim of any of the aforesaid class of settlers, shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be fined not less than fifty nor more than one hundred (\$100) dollars, for each and every offense, to which may be added imprisonment in the county jail, not exceeding ninety (90) days." [1883 p 71 § 2.]

"Sec. 3. Any person or persons, who shall wilfully or maliciously set fire to any dwelling, or other building, of any of the aforesaid class of settlers, shall be deemed guilty of arson, and subject to the penalties of the law in such cases, made and provided." [1883 p 71 § 3.]

Chapter 64.16 RCW ALIEN LAND LAW

Sections

64.16.005 Aliens' rights and interests in lands same as native citizens'.
64.16.140 Certain titles confirmed.

64.16.005 Aliens' rights and interests in lands same as native citizens'. Any alien may acquire and hold lands, or any right thereto, or interest therein, by purchase, devise or descent; and he may convey, mortgage and devise the same, and if he shall die intestate, the same shall descend to his heirs, and in all cases such lands shall be held, conveyed, mortgaged or devised, or shall descend in like manner and with like effect as if such alien were a native citizen of this state or of the United States. [1967 c 163 § 2.]

1967 c 163 adopted to implement Amendment 42: "This act is adopted by the legislature to implement amendment 42 to the state Constitution approved by the voters of the state on November 8, 1966. Amendment 42 removed constitutional restrictions against alien ownership of land by repealing Article II, section 33 of the state Constitution, as amended and Amendments 24 and 29." [1967 c 163 § 1.]

Severability—1967 c 163: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 163 § 9.]

The above two annotations apply to 1967 c 163. For codification of that act, see Codification Tables, Volume 0.

64.16.140 Certain titles confirmed. All lands and all estates or interests in lands, within the state of Washington, which were conveyed or attempted to be conveyed to, or acquired or attempted to be acquired by, any alien or aliens, prior to the date of the adoption of this act, are hereby confirmed to the respective persons at present owning or claiming to own the title thereto derived by, through or under any such alien ownership or attempted ownership, to the extent that title was vested in or conveyed by said alien or aliens: PROVIDED, That nothing in this section shall be construed to affect, adversely or otherwise, any title to any such lands, or to any interest or estate therein, held or claimed by any private person or corporation adversely to the title hereby confirmed. [1967 c 163 § 3; 1895 c 111 § 1; RRS § 10589.]

Reviser's note: 1967 c 163 carried an emergency clause and was approved by the governor on March 21, 1967.

Chapter 64.20 RCW ALIENATION OF LAND BY INDIANS

Sections

64.20.010 Puyallup Indians—Right of alienation.
64.20.025 Puyallup Indians—Right of alienation—When effective.
64.20.030 Sale of land or materials authorized.

Indian graves and records: Chapter 27.44 RCW.

Indians and Indian lands, jurisdiction: Chapter 37.12 RCW.

64.20.010 Puyallup Indians—Right of alienation.

The said Indians who now hold, or who may hereafter hold, any of the lands of any reservation, in severalty, located in this state by virtue of treaties made between them and the United States, shall have power to lease, incumber, grant and alien the same in like manner and with like effect as any other person may do under the laws of the United States and of this state, and all restrictions in reference thereto are hereby removed. [1890 p 500 § 1; RRS § 10593.]

Preamble: "WHEREAS, It was and is provided by and in the treaty made with and between the chiefs, head men and delegates of the Indian tribes (including the Puyallup tribe) and the United States of America, which treaty is dated on the 26th day of December, 1854, among other things as follows: "That the president, at his discretion, should cause the whole or any portion of the lands thereby reserved, or such land as might be selected in lieu thereof, to be surveyed into lots and assign the same to such individuals or families as are willing to avail themselves of the privilege and will locate on the same as a permanent home, on the same terms, and subject to the same regulations as are provided in the sixth article of the treaty with the Omahas, so far as the same may be applicable; and

"WHEREAS, It was and is provided by and in the sixth article of the treaty with the Omahas aforesaid, among other things, that said tracts of land shall not be aliened or leased for a longer term than two years, and shall be exempt from levy, sale or forfeiture, which conditions shall continue in force until a state constitution embracing such lands within its boundaries shall have been formed, and the legislature of the state shall remove the restric-

tions, but providing that no state legislature shall remove the restrictions* * * without the consent of the Congress; and

"WHEREAS, The President of the United States, on the 30th day of January, 1866, made and issued patents to the Puyallup Indians, in severalty, for the lands of said reservation, which are now of record in the proper office in Pierce county, in the State of Washington; and

"WHEREAS, All the conditions now exist which said treaties contain, and which make it desirable and proper to remove the restrictions in respect to the alienation and disposition of said lands by the Indians, who now hold them in severalty: now, therefore,"

64.20.025 Puyallup Indians—Right of alienation—When effective. *This act shall take effect and be in force from and after the consent to such removal of the restrictions shall have been given by the congress of the United States. [1890 p 501 § 3; no RRS.]

Reviser's note: *(1) The language "this act" appears in 1890 p 501 § 3, which act is codified herein as RCW 64.20.010 through 64.20.025.

(2) An act of congress of March 3, 1893, removed the restriction on transfer (Wilson Act, 27 Stat. p 633) but postponed the right to transfer for ten years, that is, until March 3, 1903.

64.20.030 Sale of land or materials authorized. Any Indian who owns within this state any land or real estate allotted to him by the government of the United States may with the consent of congress, either special or general, sell and convey by deed made, executed and acknowledged before any officer authorized to take acknowledgments to deeds within this state, any stone, mineral, petroleum or timber contained on said land or the fee thereof and such conveyance shall have the same effect as a deed of any other person or persons within this state; it being the intention of this section to remove from Indians residing in this state all existing disabilities relating to alienation of their real estate. [1899 c 96 § 1; RRS § 10595.]

**Chapter 64.28 RCW
JOINT TENANCIES**

Sections

- 64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors' rights saved.
- 64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, trustees, etc.—Presumption of community property.
- 64.28.030 Bank deposits, choses in action, community property agreements not affected.
- 64.28.040 Character of joint tenancy interests held by husband and wife.

64.28.010 Joint tenancies with right of survivorship authorized—Methods of creation—Creditors' rights saved. Whereas joint tenancy with right of survivorship permits property to pass to the survivor without the cost or delay of probate proceedings, there shall be a form of co-ownership of property, real and personal, known as joint tenancy. A joint tenancy shall have the incidents of survivorship and severability as at common law, including the unilateral right of each tenant to sever the joint tenancy. Joint tenancy shall be created only by written instrument, which instrument shall expressly declare the interest created to be a joint tenancy. It may be created by a single agreement, transfer, deed, will, or other instrument of conveyance, or by agreement, transfer, deed or other instrument from a sole owner to himself and others, or from tenants in common or joint tenants to themselves or some of them, or to themselves or any of them and

(2004 Ed.)

others, or from husband and wife, when holding title as community property, or otherwise, to themselves or to themselves and others, or to one of them and to another or others, or when granted or devised to executors or trustees as joint tenants: PROVIDED, That such transfer shall not derogate from the rights of creditors. [1993 c 19 § 1; 1963 ex.s. c 16 § 1; 1961 c 2 § 1 (Initiative Measure No. 208, approved November 8, 1960).]

64.28.020 Interest in favor of two or more is interest in common—Exceptions for joint tenancies, partnerships, trustees, etc.—Presumption of community property. (1) Every interest created in favor of two or more persons in their own right is an interest in common, unless acquired by them in partnership, for partnership purposes, or unless declared in its creation to be a joint tenancy, as provided in RCW 64.28.010, or unless acquired by executors or trustees.

(2) Interests in common held in the names of a husband and wife, whether or not in conjunction with others, are presumed to be their community property.

(3) Subsection (2) of this section applies as of June 9, 1988, to all existing or subsequently created interests in common. [1988 c 29 § 10; 1961 c 2 § 2 (Initiative Measure No. 208, approved November 8, 1960).]

64.28.030 Bank deposits, choses in action, community property agreements not affected. The provisions of this chapter shall not restrict the creation of a joint tenancy in a bank deposit or in other choses in action as heretofore or hereafter provided by law, nor restrict the power of husband and wife to make agreements as provided in RCW 26.16.120. [1961 c 2 § 3 (Initiative Measure No. 208, approved November 8, 1960).]

64.28.040 Character of joint tenancy interests held by husband and wife. (1) Joint tenancy interests held in the names of a husband and wife, whether or not in conjunction with others, are presumed to be their community property, the same as other property held in the name of both husband and wife. Any such interest passes to the survivor of the husband and wife as provided for property held in joint tenancy, but in all other respects the interest is treated as community property.

(2) Either husband or wife, or both, may sever a joint tenancy. When a joint tenancy is severed, the property, or proceeds of the property, shall be presumed to be their community property, whether it is held in the name of the husband or wife, or both.

(3) This section applies as of January 1, 1985, to all existing or subsequently created joint tenancies. [1993 c 19 § 2; 1985 c 10 § 2. Prior: 1984 c 149 § 174.]

Purpose—1985 c 10: "The purpose of this act is to make technical corrections to chapter 149, Laws of 1984, and to ensure that the changes made in that chapter meet the constitutional requirements of Article II, section 19 of the state Constitution." [1985 c 10 § 1.]

Severability—1985 c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 10 § 3.]

Short title—Application—1985 c 30: See RCW 11.02.900 and 11.02.901.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

Chapter 64.32 RCW
HORIZONTAL PROPERTY REGIMES ACT
(CONDOMINIUMS)

Sections

| | |
|-----------|---|
| 64.32.010 | Definitions. |
| 64.32.020 | Application of chapter. |
| 64.32.030 | Apartments and common areas declared real property. |
| 64.32.040 | Ownership and possession of apartments and common areas. |
| 64.32.050 | Common areas and facilities. |
| 64.32.060 | Compliance with covenants, bylaws and administrative rules and regulations. |
| 64.32.070 | Liens or encumbrances—Enforcement—Satisfaction. |
| 64.32.080 | Common profits and expenses. |
| 64.32.090 | Contents of declaration. |
| 64.32.100 | Copy of survey map, building plans to be filed—Contents of plans. |
| 64.32.110 | Ordinances, resolutions, or zoning laws—Construction. |
| 64.32.120 | Contents of deeds or other conveyances of apartments. |
| 64.32.130 | Mortgages, liens or encumbrances affecting an apartment at time of first conveyance. |
| 64.32.140 | Recording. |
| 64.32.150 | Removal of property from provisions of chapter. |
| 64.32.160 | Removal of property from provisions of chapter—No bar to subsequent resubmission. |
| 64.32.170 | Records and books—Availability for examination—Audits. |
| 64.32.180 | Exemption from liability for contribution for common expenses prohibited. |
| 64.32.190 | Separate assessments and taxation. |
| 64.32.200 | Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser. |
| 64.32.210 | Conveyance—Liability of grantor and grantee for unpaid common expenses. |
| 64.32.220 | Insurance. |
| 64.32.230 | Destruction or damage to all or part of property—Disposition. |
| 64.32.240 | Actions. |
| 64.32.250 | Application of chapter, declaration and bylaws. |
| 64.32.900 | Short title. |
| 64.32.910 | Construction of term "this chapter." |
| 64.32.920 | Severability—1963 c 156. |

Condominiums created after July 1, 1990: Chapter 64.34 RCW.

Conversion of apartments into condominiums, notice required: RCW 59.18.200.

Mutual savings banks, powers as to condominiums: RCW 32.04.025.

64.32.010 Definitions. As used in this chapter unless the context otherwise requires:

(1) "Apartment" means a part of the property intended for any type of independent use, including one or more rooms or spaces located on one or more floors (or part or parts thereof) in a building, or if not in a building, a separately delineated place of storage or moorage of a boat, plane, or motor vehicle, regardless of whether it is destined for a residence, an office, storage or moorage of a boat, plane, or motor vehicle, the operation of any industry or business, or for any other use not prohibited by law, and which has a direct exit to a public street or highway, or to a common area leading to such street or highway. The boundaries of an apartment located in a building are the interior surfaces of the perimeter walls, floors, ceilings, windows and doors thereof, and the apartment includes both the portions of the building so described and the air space so encompassed. If the apartment is a separately delineated place of storage or moorage of a boat, plane, or motor vehicle the boundaries are those specified in the declaration. In interpreting declarations, deeds, and plans, the existing physical boundaries of the apartment

as originally constructed or as reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed or depicted in the declaration, deed or plan, regardless of settling or lateral movement of the building and regardless of minor variance between boundaries shown in the declaration, deed, or plan and those of apartments in the building.

(2) "Apartment owner" means the person or persons owning an apartment, as herein defined, in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, together with an undivided interest in a like estate of the common areas and facilities in the percentage specified and established in the declaration as duly recorded or as it may be lawfully amended.

(3) "Apartment number" means the number, letter, or combination thereof, designating the apartment in the declaration as duly recorded or as it may be lawfully amended.

(4) "Association of apartment owners" means all of the apartment owners acting as a group in accordance with the bylaws and with the declaration as it is duly recorded or as they may be lawfully amended.

(5) "Building" means a building, containing two or more apartments, or two or more buildings each containing one or more apartments, and comprising a part of the property.

(6) "Common areas and facilities", unless otherwise provided in the declaration as duly recorded or as it may be lawfully amended, includes:

(a) The land on which the building is located;

(b) The foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbys, stairs, stairways, fire escapes, and entrances and exits of the building;

(c) The basements, yards, gardens, parking areas and storage spaces;

(d) The premises for the lodging of janitors or persons in charge of the property;

(e) The installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

(f) The elevators, tanks, pumps, motors, fans, compressors, ducts and in general all apparatus and installations existing for common use;

(g) Such community and commercial facilities as may be provided for in the declaration as duly recorded or as it may be lawfully amended;

(h) All other parts of the property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(7) "Common expenses" include:

(a) All sums lawfully assessed against the apartment owners by the association of apartment owners;

(b) Expenses of administration, maintenance, repair, or replacement of the common areas and facilities;

(c) Expenses agreed upon as common expenses by the association of apartment owners;

(d) Expenses declared common expenses by the provisions of this chapter, or by the declaration as it is duly recorded, or by the bylaws, or as they may be lawfully amended.

(8) "Common profits" means the balance of all income, rents, profits and revenues from the common areas and facilities remaining after the deduction of the common expenses.

(9) "Declaration" means the instrument by which the property is submitted to provisions of this chapter, as herein-after provided, and as it may be, from time to time, lawfully amended.

(10) "Land" means the material of the earth, whatever may be the ingredients of which it is composed, whether soil, rock, or other substance, whether or not submerged, and includes free or occupied space for an indefinite distance upwards as well as downwards, subject to limitations upon the use of airspace imposed, and rights in the use of the air-space granted, by the laws of this state or of the United States.

(11) "Limited common areas and facilities" includes those common areas and facilities designated in the declaration, as it is duly recorded or as it may be lawfully amended, as reserved for use of certain apartment or apartments to the exclusion of the other apartments.

(12) "Majority" or "majority of apartment owners" means the apartment owners with fifty-one percent or more of the votes in accordance with the percentages assigned in the declaration, as duly recorded or as it may be lawfully amended, to the apartments for voting purposes.

(13) "Person" includes any individual, corporation, partnership, association, trustee, or other legal entity.

(14) "Property" means the land, the building, all improvements and structures thereon, all owned in fee simple absolute or qualified, by way of leasehold or by way of a periodic estate, or in any other manner in which real property may be owned, leased or possessed in this state, and all easements, rights and appurtenances belonging thereto, none of which shall be considered as a security or security interest, and all articles of personalty intended for use in connection therewith, which have been or are intended to be submitted to the provisions of this chapter. [1987 c 383 § 1; 1981 c 304 § 34; 1965 ex.s. c 11 § 1; 1963 c 156 § 1.]

Applicability of RCW 64.32.010(1) to houseboat moorages: "The provisions of section 34 (1) shall not apply to moorages for houseboats without the approval of the local municipality." [1981 c 304 § 35.]

Severability—1981 c 304: See note following RCW 26.16.030.

64.32.020 Application of chapter. This chapter shall be applicable only to property, the sole owner or all of the owners, lessees or possessors of which submit the same to the provisions hereof by duly executing and recording a declaration as hereinafter provided. [1963 c 156 § 2.]

64.32.030 Apartments and common areas declared real property. Each apartment, together with its undivided interest in the common areas and facilities shall not be considered as an intangible or a security or any interest therein but shall for all purposes constitute and be classified as real property. [1963 c 156 § 3.]

64.32.040 Ownership and possession of apartments and common areas. Each apartment owner shall be entitled to the exclusive ownership and possession of his apartment but any apartment may be jointly or commonly owned by more than one person. Each apartment owner shall have the

common right to a share, with other apartment owners, in the common areas and facilities. [1963 c 156 § 4.]

64.32.050 Common areas and facilities. (1) Each apartment owner shall be entitled to an undivided interest in the common areas and facilities in the percentage expressed in the declaration. Such percentage shall be computed by taking as a basis the value of the apartment in relation to the value of the property.

(2) The percentage of the undivided interest of each apartment owner in the common areas and facilities as expressed in the declaration shall not be altered except in accordance with procedures set forth in the bylaws and by amending the declaration. The percentage of the undivided interest in the common areas and facilities shall not be separated from the apartment to which it appertains even though such interest is not expressly mentioned or described in the conveyance or other instrument. Nothing in this section or this chapter shall be construed to detract from or limit the powers and duties of any assessing or taxing unit or official which is otherwise granted or imposed by law, rule, or regulation.

(3) The common areas and facilities shall remain undivided and no apartment owner or any other person shall bring any action for partition or division of any part thereof, unless the property has been removed from the provisions of this chapter as provided in RCW 64.32.150 and 64.32.230. Any covenant to the contrary shall be void. Nothing in this chapter shall be construed as a limitation on the right of partition by joint owners or owners in common of one or more apartments as to the ownership of such apartment or apartments.

(4) Each apartment owner shall have a nonexclusive easement for, and may use the common areas and facilities in accordance with the purpose for which they were intended without hindering or encroaching upon the lawful right of the other apartment owners.

(5) The necessary work of maintenance, repair and replacement of the common areas and facilities and the making of any addition or improvement thereto shall be carried out only as provided in this chapter and in the bylaws.

(6) The association of apartment owners shall have the irrevocable right, to be exercised by the manager or board of directors, to have access to each apartment from time to time during reasonable hours as may be necessary for the maintenance, repair, or replacement of any of the common areas and facilities therein or accessible therefrom, or for making emergency repairs therein necessary to prevent damage to the common areas and facilities or to another apartment or apartments. [1965 ex.s. c 11 § 2; 1963 c 156 § 5.]

64.32.060 Compliance with covenants, bylaws and administrative rules and regulations. Each apartment owner shall comply strictly with the bylaws and with the administrative rules and regulations adopted pursuant thereto, as either may be lawfully amended from time to time, and with the covenants, conditions and restrictions set forth in the declaration or in the deed to his apartment. Failure to comply with any of the foregoing shall be ground for an action to recover sums due, for damages or injunctive relief, or both, maintainable by the manager or board of directors on

behalf of the association of apartment owners or by a particularly aggrieved apartment owner. [1963 c 156 § 6.]

64.32.070 Liens or encumbrances—Enforcement—Satisfaction. (1) Subsequent to recording the declaration as provided in this chapter, and while the property remains subject to this chapter, no lien shall thereafter arise or be effective against the property. During such period, liens or encumbrances shall arise or be created only against each apartment and the percentage of undivided interest in the common areas and facilities and appurtenant to such apartment in the same manner and under the same conditions in every respect as liens or encumbrances may arise or be created upon or against any other separate parcel of real property subject to individual ownership: PROVIDED, That no labor performed or materials furnished with the consent of or at the request of the owner of any apartment, or such owner's agent, contractor, or subcontractor, shall be the basis for the filing of a lien against any other apartment or any other property of any other apartment owner not expressly consenting to or requesting the same, except that such express consent shall be deemed to be given by any apartment owner in the case of emergency repairs. Labor performed or materials furnished for the common areas and facilities, if authorized by the association of apartment owners, the manager or board of directors shall be deemed to be performed or furnished with the express consent of each apartment owner and shall be the basis for the filing of a lien against each of the apartments and shall be subject to the provisions of subsection (2) of this section.

(2) In the event a lien against two or more apartments becomes effective, the apartment owners of the separate apartments may remove their apartment and the percentage of undivided interest in the common areas and facilities appurtenant to such apartment from the lien by payment of the fractional or proportional amounts attributable to each of the apartments affected. Such individual payments shall be computed by reference to the percentages appearing on the declaration. Subsequent to any such payment, discharge, or satisfaction, the apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto shall thereafter be free and clear of the liens so paid, satisfied, or discharged. Such partial payment, satisfaction, or discharge shall not prevent the lienor from proceeding to enforce his rights against any apartment and the percentage of undivided interest in the common areas and facilities appurtenant thereto not so paid, satisfied, or discharged. [1963 c 156 § 7.]

64.32.080 Common profits and expenses. The common profits of the property shall be distributed among, and the common expenses shall be charged to, the apartment owners according to the percentage of the undivided interest in the common areas and facilities. [1963 c 156 § 8.]

64.32.090 Contents of declaration. The declaration shall contain the following:

(1) A description of the land on which the building and improvement are or are to be located;

(2) A description of the building, stating the number of stories and basements, the number of apartments and the principal materials of which it is or is to be constructed;

(3) The apartment number of each apartment, and a statement of its location, approximate area, number of rooms, and immediate common area to which it has access, and any other data necessary for its proper identification;

(4) A description of the common areas and facilities;

(5) A description of the limited common areas and facilities, if any, stating to which apartments their use is reserved;

(6) The value of the property and of each apartment, and the percentage of undivided interest in the common areas and facilities appurtenant to each apartment and its owner for all purposes, including voting;

(7) A statement of the purposes for which the building and each of the apartments are intended and restricted as to use;

(8) The name of a person to receive service of process in the cases provided for in this chapter, together with a residence or place of business of such person which shall be within the county in which the building is located;

(9) A provision as to the percentage of votes by the apartment owners which shall be determinative of whether to rebuild, repair, restore, or sell the property in event of damage or destruction of all or part of the property;

(10) A provision authorizing and establishing procedures for the subdividing and/or combining of any apartment or apartments, common areas and facilities or limited common areas and facilities, which procedures may provide for the accomplishment thereof through means of a metes and bounds description;

(11) A provision requiring the adoption of bylaws for the administration of the property or for other purposes not inconsistent with this chapter, which may include whether administration of the property shall be by a board of directors elected from among the apartment owners, by a manager, or managing agent, or otherwise, and the procedures for the adoption thereof and amendments thereto;

(12) Any further details in connection with the property which the person executing the declaration may deem desirable to set forth consistent with this chapter; and

(13) The method by which the declaration may be amended, consistent with this chapter: PROVIDED, That not less than sixty percent of the apartment owners shall consent to any amendment except that any amendment altering the value of the property and of each apartment and the percentage of undivided interest in the common areas and facilities shall require the unanimous consent of the apartment owners. [1963 c 156 § 9.]

64.32.100 Copy of survey map, building plans to be filed—Contents of plans. Simultaneously with the recording of the declaration there shall be filed in the office of the county auditor of the county in which the property is located a survey map of the surface of the land submitted to the provisions of this chapter showing the location or proposed location of the building or buildings thereon.

There also shall be filed simultaneously, a set of plans of the building or buildings showing as to each apartment:

(1) The vertical and horizontal boundaries, as defined in RCW 64.32.010(1), in sufficient detail to identify and locate

such boundaries relative to the survey map of the surface of the land by the use of standard survey methods;

- (2) The number of the apartment and its dimensions;
- (3) The approximate square footage of each unit;
- (4) The number of bathrooms, whole or partial;
- (5) The number of rooms to be used primarily as bedrooms;
- (6) The number of built-in fireplaces;
- (7) A statement of any scenic view which might affect the value of the apartment; and
- (8) The initial value of the apartment relative to the other apartments in the building.

The set of plans shall bear the verified statement of a registered architect, registered professional engineer, or registered land surveyor certifying that the plans accurately depict the location and dimensions of the apartments as built.

If such plans do not include such verified statement there shall be recorded prior to the first conveyance of any apartment an amendment to the declaration to which shall be attached a verified statement of a registered architect, registered professional engineer, or registered land surveyor, certifying that the plans theretofore filed or being filed simultaneously with such amendment, fully and accurately depict the apartment numbers, dimensions, and locations of the apartments as built.

Such plans shall each contain a reference to the date of recording of the declaration and the volume, page and county auditor's receiving number of the recorded declaration. Correspondingly, the record of the declaration or amendment thereof shall contain a reference to the file number of the plans of the building affected thereby.

All plans filed shall be in such style, size, form and quality as shall be prescribed by the county auditor of the county where filed, and a copy shall be delivered to the county assessor. [1987 c 383 § 2; 1965 ex.s. c 11 § 3; 1963 c 156 § 10.]

Fees for filing condominium surveys, maps, or plats: RCW 58.24.070.

64.32.110 Ordinances, resolutions, or zoning laws—Construction. Local ordinances, resolutions, or laws relating to zoning shall be construed to treat like structures, lots, or parcels in like manner regardless of whether the ownership thereof is divided by sale of apartments under this chapter rather than by lease of apartments. [1963 c 156 § 11.]

64.32.120 Contents of deeds or other conveyances of apartments. Deeds or other conveyances of apartments shall include the following:

- (1) A description of the land as provided in RCW 64.32.090, or the post office address of the property, including in either case the date of recording of the declaration and the volume and page or county auditor's recording number of the recorded declaration;
- (2) The apartment number of the apartment in the declaration and any other data necessary for its proper identification;
- (3) A statement of the use for which the apartment is intended;
- (4) The percentage of undivided interest appertaining to the apartment, the common areas and facilities and limited common areas and facilities appertaining thereto, if any;

(2004 Ed.)

(5) Any further details which the grantor and grantee may deem desirable to set forth consistent with the declaration and with this chapter. [1999 c 233 § 9; 1965 ex.s. c 11 § 4; 1963 c 156 § 12.]

Effective date—1999 c 233: See note following RCW 4.28.320.

64.32.130 Mortgages, liens or encumbrances affecting an apartment at time of first conveyance. At the time of the first conveyance of each apartment, every mortgage, lien, or other encumbrance affecting such apartment, including the percentage of undivided interest of the apartment in the common areas and facilities, shall be paid and satisfied of record, or the apartment being conveyed and its percentage of undivided interest in the common areas and facilities shall be released therefrom by partial release duly recorded. [1963 c 156 § 13.]

64.32.140 Recording. The declaration, any amendment thereto, any instrument by which the property may be removed from this chapter and every instrument affecting the property or any apartment shall be entitled to be recorded in the office of the auditor of the county in which the property is located. Neither the declaration nor any amendment thereof shall be valid unless duly recorded. [1963 c 156 § 14.]

64.32.150 Removal of property from provisions of chapter. (1) All of the apartment owners may remove a property from the provisions of this chapter by an instrument to that effect duly recorded: PROVIDED, That the mortgagees and holders of all liens affecting any of the apartments consent thereto or agree, in either case by instrument duly recorded, that their mortgages and liens be transferred to the percentage of the undivided interest of the apartment owner in the property as hereinafter provided;

(2) Upon removal of the property from the provisions of this chapter, the property shall be deemed to be owned in common by the apartment owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of the undivided interest previously owned by such owners in the common areas and facilities. [1963 c 156 § 15.]

64.32.160 Removal of property from provisions of chapter—No bar to subsequent resubmission. The removal provided for in RCW 64.32.150 shall in no way bar the subsequent resubmission of the property to the provisions of this chapter. [1963 c 156 § 16.]

64.32.170 Records and books—Availability for examination—Audits. The manager or board of directors, as the case may be, shall keep complete and accurate books and records of the receipts and expenditures affecting the common areas and facilities, specifying and itemizing the maintenance and repair expenses of the common areas and facilities and any other expenses incurred. Such books and records and the vouchers authorizing payments shall be available for examination by the apartment owners, their agents or attorneys, at any reasonable time or times. All books and records shall be kept in accordance with good accounting procedures and be audited at least once a year by an auditor

outside of the organization. [1965 ex.s. c 11 § 5; 1963 c 156 § 17.]

64.32.180 Exemption from liability for contribution for common expenses prohibited. No apartment owner may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by abandonment of his apartment. [1963 c 156 § 18.]

64.32.190 Separate assessments and taxation. Each apartment and its undivided interest in the common areas and facilities shall be deemed to be a parcel and shall be subject to separate assessments and taxation by each assessing unit for all types of taxes authorized by law including but not limited to special ad valorem levies and special assessments. Neither the building, nor the property, nor any of the common areas and facilities shall be deemed to be a security or a parcel for any purpose. [1963 c 156 § 19.]

64.32.200 Assessments for common expenses—Enforcement of collection—Liens and foreclosures—Liability of mortgagee or purchaser. (1) The declaration may provide for the collection of all sums assessed by the association of apartment owners for the share of the common expenses chargeable to any apartment and the collection may be enforced in any manner provided in the declaration including but not limited to (a) ten days notice shall be given the delinquent apartment owner to the effect that unless such assessment is paid within ten days any or all utility services will be forthwith severed and shall remain severed until such assessment is paid, or (b) collection of such assessment may be made by such lawful method of enforcement, judicial or extra-judicial, as may be provided in the declaration and/or bylaws.

(2) All sums assessed by the association of apartment owners but unpaid for the share of the common expenses chargeable to any apartment shall constitute a lien on such apartment prior to all other liens except only (a) tax liens on the apartment in favor of any assessing unit and/or special district, and (b) all sums unpaid on all mortgages of record. Such lien is not subject to the ban against execution or forced sales of homesteads under RCW 6.13.080 and may be foreclosed by suit by the manager or board of directors, acting on behalf of the apartment owners, in like manner as a mortgage of real property. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment, if so provided in the bylaws, and the plaintiff in such foreclosures shall be entitled to the appointment of a receiver to collect the same. The manager or board of directors, acting on behalf of the apartment owners, shall have power, unless prohibited by the declaration, to bid on the apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment, the period of redemption shall be eight months after the sale. Suit to recover any judgment for any unpaid common expenses shall be maintainable without foreclosing or waiving the liens securing the same.

(3) Where the mortgagee of a mortgage of record or other purchaser of an apartment obtains possession of the

apartment as a result of foreclosure of the mortgage, such possessor, his successors and assigns shall not be liable for the share of the common expenses or assessments by the association of apartment owners chargeable to such apartment which became due prior to such possession. Such unpaid share of common expenses of assessments shall be deemed to be common expenses collectible from all of the apartment owners including such possessor, his successors and assigns. [1988 c 192 § 2; 1965 ex.s. c 11 § 6; 1963 c 156 § 20.]

64.32.210 Conveyance—Liability of grantor and grantee for unpaid common expenses. In a voluntary conveyance the grantee of an apartment shall be jointly and severally liable with the grantor for all unpaid assessments against the latter for his share of the common expenses up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee shall be entitled to a statement from the manager or board of directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor and such grantee shall not be liable for, nor shall the apartment conveyed be subject to a lien for, any unpaid assessments against the grantor in excess of the amount therein set forth. [1963 c 156 § 21.]

64.32.220 Insurance. The manager or board of directors, if required by the declaration, bylaws, or by a majority of the apartment owners, or at the request of a mortgagee having a mortgage of record covering an apartment, shall obtain insurance for the property against loss or damage by fire and such other hazards under such terms and for such amounts as shall be required or requested. Such insurance coverage shall be written on the property in the name of the manager or of the board of directors of the association of apartment owners, as trustee for each of the apartment owners in the percentages established in the declaration. Premiums shall be common expenses. Provision for such insurance shall be without prejudice to the right of each apartment owner to insure his own apartment and/or the personal contents thereof for his benefit. [1963 c 156 § 22.]

64.32.230 Destruction or damage to all or part of property—Disposition. If, within ninety days of the date of damage or destruction to all or part of the property it is not determined by the apartment owners to repair, reconstruct, or rebuild in accordance with the original plan, or by a unanimous vote of all apartment owners to do otherwise, then and in that event:

(1) The property shall be owned in common by the apartment owners;

(2) The undivided interest in the property owned in common which appertains to each apartment owner shall be the percentage of undivided interest previously owned by such owner in the common areas and facilities;

(3) Any mortgages or liens affecting any of the apartments shall be deemed transferred in accordance with the existing priorities to the percentage of the undivided interest of the apartment owner in the property as provided herein; and

(4) The property shall be subject to an action for partition at the suit of any apartment owner, in which event the net proceeds of sale, together with the net proceeds of the insurance of the property, if any, shall be considered as one fund; such fund shall be divided into separate shares one for each apartment owner in a percentage equal to the percentage of undivided interest owned by each such owner in the property; then, after first paying out of the respective share of each apartment owner, to the extent sufficient for the purpose, all mortgages and liens on the undivided interest in the property owned by such apartment owner, the balance remaining in each share shall then be distributed to each apartment owner respectively. [1965 ex.s. c 11 § 7; 1963 c 156 § 23.]

64.32.240 Actions. Without limiting the rights of any apartment owner, actions may be brought as provided by law and by the rules of court by the manager or board of directors, in either case in the discretion of the board of directors, on behalf of two or more of the apartment owners, as their respective interests may appear, with respect to any cause of action relating to the common areas and facilities or more than one apartment. Service of process on two or more apartment owners in any action relating to the common areas and facilities or more than one apartment may be made on the person designated in the declaration to receive service of process. Actions relating to the common areas and facilities for damages arising out of tortious conduct shall be maintained only against the association of apartment owners and any judgment lien or other charge resulting therefrom shall be deemed a common expense, which judgment lien or other charge shall be removed from any apartment and its percentage of undivided interest in the common areas and facilities upon payment by the respective owner of his proportionate share thereof based on the percentage of undivided interest owned by such apartment owner. [1963 c 156 § 24.]

64.32.250 Application of chapter, declaration and bylaws. (1) All apartment owners, tenants of such owners, employees of such owners and tenants, and any other person that may in any manner use the property or any part thereof submitted to the provisions of this chapter, shall be subject to this chapter and to the declaration and bylaws of the association of apartment owners adopted pursuant to the provisions of this chapter.

(2) All agreements, decisions and determinations made by the association of apartment owners under the provisions of this chapter, the declaration, or the bylaws and in accordance with the voting percentages established in this chapter, the declaration, or the bylaws, shall be deemed to be binding on all apartment owners. [1963 c 156 § 25.]

64.32.900 Short title. This chapter shall be known as the horizontal property regimes act. [1963 c 156 § 26.]

64.32.910 Construction of term "this chapter." The term "this chapter" means RCW 64.32.010 through 64.32.250 and 64.32.900 through 64.32.920, and as they may hereafter be amended or supplemented by subsequent legislation. [1963 c 156 § 27.]

(2004 Ed.)

64.32.920 Severability—1963 c 156. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provisions to other persons or circumstances is not affected. [1963 c 156 § 28.]

**Chapter 64.34 RCW
CONDOMINIUM ACT**

Sections

**ARTICLE 1
GENERAL PROVISIONS**

- 64.34.005 Findings—Intent—2004 c 201.
- 64.34.010 Applicability.
- 64.34.020 Definitions.
- 64.34.030 Variation by agreement.
- 64.34.040 Separate interests—Taxation.
- 64.34.050 Local ordinances, regulations, and building codes—Applicability.
- 64.34.060 Condemnation.
- 64.34.070 Law applicable—General principles.
- 64.34.080 Contracts—Unconscionability.
- 64.34.090 Obligation of good faith.
- 64.34.100 Remedies liberally administered.

**ARTICLE 2
CREATION, ALTERATION, AND
TERMINATION OF CONDOMINIUMS**

- 64.34.200 Creation of condominium.
- 64.34.202 Reservation of condominium name.
- 64.34.204 Unit boundaries.
- 64.34.208 Declaration and bylaws—Construction and validity.
- 64.34.212 Description of units.
- 64.34.216 Contents of declaration.
- 64.34.220 Leasehold condominiums.
- 64.34.224 Common element interests, votes, and expenses—Allocation.
- 64.34.228 Limited common elements.
- 64.34.232 Survey maps and plans.
- 64.34.236 Development rights.
- 64.34.240 Alterations of units.
- 64.34.244 Relocation of boundaries—Adjoining units.
- 64.34.248 Subdivision of units.
- 64.34.252 Monuments as boundaries.
- 64.34.256 Use by declarant.
- 64.34.260 Easement rights—Common elements.
- 64.34.264 Amendment of declaration.
- 64.34.268 Termination of condominium.
- 64.34.272 Rights of secured lenders.
- 64.34.276 Master associations.
- 64.34.278 Delegation of power to subassociations.
- 64.34.280 Merger or consolidation.

**ARTICLE 3
MANAGEMENT OF CONDOMINIUM**

- 64.34.300 Unit owners' association—Organization.
- 64.34.304 Unit owners' association—Powers.
- 64.34.308 Board of directors and officers.
- 64.34.312 Control of association—Transfer.
- 64.34.316 Special declarant rights—Transfer.
- 64.34.320 Contracts and leases—Declarant—Termination.
- 64.34.324 Bylaws.
- 64.34.328 Upkeep of condominium.
- 64.34.332 Meetings.
- 64.34.336 Quorums.
- 64.34.340 Voting—Proxies.
- 64.34.344 Tort and contract liability.
- 64.34.348 Common elements—Conveyance—Encumbrance.
- 64.34.352 Insurance.
- 64.34.354 Insurance—Conveyance.
- 64.34.356 Surplus funds.
- 64.34.360 Common expenses—Assessments.
- 64.34.364 Lien for assessments.
- 64.34.368 Liens—General provisions.
- 64.34.372 Association records—Funds.
- 64.34.376 Association as trustee.

ARTICLE 4

PROTECTION OF CONDOMINIUM PURCHASERS

| | |
|-----------|---|
| 64.34.400 | Applicability—Waiver. |
| 64.34.405 | Public offering statement—Requirements—Liability. |
| 64.34.410 | Public offering statement—General provisions. |
| 64.34.415 | Public offering statement—Conversion condominiums. |
| 64.34.417 | Public offering statement—Use of single disclosure document. |
| 64.34.418 | Public offering statement—Contract of sale—Restriction on interest conveyed. |
| 64.34.420 | Purchaser's right to cancel. |
| 64.34.425 | Resale of unit. |
| 64.34.430 | Escrow of deposits. |
| 64.34.435 | Release of liens—Conveyance. |
| 64.34.440 | Conversion condominiums—Notice—Tenants. |
| 64.34.443 | Express warranties of quality. |
| 64.34.445 | Implied warranties of quality—Breach. |
| 64.34.450 | Implied warranties of quality—Exclusion—Modification—Disclaimer—Express written warranty. |
| 64.34.452 | Warranties of quality—Breach—Actions for construction defect claims. |
| 64.34.455 | Effect of violations on rights of action—Attorney's fees. |
| 64.34.460 | Labeling of promotional material. |
| 64.34.465 | Improvements—Declarant's duties. |

ARTICLE 5

MISCELLANEOUS

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| 64.34.900 | Short title. |
| 64.34.910 | Section captions. |
| 64.34.920 | Severability—1989 c 43. |
| 64.34.921 | Severability—2004 c 201. |
| 64.34.930 | Effective date—1989 c 43. |
| 64.34.931 | Effective date—2004 c 201 §§ 1-13. |
| 64.34.940 | Construction against implicit repeal. |
| 64.34.950 | Uniformity of application and construction. |

Condominiums created prior to July 1, 1990: Chapter 64.32 RCW.

ARTICLE 1

GENERAL PROVISIONS

64.34.005 Findings—Intent—2004 c 201. (1) The legislature finds, declares, and determines that:

(a) Washington's cities and counties under the growth management act are required to encourage urban growth in urban growth areas at densities that accommodate twenty-year growth projections;

(b) The growth management act's planning goals include encouraging the availability of affordable housing for all residents of the state and promoting a variety of housing types;

(c) Quality condominium construction needs to be encouraged to achieve growth management act mandated urban densities and to ensure that residents of the state, particularly in urban growth areas, have a broad range of ownership choices.

(2) It is the intent of the legislature that limited changes be made to the condominium act to ensure that a broad range of affordable homeownership opportunities continue to be available to the residents of the state, and to assist cities' and counties' efforts to achieve the density mandates of the growth management act. [2004 c 201 § 1.]

64.34.010 Applicability. (1) This chapter applies to all condominiums created within this state after July 1, 1990. RCW 64.34.040 (separate titles and taxation), RCW 64.34.050 (applicability of local ordinances, regulations, and building codes), RCW 64.34.060 (condemnation), RCW 64.34.208 (construction and validity of declaration and bylaws), RCW 64.34.212 (description of units), RCW 64.34.304(1)(a) through (f) and (k) through (r) (powers of unit owners' association), RCW 64.34.308(1) (board of direc-

tors and officers), RCW 64.34.340 (voting—proxies), RCW 64.34.344 (tort and contract liability), RCW 64.34.354 (notification on sale of unit), RCW 64.34.360(3) (common expenses—assessments), RCW 64.34.364 (lien for assessments), RCW 64.34.372 (association records), RCW 64.34.425 (resales of units), RCW 64.34.455 (effect of violation on rights of action; attorney's fees), and RCW 64.34.020 (definitions) to the extent necessary in construing any of those sections, apply to all condominiums created in this state before July 1, 1990; but those sections apply only with respect to events and circumstances occurring after July 1, 1990, and do not invalidate or supersede existing, inconsistent provisions of the declaration, bylaws, or survey maps or plans of those condominiums.

(2) The provisions of chapter 64.32 RCW do not apply to condominiums created after July 1, 1990, and do not invalidate any amendment to the declaration, bylaws, and survey maps and plans of any condominium created before July 1, 1990, if the amendment would be permitted by this chapter. The amendment must be adopted in conformity with the procedures and requirements specified by those instruments and by chapter 64.32 RCW. If the amendment grants to any person any rights, powers, or privileges permitted by this chapter which are not otherwise provided for in the declaration or chapter 64.32 RCW, all correlative obligations, liabilities, and restrictions in this chapter also apply to that person.

(3) This chapter does not apply to condominiums or units located outside this state.

(4) RCW 64.34.400 (applicability—waiver), RCW 64.34.405 (liability for public offering statement requirements), RCW 64.34.410 (public offering statement—general provisions), RCW 64.34.415 (public offering statement—conversion condominiums), RCW 64.34.420 (purchaser's right to cancel), RCW 64.34.430 (escrow of deposits), RCW 64.34.440 (conversion condominiums—notice—tenants), and RCW 64.34.455 (effect of violations on rights of action—attorney's fees) apply with respect to all sales of units pursuant to purchase agreements entered into after July 1, 1990, in condominiums created before July 1, 1990, in which as of July 1, 1990, the declarant or an affiliate of the declarant owns or had the right to create at least ten units constituting at least twenty percent of the units in the condominium. [1993 c 429 § 12; 1992 c 220 § 1; 1989 c 43 § 1-102.]

64.34.020 Definitions. In the declaration and bylaws, unless specifically provided otherwise or the context requires otherwise, and in this chapter:

(1) "Affiliate" means any person who controls, is controlled by, or is under common control with the referenced person. A person "controls" another person if the person: (a) Is a general partner, officer, director, or employer of the referenced person; (b) directly or indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the referenced person; (c) controls in any manner the election of a majority of the directors of the referenced person; or (d) has contributed more than twenty percent of the capital of the referenced person. A person "is controlled by" another person if the other person: (i) Is a general partner, officer, director, or employer of the person; (ii) directly or

indirectly or acting in concert with one or more other persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing, more than twenty percent of the voting interest in the person; (iii) controls in any manner the election of a majority of the directors of the person; or (iv) has contributed more than twenty percent of the capital of the person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(2) "Allocated interests" means the undivided interest in the common elements, the common expense liability, and votes in the association allocated to each unit.

(3) "Assessment" means all sums chargeable by the association against a unit including, without limitation: (a) Regular and special assessments for common expenses, charges, and fines imposed by the association; (b) interest and late charges on any delinquent account; and (c) costs of collection, including reasonable attorneys' fees, incurred by the association in connection with the collection of a delinquent owner's account.

(4) "Association" or "unit owners' association" means the unit owners' association organized under RCW 64.34.300.

(5) "Board of directors" means the body, regardless of name, with primary authority to manage the affairs of the association.

(6) "Common elements" means all portions of a condominium other than the units.

(7) "Common expenses" means expenditures made by or financial liabilities of the association, together with any allocations to reserves.

(8) "Common expense liability" means the liability for common expenses allocated to each unit pursuant to RCW 64.34.224.

(9) "Condominium" means real property, portions of which are designated for separate ownership and the remainder of which is designated for common ownership solely by the owners of those portions. Real property is not a condominium unless the undivided interests in the common elements are vested in the unit owners, and unless a declaration and a survey map and plans have been recorded pursuant to this chapter.

(10) "Conversion condominium" means a condominium (a) that at any time before creation of the condominium was lawfully occupied wholly or partially by a tenant or subtenant for residential purposes pursuant to a rental agreement, oral or written, express or implied, for which the tenant or subtenant had not received the notice described in (b) of this subsection; or (b) that, at any time within twelve months before the conveyance of, or acceptance of an agreement to convey, any unit therein other than to a declarant or any affiliate of a declarant, was lawfully occupied wholly or partially by a residential tenant of a declarant or an affiliate of a declarant and such tenant was not notified in writing, prior to lawfully occupying a unit or executing a rental agreement, whichever event first occurs, that the unit was part of a condominium and subject to sale. "Conversion condominium" shall not include a condominium in which, before July 1, 1990, any unit therein had been conveyed or been made subject to an agreement to convey to any transferee other than a declarant or an affiliate of a declarant.

(11) "Conveyance" means any transfer of the ownership of a unit, including a transfer by deed or by real estate contract and, with respect to a unit in a leasehold condominium, a transfer by lease or assignment thereof, but shall not include a transfer solely for security.

(12) "Dealer" means a person who, together with such person's affiliates, owns or has a right to acquire either six or more units in a condominium or fifty percent or more of the units in a condominium containing more than two units.

(13) "Declarant" means:

(a) Any person who executes as declarant a declaration as defined in subsection (15) of this section; or

(b) Any person who reserves any special declarant right in the declaration; or

(c) Any person who exercises special declarant rights or to whom special declarant rights are transferred; or

(d) Any person who is the owner of a fee interest in the real property which is subjected to the declaration at the time of the recording of an instrument pursuant to RCW 64.34.316 and who directly or through one or more affiliates is materially involved in the construction, marketing, or sale of units in the condominium created by the recording of the instrument.

(14) "Declarant control" means the right of the declarant or persons designated by the declarant to appoint and remove officers and members of the board of directors, or to veto or approve a proposed action of the board or association, pursuant to RCW 64.34.308 (4) or (5).

(15) "Declaration" means the document, however denominated, that creates a condominium by setting forth the information required by RCW 64.34.216 and any amendments to that document.

(16) "Development rights" means any right or combination of rights reserved by a declarant in the declaration to: (a) Add real property or improvements to a condominium; (b) create units, common elements, or limited common elements within real property included or added to a condominium; (c) subdivide units or convert units into common elements; (d) withdraw real property from a condominium; or (e) reallocate limited common elements with respect to units that have not been conveyed by the declarant.

(17) "Dispose" or "disposition" means a voluntary transfer or conveyance to a purchaser or lessee of any legal or equitable interest in a unit, but does not include the transfer or release of a security interest.

(18) "Eligible mortgagee" means the holder of a mortgage on a unit that has filed with the secretary of the association a written request that it be given copies of notices of any action by the association that requires the consent of mortgagees.

(19) "Foreclosure" means a forfeiture or judicial or non-judicial foreclosure of a mortgage or a deed in lieu thereof.

(20) "Identifying number" means the designation of each unit in a condominium.

(21) "Leasehold condominium" means a condominium in which all or a portion of the real property is subject to a lease, the expiration or termination of which will terminate the condominium or reduce its size.

(22) "Limited common element" means a portion of the common elements allocated by the declaration or by opera-

tion of RCW 64.34.204 (2) or (4) for the exclusive use of one or more but fewer than all of the units.

(23) "Master association" means an organization described in RCW 64.34.276, whether or not it is also an association described in RCW 64.34.300.

(24) "Mortgage" means a mortgage, deed of trust or real estate contract.

(25) "Person" means a natural person, corporation, partnership, limited partnership, trust, governmental subdivision or agency, or other legal entity.

(26) "Purchaser" means any person, other than a declarant or a dealer, who by means of a disposition acquires a legal or equitable interest in a unit other than (a) a leasehold interest, including renewal options, of less than twenty years at the time of creation of the unit, or (b) as security for an obligation.

(27) "Real property" means any fee, leasehold or other estate or interest in, over, or under land, including structures, fixtures, and other improvements thereon and easements, rights and interests appurtenant thereto which by custom, usage, or law pass with a conveyance of land although not described in the contract of sale or instrument of conveyance. "Real property" includes parcels, with or without upper or lower boundaries, and spaces that may be filled with air or water.

(28) "Residential purposes" means use for dwelling or recreational purposes, or both.

(29) "Special declarant rights" means rights reserved for the benefit of a declarant to: (a) Complete improvements indicated on survey maps and plans filed with the declaration under RCW 64.34.232; (b) exercise any development right under RCW 64.34.236; (c) maintain sales offices, management offices, signs advertising the condominium, and models under RCW 64.34.256; (d) use easements through the common elements for the purpose of making improvements within the condominium or within real property which may be added to the condominium under RCW 64.34.260; (e) make the condominium part of a larger condominium or a development under RCW 64.34.280; (f) make the condominium subject to a master association under RCW 64.34.276; or (g) appoint or remove any officer of the association or any master association or any member of the board of directors, or to veto or approve a proposed action of the board or association, during any period of declarant control under RCW 64.34.308(4).

(30) "Timeshare" shall have the meaning specified in the timeshare act, RCW 64.36.010(11).

(31) "Unit" means a physical portion of the condominium designated for separate ownership, the boundaries of which are described pursuant to RCW 64.34.216(1)(d). "Separate ownership" includes leasing a unit in a leasehold condominium under a lease that expires contemporaneously with any lease, the expiration or termination of which will remove the unit from the condominium.

(32) "Unit owner" means a declarant or other person who owns a unit or leases a unit in a leasehold condominium under a lease that expires simultaneously with any lease, the expiration or termination of which will remove the unit from the condominium, but does not include a person who has an interest in a unit solely as security for an obligation. "Unit owner" means the vendee, not the vendor, of a unit under a

real estate contract. [2004 c 201 § 9; 1992 c 220 § 2; 1990 c 166 § 1; 1989 c 43 § 1-103.]

Effective date—1990 c 166: "This act shall take effect July 1, 1990." [1990 c 166 § 16.]

64.34.030 Variation by agreement. Except as expressly provided in this chapter, provisions of this chapter may not be varied by agreement, and rights conferred by this chapter may not be waived. A declarant may not act under a power of attorney or use any other device to evade the limitations or prohibitions of this chapter or the declaration. [1989 c 43 § 1-104.]

64.34.040 Separate interests—Taxation. (1) If there is any unit owner other than a declarant, each unit that has been created, together with its interest in the common elements, constitutes for all purposes a separate parcel of real property.

(2) If there is any unit owner other than a declarant, each unit together with its interest in the common elements must be separately taxed and assessed.

(3) If a development right has an ascertainable market value, the development right shall constitute a separate parcel of real property for property tax purposes and must be separately taxed and assessed to the declarant.

(4) If there is no unit owner other than a declarant, the real property comprising the condominium may be taxed and assessed in any manner provided by law. [1992 c 220 § 3; 1989 c 43 § 1-105.]

64.34.050 Local ordinances, regulations, and building codes—Applicability. (1) A zoning, subdivision, building code, or other real property law, ordinance, or regulation may not prohibit the condominium form of ownership or impose any requirement upon a condominium which it would not impose upon a physically identical development under a different form of ownership. Otherwise, no provision of this chapter invalidates or modifies any provision of any zoning, subdivision, building code, or other real property use law, ordinance, or regulation.

(2) This section shall not prohibit a county legislative authority from requiring the review and approval of declarations and amendments thereto and termination agreements executed pursuant to RCW 64.34.268(2) by the county assessor solely for the purpose of allocating the assessed value and property taxes. The review by the assessor shall be done in a reasonable and timely manner. [1989 c 43 § 1-106.]

64.34.060 Condemnation. (1) If a unit is acquired by condemnation, or if part of a unit is acquired by condemnation leaving the unit owner with a remnant of a unit which may not practically or lawfully be used for any purpose permitted by the declaration, the award must compensate the unit owner for the owner's unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides, that unit's allocated interests are automatically reallocated to the remaining units in proportion to the respective allocated interests of those units before the taking, and the association shall promptly prepare, execute, and record an

amendment to the declaration reflecting the reallocations. Any remnant of a unit remaining after part of a unit is taken under this subsection is thereafter a common element.

(2) Except as provided in subsection (1) of this section, if part of a unit is acquired by condemnation, the award must compensate the unit owner for the reduction in value of the unit and its appurtenant interest in the common elements, whether or not any common elements are acquired. Upon acquisition, unless the decree otherwise provides: (a) That unit's allocated interests are reduced in proportion to the reduction in the size of the unit, or on any other basis specified in the declaration; and (b) the portion of the allocated interests divested from the partially acquired unit are automatically reallocated to that unit and the remaining units in proportion to the respective allocated interests of those units before the taking, with the partially acquired unit participating in the reallocation on the basis of its reduced allocated interests.

(3) If part of the common elements is acquired by condemnation the portion of the award attributable to the common elements taken shall be paid to the owners based on their respective interests in the common elements unless the declaration provides otherwise. Unless the declaration provides otherwise, any portion of the award attributable to the acquisition of a limited common element must be equally divided among the owners of the units to which that limited common element was allocated at the time of acquisition.

(4) The court judgment shall be recorded in every county in which any portion of the condominium is located.

(5) Should the association not act, based on a right reserved to the association in the declaration, on the owners' behalf in a condemnation process, the affected owners may individually or jointly act on their own behalf. [1989 c 43 § 1-107.]

64.34.070 Law applicable—General principles. The principles of law and equity, including the law of corporations and unincorporated associations, the law of real property, and the law relative to capacity to contract, principal and agent, condemnation, estoppel, fraud, misrepresentation, duress, coercion, mistake, receivership, substantial performance, or other validating or invalidating cause supplement the provisions of this chapter, except to the extent inconsistent with this chapter. [1989 c 43 § 1-108.]

64.34.080 Contracts—Unconscionability. (1) The court, upon finding as a matter of law that a contract or contract clause was unconscionable at the time the contract was made, may refuse to enforce the contract, enforce the remainder of the contract without the unconscionable clause, or limit the application of any unconscionable clause in order to avoid an unconscionable result.

(2) Whenever it is claimed, or appears to the court, that a contract or any contract clause is or may be unconscionable, the parties, in order to aid the court in making the determination, shall be afforded a reasonable opportunity to present evidence as to:

(a) The commercial setting of the negotiations;

(b) Whether a party has knowingly taken advantage of the inability of the other party reasonably to protect his or her

interests by reason of physical or mental infirmity, illiteracy, or inability to understand the language of the agreement or similar factors;

(c) The effect and purpose of the contract or clause; and

(d) If a sale, any gross disparity at the time of contracting between the amount charged for the real property and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions, but a disparity between the contract price and the value of the real property measured by the price at which similar real property was readily obtainable in similar transactions does not, of itself, render the contract unconscionable. [1989 c 43 § 1-111.]

64.34.090 Obligation of good faith. Every contract or duty governed by this chapter imposes an obligation of good faith in its performance or enforcement. [1989 c 43 § 1-112.]

64.34.100 Remedies liberally administered. (1) The remedies provided by this chapter shall be liberally administered to the end that the aggrieved party is put in as good a position as if the other party had fully performed. However, consequential, special, or punitive damages may not be awarded except as specifically provided in this chapter or by other rule of law.

(2) Except as otherwise provided in chapter 64.35 RCW, any right or obligation declared by this chapter is enforceable by judicial proceeding. [2004 c 201 § 2; 1989 c 43 § 1-113.]

ARTICLE 2

CREATION, ALTERATION, AND TERMINATION OF CONDOMINIUMS

64.34.200 Creation of condominium. (1) A condominium may be created pursuant to this chapter only by recording a declaration executed by the owner of the interest subject to this chapter in the same manner as a deed and by simultaneously recording a survey map and plans pursuant to RCW 64.34.232. The declaration and survey map and plans must be recorded in every county in which any portion of the condominium is located, and the condominium shall not have the same name as any other existing condominium, whether created under this chapter or under chapter 64.32 RCW, in any county in which the condominium is located.

(2) A declaration or an amendment to a declaration adding units to a condominium may not be recorded unless (a) all structural components and mechanical systems of all buildings containing or comprising any units thereby created are substantially completed as evidenced by a recorded certificate of completion executed by the declarant which certificate may be included in the declaration or the amendment, the survey map and plans to be recorded pursuant to RCW 64.34.232, or a separately recorded written instrument, and (b) all horizontal and vertical boundaries of such units are substantially completed in accordance with the plans required to be recorded by RCW 64.34.232, as evidenced by a recorded certificate of completion executed by a licensed surveyor. [1992 c 220 § 4; 1990 c 166 § 2; 1989 c 43 § 2-101.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.202 Reservation of condominium name. Upon the filing of a written request with the county office in which the declaration is to be recorded, using such form of written request as may be required by the county office and paying such fee as the county office may establish not in excess of fifty dollars, a person may reserve the exclusive right to use a particular name for a condominium to be created in that county. The name being reserved shall not be identical to any other condominium or subdivision plat located in that county, and such name reservation shall automatically lapse unless within three hundred sixty-five days from the date on which the name reservation is filed the person reserving that name either records a declaration using the reserved name or files a new name reservation request. [1992 c 220 § 5.]

64.34.204 Unit boundaries. Except as provided by the declaration:

(1) The walls, floors, or ceilings are the boundaries of a unit, and all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces thereof are a part of the unit, and all other portions of the walls, floors, or ceilings are a part of the common elements.

(2) If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a unit, any portion thereof serving only that unit is a limited common element allocated solely to that unit, and any portion thereof serving more than one unit or any portion of the common elements is a part of the common elements.

(3) Subject to the provisions of subsection (2) of this section, all spaces, interior partitions, and other fixtures and improvements within the boundaries of a unit are a part of the unit.

(4) Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, patios, and all exterior doors and windows or other fixtures designed to serve a single unit, but which are located outside the unit's boundaries, are limited common elements allocated exclusively to that unit. [1992 c 220 § 6; 1989 c 43 § 2-102.]

64.34.208 Declaration and bylaws—Construction and validity. (1) All provisions of the declaration and bylaws are severable.

(2) The rule against perpetuities may not be applied to defeat any provision of the declaration, bylaws, rules, or regulations adopted pursuant to RCW 64.34.304(1)(a).

(3) In the event of a conflict between the provisions of the declaration and the bylaws, the declaration prevails except to the extent the declaration is inconsistent with this chapter.

(4) The creation of a condominium shall not be impaired and title to a unit and common elements shall not be rendered unmarketable or otherwise affected by reason of an insignificant failure of the declaration or survey map and plans or any amendment thereto to comply with this chapter. Whether a significant failure impairs marketability shall not be determined by this chapter. [1989 c 43 § 2-103.]

64.34.212 Description of units. A description of a unit which sets forth the name of the condominium, the recording

number for the declaration, the county in which the condominium is located, and the identifying number of the unit is a sufficient legal description of that unit and all rights, obligations, and interests appurtenant to that unit which were created by the declaration or bylaws. [1989 c 43 § 2-104.]

64.34.216 Contents of declaration. (1) The declaration for a condominium must contain:

(a) The name of the condominium, which must include the word "condominium" or be followed by the words "a condominium," and the name of the association;

(b) A legal description of the real property included in the condominium;

(c) A statement of the number of units which the declarant has created and, if the declarant has reserved the right to create additional units, the number of such additional units;

(d) The identifying number of each unit created by the declaration and a description of the boundaries of each unit if and to the extent they are different from the boundaries stated in RCW 64.34.204(1);

(e) With respect to each existing unit:

(i) The approximate square footage;

(ii) The number of bathrooms, whole or partial;

(iii) The number of rooms designated primarily as bedrooms;

(iv) The number of built-in fireplaces; and

(v) The level or levels on which each unit is located.

The data described in (ii), (iii), and (iv) of this subsection (1)(e) may be omitted with respect to units restricted to non-residential use;

(f) The number of parking spaces and whether covered, uncovered, or enclosed;

(g) The number of moorage slips, if any;

(h) A description of any limited common elements, other than those specified in RCW 64.34.204 (2) and (4), as provided in RCW 64.34.232(2)(j);

(i) A description of any real property which may be allocated subsequently by the declarant as limited common elements, other than limited common elements specified in RCW 64.34.204 (2) and (4), together with a statement that they may be so allocated;

(j) A description of any development rights and other special declarant rights under RCW 64.34.020(29) reserved by the declarant, together with a description of the real property to which the development rights apply, and a time limit within which each of those rights must be exercised;

(k) If any development right may be exercised with respect to different parcels of real property at different times, a statement to that effect together with: (i) Either a statement fixing the boundaries of those portions and regulating the order in which those portions may be subjected to the exercise of each development right, or a statement that no assurances are made in those regards; and (ii) a statement as to whether, if any development right is exercised in any portion of the real property subject to that development right, that development right must be exercised in all or in any other portion of the remainder of that real property;

(l) Any other conditions or limitations under which the rights described in (j) of this subsection may be exercised or will lapse;

(m) An allocation to each unit of the allocated interests in the manner described in RCW 64.34.224;

(n) Any restrictions in the declaration on use, occupancy, or alienation of the units;

(o) A cross-reference by recording number to the survey map and plans for the units created by the declaration; and

(p) All matters required or permitted by RCW 64.34.220 through 64.34.232, 64.34.256, 64.34.260, 64.34.276, and 64.34.308(4).

(2) All amendments to the declaration shall contain a cross-reference by recording number to the declaration and to any prior amendments thereto. All amendments to the declaration adding units shall contain a cross-reference by recording number to the survey map and plans relating to the added units and set forth all information required by RCW 64.34.216(1) with respect to the added units.

(3) The declaration may contain any other matters the declarant deems appropriate. [1992 c 220 § 7; 1989 c 43 § 2-105.]

64.34.220 Leasehold condominiums. (1) Any lease, the expiration or termination of which may terminate the condominium or reduce its size, or a memorandum thereof, shall be recorded. Every lessor of those leases must sign the declaration, and the declaration shall state:

(a) The recording number of the lease or a statement of where the complete lease may be inspected;

(b) The date on which the lease is scheduled to expire;

(c) A legal description of the real property subject to the lease;

(d) Any right of the unit owners to redeem the reversion and the manner whereby those rights may be exercised, or a statement that they do not have those rights;

(e) Any right of the unit owners to remove any improvements within a reasonable time after the expiration or termination of the lease, or a statement that they do not have those rights; and

(f) Any rights of the unit owners to renew the lease and the conditions of any renewal, or a statement that they do not have those rights.

(2) The declaration may provide for the collection by the association of the proportionate rents paid on the lease by the unit owners and may designate the association as the representative of the unit owners on all matters relating to the lease.

(3) If the declaration does not provide for the collection of rents by the association, the lessor may not terminate the interest of a unit owner who makes timely payment of the owner's share of the rent and otherwise complies with all covenants other than the payment of rent which, if violated, would entitle the lessor to terminate the lease.

(4) Acquisition of the leasehold interest of any unit owner by the owner of the reversion or remainder does not merge the leasehold and fee simple interests unless the leasehold interests of all unit owners subject to that reversion or remainder are acquired and the owner thereof records a document confirming the merger.

(5) If the expiration or termination of a lease decreases the number of units in a condominium, the allocated interests shall be reallocated in accordance with RCW 64.34.060(1) as though those units had been taken by condemnation. Reallo-

cations shall be confirmed by an amendment to the declaration and survey map and plans prepared, executed, and recorded by the association. [1989 c 43 § 2-106.]

64.34.224 Common element interests, votes, and expenses—Allocation. (1) The declaration shall allocate a fraction or percentage of undivided interests in the common elements and in the common expenses of the association, and a portion of the votes in the association, to each unit and state the formulas or methods used to establish those allocations. Those allocations may not discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) If units may be added to or withdrawn from the condominium, the declaration shall state the formulas or methods to be used to reallocate the allocated interests among all units included in the condominium after the addition or withdrawal.

(3) The declaration may provide: (a) For cumulative voting only for the purpose of electing members of the board of directors; and (b) for class voting on specified issues affecting the class if necessary to protect valid interests of the class. A declarant may not utilize cumulative or class voting for the purpose of evading any limitation imposed on declarants by this chapter, nor may units constitute a class because they are owned by a declarant.

(4) Except for minor variations due to rounding, the sum of the undivided interests in the common elements and common expense liabilities allocated at any time to all the units must each equal one if stated as fractions or one hundred percent if stated as percentages. In the event of discrepancy between an allocated interest and the result derived from application of the pertinent formula, the allocated interest prevails.

(5) Except where permitted by other sections of this chapter, the common elements are not subject to partition, and any purported conveyance, encumbrance, judicial sale, or other voluntary or involuntary transfer of an undivided interest in the common elements made without the unit to which that interest is allocated is void. [1992 c 220 § 8; 1989 c 43 § 2-107.]

64.34.228 Limited common elements. (1) Except for the limited common elements described in RCW 64.34.204 (2) and (4), the declaration shall specify to which unit or units each limited common element is allocated.

(2) Except in the case of a reallocation being made by a declarant pursuant to a development right reserved in the declaration, a limited common element may only be reallocated between units with the approval of the board of directors and by an amendment to the declaration executed by the owners of the units to which the limited common element was and will be allocated. The board of directors shall approve the request of the owner or owners under this subsection within thirty days, or within such other period provided by the declaration, unless the proposed reallocation does not comply with this chapter or the declaration. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof. The amendment shall be recorded in the names of the parties and of the condominium.

(3) Unless otherwise provided in the declaration, the owners of units to which at least sixty-seven percent of the votes are allocated, including the owner of the unit to which the limited common element will be assigned or incorporated, must agree to reallocate a common element as a limited common element or to incorporate a common element or a limited common element into an existing unit. Such reallocation or incorporation shall be reflected in an amendment to the declaration, survey map, or plans. [1992 c 220 § 9; 1989 c 43 § 2-108.]

64.34.232 Survey maps and plans. (1) A survey map and plans executed by the declarant shall be recorded simultaneously with, and contain cross-references by recording number to, the declaration and any amendments. The survey map and plans must be clear and legible and contain a certification by the person making the survey or the plans that all information required by this section is supplied. All plans filed shall be in such style, size, form and quality as shall be prescribed by the recording authority of the county where filed, and a copy shall be delivered to the county assessor.

(2) Each survey map shall show or state:

(a) The name of the condominium and a legal description and a survey of the land in the condominium and of any land that may be added to the condominium;

(b) The boundaries of all land not subject to development rights, or subject only to the development right to withdraw, and the location and dimensions of all existing buildings containing units on that land;

(c) The boundaries of any land subject to development rights, labeled "SUBJECT TO DEVELOPMENT RIGHTS SET FORTH IN THE DECLARATION"; any land that may be added to the condominium shall also be labeled "MAY BE ADDED TO THE CONDOMINIUM"; any land that may be withdrawn from the condominium shall also be labeled "MAY BE WITHDRAWN FROM THE CONDOMINIUM";

(d) The extent of any encroachments by or upon any portion of the condominium;

(e) To the extent feasible, the location and dimensions of all recorded easements serving or burdening any portion of the condominium and any unrecorded easements of which a surveyor knows or reasonably should have known, based on standard industry practices, while conducting the survey;

(f) Subject to the provisions of subsection (8) of this section, the location and dimensions of any vertical unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(g) The location with reference to an established datum of any horizontal unit boundaries not shown or projected on plans recorded under subsection (4) of this section and that unit's identifying number;

(h) The location and dimensions of any real property in which the unit owners will own only an estate for years, labeled as "leasehold real property";

(i) The distance between any noncontiguous parcels of real property comprising the condominium;

(j) The general location of any existing principal common amenities listed in a public offering statement under RCW 64.34.410(1)(j) and any limited common elements, including limited common element porches, balconies, patios, parking spaces, and storage facilities, but not includ-

ing the other limited common elements described in RCW 64.34.204 (2) and (4);

(k) In the case of real property not subject to development rights, all other matters customarily shown on land surveys.

(3) A survey map may also show the intended location and dimensions of any contemplated improvement to be constructed anywhere within the condominium. Any contemplated improvement shown must be labeled either "MUST BE BUILT" or "NEED NOT BE BUILT."

(4) To the extent not shown or projected on the survey map, plans of the existing units must show or project:

(a) Subject to the provisions of subsection (8) of this section, the location and dimensions of the vertical boundaries of each unit, and that unit's identifying number;

(b) Any horizontal unit boundaries, with reference to an established datum, and that unit's identifying number; and

(c) Any units in which the declarant has reserved the right to create additional units or common elements under RCW 64.34.236(3), identified appropriately.

(5) Unless the declaration provides otherwise, the horizontal boundaries of part of a unit located outside of a building have the same elevation as the horizontal boundaries of the inside part and in such case need not be depicted on the survey map and plans.

(6) Upon exercising any development right, the declarant shall record either a new survey map and plans necessary to conform to the requirements of subsections (1), (2), and (3) of this section or new certifications of a survey map and plans previously recorded if the documents otherwise conform to the requirements of those subsections.

(7) Any survey map, plan, or certification required by this section shall be made by a licensed surveyor.

(8) In showing or projecting the location and dimensions of the vertical boundaries of a unit under subsections (2)(f) and (4)(a) of this section, it is not necessary to show the thickness of the walls constituting the vertical boundaries or otherwise show the distance of those vertical boundaries either from the exterior surface of the building containing that unit or from adjacent vertical boundaries of other units if: (a) The walls are designated to be the vertical boundaries of that unit; (b) the unit is located within a building, the location and dimensions of the building having been shown on the survey map under subsection (2)(b) of this section; and (c) the graphic general location of the vertical boundaries are shown in relation to the exterior surfaces of that building and to the vertical boundaries of other units within that building. [1997 c 400 § 2; 1992 c 220 § 10; 1989 c 43 § 2-109.]

64.34.236 Development rights. (1) To exercise any development right reserved under RCW 64.34.216(1)(j), the declarant shall prepare, execute, and record an amendment to the declaration under RCW 64.34.264, and comply with RCW 64.34.232. The declarant is the unit owner of any units thereby created. The amendment to the declaration shall assign an identifying number to each new unit created, and, except in the case of subdivision or conversion of units described in subsection (2) of this section, reallocate the allocated interests among all units. The amendment must describe any common elements and any limited common elements thereby created and, in the case of limited common

elements, designate the unit to which each is allocated to the extent required by RCW 64.34.228.

(2) Development rights may be reserved within any real property added to the condominium if the amendment adding that real property includes all matters required by RCW 64.34.216 or 64.34.220, as the case may be, and the survey map and plans include all matters required by RCW 64.34.232. This provision does not extend the time limit on the exercise of development rights imposed by the declaration pursuant to RCW 64.34.216(1)(j).

(3) Whenever a declarant exercises a development right to subdivide or convert a unit previously created into additional units, common elements, or both:

(a) If the declarant converts the unit entirely to common elements, the amendment to the declaration must reallocate all the allocated interests of that unit among the other units as if that unit had been taken by condemnation under RCW 64.34.060.

(b) If the declarant subdivides the unit into two or more units, whether or not any part of the unit is converted into common elements, the amendment to the declaration must reallocate all the allocated interests of the unit among the units created by the subdivision in any reasonable and equitable manner prescribed by the declarant.

(4) If the declaration provides, pursuant to RCW 64.34.216(1)(j), that all or a portion of the real property is subject to the development right of withdrawal:

(a) If all the real property is subject to withdrawal, and the declaration or survey map or amendment thereto does not describe separate portions of real property subject to that right, none of the real property may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant; and

(b) If a portion or portions are subject to withdrawal as described in the declaration or in the survey map or in any amendment thereto, no portion may be withdrawn if a unit in that portion of the real property is owned by a person other than the declarant. [1989 c 43 § 2-110.]

64.34.240 Alterations of units. Subject to the provisions of the declaration and other provisions of law, a unit owner:

(1) May make any improvements or alterations to the owner's unit that do not affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium;

(2) May not change the appearance of the common elements or the exterior appearance of a unit without permission of the association;

(3) After acquiring an adjoining unit or an adjoining part of an adjoining unit may, with approval of the board of directors, remove or alter any intervening partition or create apertures therein, even if the partition in whole or in part is a common element, if those acts do not adversely affect the structural integrity or mechanical or electrical systems or lessen the support of any portion of the condominium. Removal of partitions or creation of apertures under this subsection is not a relocation of boundaries. The board of directors shall approve a unit owner's request, which request shall include the plans and specifications for the proposed removal or alteration, under this subsection within thirty days, or within

such other period provided by the declaration, unless the proposed alteration does not comply with this chapter or the declaration or impairs the structural integrity or mechanical or electrical systems in the condominium. The failure of the board of directors to act upon a request within such period shall be deemed approval thereof. [1989 c 43 § 2-111.]

64.34.244 Relocation of boundaries—Adjoining units. (1) Subject to the provisions of the declaration and other provisions of law, the boundaries between adjoining units may only be relocated by an amendment to the declaration upon application to the association by the owners of those units. If the owners of the adjoining units have specified a reallocation between their units of their allocated interests, the application must state the proposed reallocations. Unless the board of directors determines within thirty days, or such other period provided in the declaration, that the reallocations are unreasonable, the association shall prepare an amendment that identifies the units involved, states the reallocations, is executed by those unit owners, contains words of conveyance between them, and is recorded in the name of the grantor and the grantee.

(2) The association shall obtain and record survey maps or plans complying with the requirements of RCW 64.34.232(4) necessary to show the altered boundaries between adjoining units and their dimensions and identifying numbers. [1989 c 43 § 2-112.]

64.34.248 Subdivision of units. (1) If the declaration permits, a unit may be subdivided into two or more units. Subject to the provisions of the declaration and other provisions of law, upon application of a unit owner to subdivide a unit, the association shall prepare, execute, and record an amendment to the declaration, including survey maps and plans, subdividing that unit.

(2) The amendment to the declaration must be executed by the owner of the unit to be subdivided, assign an identifying number to each unit created, and reallocate the allocated interests formerly allocated to the subdivided unit to the new units in any reasonable and equitable manner prescribed by the owner of the subdivided unit. [1989 c 43 § 2-113.]

64.34.252 Monuments as boundaries. The physical boundaries of a unit constructed in substantial accordance with the original survey map and set of plans thereof become its boundaries rather than the metes and bounds expressed in the survey map or plans, regardless of settling or lateral movement of the building or minor variance between boundaries shown on the survey map or plans and those of the building. This section does not relieve a declarant or any other person of liability for failure to adhere to the survey map and plans. [1989 c 43 § 2-114.]

64.34.256 Use by declarant. A declarant may maintain sales offices, management offices, and models in units or on common elements in the condominium only if the declaration so provides and specifies the rights of a declarant with regard to the number, location, and relocation thereof. Any sales office, management office, or model not designated a unit by the declaration is a common element and, if a declarant

ceases to be a unit owner, the declarant ceases to have any rights with regard thereto unless it is removed promptly from the condominium in accordance with a right to remove reserved in the declaration. Subject to any limitations in the declaration, a declarant may maintain signs on the common elements advertising the condominium. The provisions of this section are subject to the provisions of other state law and to local ordinances. [1992 c 220 § 11; 1989 c 43 § 2-115.]

64.34.260 Easement rights—Common elements.

Subject to the provisions of the declaration, a declarant has an easement through the common elements as may be reasonably necessary for the purpose of discharging a declarant's obligations or exercising special declarant rights, whether arising under this chapter or reserved in the declaration. [1989 c 43 § 2-116.]

64.34.264 Amendment of declaration. (1) Except in cases of amendments that may be executed by a declarant under RCW 64.34.232(6) or 64.34.236; the association under RCW 64.34.060, 64.34.220(5), 64.34.228(3), 64.34.244(1), 64.34.248, or 64.34.268(8); or certain unit owners under RCW 64.34.228(2), 64.34.244(1), 64.34.248(2), or 64.34.268(2), and except as limited by subsection (4) of this section, the declaration, including the survey maps and plans, may be amended only by vote or agreement of unit owners of units to which at least sixty-seven percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units are restricted exclusively to nonresidential use.

(2) No action to challenge the validity of an amendment adopted by the association pursuant to this section may be brought more than one year after the amendment is recorded.

(3) Every amendment to the declaration must be recorded in every county in which any portion of the condominium is located, and is effective only upon recording. An amendment shall be indexed in the name of the condominium and shall contain a cross-reference by recording number to the declaration and each previously recorded amendment thereto.

(4) Except to the extent expressly permitted or required by other provisions of this chapter, no amendment may create or increase special declarant rights, increase the number of units, change the boundaries of any unit, the allocated interests of a unit, or the uses to which any unit is restricted, in the absence of the vote or agreement of the owner of each unit particularly affected and the owners of units to which at least ninety percent of the votes in the association are allocated other than the declarant or such larger percentage as the declaration provides.

(5) Amendments to the declaration required by this chapter to be recorded by the association shall be prepared, executed, recorded, and certified on behalf of the association by any officer of the association designated for that purpose or, in the absence of designation, by the president of the association.

(6) No amendment may restrict, eliminate, or otherwise modify any special declarant right provided in the declaration without the consent of the declarant and any mortgagee of

record with a security interest in the special declarant right or in any real property subject thereto, excluding mortgagees of units owned by persons other than the declarant. [1989 c 43 § 2-117.]

64.34.268 Termination of condominium. (1) Except in the case of a taking of all the units by condemnation under RCW 64.34.060, a condominium may be terminated only by agreement of unit owners of units to which at least eighty percent of the votes in the association are allocated, or any larger percentage the declaration specifies: PROVIDED, That the declaration may specify a smaller percentage only if all of the units in the condominium are restricted exclusively to non-residential uses.

(2) An agreement to terminate must be evidenced by the execution of a termination agreement or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The termination agreement must specify a date after which the agreement will be void unless it is recorded before that date and shall contain a description of the manner in which the creditors of the association will be paid or provided for. A termination agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording. A termination agreement may be amended by complying with all of the requirements of this section.

(3) A termination agreement may provide that all the common elements and units of the condominium shall be sold following termination. If, pursuant to the agreement, any real property in the condominium is to be sold following termination, the termination agreement must set forth the minimum terms of the sale.

(4) The association, on behalf of the unit owners, may contract for the sale of real property in the condominium, but the contract is not binding on the unit owners until approved pursuant to subsections (1) and (2) of this section. If any real property in the condominium is to be sold following termination, title to that real property, upon termination, vests in the association as trustee for the holders of all interests in the units. Thereafter, the association has all powers necessary and appropriate to effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the association continues in existence with all powers it had before termination. Proceeds of the sale must be distributed to unit owners and lien holders as their interests may appear, in proportion to the respective interests of unit owners as provided in subsection (7) of this section. Unless otherwise specified in the termination agreement, as long as the association holds title to the real property, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit. During the period of that occupancy, each unit owner and the owner's successors in interest remain liable for all assessments and other obligations imposed on unit owners by this chapter or the declaration.

(5) If the real property constituting the condominium is not to be sold following termination, title to all the real property in the condominium vests in the unit owners upon termination as tenants in common in proportion to their respective interests as provided in subsection (7) of this section, and liens on the units shift accordingly. While the tenancy in

common exists, each unit owner and the owner's successors in interest have an exclusive right to occupancy of the portion of the real property that formerly constituted the owner's unit.

(6) Following termination of the condominium, the proceeds of any sale of real property, together with the assets of the association, are held by the association as trustee for unit owners and holders of liens on the units and creditors of the association as their interests may appear. No such proceeds or assets may be disbursed to the owners until all of the creditors of the association have been paid or provided for. Following termination, creditors of the association holding liens on the units, which were recorded or perfected under RCW 4.64.020 before termination, may enforce those liens in the same manner as any lien holder.

(7) The respective interests of unit owners referred to in subsections (4), (5), and (6) of this section are as follows:

(a) Except as provided in (b) of this subsection, the respective interests of unit owners are the fair market values of their units, limited common elements, and common element interests immediately before the termination, as determined by one or more independent appraisers selected by the association. The decision of the independent appraisers shall be distributed to the unit owners and becomes final unless disapproved, within thirty days after distribution, by unit owners of units to which twenty-five percent of the votes in the association are allocated. The proportion of any unit owner's interest to that of all unit owners is determined by dividing the fair market value of that unit owner's unit and common element interest by the total fair market values of all the units and common elements.

(b) If any unit or any limited common element is destroyed to the extent that an appraisal of the fair market value thereof before destruction cannot be made, the interests of all unit owners are their respective common element interests immediately before the termination.

(8) Except as provided in subsection (9) of this section, foreclosure or enforcement of a lien or encumbrance against the entire condominium does not of itself terminate the condominium, and foreclosure or enforcement of a lien or encumbrance against a portion of the condominium, other than withdrawable real property, does not withdraw that portion from the condominium. Foreclosure or enforcement of a lien or encumbrance against withdrawable real property does not of itself withdraw that real property from the condominium, but the person taking title thereto has the right to require from the association, upon request, an amendment excluding the real property from the condominium.

(9) If a lien or encumbrance against a portion of the real property that is withdrawable from the condominium has priority over the declaration, and the lien or encumbrance has not been partially released as to a unit, the purchaser at the foreclosure or such purchaser's successors may, upon foreclosure, record an instrument exercising the right to withdraw the real property subject to that lien or encumbrance from the condominium. The board of directors shall reallocate interests as if the foreclosed portion were condemned.

(10) The right of partition under chapter 7.52 RCW shall be suspended if an agreement to sell the property is provided for in the termination agreement pursuant to subsection (3) of this section. The suspension of the right to partition shall continue unless and until no binding obligation to sell exists three

months after the recording of the termination agreement, the binding sale agreement is terminated, or one year after the termination agreement is recorded, whichever first occurs. [1992 c 220 § 12; 1989 c 43 § 2-118.]

64.34.272 Rights of secured lenders. The declaration may require that all or a specified number or percentage of the holders of mortgages encumbering the units approve specified actions of the unit owners or the association as a condition to the effectiveness of those actions, but no requirement for approval may operate to (1) deny or delegate control over the general administrative affairs of the association by the unit owners or the board of directors, or (2) prevent the association or the board of directors from commencing, intervening in, or settling any litigation or proceeding, or receiving and distributing any insurance proceeds except pursuant to RCW 64.34.352. With respect to any action requiring the consent of a specified number or percentage of mortgagees, the consent of only eligible mortgagees holding a first lien mortgage need be obtained and the percentage shall be based upon the votes attributable to units with respect to which eligible mortgagees have an interest. [1989 c 43 § 2-119.]

64.34.276 Master associations. (1) If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or non-profit corporation which exercises those or other powers on behalf of a development consisting of one or more condominiums or for the benefit of the unit owners of one or more condominiums, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section.

(2) Unless a master association is acting in the capacity of an association described in RCW 64.34.300, it may exercise the powers set forth in RCW 64.34.304(1)(b) only to the extent expressly permitted in the declarations of condominiums which are part of the master association or expressly described in the delegations of power from those condominiums to the master association.

(3) If the declaration of any condominium provides that the board of directors may delegate certain powers to a master association, the members of the board of directors have no liability for the acts or omissions of the master association with respect to those powers following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.308, 64.34.332, 64.34.336, 64.34.340, and 64.34.348 apply in the conduct of the affairs of a master association only to those persons who elect the board of a master association, whether or not those persons are otherwise unit owners within the meaning of this chapter.

(5) Notwithstanding the provisions of RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends and even if a master association is also an association described in RCW 64.34.300, the certificate of incorporation or other instrument creating the master association and the declaration of each condominium, the powers of which are assigned by the declaration or delegated to the master association, must provide that the board of

directors of the master association shall be elected after the period of declarant control in any of the following ways:

(a) All unit owners of all condominiums subject to the master association may elect all members of that board of directors.

(b) All members of the boards of directors of all condominiums subject to the master association may elect all members of that board of directors.

(c) All unit owners of each condominium subject to the master association may elect specified members of that board of directors.

(d) All members of the board of directors of each condominium subject to the master association may elect specified members of that board of directors. [1989 c 43 § 2-120.]

64.34.278 Delegation of power to subassociations. (1)

If the declaration provides that any of the powers described in RCW 64.34.304 are to be exercised by or may be delegated to a profit or nonprofit corporation that exercises those or other powers on behalf of unit owners owning less than all of the units in a condominium, and where those unit owners share the exclusive use of one or more limited common elements within the condominium or share some property or other interest in the condominium in common that is not shared by the remainder of the unit owners in the condominium, all provisions of this chapter applicable to unit owners' associations apply to any such corporation, except as modified by this section. The delegation of powers to a subassociation shall not be used to discriminate in favor of units owned by the declarant or an affiliate of the declarant.

(2) A subassociation may exercise the powers set forth in RCW 64.34.304(1) only to the extent expressly permitted by the declaration of the condominium of which the units in the subassociation are a part of or expressly described in the delegations of power from that condominium to the subassociation.

(3) If the declaration of any condominium contains a delegation of certain powers to a subassociation, or provides that the board of directors of the condominium may make such a delegation, the members of the board of directors have no liability for the acts or omissions of the subassociation with respect to those powers so exercised by the subassociation following delegation.

(4) The rights and responsibilities of unit owners with respect to the unit owners' association set forth in RCW 64.34.300 through 64.34.376 apply to the conduct of the affairs of a subassociation.

(5) Notwithstanding the provisions of RCW 64.34.308(6) with respect to the election of the board of directors of an association by all unit owners after the period of declarant control ends, the board of directors of the subassociation shall be elected after the period of declarant control by the unit owners of all of the units in the condominium subject to the subassociation.

(6) The declaration of the condominium creating the subassociation may provide that the authority of the board of directors of the subassociation is exclusive with regard to the powers and responsibilities delegated to it. In the alternative, the declaration may provide as to some or all such powers that the authority of the board of directors of a subassociation is concurrent with and subject to the authority of the board of

directors of the unit owners' association, in which case the declaration shall also contain standards and procedures for the review of the decisions of the board of directors of the subassociation and procedures for resolving any dispute between the board of the unit owners' association and the board of the subassociation. [1992 c 220 § 13.]

64.34.280 Merger or consolidation. (1) Any two or more condominiums, by agreement of the unit owners as provided in subsection (2) of this section, may be merged or consolidated into a single condominium. In the event of a merger or consolidation, unless the agreement otherwise provides, the resultant condominium is, for all purposes, the legal successor of all of the preexisting condominiums and the operations and activities of all associations of the preexisting condominiums shall be merged or consolidated into a single association which shall hold all powers, rights, obligations, assets, and liabilities of all preexisting associations.

(2) An agreement of two or more condominiums to merge or consolidate pursuant to subsection (1) of this section must be evidenced by an agreement prepared, executed, recorded, and certified by the president of the association of each of the preexisting condominiums following approval by owners of units to which are allocated the percentage of votes in each condominium required to terminate that condominium. Any such agreement must be recorded in every county in which a portion of the condominium is located and is not effective until recorded.

(3) Every merger or consolidation agreement must provide for the reallocation of the allocated interests in the new association among the units of the resultant condominium either (a) by stating the reallocations or the formulas upon which they are based or (b) by stating the portion of overall allocated interests of the new condominium which are allocated to all of the units comprising each of the preexisting condominiums, and providing that the percentages allocated to each unit formerly comprising a part of the preexisting condominium in such portion must be equal to the percentages of allocated interests allocated to that unit by the declaration of the preexisting condominium.

(4) All merged or consolidated condominiums under this section shall comply with this chapter. [1989 c 43 § 2-121.]

ARTICLE 3

MANAGEMENT OF CONDOMINIUM

64.34.300 Unit owners' association—Organization.

A unit owners' association shall be organized no later than the date the first unit in the condominium is conveyed. The membership of the association at all times shall consist exclusively of all the unit owners. Following termination of the condominium, the membership of the association shall consist of all of the unit owners at the time of termination entitled to distributions of proceeds under RCW 64.34.268 or their heirs, successors, or assigns. The association shall be organized as a profit or nonprofit corporation. In case of any conflict between Title 23B RCW, the business corporation act, chapter 24.03 RCW, the nonprofit corporation act, or chapter 24.06 RCW, the nonprofit miscellaneous and mutual corporations act, and this chapter, this chapter shall control. [1992 c 220 § 14; 1989 c 43 § 3-101.]

64.34.304 Unit owners' association—Powers. (1)

Except as provided in subsection (2) of this section, and subject to the provisions of the declaration, the association may:

- (a) Adopt and amend bylaws, rules, and regulations;
- (b) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from unit owners;
- (c) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (d) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more unit owners on matters affecting the condominium;
- (e) Make contracts and incur liabilities;
- (f) Regulate the use, maintenance, repair, replacement, and modification of common elements;
- (g) Cause additional improvements to be made as a part of the common elements;
- (h) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property, but common elements may be conveyed or subjected to a security interest only pursuant to RCW 64.34.348;
- (i) Grant easements, leases, licenses, and concessions through or over the common elements and petition for or consent to the vacation of streets and alleys;
- (j) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common elements, other than limited common elements described in RCW 64.34.204 (2) and (4), and for services provided to unit owners;
- (k) Impose and collect charges for late payment of assessments pursuant to RCW 64.34.364(13) and, after notice and an opportunity to be heard by the board of directors or by such representative designated by the board of directors and in accordance with such procedures as provided in the declaration or bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule thereof adopted by the board of directors and furnished to the owners for violations of the declaration, bylaws, and rules and regulations of the association;
- (l) Impose and collect reasonable charges for the preparation and recording of amendments to the declaration, resale certificates required by RCW 64.34.425, and statements of unpaid assessments;
- (m) Provide for the indemnification of its officers and board of directors and maintain directors' and officers' liability insurance;
- (n) Assign its right to future income, including the right to receive common expense assessments, but only to the extent the declaration provides;
- (o) Join in a petition for the establishment of a parking and business improvement area, participate in the rate payers' board or other advisory body set up by the legislative authority for operation of a parking and business improvement area, and pay special assessments levied by the legislative authority on a parking and business improvement area encompassing the condominium property for activities and projects which benefit the condominium directly or indirectly;
- (p) Exercise any other powers conferred by the declaration or bylaws;

(2004 Ed.)

(q) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and

(r) Exercise any other powers necessary and proper for the governance and operation of the association.

(2) The declaration may not impose limitations on the power of the association to deal with the declarant which are more restrictive than the limitations imposed on the power of the association to deal with other persons. [1993 c 429 § 11; 1990 c 166 § 3; 1989 c 43 § 3-102.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.308 Board of directors and officers. (1)

Except as provided in the declaration, the bylaws, subsection (2) of this section, or other provisions of this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors are required to exercise: (a) If appointed by the declarant, the care required of fiduciaries of the unit owners; or (b) if elected by the unit owners, ordinary and reasonable care.

(2) The board of directors shall not act on behalf of the association to amend the declaration in any manner that requires the vote or approval of the unit owners pursuant to RCW 64.34.264, to terminate the condominium pursuant to RCW 64.34.268, or to elect members of the board of directors or determine the qualifications, powers, and duties, or terms of office of members of the board of directors pursuant to subsection (6) of this section; but the board of directors may fill vacancies in its membership for the unexpired portion of any term.

(3) Within thirty days after adoption of any proposed budget for the condominium, the board of directors shall provide a summary of the budget to all the unit owners and shall set a date for a meeting of the unit owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of units to which a majority of the votes in the association are allocated or any larger percentage specified in the declaration reject the budget, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the unit owners shall be continued until such time as the unit owners ratify a subsequent budget proposed by the board of directors.

(4)(a) Subject to subsection (5) of this section, the declaration may provide for a period of declarant control of the association, during which period a declarant, or persons designated by the declarant, may: (i) Appoint and remove the officers and members of the board of directors; or (ii) veto or approve a proposed action of the board or association. A declarant's failure to veto or approve such proposed action in writing within thirty days after receipt of written notice of the proposed action shall be deemed approval by the declarant.

(b) Regardless of the period provided in the declaration, a period of declarant control terminates no later than the earlier of: (i) Sixty days after conveyance of seventy-five percent of the units which may be created to unit owners other than a declarant; (ii) two years after the last conveyance or transfer of record of a unit except as security for a debt; (iii)

two years after any development right to add new units was last exercised; or (iv) the date on which the declarant records an amendment to the declaration pursuant to which the declarant voluntarily surrenders the right to further appoint and remove officers and members of the board of directors. A declarant may voluntarily surrender the right to appoint and remove officers and members of the board of directors before termination of that period pursuant to (i), (ii), and (iii) of this subsection (4)(b), but in that event the declarant may require, for the duration of the period of declarant control, that specified actions of the association or board of directors, as described in a recorded instrument executed by the declarant, be approved by the declarant before they become effective.

(5) Not later than sixty days after conveyance of twenty-five percent of the units which may be created to unit owners other than a declarant, at least one member and not less than twenty-five percent of the members of the board of directors must be elected by unit owners other than the declarant. Not later than sixty days after conveyance of fifty percent of the units which may be created to unit owners other than a declarant, not less than thirty-three and one-third percent of the members of the board of directors must be elected by unit owners other than the declarant.

(6) Within thirty days after the termination of any period of declarant control, the unit owners shall elect a board of directors of at least three members, at least a majority of whom must be unit owners. The number of directors need not exceed the number of units then in the condominium. The board of directors shall elect the officers. Such members of the board of directors and officers shall take office upon election.

(7) Notwithstanding any provision of the declaration or bylaws to the contrary, the unit owners, by a two-thirds vote of the voting power in the association present and entitled to vote at any meeting of the unit owners at which a quorum is present, may remove any member of the board of directors with or without cause, other than a member appointed by the declarant. The declarant may not remove any member of the board of directors elected by the unit owners. Prior to the termination of the period of declarant control, the unit owners, other than the declarant, may remove by a two-thirds vote, any director elected by the unit owners. [1992 c 220 § 15; 1989 c 43 § 3-103.]

64.34.312 Control of association—Transfer. (1) Within sixty days after the termination of the period of declarant control provided in RCW 64.34.308(4) or, in the absence of such period, within sixty days after the first conveyance of a unit in the condominium, the declarant shall deliver to the association all property of the unit owners and of the association held or controlled by the declarant including, but not limited to:

- (a) The original or a photocopy of the recorded declaration and each amendment to the declaration;
- (b) The certificate of incorporation and a copy or duplicate original of the articles of incorporation of the association as filed with the secretary of state;
- (c) The bylaws of the association;
- (d) The minute books, including all minutes, and other books and records of the association;
- (e) Any rules and regulations that have been adopted;

(f) Resignations of officers and members of the board who are required to resign because the declarant is required to relinquish control of the association;

(g) The financial records, including canceled checks, bank statements, and financial statements of the association, and source documents from the time of incorporation of the association through the date of transfer of control to the unit owners;

(h) Association funds or the control of the funds of the association;

(i) All tangible personal property of the association, represented by the declarant to be the property of the association or ostensibly the property of the association, and an inventory of the property;

(j) Except for alterations to a unit done by a unit owner other than the declarant, a copy of the declarant's plans and specifications utilized in the construction or remodeling of the condominium, with a certificate of the declarant or a licensed architect or engineer that the plans and specifications represent, to the best of their knowledge and belief, the actual plans and specifications utilized by the declarant in the construction or remodeling of the condominium;

(k) Insurance policies or copies thereof for the condominium and association;

(l) Copies of any certificates of occupancy that may have been issued for the condominium;

(m) Any other permits issued by governmental bodies applicable to the condominium in force or issued within one year before the date of transfer of control to the unit owners;

(n) All written warranties that are still in effect for the common elements, or any other areas or facilities which the association has the responsibility to maintain and repair, from the contractor, subcontractors, suppliers, and manufacturers and all owners' manuals or instructions furnished to the declarant with respect to installed equipment or building systems;

(o) A roster of unit owners and eligible mortgagees and their addresses and telephone numbers, if known, as shown on the declarant's records and the date of closing of the first sale of each unit sold by the declarant;

(p) Any leases of the common elements or areas and other leases to which the association is a party;

(q) Any employment contracts or service contracts in which the association is one of the contracting parties or service contracts in which the association or the unit owners have an obligation or a responsibility, directly or indirectly, to pay some or all of the fee or charge of the person performing the service;

(r) A copy of any qualified warranty issued to the association as provided for in RCW 64.35.505; and

(s) All other contracts to which the association is a party.

(2) Upon the transfer of control to the unit owners, the records of the association shall be audited as of the date of transfer by an independent certified public accountant in accordance with generally accepted auditing standards unless the unit owners, other than the declarant, by two-thirds vote elect to waive the audit. The cost of the audit shall be a common expense unless otherwise provided in the declaration. The accountant performing the audit shall examine supporting documents and records, including the cash disbursements and related paid invoices, to determine if expenditures were

for association purposes and the billings, cash receipts, and related records to determine if the declarant was charged for and paid the proper amount of assessments. [2004 c 201 § 10; 1989 c 43 § 3-104.]

64.34.316 Special declarant rights—Transfer. (1) No special declarant right, as described in RCW 64.34.020(29), created or reserved under this chapter may be transferred except by an instrument evidencing the transfer executed by the declarant or the declarant's successor and the transferee is recorded in every county in which any portion of the condominium is located. Each unit owner shall receive a copy of the recorded instrument, but the failure to furnish the copy shall not invalidate the transfer.

(2) Upon transfer of any special declarant right, the liability of a transferor declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor by this chapter. Lack of privity does not deprive any unit owner of standing to maintain an action to enforce any obligation of the transferor.

(b) If a successor to any special declarant right is an affiliate of a declarant as described in RCW 64.34.020(1), the transferor is jointly and severally liable with the successor for any obligations or liabilities of the successor relating to the condominium.

(c) If a transferor retains any special declarant right, but transfers other special declarant rights to a successor who is not an affiliate of the declarant, the transferor is liable for any obligations or liabilities imposed on a declarant by this chapter or by the declaration relating to the retained special declarant rights arising after the transfer.

(d) A transferor has no liability for any act or omission or any breach of a contractual or warranty obligation arising from the exercise of a special declarant right by a successor declarant who is not an affiliate of the transferor.

(3) In case of foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of any unit owned by a declarant or real property in a condominium subject to development rights, a person acquiring title to all the real property being foreclosed or sold succeeds to all special declarant rights related to that real property held by that declarant and to any rights reserved in the declaration pursuant to RCW 64.34.256 and held by that declarant to maintain models, sales offices, and signs, unless such person requests that all or any of such rights not be transferred. The instrument conveying title shall describe any special declarant rights not being transferred.

(4) Upon foreclosure of a mortgage, tax sale, judicial sale, or sale under bankruptcy code or receivership proceedings of all units and other real property in a condominium owned by a declarant:

(a) The declarant ceases to have any special declarant rights; and

(b) The period of declarant control as described in RCW 64.34.308(4) terminates unless the judgment or instrument conveying title provides for transfer of all special declarant rights held by that declarant to a successor declarant.

(5) The liabilities and obligations of a person who succeeds to special declarant rights are as follows:

(a) A successor to any special declarant right who is an affiliate of a declarant is subject to all obligations and liabilities imposed on the transferor by this chapter or by the declaration;

(b) A successor to any special declarant right, other than a successor described in (c) or (d) of this subsection, who is not an affiliate of a declarant is subject to all obligations and liabilities imposed by this chapter or the declaration:

(i) On a declarant which relate to such successor's exercise or nonexercise of special declarant rights; or

(ii) On the declarant's transferor, other than:

(A) Misrepresentations by any previous declarant;

(B) Warranty obligations on improvements made by any previous declarant or made before the condominium was created;

(C) Breach of any fiduciary obligation by any previous declarant or the declarant's appointees to the board of directors; or

(D) Any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer;

(c) A successor to only a right reserved in the declaration to maintain models, sales offices, and signs as described in RCW 64.34.256, if the successor is not an affiliate of a declarant, may not exercise any other special declarant right and is not subject to any liability or obligation as a declarant, except the obligation to provide a public offering statement and any liability arising as a result thereof;

(d) A successor to all special declarant rights held by the successor's transferor who is not an affiliate of that declarant and who succeeded to those rights pursuant to a foreclosure, a deed in lieu of foreclosure, or a judgment or instrument conveying title to units under subsection (3) of this section may declare his or her intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all special declarant rights to any person acquiring title to any unit owned by the successor or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the successor's transferor to control the board of directors in accordance with the provisions of RCW 64.34.308(4) for the duration of any period of declarant control, and any attempted exercise of those rights is void. So long as a successor declarant may not exercise special declarant rights under this subsection, the successor is not subject to any liability or obligation as a declarant other than liability for the successor's acts and omissions under RCW 64.34.308(4);

(e) Nothing in this section subjects any successor to a special declarant right to any claims against or other obligations of a transferor declarant, other than claims and obligations arising under this chapter or the declaration. [1989 c 43 § 3-105.]

64.34.320 Contracts and leases—Declarant—Termination. If entered into before the board of directors elected by the unit owners pursuant to RCW 64.34.308(6) takes office, (1) any management contract, employment contract, or lease of recreational or parking areas or facilities, (2) any other contract or lease between the association and a declarant or an affiliate of a declarant, or (3) any contract or

lease that is not bona fide or was unconscionable to the unit owners at the time entered into under the circumstances then prevailing may be terminated without penalty by the association at any time after the board of directors elected by the unit owners pursuant to RCW 64.34.308(6) takes office upon not less than ninety days' notice to the other party or within such lesser notice period provided for without penalty in the contract or lease. This section does not apply to any lease, the termination of which would terminate the condominium or reduce its size, unless the real property subject to that lease was included in the condominium for the purpose of avoiding the right of the association to terminate a lease under this section. [1989 c 43 § 3-106.]

64.34.324 Bylaws. (1) Unless provided for in the declaration, the bylaws of the association shall provide for:

(a) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(b) Election by the board of directors of such officers of the association as the bylaws specify;

(c) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(d) Which of its officers may prepare, execute, certify, and record amendments to the declaration on behalf of the association;

(e) The method of amending the bylaws; and

(f) A statement of the standard of care for officers and members of the board of directors imposed by RCW 64.34.308(1).

(2) Subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate.

(3) In determining the qualifications of any officer or director of the association, notwithstanding the provision of RCW 64.34.020(32) the term "unit owner" in such context shall, unless the declaration or bylaws otherwise provide, be deemed to include any director, officer, partner in, or trustee of any person, who is, either alone or in conjunction with another person or persons, a unit owner. Any officer or director of the association who would not be eligible to serve as such if he or she were not a director, officer, partner in, or trustee of such a person shall be disqualified from continuing in office if he or she ceases to have any such affiliation with that person, or if that person would have been disqualified from continuing in such office as a natural person. [2004 c 201 § 3; 1992 c 220 § 16; 1989 c 43 § 3-107.]

64.34.328 Upkeep of condominium. (1) Except to the extent provided by the declaration, subsection (2) of this section, or RCW 64.34.352(7), the association is responsible for maintenance, repair, and replacement of the common elements, including the limited common elements, and each unit owner is responsible for maintenance, repair, and replacement of the owner's unit. Each unit owner shall afford to the association and the other unit owners, and to their agents or employees, access through the owner's unit and limited common elements reasonably necessary for those purposes. If damage is inflicted on the common elements, or on any unit

through which access is taken, the unit owner responsible for the damage, or the association if it is responsible, shall be liable for the repair thereof.

(2) In addition to the liability that a declarant as a unit owner has under this chapter, the declarant alone is liable for all expenses in connection with real property subject to development rights except that the declaration may provide that the expenses associated with the operation, maintenance, repair, and replacement of a common element that the owners have a right to use shall be paid by the association as a common expense. No other unit owner and no other portion of the condominium is subject to a claim for payment of those expenses. Unless the declaration provides otherwise, any income or proceeds from real property subject to development rights inures to the declarant. [1989 c 43 § 3-108.]

64.34.332 Meetings. A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by unit owners having twenty percent or any lower percentage specified in the declaration or bylaws of the votes in the association. Not less than ten nor more than sixty days in advance of any meeting, the secretary or other officer specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each unit or to any other mailing address designated in writing by the unit owner. The notice of any meeting shall state the time and place of the meeting and the items on the agenda to be voted on by the members, including the general nature of any proposed amendment to the declaration or bylaws, changes in the previously approved budget that result in a change in assessment obligations, and any proposal to remove a director or officer. [1989 c 43 § 3-109.]

64.34.336 Quorums. (1) Unless the bylaws specify a larger percentage, a quorum is present throughout any meeting of the association if the owners of units to which twenty-five percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting.

(2) Unless the bylaws specify a larger percentage, a quorum is deemed present throughout any meeting of the board of directors if persons entitled to cast fifty percent of the votes on the board of directors are present at the beginning of the meeting. [1989 c 43 § 3-110.]

64.34.340 Voting—Proxies. (1) If only one of the multiple owners of a unit is present at a meeting of the association or has delivered a written ballot or proxy to the association secretary, the owner is entitled to cast all the votes allocated to that unit. If more than one of the multiple owners are present or has delivered a written ballot or proxy to the association secretary, the votes allocated to that unit may be cast only in accordance with the agreement of a majority in interest of the multiple owners, unless the declaration expressly provides otherwise. There is majority agreement if any one of the multiple owners casts the votes allocated to that unit without protest being made promptly to the person presiding over the meeting by any of the other owners of the unit.

(2) Votes allocated to a unit may be cast pursuant to a proxy duly executed by a unit owner. If a unit is owned by

more than one person, each owner of the unit may vote or register protest to the casting of votes by the other owners of the unit through a duly executed proxy. A unit owner may not revoke a proxy given pursuant to this section except by actual notice of revocation to the person presiding over a meeting of the association. A proxy is void if it is not dated or purports to be revocable without notice. Unless stated otherwise in the proxy, a proxy terminates eleven months after its date of issuance.

(3) If the declaration requires that votes on specified matters affecting the condominium be cast by lessees rather than unit owners of leased units: (a) The provisions of subsections (1) and (2) of this section apply to lessees as if they were unit owners; (b) unit owners who have leased their units to other persons may not cast votes on those specified matters; and (c) lessees are entitled to notice of meetings, access to records, and other rights respecting those matters as if they were unit owners. Unit owners must also be given notice, in the manner provided in RCW 64.34.332, of all meetings at which lessees may be entitled to vote.

(4) No votes allocated to a unit owned by the association may be cast, and in determining the percentage of votes required to act on any matter, the votes allocated to units owned by the association shall be disregarded. [1992 c 220 § 17; 1989 c 43 § 3-111.]

64.34.344 Tort and contract liability. Neither the association nor any unit owner except the declarant is liable for that declarant's torts in connection with any part of the condominium which that declarant has the responsibility to maintain. Otherwise, an action alleging a wrong done by the association must be brought against the association and not against any unit owner or any officer or director of the association. Unless the wrong was done by a unit owner other than the declarant, if the wrong by the association occurred during any period of declarant control and the association gives the declarant reasonable notice of and an opportunity to defend against the action, the declarant who then controlled the association is liable to the association or to any unit owner: (1) For all tort losses not covered by insurance suffered by the association or that unit owner; and (2) for all costs which the association would not have incurred but for a breach of contract or other wrongful act or omission by the association. If the declarant does not defend the action and is determined to be liable to the association under this section, the declarant is also liable for all litigation expenses, including reasonable attorneys' fees, incurred by the association in such defense. Any statute of limitations affecting the association's right of action under this section is tolled until the period of declarant control terminates. A unit owner is not precluded from bringing an action contemplated by this section because he or she is a unit owner or a member or officer of the association. Liens resulting from judgments against the association are governed by RCW 64.34.368. [1989 c 43 § 3-112.]

64.34.348 Common elements—Conveyance—Encumbrance. (1) Portions of the common elements which are not necessary for the habitability of a unit may be conveyed or subjected to a security interest by the association if

the owners of units to which at least eighty percent of the votes in the association are allocated, including eighty percent of the votes allocated to units not owned by a declarant or an affiliate of a declarant, or any larger percentage the declaration specifies, agree to that action; but all the owners of units to which any limited common element is allocated must agree in order to convey that limited common element or subject it to a security interest. The declaration may specify a smaller percentage, but not less than sixty-seven percent of the votes not held by a declarant or an affiliate of a declarant, only if all of the units are restricted exclusively to nonresidential uses. Proceeds of the sale or financing are an asset of the association. The declaration may provide for a special allocation or distribution of the proceeds of the sale or refinancing of a limited common element.

(2) An agreement to convey common elements or subject them to a security interest must be evidenced by the execution of an agreement, or ratifications thereof, in the same manner as a deed, by the requisite number of unit owners. The agreement must specify a date after which the agreement will be void unless recorded before that date. The agreement and all ratifications thereof must be recorded in every county in which a portion of the condominium is situated and is effective only upon recording.

(3) The association, on behalf of the unit owners, may contract to convey common elements or subject them to a security interest, but the contract is not enforceable against the association until approved pursuant to subsections (1) and (2) of this section. Thereafter, the association has all powers necessary and appropriate to effect the conveyance or encumbrance, including the power to execute deeds or other instruments.

(4) Any purported conveyance, encumbrance, or other voluntary transfer of common elements, unless made pursuant to this section, is void.

(5) A conveyance or encumbrance of common elements pursuant to this section shall not deprive any unit of its rights of access and support.

(6) A conveyance or encumbrance of common elements pursuant to this section shall not affect the priority or validity of preexisting encumbrances. [1989 c 43 § 3-113.]

64.34.352 Insurance. (1) Commencing not later than the time of the first conveyance of a unit to a person other than a declarant, the association shall maintain, to the extent reasonably available:

(a) Property insurance on the condominium, which may, but need not, include equipment, improvements, and betterments in a unit installed by the declarant or the unit owners, insuring against all risks of direct physical loss commonly insured against. The total amount of insurance after application of any deductibles shall be not less than eighty percent, or such greater amount specified in the declaration, of the actual cash value of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies; and

(b) Liability insurance, including medical payments insurance, in an amount determined by the board of directors but not less than the amount specified in the declaration, covering all occurrences commonly insured against for death,

bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the common elements.

(2) If the insurance described in subsection (1) of this section is not reasonably available, or is modified, canceled, or not renewed, the association promptly shall cause notice of that fact to be hand-delivered or sent prepaid by first class United States mail to all unit owners, to each eligible mortgagee, and to each mortgagee to whom a certificate or memorandum of insurance has been issued at their respective last known addresses. The declaration may require the association to carry any other insurance, and the association in any event may carry any other insurance it deems appropriate to protect the association or the unit owners.

(3) Insurance policies carried pursuant to subsection (1) of this section shall provide that:

(a) Each unit owner is an insured person under the policy with respect to liability arising out of the owner's interest in the common elements or membership in the association;

(b) The insurer waives its right to subrogation under the policy against any unit owner, member of the owner's household, and lessee of the owner;

(c) No act or omission by any unit owner, unless acting within the scope of the owner's authority on behalf of the association, will void the policy or be a condition to recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of a unit owner covering the same risk covered by the policy, the association's policy provides primary insurance.

(4) Any loss covered by the property insurance under subsection (1)(a) of this section must be adjusted with the association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the association, and not to any holder of a mortgage. The insurance trustee or the association shall hold any insurance proceeds in trust for unit owners and lienholders as their interests may appear. Subject to the provisions of subsection (7) of this section, the proceeds must be disbursed first for the repair or restoration of the damaged property, and unit owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored or the condominium is terminated.

(5) An insurance policy issued to the association does not prevent a unit owner from obtaining insurance for the owner's own benefit.

(6) An insurer that has issued an insurance policy under this section shall issue certificates or memoranda of insurance to the association and, upon written request, to any unit owner or holder of a mortgage. The insurer issuing the policy may not modify the amount or the extent of the coverage of the policy or cancel or refuse to renew the policy unless the insurer has complied with all applicable provisions of chapter 48.18 RCW pertaining to the cancellation or nonrenewal of contracts of insurance. The insurer shall not modify the amount or the extent of the coverage of the policy, or cancel or refuse to renew the policy without complying with this section.

(7) Any portion of the condominium for which insurance is required under this section which is damaged or destroyed

shall be repaired or replaced promptly by the association unless: (a) The condominium is terminated; (b) repair or replacement would be illegal under any state or local health or safety statute or ordinance; or (c) eighty percent of the unit owners, including every owner of a unit or assigned limited common element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense. If all of the damaged or destroyed portions of the condominium are not repaired or replaced: (i) The insurance proceeds attributable to the damaged common elements shall be used to restore the damaged area to a condition compatible with the remainder of the condominium; (ii) the insurance proceeds attributable to units and limited common elements which are not rebuilt shall be distributed to the owners of those units and the owners of the units to which those limited common elements were allocated, or to lienholders, as their interests may appear; and (iii) the remainder of the proceeds shall be distributed to all the unit owners or lienholders, as their interests may appear, in proportion to the common element interests of all the units. If the unit owners vote not to rebuild any unit, that unit's allocated interests are automatically reallocated upon the vote as if the unit had been condemned under RCW 64.34.060(1), and the association promptly shall prepare, execute, and record an amendment to the declaration reflecting the reallocations. Notwithstanding the provisions of this subsection, RCW 64.34.268 governs the distribution of insurance proceeds if the condominium is terminated.

(8) The provisions of this section may be varied or waived as provided in the declaration if all units of a condominium are restricted to nonresidential use. [1992 c 220 § 18; 1990 c 166 § 4; 1989 c 43 § 3-114.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.354 Insurance—Conveyance. Promptly upon the conveyance of a unit, the new unit owner shall notify the association of the date of the conveyance and the unit owner's name and address. The association shall notify each insurance company that has issued an insurance policy to the association for the benefit of the owners under RCW 64.34.352 of the name and address of the new owner and request that the new owner be made a named insured under such policy. [1990 c 166 § 8.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.356 Surplus funds. Unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of or provision for common expenses and any prepayment of reserves shall, in the discretion of the board of directors, either be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments. [1989 c 43 § 3-115.]

64.34.360 Common expenses—Assessments. (1) Until the association makes a common expense assessment, the declarant shall pay all common expenses. After any assessment has been made by the association, assessments must be made against all units, based on a budget adopted by the association.

(2) Except for assessments under subsections (3), (4), and (5) of this section, all common expenses must be assessed against all the units in accordance with the allocations set forth in the declaration pursuant to RCW 64.34.224(1). Any past due common expense assessment or installment thereof bears interest at the rate established by the association pursuant to RCW 64.34.364.

(3) To the extent required by the declaration:

(a) Any common expense associated with the operation, maintenance, repair, or replacement of a limited common element shall be paid by the owner of or assessed against the units to which that limited common element is assigned, equally, or in any other proportion that the declaration provides;

(b) Any common expense or portion thereof benefiting fewer than all of the units must be assessed exclusively against the units benefited;

(c) The costs of insurance must be assessed in proportion to risk; and

(d) The costs of utilities must be assessed in proportion to usage.

(4) Assessments to pay a judgment against the association pursuant to RCW 64.34.368(1) may be made only against the units in the condominium at the time the judgment was entered in proportion to their allocated common expense liabilities at the time the judgment was entered.

(5) To the extent that any common expense is caused by the misconduct of any unit owner, the association may assess that expense against the owner's unit.

(6) If common expense liabilities are reallocated, common expense assessments and any installment thereof not yet due shall be recalculated in accordance with the reallocated common expense liabilities. [1990 c 166 § 5; 1989 c 43 § 3-116.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.364 Lien for assessments. (1) The association has a lien on a unit for any unpaid assessments levied against a unit from the time the assessment is due.

(2) A lien under this section shall be prior to all other liens and encumbrances on a unit except: (a) Liens and encumbrances recorded before the recording of the declaration; (b) a mortgage on the unit recorded before the date on which the assessment sought to be enforced became delinquent; and (c) liens for real property taxes and other governmental assessments or charges against the unit. A lien under this section is not subject to the provisions of chapter 6.13 RCW.

(3) Except as provided in subsections (4) and (5) of this section, the lien shall also be prior to the mortgages described in subsection (2)(b) of this section to the extent of assessments for common expenses, excluding any amounts for capital improvements, based on the periodic budget adopted by the association pursuant to RCW 64.34.360(1) which would have become due during the six months immediately preceding the date of a sheriff's sale in an action for judicial foreclosure by either the association or a mortgagee, the date of a trustee's sale in a nonjudicial foreclosure by a mortgagee, or the date of recording of the declaration of forfeiture in a proceeding by the vendor under a real estate contract.

(4) The priority of the association's lien against units encumbered by a mortgage held by an eligible mortgagee or by a mortgagee which has given the association a written request for a notice of delinquent assessments shall be reduced by up to three months if and to the extent that the lien priority under subsection (3) of this section includes delinquencies which relate to a period after such holder becomes an eligible mortgagee or has given such notice and before the association gives the holder a written notice of the delinquency. This subsection does not affect the priority of mechanics' or materialmen's liens, or the priority of liens for other assessments made by the association.

(5) If the association forecloses its lien under this section nonjudicially pursuant to chapter 61.24 RCW, as provided by subsection (9) of this section, the association shall not be entitled to the lien priority provided for under subsection (3) of this section.

(6) Unless the declaration otherwise provides, if two or more associations have liens for assessments created at any time on the same real estate, those liens have equal priority.

(7) Recording of the declaration constitutes record notice and perfection of the lien for assessments. While no further recording of any claim of lien for assessment under this section shall be required to perfect the association's lien, the association may record a notice of claim of lien for assessments under this section in the real property records of any county in which the condominium is located. Such recording shall not constitute the written notice of delinquency to a mortgagee referred to in subsection (2) of this section.

(8) A lien for unpaid assessments and the personal liability for payment of assessments is extinguished unless proceedings to enforce the lien or collect the debt are instituted within three years after the amount of the assessments sought to be recovered becomes due.

(9) The lien arising under this section may be enforced judicially by the association or its authorized representative in the manner set forth in chapter 61.12 RCW. The lien arising under this section may be enforced nonjudicially in the manner set forth in chapter 61.24 RCW for nonjudicial foreclosure of deeds of trust if the declaration (a) contains a grant of the condominium in trust to a trustee qualified under RCW 61.24.010 to secure the obligations of the unit owners to the association for the payment of assessments, (b) contains a power of sale, (c) provides in its terms that the units are not used principally for agricultural or farming purposes, and (d) provides that the power of sale is operative in the case of a default in the obligation to pay assessments. The association or its authorized representative shall have the power, unless prohibited by the declaration, to purchase the unit at the foreclosure sale and to acquire, hold, lease, mortgage, or convey the same. Upon an express waiver in the complaint of any right to a deficiency judgment in a judicial foreclosure action, the period of redemption shall be eight months. Nothing in this section shall prohibit an association from taking a deed in lieu of foreclosure.

(10) From the time of commencement of an action by the association to foreclose a lien for nonpayment of delinquent assessments against a unit that is not occupied by the owner thereof, the association shall be entitled to the appointment of a receiver to collect from the lessee thereof the rent for the unit as and when due. If the rental is not paid, the receiver

may obtain possession of the unit, refurbish it for rental up to a reasonable standard for rental units in this type of condominium, rent the unit or permit its rental to others, and apply the rents first to the cost of the receivership and attorneys' fees thereof, then to the cost of refurbishing the unit, then to applicable charges, then to costs, fees, and charges of the foreclosure action, and then to the payment of the delinquent assessments. Only a receiver may take possession and collect rents under this subsection, and a receiver shall not be appointed less than ninety days after the delinquency. The exercise by the association of the foregoing rights shall not affect the priority of preexisting liens on the unit.

(11) Except as provided in subsection (3) of this section, the holder of a mortgage or other purchaser of a unit who obtains the right of possession of the unit through foreclosure shall not be liable for assessments or installments thereof that became due prior to such right of possession. Such unpaid assessments shall be deemed to be common expenses collectible from all the unit owners, including such mortgagee or other purchaser of the unit. Foreclosure of a mortgage does not relieve the prior owner of personal liability for assessments accruing against the unit prior to the date of such sale as provided in this subsection.

(12) In addition to constituting a lien on the unit, each assessment shall be the joint and several obligation of the owner or owners of the unit to which the same are assessed as of the time the assessment is due. In a voluntary conveyance, the grantee of a unit shall be jointly and severally liable with the grantor for all unpaid assessments against the grantor up to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Suit to recover a personal judgment for any delinquent assessment shall be maintainable in any court of competent jurisdiction without foreclosing or waiving the lien securing such sums.

(13) The association may from time to time establish reasonable late charges and a rate of interest to be charged on all subsequent delinquent assessments or installments thereof. In the absence of another established nonusurious rate, delinquent assessments shall bear interest from the date of delinquency at the maximum rate permitted under RCW 19.52.020 on the date on which the assessments became delinquent.

(14) The association shall be entitled to recover any costs and reasonable attorneys' fees incurred in connection with the collection of delinquent assessments, whether or not such collection activities result in suit being commenced or prosecuted to judgment. In addition, the association shall be entitled to recover costs and reasonable attorneys' fees if it prevails on appeal and in the enforcement of a judgment.

(15) The association upon written request shall furnish to a unit owner or a mortgagee a statement signed by an officer or authorized agent of the association setting forth the amount of unpaid assessments against that unit. The statement shall be furnished within fifteen days after receipt of the request and is binding on the association, the board of directors, and every unit owner, unless and to the extent known by the recipient to be false.

(16) To the extent not inconsistent with this section, the declaration may provide for such additional remedies for col-

lection of assessments as may be permitted by law. [1990 c 166 § 6; 1989 c 43 § 3-117.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.368 Liens—General provisions. (1) Except as provided in subsection (2) of this section, a judgment for money against the association perfected under RCW 4.64.020 is a lien in favor of the judgment lienholder against all of the units in the condominium and their interest in the common elements at the time the judgment was entered. No other property of a unit owner is subject to the claims of creditors of the association.

(2) If the association has granted a security interest in the common elements to a creditor of the association pursuant to RCW 64.34.348, the holder of that security interest shall exercise its right first against such common elements before its judgment lien on any unit may be enforced.

(3) Whether perfected before or after the creation of the condominium, if a lien other than a mortgage, including a judgment lien or lien attributable to work performed or materials supplied before creation of the condominium, becomes effective against two or more units, the unit owner of an affected unit may pay to the lienholder the amount of the lien attributable to the owner's unit, and the lienholder, upon receipt of payment, promptly shall deliver a release of the lien covering that unit. The amount of the payment must be proportionate to the ratio which that unit owner's allocated common expense liability bears to the allocated common expense liabilities of all unit owners whose units are subject to the lien. After payment, the association may not assess or have a lien against that unit owner's unit for any portion of the common expenses incurred in connection with that lien.

(4) A judgment against the association shall be filed in the name of the condominium and the association and, when so filed, is notice of the lien against the units. [1989 c 43 § 3-118.]

64.34.372 Association records—Funds. (1) The association shall keep financial records sufficiently detailed to enable the association to comply with RCW 64.34.425. All financial and other records of the association, including but not limited to checks, bank records, and invoices, are the property of the association, but shall be made reasonably available for examination and copying by the manager of the association, any unit owner, or the owner's authorized agents. At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association in accordance with generally accepted accounting principles. The financial statements of condominiums consisting of fifty or more units shall be audited at least annually by a certified public accountant. In the case of a condominium consisting of fewer than fifty units, an annual audit is also required but may be waived annually by unit owners other than the declarant of units to which sixty percent of the votes are allocated, excluding the votes allocated to units owned by the declarant.

(2) The funds of an association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsi-

ble for the custody of such funds. Any reserve funds of an association shall be kept in a segregated account and any transaction affecting such funds, including the issuance of checks, shall require the signature of at least two persons who are officers or directors of the association. [1992 c 220 § 19; 1990 c 166 § 7; 1989 c 43 § 3-119.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.376 Association as trustee. With respect to a third person dealing with the association in the association's capacity as a trustee, the existence of trust powers and their proper exercise by the association may be assumed without inquiry. A third person is not bound to inquire whether the association has power to act as trustee or is properly exercising trust powers. A third person, without actual knowledge that the association is exceeding or improperly exercising its powers, is fully protected in dealing with the association as if it possessed and properly exercised the powers it purports to exercise. A third person is not bound to assure the proper application of trust assets paid or delivered to the association in its capacity as trustee. [1989 c 43 § 3-120.]

ARTICLE 4

PROTECTION OF CONDOMINIUM PURCHASERS

64.34.400 Applicability—Waiver. (1) This article applies to all units subject to this chapter, except as provided in subsection (2) of this section and unless and to the extent otherwise agreed to in writing by the seller and purchasers of those units that are restricted to nonresidential use in the declaration.

(2) This article shall not apply in the case of:

- (a) A conveyance by gift, devise, or descent;
- (b) A conveyance pursuant to court order;
- (c) A disposition by a government or governmental agency;
- (d) A conveyance by foreclosure;
- (e) A disposition of all of the units in a condominium in a single transaction;
- (f) A disposition to other than a purchaser as defined in RCW 64.34.020(26); or
- (g) A disposition that may be canceled at any time and for any reason by the purchaser without penalty. [1992 c 220 § 20; 1990 c 166 § 9; 1989 c 43 § 4-101.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.405 Public offering statement—Requirements—Liability. (1) Except as provided in subsection (2) of this section or when no public offering statement is required, a declarant shall prepare a public offering statement conforming to the requirements of RCW 64.34.410 and 64.34.415.

(2) A declarant may transfer responsibility for preparation of all or a part of the public offering statement to a successor declarant pursuant to RCW 64.34.316 or to a dealer who intends to offer units in the condominium for the person's own account.

(3) Any declarant or dealer who offers a unit for the person's own account to a purchaser shall deliver a public offering statement in the manner prescribed in RCW 64.34.420(1).

(2004 Ed.)

Any agent, attorney, or other person assisting the declarant or dealer in preparing the public offering statement may rely upon information provided by the declarant or dealer without independent investigation. The agent, attorney, or other person shall not be liable for any material misrepresentation in or omissions of material facts from the public offering statement unless the person had actual knowledge of the misrepresentation or omission at the time the public offering statement was prepared. The declarant or dealer shall be liable for any misrepresentation contained in the public offering statement or for any omission of material fact therefrom if the declarant or dealer had actual knowledge of the misrepresentation or omission or, in the exercise of reasonable care, should have known of the misrepresentation or omission.

(4) If a unit is part of a condominium and is part of another real property regime in connection with the sale of which the delivery of a public offering statement is required under the laws of this state, a single public offering statement, conforming to the requirements of RCW 64.34.410 and 64.34.415 as those requirements relate to all real property regimes in which the unit is located and conforming to any other requirements imposed under the laws of this state, may be prepared and delivered in lieu of providing two or more public offering statements. [1989 c 43 § 4-102.]

64.34.410 Public offering statement—General provisions. (1) A public offering statement shall contain the following information:

- (a) The name and address of the condominium;
- (b) The name and address of the declarant;
- (c) The name and address of the management company, if any;
- (d) The relationship of the management company to the declarant, if any;
- (e) A list of up to the five most recent condominium projects completed by the declarant or an affiliate of the declarant within the past five years, including the names of the condominiums, their addresses, and the number of existing units in each. For the purpose of this section, a condominium is "completed" when any one unit therein has been rented or sold;
- (f) The nature of the interest being offered for sale;
- (g) A brief description of the permitted uses and use restrictions pertaining to the units and the common elements;
- (h) A brief description of the restrictions, if any, on the renting or leasing of units by the declarant or other unit owners, together with the rights, if any, of the declarant to rent or lease at least a majority of units;
- (i) The number of existing units in the condominium and the maximum number of units that may be added to the condominium;
- (j) A list of the principal common amenities in the condominium which materially affect the value of the condominium and those that will or may be added to the condominium;
- (k) A list of the limited common elements assigned to the units being offered for sale;
- (l) The identification of any real property not in the condominium, the owner of which has access to any of the common elements, and a description of the terms of such access;

[Title 64 RCW—page 43]

(m) The identification of any real property not in the condominium to which unit owners have access and a description of the terms of such access;

(n) The status of construction of the units and common elements, including estimated dates of completion if not completed;

(o) The estimated current common expense liability for the units being offered;

(p) An estimate of any payment with respect to the common expense liability for the units being offered which will be due at closing;

(q) The estimated current amount and purpose of any fees not included in the common expenses and charged by the declarant or the association for the use of any of the common elements;

(r) Any assessments which have been agreed to or are known to the declarant and which, if not paid, may constitute a lien against any units or common elements in favor of any governmental agency;

(s) The identification of any parts of the condominium, other than the units, which any individual owner will have the responsibility for maintaining;

(t) If the condominium involves a conversion condominium, the information required by RCW 64.34.415;

(u) Whether timesharing is restricted or prohibited, and if restricted, a general description of such restrictions;

(v) A list of all development rights reserved to the declarant and all special declarant rights reserved to the declarant, together with the dates such rights must terminate, and a copy of or reference by recording number to any recorded transfer of a special declarant right;

(w) A description of any material differences in terms of furnishings, fixtures, finishes, and equipment between any model unit available to the purchaser at the time the agreement for sale is executed and the unit being offered;

(x) Any liens on real property to be conveyed to the association required to be disclosed pursuant to RCW 64.34.435(2)(b);

(y) A list of any physical hazards known to the declarant which particularly affect the condominium or the immediate vicinity in which the condominium is located and which are not readily ascertainable by the purchaser;

(z) A brief description of any construction warranties to be provided to the purchaser;

(aa) Any building code violation citations received by the declarant in connection with the condominium which have not been corrected;

(bb) A statement of any unsatisfied judgments or pending suits against the association, a statement of the status of any pending suits material to the condominium of which the declarant has actual knowledge, and a statement of any litigation brought by an owners' association, unit owner, or governmental entity in which the declarant or any affiliate of the declarant has been a defendant, arising out of the construction, sale, or administration of any condominium within the previous five years, together with the results thereof, if known;

(cc) Any rights of first refusal to lease or purchase any unit or any of the common elements;

(dd) The extent to which the insurance provided by the association covers furnishings, fixtures, and equipment located in the unit;

(ee) A notice which describes a purchaser's right to cancel the purchase agreement or extend the closing under RCW 64.34.420, including applicable time frames and procedures;

(ff) Any reports or statements required by RCW 64.34.415 or 64.34.440(6)(a). RCW 64.34.415 shall apply to the public offering statement of a condominium in connection with which a final certificate of occupancy was issued more than sixty calendar months prior to the preparation of the public offering statement whether or not the condominium is a conversion condominium as defined in RCW 64.34.020(10);

(gg) A list of the documents which the prospective purchaser is entitled to receive from the declarant before the rescission period commences;

(hh) A notice which states: A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or by any person identified in the public offering statement as the declarant's agent;

(ii) A notice which states: This public offering statement is only a summary of some of the significant aspects of purchasing a unit in this condominium and the condominium documents are complex, contain other important information, and create binding legal obligations. You should consider seeking the assistance of legal counsel;

(jj) Any other information and cross-references which the declarant believes will be helpful in describing the condominium to the recipients of the public offering statement, all of which may be included or not included at the option of the declarant;

(kk) A notice that addresses compliance or noncompliance with the housing for older persons act of 1995, P.L. 104-76, as enacted on December 28, 1995;

(ll) A notice that is substantially in the form required by RCW 64.50.050; and

(mm) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty.

(2) The public offering statement shall include copies of each of the following documents: The declaration, the survey map and plans, the articles of incorporation of the association, bylaws of the association, rules and regulations, if any, current or proposed budget for the association, and the balance sheet of the association current within ninety days if assessments have been collected for ninety days or more.

If any of the foregoing documents listed in this subsection are not available because they have not been executed, adopted, or recorded, drafts of such documents shall be provided with the public offering statement, and, before closing the sale of a unit, the purchaser shall be given copies of any material changes between the draft of the proposed documents and the final documents.

(3) The disclosures required by subsection (1)(g), (k), (s), (u), (v), and (cc) of this section shall also contain a reference to specific sections in the condominium documents which further explain the information disclosed.

(4) The disclosures required by subsection (1)(ee), (hh), (ii), and (ll) of this section shall be located at the top of the first page of the public offering statement and be typed or printed in ten-point bold face type size.

(5) A declarant shall promptly amend the public offering statement to reflect any material change in the information required by this section. [2004 c 201 § 11; 2002 c 323 § 10; 1997 c 400 § 1; 1992 c 220 § 21; 1989 c 43 § 4-103.]

64.34.415 Public offering statement—Conversion condominiums. (1) The public offering statement of a conversion condominium shall contain, in addition to the information required by RCW 64.34.410:

(a) Either a copy of a report prepared by an independent, licensed architect or engineer, or a statement by the declarant based on such report, which report or statement describes, to the extent reasonably ascertainable, the present condition of all structural components and mechanical and electrical installations material to the use and enjoyment of the condominium;

(b) A statement by the declarant of the expected useful life of each item reported on in (a) of this subsection or a statement that no representations are made in that regard; and

(c) A list of any outstanding notices of uncured violations of building code or other municipal regulations, together with the estimated cost of curing those violations. Unless the purchaser waives in writing the curing of specific violations, the extent to which the declarant will cure such violations prior to the closing of the sale of a unit in the condominium shall be included.

(2) This section applies only to condominiums containing units that may be occupied for residential use. [1992 c 220 § 22; 1990 c 166 § 10; 1989 c 43 § 4-104.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.417 Public offering statement—Use of single disclosure document. If a unit is offered for sale for which the delivery of a public offering statement or other disclosure document is required under the laws of any state or the United States, a single disclosure document conforming to the requirements of RCW 64.34.410 and 64.34.415 and conforming to any other requirement imposed under such laws, may be prepared and delivered in lieu of providing two or more disclosure documents. [1990 c 166 § 11.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.418 Public offering statement—Contract of sale—Restriction on interest conveyed. In the case of a sale of a unit where delivery of a public offering statement is required, a contract of sale may be executed, but no interest in that unit may be conveyed until (1) the declaration and survey map and plans which create the condominium in which that unit is located are recorded pursuant to RCW 64.34.200 and 64.34.232 and (2) the unit is substantially completed and available for occupancy, unless the declarant and purchaser have otherwise specifically agreed in writing as to the extent to which the unit will not be substantially completed and available for occupancy at the time of conveyance. [1990 c 166 § 15.]

Effective date—1990 c 166: See note following RCW 64.34.020.

(2004 Ed.)

64.34.420 Purchaser's right to cancel. (1) A person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall provide a purchaser of a unit with a copy of the public offering statement and all material amendments thereto before conveyance of that unit. Unless a purchaser is given the public offering statement more than seven days before execution of a contract for the purchase of a unit, the purchaser, before conveyance, shall have the right to cancel the contract within seven days after first receiving the public offering statement and, if necessary to have seven days to review the public offering statement and cancel the contract, to extend the closing date for conveyance to a date not more than seven days after first receiving the public offering statement. The purchaser shall have no right to cancel the contract upon receipt of an amendment unless the purchaser would have that right under generally applicable legal principles.

(2) If a purchaser elects to cancel a contract pursuant to subsection (1) of this section, the purchaser may do so by hand-delivering notice thereof to the offeror or by mailing notice thereof by prepaid United States mail to the offeror or to his or her agent for service of process. Cancellation is without penalty, and all payments made by the purchaser before cancellation shall be refunded promptly.

(3) If a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) fails to provide a purchaser to whom a unit is conveyed with that public offering statement and all material amendments thereto as required by subsection (1) of this section, the purchaser is entitled to receive from that person an amount equal to the greater of (a) actual damages, or (b) ten percent of the sales price of the unit for a willful failure by the declarant or three percent of the sales price of the unit for any other failure. There shall be no liability for failure to deliver any amendment unless such failure would have entitled the purchaser under generally applicable legal principles to cancel the contract for the purchase of the unit had the undisclosed information been evident to the purchaser before the closing of the purchase. [1989 c 43 § 4-106.]

64.34.425 Resale of unit. (1) Except in the case of a sale where delivery of a public offering statement is required, or unless exempt under RCW 64.34.400(2), a unit owner shall furnish to a purchaser before execution of any contract for sale of a unit, or otherwise before conveyance, a resale certificate, signed by an officer or authorized agent of the association and based on the books and records of the association and the actual knowledge of the person signing the certificate, containing:

(a) A statement disclosing any right of first refusal or other restraint on the free alienability of the unit contained in the declaration;

(b) A statement setting forth the amount of the monthly common expense assessment and any unpaid common expense or special assessment currently due and payable from the selling unit owner and a statement of any special assessments that have been levied against the unit which have not been paid even though not yet due;

(c) A statement, which shall be current to within forty-five days, of any common expenses or special assessments

against any unit in the condominium that are past due over thirty days;

(d) A statement, which shall be current to within forty-five days, of any obligation of the association which is past due over thirty days;

(e) A statement of any other fees payable by unit owners;

(f) A statement of any anticipated repair or replacement cost in excess of five percent of the annual budget of the association that has been approved by the board of directors;

(g) A statement of the amount of any reserves for repair or replacement and of any portions of those reserves currently designated by the association for any specified projects;

(h) The annual financial statement of the association, including the audit report if it has been prepared, for the year immediately preceding the current year;

(i) A balance sheet and a revenue and expense statement of the association prepared on an accrual basis, which shall be current to within one hundred twenty days;

(j) The current operating budget of the association;

(k) A statement of any unsatisfied judgments against the association and the status of any pending suits or legal proceedings in which the association is a plaintiff or defendant;

(l) A statement describing any insurance coverage provided for the benefit of unit owners;

(m) A statement as to whether there are any alterations or improvements to the unit or to the limited common elements assigned thereto that violate any provision of the declaration;

(n) A statement of the number of units, if any, still owned by the declarant, whether the declarant has transferred control of the association to the unit owners, and the date of such transfer;

(o) A statement as to whether there are any violations of the health or building codes with respect to the unit, the limited common elements assigned thereto, or any other portion of the condominium;

(p) A statement of the remaining term of any leasehold estate affecting the condominium and the provisions governing any extension or renewal thereof;

(q) A copy of the declaration, the bylaws, the rules or regulations of the association, and any other information reasonably requested by mortgagees of prospective purchasers of units. Information requested generally by the federal national mortgage association, the federal home loan bank board, the government national mortgage association, the veterans administration and the department of housing and urban development shall be deemed reasonable, provided such information is reasonably available to the association; and

(r) A statement, as required by RCW 64.35.210, as to whether the units or common elements of the condominium are covered by a qualified warranty, and a history of claims under any such warranty.

(2) The association, within ten days after a request by a unit owner, and subject to payment of any fee imposed pursuant to RCW 64.34.304(1)(l), shall furnish a resale certificate signed by an officer or authorized agent of the association and containing the information necessary to enable the unit owner to comply with this section. For the purposes of this chapter, a reasonable charge for the preparation of a resale certificate may not exceed one hundred fifty dollars. The association may charge a unit owner a nominal fee for updat-

ing a resale certificate within six months of the unit owner's request. The unit owner shall also sign the certificate but the unit owner is not liable to the purchaser for any erroneous information provided by the association and included in the certificate unless and to the extent the unit owner had actual knowledge thereof.

(3) A purchaser is not liable for any unpaid assessment or fee against the unit as of the date of the certificate greater than the amount set forth in the certificate prepared by the association unless and to the extent such purchaser had actual knowledge thereof. A unit owner is not liable to a purchaser for the failure or delay of the association to provide the certificate in a timely manner, but the purchaser's contract is voidable by the purchaser until the certificate has been provided and for five days thereafter or until conveyance, whichever occurs first. [2004 c 201 § 4; 1992 c 220 § 23; 1990 c 166 § 12; 1989 c 43 § 4-107.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.430 Escrow of deposits. Any deposit made in connection with the purchase or reservation of a unit from a person required to deliver a public offering statement pursuant to RCW 64.34.405(3) shall be placed in escrow and held in this state in an escrow or trust account designated solely for that purpose by a licensed title insurance company, an attorney, a real estate broker, an independent bonded escrow company, or an institution whose accounts are insured by a governmental agency or instrumentality until: (1) Delivered to the declarant at closing; (2) delivered to the declarant because of purchaser's default under a contract to purchase the unit; (3) refunded to the purchaser; or (4) delivered to a court in connection with the filing of an interpleader action. [1992 c 220 § 24; 1989 c 43 § 4-108.]

64.34.435 Release of liens—Conveyance. (1) At the time of the first conveyance of each unit, every mortgage, lien, or other encumbrance affecting that unit and any other unit or units or real property, other than the percentage of undivided interest of that unit in the common elements, shall be paid and satisfied of record, or the unit being conveyed and its undivided interest in the common elements shall be released therefrom by partial release duly recorded or the purchaser of that unit shall receive title insurance from a licensed title insurance company against such mortgage, lien or other encumbrance. This subsection does not apply to any real property which a declarant has the right to withdraw.

(2) Before conveying real property to the association the declarant shall have that real property released from: (a) All liens the foreclosure of which would deprive unit owners of any right of access to or easement of support of their units; and (b) all other liens on that real property unless the public offering statement describes certain real property which may be conveyed subject to liens in specified amounts. [1989 c 43 § 4-109.]

64.34.440 Conversion condominiums—Notice—Tenants. (1) A declarant of a conversion condominium, and any dealer who intends to offer units in such a condominium, shall give each of the residential tenants and any residential subtenant in possession of a portion of a conversion condo-

minium notice of the conversion and provide those persons with the public offering statement no later than ninety days before the tenants and any subtenant in possession are required to vacate. The notice must set forth generally the rights of tenants and subtenants under this section and shall be delivered pursuant to notice requirements set forth in RCW 59.12.040. No tenant or subtenant may be required to vacate upon less than ninety days' notice, except by reason of nonpayment of rent, waste, conduct that disturbs other tenants' peaceful enjoyment of the premises, or act of unlawful detainer as defined in RCW 59.12.030, and the terms of the tenancy may not be altered during that period. Nothing in this subsection shall be deemed to waive or repeal RCW 59.18.200(2). Failure to give notice as required by this section is a defense to an action for possession.

(2) For sixty days after delivery or mailing of the notice described in subsection (1) of this section, the person required to give the notice shall offer to convey each unit or proposed unit occupied for residential use to the tenant who leases that unit. If a tenant fails to purchase the unit during that sixty-day period, the offeror may offer to dispose of an interest in that unit during the following one hundred eighty days at a price or on terms more favorable to the offeree than the price or terms offered to the tenant only if: (a) Such offeror, by written notice mailed to the tenant's last known address, offers to sell an interest in that unit at the more favorable price and terms, and (b) such tenant fails to accept such offer in writing within ten days following the mailing of the offer to the tenant. This subsection does not apply to any unit in a conversion condominium if that unit will be restricted exclusively to nonresidential use or the boundaries of the converted unit do not substantially conform to the dimensions of the residential unit before conversion.

(3) If a seller, in violation of subsection (2) of this section, conveys a unit to a purchaser for value who has no knowledge of the violation, recording of the deed conveying the unit extinguishes any right a tenant may have to purchase that unit but does not affect the right of a tenant to recover damages from the seller for a violation of subsection (2) of this section.

(4) If a notice of conversion specifies a date by which a unit or proposed unit must be vacated and otherwise complies with the provisions of this chapter and chapter 59.18 RCW, the notice also constitutes a notice to vacate specified by that statute.

(5) Nothing in this section permits termination of a lease by a declarant in violation of its terms.

(6) Notwithstanding RCW 64.34.050(1), a city or county may by appropriate ordinance require with respect to any conversion condominium within the jurisdiction of such city or county that:

(a) In addition to the statement required by RCW 64.34.415(1)(a), the public offering statement shall contain a copy of the written inspection report prepared by the appropriate department of such city or county, which report shall list any violations of the housing code or other governmental regulation, which code or regulation is applicable regardless of whether the real property is owned as a condominium or in some other form of ownership; said inspection shall be made within forty-five days of the declarant's written request therefor and said report shall be issued within fourteen days of said

inspection being made. Such inspection may not be required with respect to any building for which a final certificate of occupancy has been issued by the city or county within the preceding twenty-four months; and any fee imposed for the making of such inspection may not exceed the fee that would be imposed for the making of such an inspection for a purpose other than complying with this subsection (6)(a);

(b) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) All violations disclosed in the inspection report provided for in (a) of this subsection, and not otherwise waived by such city or county, shall be repaired, and (ii) a certification shall be obtained from such city or county that such repairs have been made, which certification shall be based on a reinspection to be made within seven days of the declarant's written request therefor and which certification shall be issued within seven days of said reinspection being made;

(c) The repairs required to be made under (b) of this subsection shall be warranted by the declarant against defects due to workmanship or materials for a period of one year following the completion of such repairs;

(d) Prior to the conveyance of any residential unit within a conversion condominium, other than a conveyance to a declarant or affiliate of a declarant: (i) The declarant shall establish and maintain, during the one-year warranty period provided under (c) of this subsection, an account containing a sum equal to ten percent of the actual cost of making the repairs required under (b) of this subsection; (ii) during the one-year warranty period, the funds in such account shall be used exclusively for paying the actual cost of making repairs required, or for otherwise satisfying claims made, under such warranty; (iii) following the expiration of the one-year warranty period, any funds remaining in such account shall be immediately disbursed to the declarant; and (iv) the declarant shall notify in writing the association and such city or county as to the location of such account and any disbursements therefrom; and

(e) Relocation assistance not to exceed five hundred dollars per unit shall be paid to tenants and subtenants who elect not to purchase a unit and who are in lawful occupancy for residential purposes of a unit and whose monthly household income from all sources, on the date of the notice described in subsection (1) of this section, was less than an amount equal to eighty percent of (i) the monthly median income for comparably sized households in the standard metropolitan statistical area, as defined and established by the United States department of housing and urban development, in which the condominium is located, or (ii) if the condominium is not within a standard metropolitan statistical area, the monthly median income for comparably sized households in the state of Washington, as defined and determined by said department. The household size of a unit shall be based on the number of persons actually in lawful occupancy of the unit. The tenant or subtenant actually in lawful occupancy of the unit shall be entitled to the relocation assistance. Relocation assistance shall be paid on or before the date the tenant or subtenant vacates and shall be in addition to any damage deposit or other compensation or refund to which the tenant is otherwise entitled. Unpaid rent or other amounts owed by

the tenant or subtenant to the landlord may be offset against the relocation assistance.

(7) Violations of any city or county ordinance adopted as authorized by subsection (6) of this section shall give rise to such remedies, penalties, and causes of action which may be lawfully imposed by such city or county. Such violations shall not invalidate the creation of the condominium or the conveyance of any interest therein. [1992 c 220 § 25; 1990 c 166 § 13; 1989 c 43 § 4-110.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.443 Express warranties of quality. (1) Express warranties made by any seller to a purchaser of a unit, if relied upon by the purchaser, are created as follows:

(a) Any written affirmation of fact or promise which relates to the unit, its use, or rights appurtenant thereto, area improvements to the condominium that would directly benefit the unit, or the right to use or have the benefit of facilities not located in the condominium creates an express warranty that the unit and related rights and uses will conform to the affirmation or promise;

(b) Any model or written description of the physical characteristics of the condominium at the time the purchase agreement is executed, including plans and specifications of or for improvements, creates an express warranty that the condominium will conform to the model or description except pursuant to *RCW 64.34.410(1)(v);

(c) Any written description of the quantity or extent of the real property comprising the condominium, including plats or surveys, creates an express warranty that the condominium will conform to the description, subject to customary tolerances; and

(d) A written provision that a buyer may put a unit only to a specified use is an express warranty that the specified use is lawful.

(2) Neither formal words, such as "warranty" or "guarantee," nor a specific intention to make a warranty are necessary to create an express warranty of quality, but a statement purporting to be merely an opinion or commendation of the real estate or its value does not create a warranty. A purchaser may not rely on any representation or express warranty unless it is contained in the public offering statement or made in writing signed by the declarant or declarant's agent identified in the public offering statement.

(3) Any conveyance of a unit transfers to the purchaser all express warranties of quality made by previous sellers. [1989 c 428 § 2.]

***Reviser's note:** RCW 64.34.410 was amended by 1997 c 400 § 1, changing subsection (1)(v) to subsection (1)(w).

Captions—1989 c 428: "Section captions as used in this act do not constitute any part of the law." [1989 c 428 § 6.]

Effective date—1989 c 428: "Sections 1 through 4 of this act shall take effect July 1, 1990." [1989 c 428 § 7.]

***Reviser's note:** Sections 1, 3, and 4 of this act were vetoed by the governor.

64.34.445 Implied warranties of quality—Breach.

(1) A declarant and any dealer warrants that a unit will be in at least as good condition at the earlier of the time of the conveyance or delivery of possession as it was at the time of con-

tracting, reasonable wear and tear and damage by casualty or condemnation excepted.

(2) A declarant and any dealer impliedly warrants that a unit and the common elements in the condominium are suitable for the ordinary uses of real estate of its type and that any improvements made or contracted for by such declarant or dealer will be:

(a) Free from defective materials;

(b) Constructed in accordance with sound engineering and construction standards;

(c) Constructed in a workmanlike manner; and

(d) Constructed in compliance with all laws then applicable to such improvements.

(3) A declarant and any dealer warrants to a purchaser of a unit that may be used for residential use that an existing use, continuation of which is contemplated by the parties, does not violate applicable law at the earlier of the time of conveyance or delivery of possession.

(4) Warranties imposed by this section may be excluded or modified as specified in RCW 64.34.450.

(5) For purposes of this section, improvements made or contracted for by an affiliate of a declarant, as defined in RCW 64.34.020(1), are made or contracted for by the declarant.

(6) Any conveyance of a unit transfers to the purchaser all of the declarant's implied warranties of quality.

(7) In a judicial proceeding for breach of any of the obligations arising under this section, the plaintiff must show that the alleged breach has adversely affected or will adversely affect the performance of that portion of the unit or common elements alleged to be in breach. As used in this subsection, an "adverse effect" must be more than technical and must be significant to a reasonable person. To establish an adverse effect, the person alleging the breach is not required to prove that the breach renders the unit or common element uninhabitable or unfit for its intended purpose.

(8) Proof of breach of any obligation arising under this section is not proof of damages. Damages awarded for a breach of an obligation arising under this section are the cost of repairs. However, if it is established that the cost of such repairs is clearly disproportionate to the loss in market value caused by the breach, then damages shall be limited to the loss in market value. [2004 c 201 § 5; 1992 c 220 § 26; 1989 c 43 § 4-112.]

Application—2004 c 201 §§ 5 and 6: "Sections 5 and 6 of this act apply only to condominiums created by declarations recorded on or after July 1, 2004." [2004 c 201 § 12.]

64.34.450 Implied warranties of quality—Exclusion—Modification—Disclaimer—Express written warranty. (1) For units intended for nonresidential use, implied warranties of quality:

(a) May be excluded or modified by written agreement of the parties; and

(b) Are excluded by written expression of disclaimer, such as "as is," "with all faults," or other language which in common understanding calls the buyer's attention to the exclusion of warranties.

(2) For units intended for residential use, no disclaimer of implied warranties of quality is effective, except that a declarant or dealer may disclaim liability in writing, in type

that is bold faced, capitalized, underlined, or otherwise set out from surrounding material so as to be conspicuous, and separately signed by the purchaser, for a specified defect or specified failure to comply with applicable law, if: (a) The declarant or dealer knows or has reason to know that the specific defect or failure exists at the time of disclosure; (b) the disclaimer specifically describes the defect or failure; and (c) the disclaimer includes a statement as to the effect of the defect or failure.

(3) A declarant or dealer may offer an express written warranty of quality only if the express written warranty does not reduce protections provided to the purchaser by the implied warranty set forth in RCW 64.34.445. [2004 c 201 § 6; 1989 c 43 § 4-113.]

Application—2004 c 201 §§ 5 and 6: See note following RCW 64.34.445.

64.34.452 Warranties of quality—Breach—Actions for construction defect claims. (1) A judicial proceeding for breach of any obligations arising under RCW 64.34.443, 64.34.445, and 64.34.450 must be commenced within four years after the cause of action accrues: PROVIDED, That the period for commencing an action for a breach accruing pursuant to subsection (2)(b) of this section shall not expire prior to one year after termination of the period of declarant control, if any, under RCW 64.34.308(4). Such periods may not be reduced by either oral or written agreement, or through the use of contractual claims or notice procedures that require the filing or service of any claim or notice prior to the expiration of the period specified in this section.

(2) Subject to subsection (3) of this section, a cause of action or [for] breach of warranty of quality, regardless of the purchaser's lack of knowledge of the breach, accrues:

(a) As to a unit, the date the purchaser to whom the warranty is first made enters into possession if a possessory interest was conveyed or the date of acceptance of the instrument of conveyance if a nonpossessory interest was conveyed; and

(b) As to each common element, at the latest of (i) the date the first unit in the condominium was conveyed to a bona fide purchaser, (ii) the date the common element was completed, or (iii) the date the common element was added to the condominium.

(3) If a warranty of quality explicitly extends to future performance or duration of any improvement or component of the condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier.

(4) If a written notice of claim is served under RCW 64.50.020 within the time prescribed for the filing of an action under this chapter, the statutes of limitation in this chapter and any applicable statutes of repose for construction-related claims are tolled until sixty days after the period of time during which the filing of an action is barred under RCW 64.50.020.

(5) Nothing in this section affects the time for filing a claim under chapter 64.35 RCW. [2004 c 201 § 7; 2002 c 323 § 11; 1990 c 166 § 14.]

Effective date—1990 c 166: See note following RCW 64.34.020.

64.34.455 Effect of violations on rights of action—Attorney's fees. If a declarant or any other person subject to (2004 Ed.)

this chapter fails to comply with any provision hereof or any provision of the declaration or bylaws, any person or class of persons adversely affected by the failure to comply has a claim for appropriate relief. The court, in an appropriate case, may award reasonable attorney's fees to the prevailing party. [1989 c 43 § 4-115.]

64.34.460 Labeling of promotional material. If any improvement contemplated in a condominium is labeled "NEED NOT BE BUILT" on a survey map or plan, or is to be located within a portion of the condominium with respect to which the declarant has reserved a development right, no promotional material may be displayed or delivered to prospective purchasers which describes or portrays that improvement unless the description or portrayal of the improvement in the promotional material is conspicuously labeled or identified as "NEED NOT BE BUILT." [1989 c 43 § 4-116.]

64.34.465 Improvements—Declarant's duties. (1) The declarant shall complete all improvements labeled "MUST BE BUILT" on survey maps or plans prepared pursuant to RCW 64.34.232.

(2) The declarant is subject to liability for the prompt repair and restoration, to a condition compatible with the remainder of the condominium, of any portion of the condominium damaged by the exercise of rights reserved pursuant to or created by RCW 64.34.236, 64.34.240, 64.34.244, 64.34.248, 64.34.256, and 64.34.260. [1989 c 43 § 4-117.]

ARTICLE 5 MISCELLANEOUS

64.34.900 Short title. This chapter shall be known and may be cited as the Washington condominium act or the condominium act. [1989 c 43 § 1-101.]

64.34.910 Section captions. Section captions as used in this chapter do not constitute any part of the law. [1989 c 43 § 4-119.]

64.34.920 Severability—1989 c 43. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 43 § 4-120.]

64.34.921 Severability—2004 c 201. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2004 c 201 § 13.]

64.34.930 Effective date—1989 c 43. This act shall take effect July 1, 1990. [1989 c 43 § 4-124.]

64.34.931 Effective date—2004 c 201 §§ 1-13. Sections 1 through 13 of this act take effect July 1, 2004. [2004 c 201 § 14.]

64.34.940 Construction against implicit repeal. This chapter being a general act intended as a unified coverage of its subject matter, no part of it shall be construed to be impliedly repealed by subsequent legislation if that construction can reasonably be avoided. [1989 c 43 § 1-109.]

64.34.950 Uniformity of application and construction. This chapter shall be applied and construed so as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among states enacting it. [1989 c 43 § 1-110.]

Chapter 64.35 RCW

CONDOMINIUMS—QUALIFIED WARRANTIES

Sections

ARTICLE 1 GENERAL PROVISIONS

- 64.35.105 Definitions.
64.35.106 Qualified warranties—Application of RCW 48.01.040.
64.35.110 No duty to offer a qualified warranty—Insurer sets terms—
Scope of inquiry—Conditions.
64.35.115 Attorneys' fees.
64.35.120 Change of ownership—Coverage transfers.

ARTICLE 2 REMEDY, PROCEDURE, AND DISCLOSURE UNDER A QUALIFIED WARRANTY

- 64.35.205 Qualified warranty—Remedy and procedure—Application of
chapter 64.50 RCW.
64.35.210 Notice of qualified warranty—History of claims.

ARTICLE 3 MINIMUM COVERAGE STANDARDS FOR QUALIFIED WARRANTIES

- 64.35.305 Two-year materials and labor warranty—Noncompliance with
building code.
64.35.310 Five-year building envelope warranty.
64.35.315 Ten-year structural defects warranty.
64.35.320 Beginning dates for warranty coverage.
64.35.325 Beginning dates for warranty coverage—Special cases—
Declarant control.
64.35.330 Living expense allowance.
64.35.335 Warranty on repairs and replacements.

ARTICLE 4 QUALIFIED WARRANTY TERMS

- 64.35.405 Provisions a qualified insurer may include.
64.35.410 Authorized exclusions—General.
64.35.415 Authorized exclusions—Defects.
64.35.420 Limits on amounts—Calculation of costs—Adjustments.
64.35.425 Prohibited policy provisions—Exclusions.

ARTICLE 5 DUTIES OF PARTIES REGARDING COVERAGE AND CLAIMS

- 64.35.505 Failure to provide information—Conditions or exclusions may
not apply.
64.35.510 Schedule of expiration dates must be provided.
64.35.515 Duty to mitigate may be required.
64.35.520 Notice of claim—Reasonable timeliness and detail—Con-
tents.
64.35.525 Handling of claim—Prompt response—Procedures.

ARTICLE 6 MEDIATION OR ARBITRATION OF DISPUTES

- 64.35.605 Disputed claim—Notice—Mediation procedures—Duties of
parties.
64.35.610 Disputed claim—Notice—Arbitration procedures—Duties of
parties.

ARTICLE 9 MISCELLANEOUS

- 64.35.900 Captions not law—2004 c 201.
64.35.901 Severability—2004 c 201.

ARTICLE 1 GENERAL PROVISIONS

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

- (1) "Affiliate" has the meaning in RCW 64.34.020.
- (2) "Association" has the meaning in RCW 64.34.020.
- (3) "Building envelope" means the assemblies, components, and materials of a building that are intended to separate and protect the interior space of the building from the adverse effects of exterior climatic conditions.
- (4) "Common element" has the meaning in RCW 64.34.020.
- (5) "Condominium" has the meaning in RCW 64.34.020.
- (6) "Construction professional" has the meaning in RCW 64.50.010.
- (7) "Conversion condominium" has the meaning in RCW 64.34.020.
- (8) "Declarant" has the meaning in RCW 64.34.020.
- (9) "Declarant control" has the meaning in RCW 64.34.020.
- (10) "Defect" means any aspect of a condominium unit or common element which constitutes a breach of the implied warranties set forth in RCW 64.34.445.
- (11) "Limited common element" has the meaning in RCW 64.34.020.
- (12) "Material" means substantive, not simply formal; significant to a reasonable person; not trivial or insignificant. When used with respect to a particular construction defect, "material" does not require that the construction defect render the unit or common element unfit for its intended purpose or uninhabitable.
- (13) "Mediation" means a collaborative process in which two or more parties meet and attempt, with the assistance of a mediator, to resolve issues in dispute between them.
- (14) "Mediation session" means a meeting between two or more parties to a dispute during which they are engaged in mediation.
- (15) "Mediator" means a neutral and impartial facilitator with no decision-making power who assists parties in negotiating a mutually acceptable settlement of issues in dispute between them.
- (16) "Person" has the meaning in RCW 64.34.020.
- (17) "Public offering statement" has the meaning in RCW 64.34.410.
- (18) "Qualified insurer" means an entity that holds a certificate of authority under RCW 48.05.030, or an eligible insurer under chapter 48.15 RCW.
- (19) "Qualified warranty" means an insurance policy issued by a qualified insurer that complies with the requirements of this chapter. A qualified warranty includes coverage for repair of physical damage caused by the defects covered by the qualified warranty, except to the extent of any exclusions and limitations under this chapter.

(20) "Resale certificate" means the statement to be delivered by the association under RCW 64.34.425.

(21) "Transition date" means the date on which the declarant is required to deliver to the association the property of the association under RCW 64.34.312.

(22) "Unit" has the meaning in RCW 64.34.020.

(23) "Unit owner" has the meaning in RCW 64.34.020. [2004 c 201 § 101.]

64.35.106 Qualified warrantees—Application of RCW 48.01.040. All qualified warrantees shall be deemed to be "insurance" for purposes of RCW 48.01.040, and shall be regulated as such. [2004 c 201 § 2001.]

64.35.110 No duty to offer a qualified warranty—Insurer sets terms—Scope of inquiry—Conditions. (1) No insurer is bound to offer a qualified warranty to any person. Except as specifically set forth in this section, the terms of any qualified warranty are set in the sole discretion of the qualified insurer. Without limiting the generality of this subsection, a qualified insurer may make inquiries about the applicant as follows:

(a) Does the applicant have the financial resources to undertake the construction of the number of units being proposed by the applicant's business plan for the following twelve months;

(b) Does the applicant and its directors, officers, employees, and consultants possess the necessary technical expertise to adequately perform their individual functions with respect to their proposed role in the construction and sale of units;

(c) Does the applicant and its directors and officers have sufficient experience in business management to properly manage the unit construction process;

(d) Does the applicant and its directors, officers, and employees have sufficient practical experience to undertake the proposed unit construction;

(e) Does the past conduct of the applicant and its directors, officers, employees, and consultants provide a reasonable indication of good business practices, and reasonable grounds for belief that its undertakings will be carried on in accordance with all legal requirements; and

(f) Is the applicant reasonably able to provide, or to cause to be provided, after-sale customer service for the units to be constructed.

(2) A qualified insurer may charge a fee to make the inquiries permitted by subsection (1) of this section.

(3) Before approving a qualified warranty for a condominium, a qualified insurer may make such inquiries and impose such conditions as it deems appropriate in its sole discretion, including without limitation the following:

(a) To determine if the applicant has the necessary capitalization or financing in place, including any reasonable contingency reserves, to undertake construction of the proposed unit;

(b) To determine if the applicant or, in the case of a corporation, its directors, officers, employees, and consultants possess reasonable technical expertise to construct the proposed unit, including specific technical knowledge or expertise in any building systems, construction methods, products,

treatments, technologies, and testing and inspection methods proposed to be employed;

(c) To determine if the applicant or, in the case of a corporation, its directors, officers, employees, and consultants have sufficient practical experience in the specific types of construction to undertake construction of the proposed unit;

(d) To determine if the applicant has sufficient personnel and other resources to adequately undertake the construction of the proposed unit in addition to other units which the applicant may have under construction or is currently marketing;

(e) To determine if:

(i) The applicant is proposing to engage a general contractor to undertake all or a significant portion of the construction of the proposed unit; and

(ii) The general contractor meets the criteria set out in this section;

(f) Requiring that a declarant provide security in a form suitable to the qualified insurer;

(g) Establishing or requiring compliance with specific construction standards for the unit;

(h) Restricting the applicant from constructing some types of units or using some types of construction or systems;

(i) Requiring the use of specific types of systems, consultants, or personnel for the construction;

(j) Requiring an independent review of the unit building plans or consultants' reports or any part thereof;

(k) Requiring third-party verification or certification of the construction of the unit or any part thereof;

(l) Providing for inspection of the unit or any part thereof during construction;

(m) Requiring ongoing monitoring of the unit, or one or more of its components, following completion of construction;

(n) Requiring that the declarant or any of the design professionals, engineering professionals, consultants, general contractors, or subcontractors maintain minimum levels of insurance, bonding, or other security naming the potential owners and qualified insurer as loss payees or beneficiaries of the insurance, bonding, or security to the extent possible;

(o) Requiring that the declarant provide a list of all design professionals and other consultants who are involved in the design or construction inspection, or both, of the unit;

(p) Requiring that the declarant provide a list of trades employed in the construction of the unit, and requiring evidence of their current trade's certification, if applicable. [2004 c 201 § 1901.]

64.35.115 Attorneys' fees. In any judicial proceeding or arbitration brought to enforce the terms of a qualified warranty, the court or arbitrator may award reasonable attorneys' fees to the substantially prevailing party. In no event may such fees exceed the reasonable hourly value of the attorney's work. [2004 c 201 § 1701.]

64.35.120 Change of ownership—Coverage transfers. (1) A qualified warranty pertains solely to the unit and common elements for which it provides coverage and no notice to the qualified insurer is required on a change of ownership.

(2) All of the applicable unused benefits under a qualified warranty with respect to a unit are automatically transferred to any subsequent owner on a change of ownership. [2004 c 201 § 1801.]

ARTICLE 2
REMEDY, PROCEDURE, AND DISCLOSURE
UNDER A QUALIFIED WARRANTY

64.35.205 Qualified warranty—Remedy and procedure—Application of chapter 64.50 RCW. No declarant, affiliate of a declarant, or construction professional is liable to a unit owner or an association for damages awarded for repair of construction defects and resulting physical damage, and chapter 64.50 RCW shall not apply if: (1) Every unit is the subject of a qualified warranty; and (2) the association has been issued a qualified warranty with respect to the common elements. If a construction professional agrees on terms satisfactory to the qualified insurer to partially or fully indemnify the qualified insurer with respect to a defect caused by the construction professional, the liability of the construction professional for the defect and resulting physical damage caused by him or her shall not exceed damages recoverable under the terms of the qualified warranty for the defect. Any indemnity claim by the qualified insurer shall be by separate action or arbitration, and no unit owner or association shall be joined therein. A qualified warranty may also be provided in the case of improvements made or contracted for by a declarant as part of a conversion condominium, and in such case, declarant's liability with respect to such improvements shall be limited as set forth in this section. [2004 c 201 § 201.]

64.35.210 Notice of qualified warranty—History of claims. (1) Every public offering statement and resale certificate shall affirmatively state whether or not the unit and/or the common elements are covered by a qualified warranty, and shall provide to the best knowledge of the person preparing the public offering statement or resale certificate a history of claims under the warranty.

(2) The history of claims must include, for each claim, not less than the following information for the unit and/or the common elements, as applicable, to the best knowledge of the person providing the information:

- (a) The type of claim that was made;
- (b) The resolution of the claim;
- (c) The type of repair performed;
- (d) The date of the repair;
- (e) The cost of the repair; and
- (f) The name of the person or entity who performed the repair. [2004 c 201 § 301.]

ARTICLE 3
MINIMUM COVERAGE STANDARDS FOR
QUALIFIED WARRANTIES

64.35.305 Two-year materials and labor warranty—Noncompliance with building code. (1) The minimum coverage for the two-year materials and labor warranty is:

- (a) In the first twelve months, for other than the common elements, (i) coverage for any defect in materials and labor;

and (ii) subject to subsection (2) of this section, coverage for a violation of the building code;

- (b) In the first fifteen months, for the common elements, (i) coverage for any defect in materials and labor; and (ii) subject to subsection (2) of this section, coverage for a violation of the building code;

- (c) In the first twenty-four months, (i) coverage for any defect in materials and labor supplied for the electrical, plumbing, heating, ventilation, and air conditioning delivery and distribution systems; (ii) coverage for any defect in materials and labor supplied for the exterior cladding, caulking, windows, and doors that may lead to detachment or material damage to the unit or common elements; (iii) coverage for any defect in materials and labor which renders the unit unfit to live in; and (iv) subject to subsection (2) of this section, coverage for a violation of the building code.

(2) Noncompliance with the building code is considered a defect covered by a qualified warranty if the noncompliance:

- (a) Constitutes an unreasonable health or safety risk; or
- (b) Has resulted in, or is likely to result in, material damage to the unit or common elements. [2004 c 201 § 401.]

64.35.310 Five-year building envelope warranty. The minimum coverage for the building envelope warranty is five years for defects in the building envelope of a condominium, including a defect which permits unintended water penetration so that it causes, or is likely to cause, material damage to the unit or common elements. [2004 c 201 § 402.]

64.35.315 Ten-year structural defects warranty. The minimum coverage for the structural defects warranty is ten years for:

- (1) Any defect in materials and labor that results in the failure of a load-bearing part of the condominium; and
- (2) Any defect which causes structural damage that materially and adversely affects the use of the condominium for residential occupancy. [2004 c 201 § 403.]

64.35.320 Beginning dates for warranty coverage.

(1) For the unit, the beginning date of the qualified warranty coverage is the earlier of:

- (a) Actual occupancy of the unit; or
- (b) Transfer of legal title to the unit.

(2) For the common elements, the beginning date of a qualified warranty is the date a temporary or final certificate of occupancy is issued for the common elements in each separate multiunit building, comprised by the condominium. [2004 c 201 § 404.]

64.35.325 Beginning dates for warranty coverage—Special cases—Declarant control. (1) If an unsold unit is occupied as a rental unit, the qualified warranty beginning date for such unit is the date the unit is first occupied.

(2) If the declarant subsequently offers to sell a unit which is rented, the declarant must disclose, in writing, to each prospective purchaser, the date on which the qualified warranty expires.

(3) If the declarant retains any declarant control over the association on the date that is fourteen full calendar months

following the month in which the beginning date for common element warranty coverage commences, the declarant shall within thirty days thereafter cause an election to be held in which the declarant may not vote, for the purpose of electing one or more board members who are empowered to make warranty claims. If at such time, one or more independent board members hold office, no additional election need be held, and such independent board members are empowered to make warranty claims. The declarant shall inform all independent board members of their right to make warranty claims at no later than sixteen full calendar months following the beginning date of the common element warranty. [2004 c 201 § 405.]

64.35.330 Living expense allowance. (1) If repairs are required under the qualified warranty and damage to the unit, or the extent of the repairs renders the unit uninhabitable, the qualified warranty must cover reasonable living expenses incurred by the owner to live elsewhere in an amount commensurate with the nature of the unit.

(2) If a qualified insurer establishes a maximum amount per day for claims for living expenses, the limit must be the greater of one hundred dollars per day or a reasonable amount commensurate with the nature of the unit for the complete reimbursement of the actual accommodation expenses incurred by the owner at a hotel, motel, or other rental accommodation up to the day the unit is ready for occupancy, subject to the owner receiving twenty-four hours' advance notice. [2004 c 201 § 406.]

64.35.335 Warranty on repairs and replacements.

(1) All repairs and replacements made under a qualified warranty must be warranted by the qualified warranty against defects in materials and labor until the later of:

(a) The first anniversary of the date of completion of the repair or replacement; or

(b) The expiration of the applicable qualified warranty coverage.

(2) All repairs and replacements made under a qualified warranty must be completed in a reasonable manner using materials and labor conforming to the building code and industry standards. [2004 c 201 § 407.]

ARTICLE 4
QUALIFIED WARRANTY TERMS

64.35.405 Provisions a qualified insurer may include.

A qualified insurer may include any of the following provisions in a qualified warranty:

(1) If the qualified insurer makes a payment or assumes liability for any payment or repair under a qualified warranty, the owner and association must fully support and assist the qualified insurer in pursuing any rights that the qualified insurer may have against the declarant, and any construction professional that has contractual or common law obligations to the declarant, whether such rights arose by contract, subrogation, or otherwise.

(2) Warranties or representations made by a declarant which are in addition to the warranties set forth in this chapter are not binding on the qualified insurer unless and to the

extent specifically provided in the text of the warranty; and disclaimers of specific defects made by agreement between the declarant and the unit purchaser under RCW 64.34.450 act as an exclusion of the specified defect from the warranty coverage.

(3) An owner and the association must permit the qualified insurer or declarant, or both, to enter the unit at reasonable times, after reasonable notice to the owner and the association:

(a) To monitor the unit or its components;

(b) To inspect for required maintenance;

(c) To investigate complaints or claims; or

(d) To undertake repairs under the qualified warranty.

If any reports are produced as a result of any of the activities referred to in (a) through (d) of this subsection, the reports must be provided to the owner and the association.

(4) An owner and the association must provide to the qualified insurer all information and documentation that the owner and the association have available, as reasonably required by the qualified insurer to investigate a claim or maintenance requirement, or to undertake repairs under the qualified warranty.

(5) To the extent any damage to a unit is caused or made worse by the unreasonable refusal of the association, or an owner or occupant to permit the qualified insurer or declarant access to the unit for the reasons in subsection (3) of this section, or to provide the information required by subsection (4) of this section, that damage is excluded from the qualified warranty.

(6) In any claim under a qualified warranty issued to the association, the association shall have the sole right to prosecute and settle any claim with respect to the common elements. [2004 c 201 § 501.]

64.35.410 Authorized exclusions—General. (1) A qualified insurer may exclude from a qualified warranty:

(a) Landscaping, both hard and soft, including plants, fencing, detached patios, planters not forming a part of the building envelope, gazebos, and similar structures;

(b) Any commercial use area and any construction associated with a commercial use area;

(c) Roads, curbs, and lanes;

(d) Subject to subsection (2) of this section, site grading and surface drainage except as required by the building code;

(e) Municipal services operation, including sanitary and storm sewer;

(f) Septic tanks or septic fields;

(g) The quality or quantity of water, from either a piped municipal water supply or a well;

(h) A water well, but excluding equipment installed for the operation of a water well used exclusively for a unit, which equipment is part of the plumbing system for that unit for the purposes of the qualified warranty.

(2) The exclusions permitted by subsection (1) of this section do not include any of the following:

(a) A driveway or walkway;

(b) Recreational and amenity facilities situated in, or included as the common property of, a unit;

(c) A parking structure in a multiunit building;

(d) A retaining wall that:

(i) An authority with jurisdiction requires to be designed by a professional engineer; or

(ii) Is reasonably required for the direct support of, or retaining soil away from, a unit, driveway, or walkway. [2004 c 201 § 601.]

64.35.415 Authorized exclusions—Defects. A qualified insurer may exclude any or all of the following items from a qualified warranty:

(1) Weathering, normal wear and tear, deterioration, or deflection consistent with normal industry standards;

(2) Normal shrinkage of materials caused by drying after construction;

(3) Any loss or damage which arises while a unit is being used primarily or substantially for nonresidential purposes;

(4) Materials, labor, or design supplied by an owner;

(5) Any damage to the extent caused or made worse by an owner or third party, including:

(a) Negligent or improper maintenance or improper operation by anyone other than the declarant or its employees, agents, or subcontractors;

(b) Failure of anyone, other than the declarant or its employees, agents, or subcontractors, to comply with the warranty requirements of the manufacturers of appliances, equipment, or fixtures;

(c) Alterations to the unit, including converting nonliving space into living space or converting a unit into two or more units, by anyone other than the declarant or its employees, agents, or subcontractors while undertaking their obligations under the sales contract; and

(d) Changes to the grading of the ground by anyone other than the declarant or its employees, agents, or subcontractors;

(6) An owner failing to take timely action to prevent or minimize loss or damage, including failing to give prompt notice to the qualified insurer of a defect or discovered loss, or a potential defect or loss;

(7) Any damage caused by insects, rodents, or other animals, unless the damage results from noncompliance with the building code by the declarant or its employees, agents, or subcontractors;

(8) Accidental loss or damage from acts of nature including, but not limited to, fire, explosion, smoke, water escape, glass breakage, windstorm, hail, lightning, falling trees, aircraft, vehicles, flood, earthquake, avalanche, landslide, and changes in the level of the underground water table which are not reasonably foreseeable by the declarant;

(9) Bodily injury or damage to personal property or real property which is not part of a unit;

(10) Any defect in, or caused by, materials or work supplied by anyone other than the declarant, an affiliate of a declarant, or their respective contractors, employees, agents, or subcontractors;

(11) Changes, alterations, or additions made to a unit by anyone after initial occupancy, except those performed by the declarant or its employees, agents, or subcontractors as required by the qualified warranty or under the construction contract or sales agreement;

(12) Contaminated soil;

(13) Subsidence of the land around a unit or along utility lines, other than subsidence beneath footings of a unit or under driveways or walkways;

(14) Diminution in the value of the unit. [2004 c 201 § 701.]

64.35.420 Limits on amounts—Calculation of costs—Adjustments. (1) A qualified insurer may establish a monetary limit on the amount of the warranty. Any limit must not be less than:

(a) For a unit, the lesser of (i) the original purchase price paid by the owner, or (ii) one hundred thousand dollars;

(b) For common elements, the lesser of (i) the total original purchase price for all components of the multiunit building, or (ii) one hundred fifty thousand dollars times the number of units of the condominium.

(2) When calculating the cost of warranty claims under the standard limits under a qualified warranty, a qualified insurer may include:

(a) The cost of repairs;

(b) The cost of any investigation, engineering, and design required for the repairs; and

(c) The cost of supervision of repairs, including professional review, but excluding legal costs.

(3) The minimum amounts in subsections (1) and (2) of this section shall be adjusted at the end of each calendar year after the effective date by an amount equal to the percentage change in the consumer price index for all urban consumers, all items, as published from time to time by the United States department of labor. The adjustment does not affect any qualified warranty issued before the adjustment date. [2004 c 201 § 801.]

64.35.425 Prohibited policy provisions—Exclusions.

(1) A qualified insurer must not include in a qualified warranty any provision that requires an owner or the association:

(a) To sign a release before repairs are performed under the qualified warranty; or

(b) To pay a deductible in excess of five hundred dollars for the repair of any defect in a unit covered by the qualified warranty, or in excess of the lesser of five hundred dollars per unit or ten thousand dollars in the aggregate for any defect in the common elements.

(2) All exclusions must be permitted by this chapter and stated in the qualified warranty. [2004 c 201 § 901.]

ARTICLE 5 DUTIES OF PARTIES REGARDING COVERAGE AND CLAIMS

64.35.505 Failure to provide information—Conditions or exclusions may not apply. (1) If coverage under a qualified warranty is conditional on an owner undertaking proper maintenance, or if coverage is excluded for damage caused by negligence by the owner or association with respect to maintenance or repair by the owner or association, the conditions or exclusions apply only to maintenance requirements or procedures: (a) Provided to the original owner in the case of the unit warranty, and to the association for the common element warranty with an estimation of the required cost thereof for the common element warranty provided in the budget prepared by the declarant; or (b) that would be obvious to a reasonable and prudent layperson.

Recommended maintenance requirements and procedures are sufficient for purposes of this subsection if consistent with knowledge generally available in the construction industry at the time the qualified warranty is issued.

(2) If an original owner or the association has not been provided with the manufacturer's documentation or warranty information, or both, or with recommended maintenance and repair procedures for any component of a unit, the relevant exclusion does not apply. The common element warranty is included in the written warranty to be provided to the association under RCW 64.34.312. [2004 c 201 § 1001.]

64.35.510 Schedule of expiration dates must be provided. (1) A qualified insurer must, as soon as reasonably possible after the beginning date for the qualified warranty, provide an owner and association with a schedule of the expiration dates for coverages under the qualified warranty as applicable to the unit and the common elements, respectively.

(2) The expiration date schedule for a unit must set out all the required dates on an adhesive label that is a minimum size of four inches by four inches and is suitable for affixing by the owner in a conspicuous location in the unit. [2004 c 201 § 1101.]

64.35.515 Duty to mitigate may be required. (1) The qualified insurer may require an owner or association to mitigate any damage to a unit or the common elements, including damage caused by defects or water penetration, as set out in the qualified warranty.

(2) Subject to subsection (3) of this section, for defects covered by the qualified warranty, the duty to mitigate is met through timely notice in writing to the qualified insurer.

(3) The owner must take all reasonable steps to restrict damage to the unit if the defect requires immediate attention.

(4) The owner's duty to mitigate survives even if:

- (a) The unit is unoccupied;
- (b) The unit is occupied by someone other than the owner;
- (c) Water penetration does not appear to be causing damage; or
- (d) The owner advises the homeowners' association corporation about the defect.

(5) If damage to a unit is caused or made worse by the failure of an owner to take reasonable steps to mitigate as set out in this section, the damage may, at the option of the qualified insurer, be excluded from qualified warranty coverage. [2004 c 201 § 1201.]

64.35.520 Notice of claim—Reasonable timeliness and detail—Contents. (1) Within a reasonable time after the discovery of a defect and before the expiration of the applicable qualified warranty coverage, a claimant must give to the qualified insurer and the declarant written notice in reasonable detail that provides particulars of any specific defects covered by the qualified warranty.

(2) The qualified insurer may require the notice under subsection (1) of this section to include:

- (a) The qualified warranty number; and
- (b) Copies of any relevant documentation and correspondence between the claimant and the declarant, to the extent

any such documentation and correspondence is in the control or possession of the claimant. [2004 c 201 § 1301.]

64.35.525 Handling of claim—Prompt response—Procedures. A qualified insurer must, on receipt of a notice of a claim under a qualified warranty, promptly make reasonable attempts to contact the claimant to arrange an evaluation of the claim. Claims shall be handled in accordance with the claims procedures set forth in rules by the insurance commissioner, and as follows:

(1) The qualified insurer must make all reasonable efforts to avoid delays in responding to a claim under a qualified warranty, evaluating the claim, and scheduling any required repairs.

(2) If, after evaluating a claim under a qualified warranty, the qualified insurer determines that the claim is not valid, or not covered under the qualified warranty, the qualified insurer must: (a) Notify the claimant of the decision in writing; (b) set out the reasons for the decision; and (c) set out the rights of the parties under the third-party dispute resolution process for the warranty.

(3) Repairs must be undertaken in a timely manner, with reasonable consideration given to weather conditions and the availability of materials and labor.

(4) On completing any repairs, the qualified insurer must deliver a copy of the repair specifications to the claimant along with a letter confirming the date the repairs were completed and referencing the repair warranty provided for in RCW 64.35.335. [2004 c 201 § 1401.]

ARTICLE 6

MEDIATION OR ARBITRATION OF DISPUTES

64.35.605 Disputed claim—Notice—Mediation procedures—Duties of parties. (1) If a dispute between a qualified insurer and a claimant arising under a qualified warranty cannot be resolved by informal negotiation within a reasonable time, the claimant or qualified insurer may require that the dispute be referred to mediation by delivering written notice to the other to mediate.

(2) If a party delivers a request to mediate under subsection (1) of this section, the qualified insurer and the party must attend a mediation session in relation to the dispute and may invite to participate in the mediation any other party to the dispute who may be liable.

(3) Within twenty-one days after the party has delivered a request to mediate under subsection (1) of this section, the parties must, directly or with the assistance of an independent, neutral person or organization, jointly appoint a mutually acceptable mediator.

(4) If the parties do not jointly appoint a mutually acceptable mediator within the time required by subsection (3) of this section, the party may apply to the superior court of the county where the project is located, which must appoint a mediator taking into account:

- (a) The need for the mediator to be neutral and independent;
- (b) The qualifications of the mediator;
- (c) The mediator's fees;
- (d) The mediator's availability; and

(e) Any other consideration likely to result in the selection of an impartial, competent, and effective mediator.

(5) After selecting the mediator under subsection (4) of this section, the superior court must promptly notify the parties in writing of that selection.

(6) The mediator selected by the superior court is deemed to be appointed by the parties effective the date of the notice sent under subsection (5) of this section.

(7) The first mediation session must occur within twenty-one days of the appointment of the mediator at the date, time, and place selected by the mediator.

(8) A party may attend a mediation session by representative if:

(a) The party is under a legal disability and the representative is that party's guardian ad litem;

(b) The party is not an individual; or

(c) The party is a resident of a jurisdiction other than Washington and will not be in Washington at the time of the mediation session.

(9) A representative who attends a mediation session in the place of a party as permitted by subsection (8) of this section:

(a) Must be familiar with all relevant facts on which the party, on whose behalf the representative attends, intends to rely; and

(b) Must have full authority to settle, or have immediate access to a person who has full authority to settle, on behalf of the party on whose behalf the representative attends.

(10) A party or a representative who attends the mediation session may be accompanied by counsel.

(11) Any other person may attend a mediation session on consent of all parties or their representatives.

(12) At least seven days before the first mediation session is to be held, each party must deliver to the mediator a statement briefly setting out:

(a) The facts on which the party intends to rely; and

(b) The matters in dispute.

(13) The mediator must promptly send each party's statement to each of the other parties.

(14) Before the first mediation session, the parties must enter into a retainer agreement with the mediator which must:

(a) Disclose the cost of the mediation services; and

(b) Provide that the cost of the mediation will be paid:

(i) Equally by the parties; or

(ii) On any other specified basis agreed by the parties.

(15) The mediator may conduct the mediation in any manner he or she considers appropriate to assist the parties to reach a resolution that is timely, fair, and cost-effective.

(16) A person may not disclose, or be compelled to disclose, in any proceeding, oral or written information acquired or an opinion formed, including, without limitation, any offer or admission made in anticipation of or during a mediation session.

(17) Nothing in subsection (16) of this section precludes a party from introducing into evidence in a proceeding any information or records produced in the course of the mediation that are otherwise producible or compellable in those proceedings.

(18) A mediation session is concluded when:

(a) All issues are resolved;

(b) The mediator determines that the process will not be productive and so advises the parties or their representatives; or

(c) The mediation session is completed and there is no agreement to continue.

(19) If the mediation resolves some but not all issues, the mediator may, at the request of all parties, complete a report setting out any agreements made as a result of the mediation, including, without limitation, any agreements made by the parties on any of the following:

(a) Facts;

(b) Issues; and

(c) Future procedural steps. [2004 c 201 § 1501.]

64.35.610 Disputed claim—Notice—Arbitration procedures—Duties of parties. A qualified warranty may include mandatory binding arbitration of all disputes arising out of or in connection with a qualified warranty. The provision may provide that all claims for a single condominium be heard by the same arbitrator, but shall not permit the joinder or consolidation of any other person or entity. The arbitration shall comply with the following minimum procedural standards:

(1) Any demand for arbitration shall be delivered by certified mail return receipt requested, and by ordinary first class mail. The party initiating the arbitration shall address the notice to the address last known to the initiating party in the exercise of reasonable diligence, and also, for any entity which is required to have a registered agent in the state of Washington, to the address of the registered agent. Demand for arbitration is deemed effective three days after the date deposited in the mail;

(2) All disputes shall be heard by one qualified arbitrator, unless the parties agree to use three arbitrators. If three arbitrators are used, one shall be appointed by each of the disputing parties and the first two arbitrators shall appoint the third, who will chair the panel. The parties shall select the identity and number of the arbitrator or arbitrators after the demand for arbitration is made. If, within thirty days after the effective date of the demand for arbitration, the parties fail to agree on an arbitrator or the agreed number of arbitrators fail to be appointed, then an arbitrator or arbitrators shall be appointed under RCW 7.04.050 by the presiding judge of the superior court of the county in which the condominium is located;

(3) In any arbitration, at least one arbitrator must be a lawyer or retired judge. Any additional arbitrator must be either a lawyer or retired judge or a person who has experience with construction and engineering standards and practices, written construction warranties, or construction dispute resolution. No person may serve as an arbitrator in any arbitration in which that person has any past or present financial or personal interest;

(4) The arbitration hearing must be conducted in a manner that permits full, fair, and expeditious presentation of the case by both parties. The arbitrator is bound by the law of Washington state. Parties may be, but are not required to be, represented by attorneys. The arbitrator may permit discovery to ensure a fair hearing, but may limit the scope or manner of discovery for good cause to avoid excessive delay and costs to the parties. The parties and the arbitrator shall use all reasonable efforts to complete the arbitration within six

months of the effective date of the demand for arbitration or, when applicable, the service of the list of defects in accordance with RCW 64.50.030;

(5) Except as otherwise set forth in this section, arbitration shall be conducted under chapter 7.04 RCW, unless the parties elect to use the construction industry arbitration rules of the American arbitration association, which are permitted to the extent not inconsistent with this section. The expenses of witnesses including expert witnesses shall be paid by the party producing the witnesses. All other expenses of arbitration shall be borne equally by the parties, unless all parties agree otherwise or unless the arbitrator awards expenses or any part thereof to any specified party or parties. The parties shall pay the fees of the arbitrator as and when specified by the arbitrator;

(6) Demand for arbitration given pursuant to subsection (1) of this section commences a judicial proceeding for purposes of RCW 64.34.452;

(7) The arbitration decision shall be in writing and must set forth findings of fact and conclusions of law that support the decision. [2004 c 201 § 1601.]

ARTICLE 9
MISCELLANEOUS

64.35.900 Captions not law—2004 c 201. Captions and part headings used in this act are not any part of the law. [2004 c 201 § 2002.]

64.35.901 Severability—2004 c 201. See RCW 64.34.921.

Chapter 64.36 RCW
TIMESHARE REGULATION

Sections

| | |
|-----------|--|
| 64.36.010 | Definitions. |
| 64.36.020 | Registration required before advertisement, solicitation, or offer—Requirements for registration—Exemption authorized—Penalties. |
| 64.36.025 | Timeshare interest reservation—Definition—Registration required—Promoter's obligations—Deposits—Escrow—Purchaser cancellation rights—Insolvency prior to completion. |
| 64.36.028 | Timeshare interest—Incomplete projects or facilities—Promoter's obligations—Funds—Purchaser's rights. |
| 64.36.030 | Application for registration—Contents. |
| 64.36.035 | Applications for registration, consents to service, affidavits, and permits to market—Authorized signatures required—Corporate shield disclaimer prohibited. |
| 64.36.040 | Application for registration—When effective. |
| 64.36.050 | Timeshare offering—Duration of registration—Renewal—Amendment—Penalties. |
| 64.36.060 | Application for registration—Acceptance of disclosure documents—Waiver of information—Additional information. |
| 64.36.070 | Registration as timeshare salesperson required—Exemption. |
| 64.36.081 | Fees. |
| 64.36.085 | Inspections of projects—Identification of inspectors. |
| 64.36.090 | Disciplinary action against a timeshare salesperson's application, registration, or license—Unprofessional conduct. |
| 64.36.100 | Disciplinary action—Unprofessional conduct—Other conduct, acts, or conditions. |
| 64.36.110 | Requirements of transfer of promoter's interest—Notice to purchaser. |
| 64.36.120 | Good faith required—Provision relieving person from duty prohibited—Out-of-state jurisdiction or venue designation void. |
| 64.36.130 | Impoundment of proceeds from sales authorized—Establishment of trusts, escrows, etc. |

(2004 Ed.)

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|-----------|--|
| 64.36.140 | Disclosure document—Contents. |
| 64.36.150 | Disclosure document to prospective purchasers—Cancellation and refund—Voidable agreement. |
| 64.36.160 | Application of liability provisions. |
| 64.36.170 | Noncompliance—Unfair practice under chapter 19.86 RCW. |
| 64.36.185 | Director's powers—Employment of outside persons for advice on project operating budget—Reimbursement by promoter—Notice and hearing. |
| 64.36.195 | Assurances of discontinuance—Violation of assurance constitutes unprofessional conduct. |
| 64.36.200 | Cease and desist order—Notification—Hearing. |
| 64.36.210 | Unlawful acts—Penalties. |
| 64.36.220 | Injunction, restraining order, writ of mandamus—Costs and attorney's fees—Penalties—Appointment of receiver or conservator. |
| 64.36.225 | Liability of registrant or applicant for costs of proceedings. |
| 64.36.240 | Liability for violation of chapter. |
| 64.36.250 | Appointment of director to receive service—Requirements for effective service. |
| 64.36.260 | Certain acts not constituting findings or approval by the director—Certain representations unlawful. |
| 64.36.270 | Rules, forms, and orders—Interpretive opinions. |
| 64.36.290 | Application of chapters 21.20, 58.19, and 19.105 RCW—Exemption of certain camping and outdoor recreation enterprises. |
| 64.36.310 | Copy of advertisement to be filed with director before publication—Application of chapter limited. |
| 64.36.320 | Free gifts, awards, and prizes—Security arrangement required of promisor—Other requirements—Private causes of action. |
| 64.36.330 | Membership lists available for members and owners—Conditions—Exclusion of members' names from list—Commercial use of list. |
| 64.36.340 | Uniform regulation of business and professions act. |
| 64.36.900 | Short title. |
| 64.36.901 | Severability—1983 1st ex.s. c 22. |

64.36.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Advertisement" means any written, printed, audio, or visual communication which is published in whole or part to sell, offer to sell, or solicit an offer for a timeshare.

(2) "Affiliate of a promoter" means any person who controls, is controlled by, or is under the control of a promoter.

(3) "Commercial promotional programs" mean packaging or putting together advertising or promotional materials involving promises of gifts, prizes, awards, or other items of value to solicit prospective purchasers to purchase a product or commodity.

(4) "Director" means the director of licensing.

(5) "Interval" means that period of time when a timeshare owner is entitled to the possession and use of the timeshare unit.

(6) "Offer" means any inducement, solicitation, or attempt to encourage any person to acquire a timeshare.

(7) "Person" means a natural person, corporation, business trust, estate, trust, partnership, association, joint venture, or other legal or commercial entity.

(8) "Promoter" means any person directly or indirectly instrumental in organizing, wholly or in part, a timeshare offering.

(9) "Purchaser" means any person, other than a promoter, who by means of a voluntary transfer acquires a legal or equitable interest in a timeshare, other than as security for an obligation.

(10) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a timeshare for value.

(11) "Timeshare" means a right to occupy a unit or any of several units during three or more separate time periods

over a period of at least three years, including renewal options, whether or not coupled with an estate in land.

(12) "Timeshare expenses" means expenditures, fees, charges, or liabilities: (a) Incurred with respect to the timeshares by or on behalf of all timeshare owners in one timeshare property; and (b) imposed on the timeshare units by the entity governing a project of which the timeshare property is a part, together with any allocations to reserves but excluding purchase money payable for timeshares.

(13) "Timeshare instrument" means one or more documents, by whatever name denominated, creating or regulating timeshares.

(14) "Timeshare owner" means a person who is an owner or co-owner of a timeshare. If title to a timeshare is held in trust, "timeshare owner" means the beneficiary of the trust.

(15) "Timeshare salesperson" means any natural person who offers a timeshare unit for sale.

(16) "Unit" means the real or personal property, or portion thereof, in which the timeshare exists and which is designated for separate use. [1987 c 370 § 1; 1985 c 358 § 1; 1983 1st ex.s. c 22 § 1.]

64.36.020 Registration required before advertisement, solicitation, or offer—Requirements for registration—Exemption authorized—Penalties. (1) A timeshare offering registration must be effective before any advertisement, solicitation of an offer, or any offer or sale of a timeshare may be made in this state.

(2) An applicant shall apply for registration by filing with the director:

(a) A copy of the disclosure document prepared in accordance with RCW 64.36.140 and signed by the applicant;

(b) An application for registration prepared in accordance with RCW 64.36.030;

(c) An irrevocable consent to service of process signed by the applicant;

(d) The prescribed registration fee; and

(e) Any other information the director may by rule require in the protection of the public interest.

(3) The registration requirements do not apply to:

(a) An offer, sale, or transfer of not more than one timeshare in any twelve-month period;

(b) A gratuitous transfer of a timeshare;

(c) A sale under court order;

(d) A sale by a government or governmental agency;

(e) A sale by forfeiture, foreclosure, or deed in lieu of foreclosure; or

(f) A sale of a timeshare property or all timeshare units therein to any one purchaser.

(4) The director may by rule or order exempt any potential registrant from the requirements of this chapter if the director finds registration is unnecessary for the protection of the public interest.

(5)(a) Except as provided in (b) of this subsection, any person who violates this section is guilty of a gross misdemeanor.

(b) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(c) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 289; 1983 1st ex.s. c 22 § 2.]

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

64.36.025 Timeshare interest reservation—Definition—Registration required—Promoter's obligations—Deposits—Escrow—Purchaser cancellation rights—Insolvency prior to completion. (1) For the purpose of this section, "timeshare interest reservation" means a revocable right to purchase an interest in a timeshare project for which construction has not yet been completed and an effective registration has been obtained under this chapter.

(2) An effective registration pursuant to this chapter is required for any party to offer to sell a timeshare interest reservation. Promoters offering a timeshare interest reservation under this section must provide the registered disclosure document required by RCW 64.36.140 to each prospective purchaser before he or she enters into a timeshare interest reservation. Prior to the signing of a purchase agreement, the subject property or properties must be completed, the timeshare offering registration required by RCW 64.36.020 must be amended to reflect any changes to the property and must be reapproved by the department, the disclosure document required by RCW 64.36.140 must be revised, and the new version of the disclosure document must be provided to the prospective purchaser.

(3) Deposits accepted by promoters on a timeshare interest reservation may be no more than twenty percent of the total purchase price of the timeshare interest that is being purchased. Within one business day after being accepted by the promoter, any deposit on a timeshare interest reservation shall be deposited in an account in a federally insured depository located in the state of Washington. This account must be an escrow account wherein the deposited funds are held for the benefit of the purchaser. The department may request that deposits be placed in impoundment under RCW 64.36.130.

(4) In addition to the cancellation rights provided in RCW 64.36.150, the purchaser has the right to cancel the purchase at any time before the signing of a purchase agreement. If the purchaser notifies the promoter that he or she wishes to cancel the timeshare interest reservation, the promoter must refund the full amount of the deposit minus any account fees within ten days of the notice.

(5) If prior to signing a purchase agreement the purchaser learns that the promoter proposes to raise the purchase price above the price agreed to in the written reservation agreement for the timeshare interest reservation, the written reservation agreement is void and all deposit moneys including account fees shall be returned to the purchaser within ten days after the purchaser learns of the proposed price increase.

(6) If the promoter charges account fees to pay for administrative costs of holding the purchaser's funds in escrow, these fees may be no more than one percent of the total deposit paid towards the timeshare interest reservation by the purchaser.

(7) The promoter shall provide instructions to the escrow company for release of the funds to be held in escrow in compliance with this section and rules of the department.

(8) The purchaser's right to cancel and the amount of the deposit proposed to be retained for account fees in the event of cancellation must be included in the contract for the sale of a timeshare interest reservation and the contract must state:

PURCHASER CANCELLATION RIGHTS

As a purchaser of a timeshare interest reservation, you have the right to cancel this timeshare interest reservation and receive a refund of all consideration paid (less only those account fee deductions which were fully disclosed at the time of the agreement) by providing written notice of the cancellation to the promoter or the promoter's agent at any time prior to signing a purchase agreement. You also have a right to cancel your purchase within seven days of signing a purchase agreement.

(9) If it appears that the timeshare project will become or does become insolvent prior to completion, the promoter shall instruct the escrow company to immediately return all deposits to purchasers of timeshare interest reservations. If funds are returned under this subsection, the promoter may not retain any portion of the deposits for account fees. [2002 c 226 § 2.]

64.36.028 Timeshare interest—Incomplete projects or facilities—Promoter's obligations—Funds—Purchaser's rights. (1) An effective registration pursuant to this chapter is required for any party to offer to sell a timeshare interest. A promoter who offers to sell or sells revocable timeshare interests in incomplete projects or facilities is limited by and must comply with all of the requirements of RCW 64.36.025. If a promoter seeks to enter into irrevocable purchase agreements with purchasers for timeshare interests in incomplete projects or facilities, the promoter must meet the requirements in this section in addition to RCW 64.36.020 and the following limitations and conditions apply:

(a) The promoter is limited to offering or selling only fee simple deeded timeshare interests;

(b) Construction on the project must have begun by the time the irrevocable purchase agreement is signed and the purchaser must have the right to occupy the unit and use all contracted for amenities no later than within two years of the date that the irrevocable purchase agreement is signed;

(c) The promoter must establish an independent third-party escrow account for the purpose of protecting the funds or other property paid, pledged, or deposited by purchasers;

(d) The promoter's solicitations, advertisements, and promotional materials must clearly and conspicuously disclose that "THE PROJECT IS NOT YET COMPLETED; IT IS STILL UNDER CONSTRUCTION"; and

(e) The promoter's solicitations, advertisements, and promotional materials and the timeshare interest purchase agreement must clearly and conspicuously provide for and disclose the last possible estimated date for completion of construction of any building the promoter is contractually obligated to the purchaser to complete.

(2) The timeshare interest purchase agreement must contain the following language in fourteen-point bold face type: "If the building in which the timeshare interest is located and all contracted for amenities are not completed by [estimated date of completion], the purchaser has the right to void the

purchase agreement and is entitled to a full, unqualified refund of all moneys paid."

(3) One hundred percent of all funds or other property that is received from or on behalf of purchasers of timeshare interests prior to the occurrence of events required in this section must be deposited pursuant to a third-party escrow agreement approved by the director. For purposes of this section, "purchasers" includes all persons solicited, offered, or who purchased a timeshare interest by a promoter within the state of Washington. An escrow agent shall maintain the account only in such a manner as to be under the direct supervision and control of the escrow agent. The escrow agent has a fiduciary duty to each purchaser to maintain the escrow accounts in accordance with good accounting practices and to release the purchaser's funds or other property from escrow only in accordance with this chapter. If the escrow agent receives conflicting demands for funds or property held in escrow, the escrow agent shall immediately notify the department of licensing of the dispute and the department shall determine if and how the funds should be distributed. If the purchaser, promoter, or escrow agent disagrees with the department's determination, the parties have the right to request an administrative hearing under chapter 34.05 RCW. Funds may be released from the escrow account to the purchaser if the purchaser cancels within the cancellation period, or to the promoter only when all three of the following conditions occur:

(a) The purchaser's cancellation period has expired;

(b) Closing has occurred; and

(c) Construction is complete and the building is ready to occupy.

(4) In lieu of depositing purchaser funds into an escrow account, the promoter may post with the department a bond in an amount equal to or greater than the amount that would otherwise be required to be placed into the escrow account.

(5) Any purchaser has the right to void the timeshare purchase agreement and request a full, unqualified refund if construction of the building in which the timeshare interest is located or all contracted for amenities are not completed within two years from the date that the irrevocable purchase agreement is signed or by the last estimated date of construction contained in the irrevocable purchase agreement, whichever is earlier.

(6) If the completed timeshare building or contracted for amenities are materially and adversely different from the building or amenities that were promised to purchasers at the time that the purchase agreements were signed, the director may declare any or all of the purchaser contracts void. Before declaring the contracts void, the director shall give the promoter the opportunity for a hearing in accordance with chapters 34.05 and 18.235 RCW.

(7) If the promoter intends to or does pledge or borrow against funds or properties, that are held in escrow or protected by a bond, to help finance in whole or in part the construction of the timeshare project or to help pay for operating costs, this must be fully, plainly, and conspicuously disclosed in all written advertising, in all written solicitations for the sale of the timeshare interests, in the registration with the director, and in the purchase agreement or contract.

(8) A promoter who obtains an effective registration for a revocable timeshare interest reservation must meet the

requirements of this section in order to complete an irrevocable purchase agreement. [2003 c 348 § 1.]

64.36.030 Application for registration—Contents.

The application for registration signed by the promoter shall contain the following information on a form prescribed by the director:

(1) The following financial statements showing the financial condition of the promoter and any affiliate:

(a) A balance sheet as of a date within four months before the filing of the application for registration; and

(b) Statements of income, shareholders' equity, and material changes in financial position as of the end of the last fiscal year and for any period between the end of the last fiscal year and the date of the last balance sheet;

(2) A projected budget for the timeshare project for two years after the offering being made, including but not limited to source of revenues and expenses of construction, development, management, maintenance, advertisement, operating reserves, interest, and any other necessary reserves;

(3) A statement of the selling costs per unit and total sales costs for the project, including sales commissions, advertisement fees, and fees for promotional literature;

(4) A description of the background of the promoters for the previous ten years, including information about the business experience of the promoter and any relevant criminal convictions, civil law suits, or administrative actions related to such promotion during that period;

(5) A statement disclosing any fees in excess of the stated price per unit to be charged to the purchasers, a description of their purpose, and the method of calculation;

(6) A statement disclosing when and where the promoter or an affiliate has previously sold timeshares;

(7) A statement of any liens, defects, or encumbrances on or affecting the title to the timeshare units;

(8) Copies of all timeshare instruments; and

(9) Any additional information to describe the risks which the director considers appropriate. [1983 1st ex.s. c 22 § 4.]

64.36.035 Applications for registration, consents to service, affidavits, and permits to market—Authorized signatures required—Corporate shield disclaimer prohibited.

(1) Applications, consents to service of process, affidavits, and permits to market shall be signed by the promoter, unless a trustee or person with power of attorney is specifically authorized to make such signatures. If the signature of a person with a power of attorney or trustee is used, the filing of the signature shall include a copy of the authorizations for the signature. No promoter or other person responsible under this chapter shall disclaim responsibility because the signature of a trustee or attorney in fact, or other substitute was used.

(2) If the promoter is a corporation or a general partnership, each natural person therein, with a ten percent or greater interest or share in the promoter, shall, in addition to the promoter, be required to sign as required in this section, but may authorize a trustee or a person with power of attorney to make the signatures.

(3) All persons required to use or authorizing the use of their signatures in this section, individually or otherwise, shall be responsible for affidavits, applications, and permits signed, and for compliance with the provisions of this chapter. Individuals whose signatures are required under this section shall not disclaim their responsibilities because of any corporate shield. [1987 c 370 § 2.]

64.36.040 Application for registration—When effective.

If no stop order is in effect and no proceeding is pending under RCW 64.36.100, a complete registration application becomes effective at 3:00 p.m. Pacific Standard Time on the afternoon of the thirtieth calendar day after the filing of the application or the last amendment or at such earlier time as the director determines. [2002 c 86 § 297; 1983 1st ex.s. c 22 § 5.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.050 Timeshare offering—Duration of registration—Renewal—Amendment—Penalties.

(1) A timeshare offering is registered for a period of one year from the effective date of registration unless the director specifies a different period.

(2) Registration of a timeshare offering may be renewed for additional periods of one year each, unless the director by rule specifies a different period, by filing a renewal application with the director no later than thirty days before the expiration of the period in subsection (1) of this section and paying the prescribed fees. A renewal application shall contain any information the director requires to indicate any material changes in the information contained in the original application.

(3) If a material change in the condition of the promoter, the promoter's affiliates, the timeshare project, or the operation or management of the timeshare project occurs during any year, an amendment to the documents filed under RCW 64.36.030 shall be filed, along with the prescribed fees, as soon as reasonably possible and before any further sales occur.

(4) The promoter shall keep the information in the written disclosures reasonably current at all times by amending the registration. If the promoter fails to amend and keep current the written disclosures or the registrations in instances of material change, the director may require compliance under RCW 64.36.100 and assess penalties. [1987 c 370 § 3; 1983 1st ex.s. c 22 § 6.]

64.36.060 Application for registration—Acceptance of disclosure documents—Waiver of information—Additional information.

(1) In lieu of the documents required to be filed under RCW 64.36.030, the director may by rule accept:

(a) Any disclosure document filed with agencies of the United States or any other state;

(b) Any disclosure document compiled in accordance with any rule of any agency of the United States or any other state; or

(c) Any documents submitted pursuant to registration of a timeshare offering under chapter 58.19 RCW before August 1, 1983.

(2) The director may by rule waive disclosure of information which the director considers unnecessary for the protection of timeshare purchasers.

(3) The director may by rule require the provision of any other information the director considers necessary to protect timeshare purchasers. [1983 1st ex.s. c 22 § 7.]

64.36.070 Registration as timeshare salesperson required—Exemption. Any individual offering timeshare units or timeshare interest reservations for the individual's own account or for the account of others shall be registered as a timeshare salesperson unless the timeshare offering is exempt from registration under RCW 64.36.020. Registration may be obtained by filing an application with the department of licensing on a form prescribed by the director. The director may require that the applicant demonstrate sufficient knowledge of the timeshare industry and this chapter. A timeshare salesperson who is licensed as a real estate broker or salesperson under chapter 18.85 RCW is exempt from the registration requirement of this section. [2002 c 226 § 1; 1983 1st ex.s. c 22 § 8.]

64.36.081 Fees. (1) Applicants or registrants under this chapter shall pay fees determined by the director as provided in RCW 43.24.086. These fees shall be prepaid and the director may establish fees for the following:

(a) Processing an original application for registration of a timeshare offering, along with an additional fee for each interval registered or in the timeshare program;

(b) Processing consolidations or adding additional inventory into the program;

(c) Reviewing and granting exemptions;

(d) Processing annual or periodic renewals;

(e) Initially and annually processing and administering any required impound, trust, or escrow arrangement;

(f) The review of advertising or promotional materials;

(g) Registering persons in the business of selling promotional programs for use in timeshare offerings or sales presentations;

(h) Registrations and renewal of registrations of salespersons;

(i) The transfer of salespersons' permits to other promoters;

(j) Administering and processing examinations for salespersons;

(k) Conducting site inspections of registered projects and projects for which registration is pending.

(2) The director may establish penalties for registrants in any situation where a registrant has failed to file an amendment to the registration or the disclosure document in a timely manner for material changes, as required in this chapter and rules adopted under this chapter. [1987 c 370 § 4.]

64.36.085 Inspections of projects—Identification of inspectors. (1) The director may require inspections of projects registered under this chapter and promoters and their

(2004 Ed.)

agents shall cooperate by permitting staff of the department to conduct the inspections.

(2) The director may perform "spot checks" or inspections of sales offices, during tours or sales presentations or normal business hours, for purposes of enforcing this chapter and determining compliance by the operator and salespersons in the sales, advertising, and promotional activities regulated under this chapter. These inspections or spot checks may be conducted during or at the time of sales presentations or during the hours during which sales are ordinarily scheduled.

(3) The department employee making the inspections shall show identification upon request. It is a violation of this chapter for the operator or its sales representatives to refuse an inspection or refuse to cooperate with employees of the department conducting the inspection. [1987 c 370 § 5.]

64.36.090 Disciplinary action against a timeshare salesperson's application, registration, or license—Unprofessional conduct. The director may take disciplinary action against a timeshare salesperson's registration or application for registration or a salesperson's license under chapter 18.85 RCW who is selling under this chapter, if the director finds that the applicant or registrant has committed unprofessional conduct as described in RCW 18.235.130. In addition, the director may take disciplinary action if the applicant or registrant:

(1) Has filed an application for registration as a timeshare salesperson or as a licensee under chapter 18.85 RCW which, as of its effective date, is incomplete in any material respect;

(2) Has violated or failed to comply with any provision of this chapter or a predecessor act or any rule or order issued under this chapter or a predecessor act;

(3) Is permanently or temporarily enjoined by any court or administrative order from engaging in or continuing any conduct or practice involving any aspect of the timeshare business;

(4) Has engaged in dishonest or unethical practices in the timeshare, real estate, or camp resort business;

(5) Is insolvent either in the sense that the individual's liabilities exceed his or her assets or in the sense that the individual cannot meet his or her obligations as they mature; or

(6) Has not complied with any condition imposed by the director or is not qualified on the basis of such factors as training, experience, or knowledge of the timeshare business or this chapter. [2002 c 86 § 298; 1987 c 370 § 9; 1983 1st ex.s. c 22 § 9.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.100 Disciplinary action—Unprofessional conduct—Other conduct, acts, or conditions. The director may deny or take disciplinary action against any timeshare application or registration if the director finds that the applicant or registrant has engaged in unprofessional conduct as described in RCW 18.235.130. In addition, the director may deny or take disciplinary action based on the following conduct, acts, or conditions:

(1) The application, written disclosure, or registration is incomplete;

(2) The activities of the promoter include, or would include, activities which are unlawful or in violation of a law, rule, or ordinance in this state or another jurisdiction;

(3) The timeshare offering has worked or tended to work a fraud on purchasers, or would likely be adverse to the interests or the economic or physical welfare of purchasers;

(4) The protections and security arrangements to ensure future quiet enjoyment required under RCW 64.36.130 have not been provided as required by the director for the protection of purchasers; or

(5) The operating budget proposed by the promoter or promoter-controlled association appears inadequate to meet operating costs or funding of reserve accounts or fees for a consultant to determine adequacy have not been paid by the promoter. [2002 c 86 § 299; 1987 c 370 § 10; 1983 1st ex.s. c 22 § 10.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.110 Requirements of transfer of promoter's interest—Notice to purchaser. A promoter shall not sell, lease, assign, or otherwise transfer the promoter's interest in the timeshare program unless the transferee agrees in writing to honor the timeshare purchaser's right to use and occupy the timeshare unit, honor the purchaser's right to cancel, and comply with this chapter. In the event of a transfer, each timeshare purchaser whose contract may be affected shall be given written notice of the transfer when the transfer is made. [1983 1st ex.s. c 22 § 11.]

64.36.120 Good faith required—Provision relieving person from duty prohibited—Out-of-state jurisdiction or venue designation void. (1) The parties to a timeshare agreement shall deal with each other in good faith.

(2) A timeshare promoter shall not require any timeshare purchaser to agree to a release, assignment, novation, waiver, or any other provision which relieves any person from a duty imposed by this chapter.

(3) Any provision in a timeshare contract or agreement which designates jurisdiction or venue in a forum outside this state is void with respect to any cause of action which is enforceable in this state. [1983 1st ex.s. c 22 § 12.]

64.36.130 Impoundment of proceeds from sales authorized—Establishment of trusts, escrows, etc. (1) The director may by rule require as a condition of registration under this chapter that the proceeds from the sale of the timeshares be impounded until the promoter receives an amount established by the director. The director may by rule determine the conditions of any impoundment required under this section, including the release of moneys for promotional purposes.

(2) The director, in lieu of or in addition to requiring impoundment under subsection (1) of this section, may require that the registrant establish trusts, escrows, or any other similar arrangement that assures the timeshare purchaser quiet enjoyment of the timeshare unit.

(3) Impounding will not be required for those timeshare offerors who are able to convey fee simple title, along with

title insurance: PROVIDED, That no other facilities are promised in the offering. [1983 1st ex.s. c 22 § 13.]

64.36.140 Disclosure document—Contents. Any person who offers or sells a timeshare shall provide the prospective purchaser a written disclosure document before the prospective purchaser signs an agreement for the purchase of a timeshare. The timeshare salesperson shall date and sign the disclosure document. The disclosure document shall include:

(1) The official name and address of the promoter, its parent or affiliates, and the names and addresses of the director and officers of each;

(2) The location of the timeshare property;

(3) A general description of the timeshare property and the timeshare units;

(4) A list of all units offered by the promoter in the same project including:

(a) The types, prices, and number of units;

(b) Identification and location of units;

(c) The types and durations of the timeshares;

(d) The maximum number of units that may become part of the timeshare property; and

(e) A statement of the maximum number of timeshares that may be created or a statement that there is no maximum.

(5) A description of any financing offered by the promoter;

(6) A statement of ownership of all properties included in the timeshare offering including any liens or encumbrances affecting the property;

(7) Copies of any agreements or leases to be signed by timeshare purchasers at closing and a copy of the timeshare instrument;

(8) The identity of the managing entity and the manner, if any, whereby the promoter may change the managing entity;

(9) A description of the selling costs both per unit and for the total project at the time the sale is made;

(10) A statement disclosing when and where the promoter or its affiliate has previously sold timeshares;

(11) A description of the nature and purpose of all charges, dues, maintenance fees, and other expenses that may be assessed, including:

(a) The current amounts assessed;

(b) The method and formula for charges; and

(c) The formula for payment of charges if all timeshares are not sold and a statement of who pays additional costs;

(12) Any services which the promoter provides or expenses the promoter pays which the promoter expects may become a timeshare expense at any subsequent time;

(13) A statement in bold face type on the cover page of the disclosure document and the cover page of the timeshare purchase agreement that within seven days after receipt of a disclosure document or the signing of the timeshare purchase agreement, whichever is later, a purchaser may cancel any agreement for the purchase of a timeshare from a promoter or a timeshare salesperson and that the cancellation must be in writing and be either hand delivered or mailed to the promoter or the promoter's agent;

(14) Any restraints on transfer of a timeshare or portion thereof;

(15) A description of the insurance coverage provided for the benefit of timeshare owners;

(16) A full and accurate disclosure of whether the timeshare owners are to be permitted or required to become members of or participate in any program for the exchange of property rights among themselves or with the timeshare owners of other timeshare units, or both, and a complete description of the program; and

(17) Any additional information the director finds necessary to fully inform prospective timeshare purchasers, including but not limited to information required by RCW 64.36.030. [1983 1st ex.s. c 22 § 3.]

64.36.150 Disclosure document to prospective purchasers—Cancellation and refund—Voidable agreement. The promoter or any person offering timeshare interest shall provide a prospective purchaser with a copy of the disclosure document described in RCW 64.36.140 before the execution of any agreement for the purchase of a timeshare. A purchaser may, for seven days following execution of an agreement to purchase a timeshare, cancel the agreement and receive a refund of any consideration paid by providing written notice of the cancellation to the promoter or the promoter's agent either by mail or hand delivery. If the purchaser does not receive the disclosure document, the agreement is voidable by the purchaser until the purchaser receives the document and for seven days thereafter. [1983 1st ex.s. c 22 § 14.]

64.36.160 Application of liability provisions. No provision of this chapter imposing any liability applies to any act or omission in good faith in conformity with any rule, form, or order of the director, notwithstanding that the rule, form, or order may later be amended or rescinded or determined by judicial or other authority to be invalid for any reason. [1983 1st ex.s. c 22 § 15.]

64.36.170 Noncompliance—Unfair practice under chapter 19.86 RCW. Any failure to comply with this chapter constitutes an unfair and deceptive trade practice under chapter 19.86 RCW. [1983 1st ex.s. c 22 § 16.]

64.36.185 Director's powers—Employment of outside persons for advice on project operating budget—Reimbursement by promoter—Notice and hearing. (1) If it appears that the operating budget of a project fails to adequately provide for funding of reserve accounts, the director may employ outside professionals or consultants to provide advice or to develop an alternative budget. The promoter shall pay or reimburse the department for the costs incurred for such professional opinions.

(2) Before employing consultants under this section, the director shall provide the applicant with written notice and an opportunity for a hearing under chapter 34.05 RCW. [1987 c 370 § 6.]

64.36.195 Assurances of discontinuance—Violation of assurance constitutes unprofessional conduct. The director or persons to whom the director delegates such powers may enter into assurances of discontinuance in lieu of

(2004 Ed.)

issuing a statement of charges or a cease and desist order or conducting a hearing under this chapter. The assurances shall consist of a statement of the law in question and an agreement to not violate the stated provision. The applicant or registrant shall not be required to admit to any violation of the law, nor shall the assurance be construed as such an admission. Violation or breaching of an assurance under this section shall constitute unprofessional conduct for which disciplinary action may be taken under RCW 18.235.110 and 18.235.130. [2002 c 86 § 300; 1987 c 370 § 7.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.200 Cease and desist order—Notification—Hearing. (1) The director may order any person to cease and desist from an act or practice if it appears that the person is violating or is about to violate any provision of this chapter or any rule or order issued under this chapter.

(2) Upon the entry of the temporary order to cease and desist, the director shall promptly notify the recipient of the order that it has been entered and the reasons therefor and that if requested in writing by such person within fifteen days after service of the director's notification, the matter will be scheduled for hearing which shall be held within a reasonable time and in accordance with chapter 34.05 RCW. The temporary order shall remain in effect until ten days after the hearing is held.

(3) If a person does not request a hearing, the order shall become final.

(4) Unlicensed timeshare activity is subject to RCW 18.235.150. [2002 c 86 § 301; 1983 1st ex.s. c 22 § 19.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.210 Unlawful acts—Penalties. (1) It is unlawful for any person in connection with the offer, sale, or lease of any timeshare in the state:

(a) To make any untrue or misleading statement of a material fact, or to omit a material fact;

(b) To employ any device, scheme, or artifice to defraud;

(c) To engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person;

(d) To file, or cause to be filed, with the director any document which contains any untrue or misleading information; or

(e) To violate any rule or order of the director.

(2)(a) Any person who knowingly violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW.

(b) No indictment or information for a felony may be returned under this chapter more than five years after the alleged violation. [2003 c 53 § 290; 1983 1st ex.s. c 22 § 20.]

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

64.36.220 Injunction, restraining order, writ of mandamus—Costs and attorney's fees—Penalties—Appointment of receiver or conservator. (1) The attorney general,

in the name of the state or the director, may bring an action to enjoin any person from violating any provision of this chapter. Upon a proper showing, the superior court shall grant a permanent or temporary injunction, restraining order, or writ of mandamus. The court may make any additional orders or judgments which may be necessary to restore to any person any interest in any money or property, real or personal, which may have been acquired by means of any act prohibited or declared to be unlawful under this chapter. The prevailing party may recover costs of the action, including a reasonable attorney's fee.

(2) The superior court issuing an injunction shall retain jurisdiction. Any person who violates the terms of an injunction shall pay a civil penalty of not more than twenty-five thousand dollars.

(3) The attorney general, in the name of the state or the director, may apply to the superior court to appoint a receiver or conservator for any person, or the assets of any person, who is subject to a cease and desist order, permanent or temporary injunction, restraining order, or writ of mandamus.

(4) Proceedings for injunctions for unlicensed timeshare activity must be conducted under the provisions of RCW 18.235.150. [2002 c 86 § 302; 1983 1st ex.s. c 22 § 21.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.225 Liability of registrant or applicant for costs of proceedings. A registrant or applicant against whom an administrative or legal proceeding authorized under this chapter has been filed, shall be liable for and reimburse to the state of Washington by payment into the general fund, all administrative and legal costs, including attorney fees, incurred by the department in issuing and conducting administrative or legal proceedings that result in a final legal or administrative determination of any type or degree, in favor of the department or the state of Washington. [1987 c 370 § 8.]

64.36.240 Liability for violation of chapter. Any person who offers, sells, or materially aids in such offer or sale of a timeshare in violation of this chapter is liable to the person buying the timeshare who may sue either at law or in equity to recover the consideration paid for the timeshare, together with interest at ten percent per annum from date of payment and costs upon the tender of the timeshare, or for damages if the person no longer owns the timeshare. [1983 1st ex.s. c 22 § 23.]

64.36.250 Appointment of director to receive service—Requirements for effective service. Every applicant for registration under this chapter shall file with the director, in a form the director prescribes by rule, an irrevocable consent appointing the director to be the attorney of the applicant to receive service of any lawful process in any civil suit, action, or proceeding against the applicant or the applicant's successor, executor, or administrator which arises under this chapter or any rule or order issued under this chapter after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. Service

may be made by leaving a copy of the process in the office of the director, but it is not effective unless: (1) The plaintiff, who may be the director in a suit, action, or proceeding instituted by the director, forthwith sends notice of the service and a copy of the process by certified mail to the defendant or respondent at the last address of the respondent or defendant on file with the director; and (2) the plaintiff's affidavit of compliance with this section is filed in the case on or before the return day of the process, if any, or within such further time as the court allows. [1983 1st ex.s. c 22 § 24.]

64.36.260 Certain acts not constituting findings or approval by the director—Certain representations unlawful. Neither the fact that an application for registration nor a disclosure document under RCW 64.36.140 has been filed, nor the fact that a timeshare offering is effectively registered, constitutes a finding by the director that any document filed under this chapter is true, complete, and not misleading, nor does either fact mean that the director has determined in any way the merits of, qualifications of, or recommended or given approval to any person, timeshare, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser any representation inconsistent with this section. [1983 1st ex.s. c 22 § 25.]

64.36.270 Rules, forms, and orders—Interpretive opinions. The director may make, amend, and repeal rules, forms, and orders when necessary to carry out this chapter. The director may honor requests for interpretive opinions. [1983 1st ex.s. c 22 § 26.]

64.36.290 Application of chapters 21.20, 58.19, and 19.105 RCW—Exemption of certain camping and outdoor recreation enterprises. (1) All timeshares registered under this chapter are exempt from chapters 21.20, 58.19, and 19.105 RCW.

(2) This chapter shall not apply to any enterprise that has as its primary purpose camping and outdoor recreation and camping sites designed and promoted for the purpose of purchasers locating a trailer, tent, tent trailer, pick-up camper, or other similar device used for land-based portable housing. [1987 c 370 § 11; 1983 1st ex.s. c 22 § 28.]

64.36.310 Copy of advertisement to be filed with director before publication—Application of chapter limited. (1) No person may publish any advertisement in this state offering a timeshare which is subject to the registration requirements of RCW 64.36.020 unless a true copy of the advertisement has been filed in the office of the director at least seven days before publication or a shorter period which the director by rule may establish. The right to subsequently publish the advertisement is subject to the approval of the director within that seven day period.

(2) Nothing in this chapter applies to any radio or television station or any publisher, printer, or distributor of any newspaper, magazine, billboard, or other advertising medium which accepts advertising in good faith without knowledge of its violation of any provision of this chapter. This subsection does not apply, however, to any publication devoted primarily to the soliciting of resale timeshare offerings and where

the publisher or owner of the publication collects advance fees for the purpose of locating or finding potential resale buyers or sellers. [1987 c 370 § 12; 1983 1st ex.s. c 22 § 31.]

64.36.320 Free gifts, awards, and prizes—Security arrangement required of promisor—Other requirements—Private causes of action. (1) No person, including a promoter, may advertise, sell, contract for, solicit, arrange, or promise a free gift, an award, a prize, or other item of value in this state as a condition for attending a sales presentation, touring a facility, or performing other activities in connection with the offer or sale of a timeshare under this chapter, without first providing the director with a bond, letter of credit, cash depository, or other security arrangement that will assure performance by the promisor and delivery of the promised gift, award, sweepstakes, prize, or other item of value.

(2) Promoters under this chapter shall be strictly liable for delivering promised gifts, prizes, awards, or other items of value offered or advertised in connection with the marketing of timeshares.

(3) Persons promised but not receiving gifts, prizes, awards, or other items of consideration covered under this section, shall be entitled in any cause of action in the courts of this state in which their causes prevail, to be awarded treble the stated value of the gifts, prizes, or awards, court costs, and reasonable attorney fees.

(4) The director may require that any fees or funds of any description collected from persons in advance, in connection with delivery by the promisor of gifts, prizes, awards, or other items of value covered under this section, be placed in a depository in this state, where they shall remain until performance by the promisor.

(5) The director may require commercial promotional programs to be registered and require the provision of whatever information, including financial information, the department deems necessary for protection of purchasers.

(6) Persons offering commercial promotional programs shall sign and present to the department a consent to service of process, in the manner required of promoters in this chapter.

(7) Registrants or their agents or other persons shall not take possession of promotional materials covered under this section and RCW 64.36.310, from recipients who have received the materials for attending a sales presentation or touring a project, unless the permission of the recipient is received and the recipient is provided with an accurate signed copy describing such promotional materials. The department shall adopt rules enforcing this subsection.

(8) Chapter 19.170 RCW applies to free gifts, awards, prizes, or other items of value regulated under this chapter. [1991 c 227 § 10; 1987 c 370 § 13.]

Severability—1991 c 227: See RCW 19.170.900.

64.36.330 Membership lists available for members and owners—Conditions—Exclusion of members' names from list—Commercial use of list. (1) Concerning any timeshare offered or sited in this state, it is unlawful and a violation of this chapter and chapter 19.86 RCW for any person, developer, promoter, operator, or other person in control

of timeshares or the board of directors or appropriate officer of timeshares with such responsibilities, to fail to provide a member/owner of a timeshare with a membership list, including names, addresses, and lot, unit, or interval owned, under the following circumstances:

(a) Upon demand or by rule or order of the director of the department, for whatever purpose deemed necessary to administer this chapter;

(b) Upon written request sent by certified mail being made by a member of the timeshare, to a declarant, promoter, or other person who has established and is yet in control of the timeshare;

(c) Upon written request sent by certified mail of a member of a timeshare to the board of directors or appropriate officer of the timeshare or an affiliated timeshare.

(2) The board of directors of the timeshare may require that any applicant for a membership list, other than the department, pay reasonable costs for providing the list and an affidavit that the applicant will not use and will be responsible for any use of the list for commercial purposes.

(3) Upon request, a member's name shall be excluded from a membership list available to any person other than the director of licensing for purposes of administering statutes that are its responsibility. Such persons shall make their request for exclusion in writing by certified mail to the board of directors or the appropriate officer or director of the timeshare.

(4) It is unlawful for any person to use a membership list obtained under this section or otherwise, for commercial purposes, unless written permission to do so has been received from the board of directors or appropriate officer of the timeshare. Wilful use of a membership list for commercial purposes without such permission shall subject the violator to damages, costs, and reasonable attorneys' fees in any legal proceedings instituted by a member in which the member prevails alleging violation of this section. Members may petition the courts of this state for orders restraining such commercial use. [1987 c 370 § 14.]

64.36.340 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 304.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

64.36.900 Short title. This chapter may be known and cited as "The Timeshare Act." [1983 1st ex.s. c 22 § 32.]

64.36.901 Severability—1983 1st ex.s. c 22. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 22 § 35.]

Chapter 64.38 RCW

HOMEOWNERS' ASSOCIATIONS

Sections

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|-----------|---|
| 64.38.005 | Intent. |
| 64.38.010 | Definitions. |
| 64.38.015 | Association membership. |
| 64.38.020 | Association powers. |
| 64.38.025 | Board of directors—Standard of care—Restrictions—Budget—Removal from board. |
| 64.38.030 | Association bylaws. |
| 64.38.033 | Flag of the United States—Outdoor display—Governing documents. |
| 64.38.035 | Association meetings—Notice—Board of directors. |
| 64.38.040 | Quorum for meeting. |
| 64.38.045 | Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts. |
| 64.38.050 | Violation—Remedy—Attorneys' fees. |

Speed enforcement: RCW 46.61.419.

64.38.005 Intent. The intent of this chapter is to provide consistent laws regarding the formation and legal administration of homeowners' associations. [1995 c 283 § 1.]

64.38.010 Definitions. For purposes of this chapter:

(1) "Homeowners' association" or "association" means a corporation, unincorporated association, or other legal entity, each member of which is an owner of residential real property located within the association's jurisdiction, as described in the governing documents, and by virtue of membership or ownership of property is obligated to pay real property taxes, insurance premiums, maintenance costs, or for improvement of real property other than that which is owned by the member. "Homeowners' association" does not mean an association created under chapter 64.32 or 64.34 RCW.

(2) "Governing documents" means the articles of incorporation, bylaws, plat, declaration of covenants, conditions, and restrictions, rules and regulations of the association, or other written instrument by which the association has the authority to exercise any of the powers provided for in this chapter or to manage, maintain, or otherwise affect the property under its jurisdiction.

(3) "Board of directors" or "board" means the body, regardless of name, with primary authority to manage the affairs of the association.

(4) "Common areas" means property owned, or otherwise maintained, repaired or administered by the association.

(5) "Common expense" means the costs incurred by the association to exercise any of the powers provided for in this chapter.

(6) "Residential real property" means any real property, the use of which is limited by law, covenant or otherwise to primarily residential or recreational purposes. [1995 c 283 § 2.]

64.38.015 Association membership. The membership of an association at all times shall consist exclusively of the owners of all real property over which the association has jurisdiction, both developed and undeveloped. [1995 c 283 § 3.]

64.38.020 Association powers. Unless otherwise provided in the governing documents, an association may:

- (1) Adopt and amend bylaws, rules, and regulations;
- (2) Adopt and amend budgets for revenues, expenditures, and reserves, and impose and collect assessments for common expenses from owners;
- (3) Hire and discharge or contract with managing agents and other employees, agents, and independent contractors;
- (4) Institute, defend, or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more owners on matters affecting the homeowners' association, but not on behalf of owners involved in disputes that are not the responsibility of the association;
- (5) Make contracts and incur liabilities;
- (6) Regulate the use, maintenance, repair, replacement, and modification of common areas;
- (7) Cause additional improvements to be made as a part of the common areas;
- (8) Acquire, hold, encumber, and convey in its own name any right, title, or interest to real or personal property;
- (9) Grant easements, leases, licenses, and concessions through or over the common areas and petition for or consent to the vacation of streets and alleys;
- (10) Impose and collect any payments, fees, or charges for the use, rental, or operation of the common areas;
- (11) Impose and collect charges for late payments of assessments and, after notice and an opportunity to be heard by the board of directors or by the representative designated by the board of directors and in accordance with the procedures as provided in the bylaws or rules and regulations adopted by the board of directors, levy reasonable fines in accordance with a previously established schedule adopted by the board of directors and furnished to the owners for violation of the bylaws, rules, and regulations of the association;
- (12) Exercise any other powers conferred by the bylaws;
- (13) Exercise all other powers that may be exercised in this state by the same type of corporation as the association; and
- (14) Exercise any other powers necessary and proper for the governance and operation of the association. [1995 c 283 § 4.]

Speed enforcement: RCW 46.61.419.

64.38.025 Board of directors—Standard of care—Restrictions—Budget—Removal from board. (1) Except as provided in the association's governing documents or this chapter, the board of directors shall act in all instances on behalf of the association. In the performance of their duties, the officers and members of the board of directors shall exercise the degree of care and loyalty required of an officer or director of a corporation organized under chapter 24.03 RCW.

(2) The board of directors shall not act on behalf of the association to amend the articles of incorporation, to take any action that requires the vote or approval of the owners, to terminate the association, to elect members of the board of directors, or to determine the qualifications, powers, and duties, or terms of office of members of the board of directors; but the board of directors may fill vacancies in its membership of the unexpired portion of any term.

(3) Within thirty days after adoption by the board of directors of any proposed regular or special budget of the

association, the board shall set a date for a meeting of the owners to consider ratification of the budget not less than fourteen nor more than sixty days after mailing of the summary. Unless at that meeting the owners of a majority of the votes in the association are allocated or any larger percentage specified in the governing documents reject the budget, in person or by proxy, the budget is ratified, whether or not a quorum is present. In the event the proposed budget is rejected or the required notice is not given, the periodic budget last ratified by the owners shall be continued until such time as the owners ratify a subsequent budget proposed by the board of directors.

(4) The owners by a majority vote of the voting power in the association present, in person or by proxy, and entitled to vote at any meeting of the owners at which a quorum is present, may remove any member of the board of directors with or without cause. [1995 c 283 § 5.]

64.38.030 Association bylaws. Unless provided for in the governing documents, the bylaws of the association shall provide for:

(1) The number, qualifications, powers and duties, terms of office, and manner of electing and removing the board of directors and officers and filling vacancies;

(2) Election by the board of directors of the officers of the association as the bylaws specify;

(3) Which, if any, of its powers the board of directors or officers may delegate to other persons or to a managing agent;

(4) Which of its officers may prepare, execute, certify, and record amendments to the governing documents on behalf of the association;

(5) The method of amending the bylaws; and

(6) Subject to the provisions of the governing documents, any other matters the association deems necessary and appropriate. [1995 c 283 § 6.]

64.38.033 Flag of the United States—Outdoor display—Governing documents. (1) The governing documents may not prohibit the outdoor display of the flag of the United States by an owner or resident on the owner's or resident's property if the flag is displayed in a manner consistent with federal flag display law, 4 U.S.C. Sec. 1 et seq. The governing documents may include reasonable rules and regulations, consistent with 4 U.S.C. Sec. 1 et seq., regarding the placement and manner of display of the flag of the United States.

(2) The governing documents may not prohibit the installation of a flagpole for the display of the flag of the United States. The governing documents may include reasonable rules and regulations regarding the location and the size of the flagpole.

(3) For purposes of this section, "flag of the United States" means the flag of the United States as defined in federal flag display law, 4 U.S.C. Sec. 1 et seq., that is made of fabric, cloth, or paper and that is displayed from a staff or flagpole or in a window. For purposes of this section, "flag of the United States" does not mean a flag depiction or emblem made of lights, paint, roofing, siding, paving materi-

als, flora, or balloons, or of any similar building, landscaping, or decorative component.

(4) The provisions of this section shall be construed to apply retroactively to any governing documents in effect on June 10, 2004. Any provision in a governing document in effect on June 10, 2004, that is inconsistent with this section shall be void and unenforceable. [2004 c 169 § 1.]

64.38.035 Association meetings—Notice—Board of directors. (1) A meeting of the association must be held at least once each year. Special meetings of the association may be called by the president, a majority of the board of directors, or by owners having ten percent of the votes in the association. Not less than fourteen nor more than sixty days in advance of any meeting, the secretary or other officers specified in the bylaws shall cause notice to be hand-delivered or sent prepaid by first class United States mail to the mailing address of each owner or to any other mailing address designated in writing by the owner. The notice of any meeting shall state the time and place of the meeting and the business to be placed on the agenda by the board of directors for a vote by the owners, including the general nature of any proposed amendment to the articles of incorporation, bylaws, any budget or changes in the previously approved budget that result in a change in assessment obligation, and any proposal to remove a director.

(2) Except as provided in this subsection, all meetings of the board of directors shall be open for observation by all owners of record and their authorized agents. The board of directors shall keep minutes of all actions taken by the board, which shall be available to all owners. Upon the affirmative vote in open meeting to assemble in closed session, the board of directors may convene in closed executive session to consider personnel matters; consult with legal counsel or consider communications with legal counsel; and discuss likely or pending litigation, matters involving possible violations of the governing documents of the association, and matters involving the possible liability of an owner to the association. The motion shall state specifically the purpose for the closed session. Reference to the motion and the stated purpose for the closed session shall be included in the minutes. The board of directors shall restrict the consideration of matters during the closed portions of meetings only to those purposes specifically exempted and stated in the motion. No motion, or other action adopted, passed, or agreed to in closed session may become effective unless the board of directors, following the closed session, reconvenes in open meeting and votes in the open meeting on such motion, or other action which is reasonably identified. The requirements of this subsection shall not require the disclosure of information in violation of law or which is otherwise exempt from disclosure. [1995 c 283 § 7.]

64.38.040 Quorum for meeting. Unless the governing documents specify a different percentage, a quorum is present throughout any meeting of the association if the owners to which thirty-four percent of the votes of the association are allocated are present in person or by proxy at the beginning of the meeting. [1995 c 283 § 8.]

64.38.045 Financial and other records—Property of association—Copies—Examination—Annual financial statement—Accounts. (1) The association or its managing agent shall keep financial and other records sufficiently detailed to enable the association to fully declare to each owner the true statement of its financial status. All financial and other records of the association, including but not limited to checks, bank records, and invoices, in whatever form they are kept, are the property of the association. Each association managing agent shall turn over all original books and records to the association immediately upon termination of the management relationship with the association, or upon such other demand as is made by the board of directors. An association managing agent is entitled to keep copies of association records. All records which the managing agent has turned over to the association shall be made reasonably available for the examination and copying by the managing agent.

(2) All records of the association, including the names and addresses of owners and other occupants of the lots, shall be available for examination by all owners, holders of mortgages on the lots, and their respective authorized agents on reasonable advance notice during normal working hours at the offices of the association or its managing agent. The association shall not release the unlisted telephone number of any owner. The association may impose and collect a reasonable charge for copies and any reasonable costs incurred by the association in providing access to records.

(3) At least annually, the association shall prepare, or cause to be prepared, a financial statement of the association. The financial statements of associations with annual assessments of fifty thousand dollars or more shall be audited at least annually by an independent certified public accountant, but the audit may be waived if sixty-seven percent of the votes cast by owners, in person or by proxy, at a meeting of the association at which a quorum is present, vote each year to waive the audit.

(4) The funds of the association shall be kept in accounts in the name of the association and shall not be commingled with the funds of any other association, nor with the funds of any manager of the association or any other person responsible for the custody of such funds. [1995 c 283 § 9.]

64.38.050 Violation—Remedy—Attorneys' fees. Any violation of the provisions of this chapter entitles an aggrieved party to any remedy provided by law or in equity. The court, in an appropriate case, may award reasonable attorneys' fees to the prevailing party. [1995 c 283 § 10.]

Chapter 64.40 RCW

PROPERTY RIGHTS—DAMAGES FROM GOVERNMENTAL ACTIONS

Sections

- 64.40.010 Definitions—Defense in action for damages.
- 64.40.020 Applicant for permit—Actions for damages from governmental actions.
- 64.40.030 Commencement of action—Time limitation.
- 64.40.040 Remedies cumulative.
- 64.40.900 Severability—1982 c 232.

64.40.010 Definitions—Defense in action for damages. As used in this chapter, the terms in this section shall

have the meanings indicated unless the context clearly requires otherwise.

(1) "Agency" means the state of Washington, any of its political subdivisions, including any city, town, or county, and any other public body exercising regulatory authority or control over the use of real property in the state.

(2) "Permit" means any governmental approval required by law before an owner of a property interest may improve, sell, transfer, or otherwise put real property to use.

(3) "Property interest" means any interest or right in real property in the state.

(4) "Damages" means reasonable expenses and losses, other than speculative losses or profits, incurred between the time a cause of action arises and the time a holder of an interest in real property is granted relief as provided in RCW 64.40.020. Damages must be caused by an act, necessarily incurred, and actually suffered, realized, or expended, but are not based upon diminution in value of or damage to real property, or litigation expenses.

(5) "Regulation" means any ordinance, resolution, or other rule or regulation adopted pursuant to the authority provided by state law, which imposes or alters restrictions, limitations, or conditions on the use of real property.

(6) "Act" means a final decision by an agency which places requirements, limitations, or conditions upon the use of real property in excess of those allowed by applicable regulations in effect on the date an application for a permit is filed. "Act" also means the failure of an agency to act within time limits established by law in response to a property owner's application for a permit: PROVIDED, That there is no "act" within the meaning of this section when the owner of a property interest agrees in writing to extensions of time, or to the conditions or limitations imposed upon an application for a permit. "Act" shall not include lawful decisions of an agency which are designed to prevent a condition which would constitute a threat to the health, safety, welfare, or morals of residents in the area.

In any action brought pursuant to this chapter, a defense is available to a political subdivision of this state that its act was mandated by a change in statute or state rule or regulation and that such a change became effective subsequent to the filing of an application for a permit. [1982 c 232 § 1.]

64.40.020 Applicant for permit—Actions for damages from governmental actions.

(1) Owners of a property interest who have filed an application for a permit have an action for damages to obtain relief from acts of an agency which are arbitrary, capricious, unlawful, or exceed lawful authority, or relief from a failure to act within time limits established by law: PROVIDED, That the action is unlawful or in excess of lawful authority only if the final decision of the agency was made with knowledge of its unlawfulness or that it was in excess of lawful authority, or it should reasonably have been known to have been unlawful or in excess of lawful authority.

(2) The prevailing party in an action brought pursuant to this chapter may be entitled to reasonable costs and attorney's fees.

(3) No cause of action is created for relief from unintentional procedural or ministerial errors of an agency.

(4) Invalidation of any regulation in effect prior to the date an application for a permit is filed with the agency shall not constitute a cause of action under this chapter. [1982 c 232 § 2.]

64.40.030 Commencement of action—Time limitation. Any action to assert claims under the provisions of this chapter shall be commenced only within thirty days after all administrative remedies have been exhausted. [1982 c 232 § 3.]

64.40.040 Remedies cumulative. The remedies provided by this chapter are in addition to any other remedies provided by law. [1982 c 232 § 4.]

64.40.900 Severability—1982 c 232. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 232 § 5.]

Chapter 64.44 RCW

CONTAMINATED PROPERTIES

Sections

| | |
|-----------|---|
| 64.44.005 | Legislative finding. |
| 64.44.010 | Definitions. |
| 64.44.020 | Reporting—Warning—Notice—Duties of local health officer. |
| 64.44.030 | Unfit for use—Order—Notice—Hearing. |
| 64.44.040 | City or county options. |
| 64.44.050 | Decontamination by owner—Requirements. |
| 64.44.060 | Certification of contractors—Denial, suspension, or revocation of certificate—Duties of department of health—Decontamination account. |
| 64.44.070 | Rules and standards—Authority to develop. |
| 64.44.080 | Civil liability—Immunity. |
| 64.44.900 | Application—Other remedies. |
| 64.44.901 | Severability—1990 c 213. |

64.44.005 Legislative finding. The legislature finds that some properties are being contaminated by hazardous chemicals used in unsafe or illegal ways in the manufacture of illegal drugs. Innocent members of the public may be harmed by the residue left by these chemicals when the properties are subsequently rented or sold without having been decontaminated. [1990 c 213 § 1.]

64.44.010 Definitions. The words and phrases defined in this section shall have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) "Authorized contractor" means a person who decontaminates, demolishes, or disposes of contaminated property as required by this chapter who is certified by the department as provided for in RCW 64.44.060.

(2) "Contaminated" or "contamination" means polluted by hazardous chemicals so that the property is unfit for human habitation or use due to immediate or long-term hazards. Property that at one time was contaminated but has been satisfactorily decontaminated according to procedures established by the state board of health is not "contaminated."

(3) "Hazardous chemicals" means the following substances used in the manufacture of illegal drugs: (a) Hazardous substances as defined in RCW 70.105D.020, and (b) pre-

cursor substances as defined in RCW 69.43.010 which the state board of health, in consultation with the state board of pharmacy, has determined present an immediate or long-term health hazard to humans.

(4) "Officer" means a local health officer authorized under chapters 70.05, 70.08, and 70.46 RCW.

(5) "Property" means any property, site, structure, or part of a structure which is involved in the unauthorized manufacture or storage of hazardous chemicals. This includes but is not limited to single-family residences, units of multiplexes, condominiums, apartment buildings, boats, motor vehicles, trailers, manufactured housing, or any shop, booth, or garden. [1999 c 292 § 2; 1990 c 213 § 2.]

Finding—Intent—1999 c 292: "The legislature finds that the contamination of properties used for illegal drug manufacturing poses a threat to public health. The toxic chemicals left behind by the illegal drug manufacturing must be cleaned up to prevent harm to subsequent occupants of the properties. It is the intent of the legislature that properties are decontaminated in a manner that is efficient, prompt, and that makes them safe to reoccupy." [1999 c 292 § 1.]

Effective date—1990 c 213 §§ 2, 12: "Sections 2 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety or support of the state government and its public institutions, and shall take effect on the effective date of the 1989-91 supplemental omnibus appropriations act (SSB 6407) [April 23, 1990] if specific funding for this act is provided therein." [1990 c 213 § 17.]

64.44.020 Reporting—Warning—Notice—Duties of local health officer. Whenever a law enforcement agency becomes aware that property has been contaminated by hazardous chemicals, that agency shall report the contamination to the local health officer. The local health officer shall post a written warning on the premises within one working day of notification of the contamination and shall inspect the property within fourteen days after receiving the notice of contamination. The warning shall inform the potential occupants that hazardous chemicals may exist on, or have been removed from, the premises and that entry is unsafe. If a property owner believes that a tenant has contaminated property that was being leased or rented, and the property is vacated or abandoned, then the property owner shall contact the local health officer about the possible contamination. Local health officers or boards may charge property owners reasonable fees for inspections of suspected contaminated property requested by property owners.

A local health officer may enter, inspect, and survey at reasonable times any properties for which there are reasonable grounds to believe that the property has become contaminated. If the property is contaminated, the local health officer shall post a written notice declaring that the officer intends to issue an order prohibiting use of the property as long as the property is contaminated.

Local health officers must report all cases of contaminated property to the state department of health. The department may make the list of contaminated properties available to health associations, landlord and realtor organizations, prosecutors, and other interested groups. The department shall promptly update the list of contaminated properties to remove those which have been decontaminated according to provisions of this chapter.

The local health officer may determine when the services of an authorized contractor are necessary. [1999 c 292 § 3; 1990 c 213 § 3.]

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

64.44.030 Unfit for use—Order—Notice—Hearing.

If after the inspection of the property, the local health officer finds that it is contaminated, then the property shall be found unfit for use. The local health officer shall cause to be served an order prohibiting use either personally or by certified mail, with return receipt requested, upon all occupants and persons having any interest therein as shown upon the records of the auditor's office of the county in which such property is located. The local health officer shall also post the order prohibiting use in a conspicuous place on the property. If the whereabouts of such persons is unknown and the same cannot be ascertained by the local health officer in the exercise of reasonable diligence, and the health officer makes an affidavit to that effect, then the serving of the order upon such persons may be made either by personal service or by mailing a copy of the order by certified mail, postage prepaid, return receipt requested, to each person at the address appearing on the last equalized tax assessment roll of the county where the property is located or at the address known to the county assessor, and the order shall be posted conspicuously at the residence. A copy of the order shall also be mailed, addressed to each person or party having a recorded right, title, estate, lien, or interest in the property. The order shall contain a notice that a hearing before the local health board or officer shall be held upon the request of a person required to be notified of the order under this section. The request for a hearing must be made within ten days of serving the order. The hearing shall then be held within not less than twenty days nor more than thirty days after the serving of the order. The officer shall prohibit use as long as the property is found to be contaminated. A copy of the order shall also be filed with the auditor of the county in which the property is located, and such filing of the complaint or order shall have the same force and effect as other *lis pendens* notices provided by law. In any hearing concerning whether property is fit for use, the property owner has the burden of showing that the property is decontaminated or fit for use. The owner or any person having an interest in the property may file an appeal on any order issued by the local health board or officer within thirty days from the date of service of the order with the appeals commission established pursuant to RCW 35.80.030. All proceedings before the appeals commission, including any subsequent appeals to superior court, shall be governed by the procedures established in chapter 35.80 RCW. [1999 c 292 § 4; 1990 c 213 § 4.]

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

64.44.040 City or county options. The city or county in which the contaminated property is located may take action to condemn or demolish property or to require the property be vacated or the contents removed from the property. The city or county may use an authorized contractor if property is demolished, decontaminated, or removed under this section. No city or county may condemn or demolish property pursuant to this section until all procedures granting the right of notice and the opportunity to appeal in RCW 64.44.030 have been exhausted. [1999 c 292 § 5; 1990 c 213 § 5.]

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

64.44.050 Decontamination by owner—Requirements. An owner of contaminated property who desires to have the property decontaminated shall use the services of an authorized contractor unless otherwise authorized by the local health officer. The contractor shall prepare and submit a written work plan for decontamination to the local health officer. The local health officer may charge a reasonable fee for review of the work plan. If the work plan is approved and the decontamination is completed and the property is retested according to the plan and properly documented, then the health officer shall allow reuse of the property. A release for reuse document shall be recorded in the real property records indicating the property has been decontaminated in accordance with rules of the state department of health. [1999 c 292 § 6; 1990 c 213 § 6.]

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

64.44.060 Certification of contractors—Denial, suspension, or revocation of certificate—Duties of department of health—Decontamination account. (1) A contractor may not perform decontamination, demolition, or disposal work unless issued a certificate by the state department of health. The department shall establish performance standards for contractors by rule in accordance with chapter 34.05 RCW, the administrative procedure act. The department shall train and test, or may approve courses to train and test, contractors and their employees on the essential elements in assessing property used as an illegal drug manufacturing or storage site to determine hazard reduction measures needed, techniques for adequately reducing contaminants, use of personal protective equipment, methods for proper decontamination, demolition, removal, and disposal of contaminated property, and relevant federal and state regulations. Upon successful completion of the training, the contractor or employee shall be certified.

(2) The department may require the successful completion of annual refresher courses provided or approved by the department for the continued certification of the contractor or employee.

(3) The department shall provide for reciprocal certification of any individual trained to engage in decontamination, demolition, or disposal work in another state when the prior training is shown to be substantially similar to the training required by the department. The department may require such individuals to take an examination or refresher course before certification.

(4) The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted pursuant to this chapter. A certificate may be denied, suspended, or revoked on any of the following grounds:

- (a) Failing to perform decontamination, demolition, or disposal work under the supervision of trained personnel;
- (b) Failing to file a work plan;
- (c) Failing to perform work pursuant to the work plan;
- (d) Failing to perform work that meets the requirements of the department;
- (e) The certificate was obtained by error, misrepresentation, or fraud; or
- (f) If the person has been certified pursuant to RCW 74.20A.320 by the department of social and health services

as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(5) A contractor who violates any provision of this chapter may be assessed a fine not to exceed five hundred dollars for each violation.

(6) The department of health shall prescribe fees as provided for in RCW 43.70.250 for the issuance and renewal of certificates, the administration of examinations, and for the review of training courses.

(7) The decontamination account is hereby established in the state treasury. All fees collected under this chapter shall be deposited in this account. Moneys in the account may only be spent after appropriation for costs incurred by the department in the administration and enforcement of this chapter. [1999 c 292 § 7; 1997 c 58 § 878; 1990 c 213 § 7.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

64.44.070 Rules and standards—Authority to develop. (1) The state board of health shall promulgate rules and standards for carrying out the provisions in this chapter in accordance with chapter 34.05 RCW, the administrative procedure act. The local board of health and the local health officer are authorized to exercise such powers as may be necessary to carry out this chapter. The department shall provide technical assistance to local health boards and health officers to carry out their duties under this chapter.

(2) The department shall adopt rules for decontamination of a property used as an illegal drug laboratory and methods for the testing of ground water, surface water, soil, and septic tanks for contamination. The rules shall establish decontamination standards for hazardous chemicals, including but not limited to methamphetamine, lead, mercury, and total volatile organic compounds. [1999 c 292 § 8; 1990 c 213 § 9.]

Finding—Intent—1999 c 292: See note following RCW 64.44.010.

64.44.080 Civil liability—Immunity. Members of the state board of health and local boards of health, local health officers, and employees of the department of health and local health departments are immune from civil liability arising out of the performance of their duties under this chapter, unless such performance constitutes gross negligence or intentional misconduct. [1990 c 213 § 10.]

64.44.900 Application—Other remedies. This chapter shall not limit state or local government authority to act

under any other statute, including chapter 35.80 or 7.48 RCW. [1990 c 213 § 11.]

64.44.901 Severability—1990 c 213. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 213 § 14.]

Chapter 64.50 RCW

CONSTRUCTION DEFECT CLAIMS

Sections

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| 64.50.005 | Finding—Intent. |
| 64.50.010 | Definitions. |
| 64.50.020 | Construction defect action—Notice of claim—Response—Procedure for negotiations—Commencing an action. |
| 64.50.030 | List of known construction defects—Requirements—Time limits. |
| 64.50.040 | Construction defect action brought by a board of directors—Notice. |
| 64.50.050 | Construction professional right to offer to cure defects—Notice to homeowner. |
| 64.50.060 | Interpretation of chapter regarding certain relationships and rights. |

64.50.005 Finding—Intent. The legislature finds, declares, and determines that limited changes in the law are necessary and appropriate concerning actions claiming damages, indemnity, or contribution in connection with alleged construction defects. It is the intent of the legislature that this chapter apply to these types of civil actions while preserving adequate rights and remedies for property owners who bring and maintain such actions. [2002 c 323 § 1.]

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

(1) "Action" means any civil lawsuit or action in contract or tort for damages or indemnity brought against a construction professional to assert a claim, whether by complaint, counterclaim, or cross-claim, for damage or the loss of use of real or personal property caused by a defect in the construction of a residence or in the substantial remodel of a residence. "Action" does not include any civil action in tort alleging personal injury or wrongful death to a person or persons resulting from a construction defect.

(2) "Association" means an association, master association, or subassociation as defined and provided for in RCW 64.34.020(4), 64.34.276, 64.34.278, and 64.38.010(1).

(3) "Claimant" means a homeowner or association who asserts a claim against a construction professional concerning a defect in the construction of a residence or in the substantial remodel of a residence.

(4) "Construction professional" means an architect, builder, builder vendor, contractor, subcontractor, engineer, or inspector, including, but not limited to, a dealer as defined in RCW 64.34.020(12) and a declarant as defined in RCW 64.34.020(13), performing or furnishing the design, supervision, inspection, construction, or observation of the construction of any improvement to real property, whether operating as a sole proprietor, partnership, corporation, or other business entity.

(5) "Homeowner" means: (a) Any person, company, firm, partnership, corporation, or association who contracts with a construction professional for the construction, sale, or construction and sale of a residence; and (b) an "association" as defined in this section. "Homeowner" includes, but is not limited to, a subsequent purchaser of a residence from any homeowner.

(6) "Residence" means a single-family house, duplex, triplex, quadruplex, or a unit in a multiunit residential structure in which title to each individual unit is transferred to the owner under a condominium or cooperative system, and shall include common elements as defined in RCW 64.34.020(6) and common areas as defined in RCW 64.38.010(4).

(7) "Serve" or "service" means personal service or delivery by certified mail to the last known address of the addressee.

(8) "Substantial remodel" means a remodel of a residence, for which the total cost exceeds one-half of the assessed value of the residence for property tax purposes at the time the contract for the remodel work was made. [2002 c 323 § 2.]

64.50.020 Construction defect action—Notice of claim—Response—Procedure for negotiations—Commencing an action. (1) In every construction defect action brought against a construction professional, the claimant shall, no later than forty-five days before filing an action, serve written notice of claim on the construction professional. The notice of claim shall state that the claimant asserts a construction defect claim against the construction professional and shall describe the claim in reasonable detail sufficient to determine the general nature of the defect.

(2) Within twenty-one days after service of the notice of claim, the construction professional shall serve a written response on the claimant by registered mail or personal service. The written response shall:

(a) Propose to inspect the residence that is the subject of the claim and to complete the inspection within a specified time frame. The proposal shall include the statement that the construction professional shall, based on the inspection, offer to remedy the defect, compromise by payment, or dispute the claim;

(b) Offer to compromise and settle the claim by monetary payment without inspection. A construction professional's offer under this subsection (2)(b) to compromise and settle a homeowner's claim may include, but is not limited to, an express offer to purchase the claimant's residence that is the subject of the claim, and to pay the claimant's reasonable relocation costs; or

(c) State that the construction professional disputes the claim and will neither remedy the construction defect nor compromise and settle the claim.

(3)(a) If the construction professional disputes the claim or does not respond to the claimant's notice of claim within the time stated in subsection (2) of this section, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(b) If the claimant rejects the inspection proposal or the settlement offer made by the construction professional pursuant to subsection (2) of this section, the claimant shall serve

written notice of the claimant's rejection on the construction professional. After service of the rejection, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the inspection proposal or settlement offer, then at anytime thereafter the construction professional may terminate the proposal or offer by serving written notice to the claimant, and the claimant may thereafter bring an action against the construction professional for the construction defect claim described in the notice of claim.

(4)(a) If the claimant elects to allow the construction professional to inspect in accordance with the construction professional's proposal pursuant to subsection (2)(a) of this section, the claimant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to inspect the premises and the claimed defect.

(b) Within fourteen days following completion of the inspection, the construction professional shall serve on the claimant:

(i) A written offer to remedy the construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a description of the additional construction necessary to remedy the defect described in the claim, and a timetable for the completion of such construction;

(ii) A written offer to compromise and settle the claim by monetary payment pursuant to subsection (2)(b) of this section; or

(iii) A written statement that the construction professional will not proceed further to remedy the defect.

(c) If the construction professional does not proceed further to remedy the construction defect within the agreed timetable, or if the construction professional fails to comply with the provisions of (b) of this subsection, the claimant may bring an action against the construction professional for the claim described in the notice of claim without further notice.

(d) If the claimant rejects the offer made by the construction professional pursuant to (b)(i) or (ii) of this subsection to either remedy the construction defect or to compromise and settle the claim by monetary payment, the claimant shall serve written notice of the claimant's rejection on the construction professional. After service of the rejection notice, the claimant may bring an action against the construction professional for the construction defect claim described in the notice of claim. If the construction professional has not received from the claimant, within thirty days after the claimant's receipt of the construction professional's response, either an acceptance or rejection of the offer made pursuant to (b)(i) or (ii) of this subsection, then at anytime thereafter the construction professional may terminate the offer by serving written notice to the claimant.

(5)(a) Any claimant accepting the offer of a construction professional to remedy the construction defect pursuant to subsection (4)(b)(i) of this section shall do so by serving the construction professional with a written notice of acceptance within a reasonable time period after receipt of the offer, and no later than thirty days after receipt of the offer. The claim-

ant shall provide the construction professional and its contractors or other agents reasonable access to the claimant's residence during normal working hours to perform and complete the construction by the timetable stated in the offer.

(b) The claimant and construction professional may, by written mutual agreement, alter the extent of construction or the timetable for completion of construction stated in the offer, including, but not limited to, repair of additional defects.

(6) Any action commenced by a claimant prior to compliance with the requirements of this section shall be subject to dismissal without prejudice, and may not be recommenced until the claimant has complied with the requirements of this section.

(7) Nothing in this section may be construed to prevent a claimant from commencing an action on the construction defect claim described in the notice of claim if the construction professional fails to perform the construction agreed upon, fails to remedy the defect, or fails to perform by the timetable agreed upon pursuant to subsection (2)(a) or (5) of this section.

(8) Prior to commencing any action alleging a construction defect, or after the dismissal of any action without prejudice pursuant to subsection (6) of this section, the claimant may amend the notice of claim to include construction defects discovered after the service of the original notice of claim, and must otherwise comply with the requirements of this section for the additional claims. The service of an amended notice of claim shall relate back to the original notice of claim for purposes of tolling statutes of limitations and repose. Claims for defects discovered after the commencement or recommencement of an action may be added to such action only after providing notice to the construction professional of the defect and allowing for response under subsection (2) of this section. [2002 c 323 § 3.]

64.50.030 List of known construction defects—Requirements—Time limits. (1) In every action brought against a construction professional, the claimant, including a construction professional asserting a claim against another construction professional, shall file with the court and serve on the defendant a list of known construction defects in accordance with this section.

(2) The list of known construction defects shall contain a description of the construction that the claimant alleges to be defective. The list of known construction defects shall be filed with the court and served on the defendant within thirty days after the commencement of the action or within such longer period as the court in its discretion may allow.

(3) The list of known construction defects may be amended by the claimant to identify additional construction defects as they become known to the claimant.

(4) The list of known construction defects must specify, to the extent known to the claimant, the construction professional responsible for each alleged defect identified by the claimant.

(5) If a subcontractor or supplier is added as a party to an action under this section, the party making the claim against such subcontractor or supplier shall serve on the subcontractor or supplier the list of construction defects in accordance with this section within thirty days after service of the com-

plaint against the subcontractor or supplier or within such period as the court in its discretion may allow. [2002 c 323 § 4.]

64.50.040 Construction defect action brought by a board of directors—Notice. (1)(a) In the event the board of directors, pursuant to RCW 64.34.304(1)(d) or 64.38.020(4), institutes an action asserting defects in the construction of two or more residences, common elements, or common areas, this section shall apply. For purposes of this section, "action" has the same meaning as set forth in RCW 64.50.010.

(b) The board of directors shall substantially comply with the provisions of this section.

(2)(a) Prior to the service of the summons and complaint on any defendant with respect to an action governed by this section, the board of directors shall mail or deliver written notice of the commencement or anticipated commencement of such action to each homeowner at the last known address described in the association's records.

(b) The notice required by (a) of this subsection shall state a general description of the following:

(i) The nature of the action and the relief sought; and

(ii) The expenses and fees that the board of directors anticipates will be incurred in prosecuting the action.

(3) Nothing in this section may be construed to:

(a) Require the disclosure in the notice or the disclosure to a unit owner of attorney-client communications or other privileged communications;

(b) Permit the notice to serve as a basis for any person to assert the waiver of any applicable privilege or right of confidentiality resulting from, or to claim immunity in connection with, the disclosure of information in the notice; or

(c) Limit or impair the authority of the board of directors to contract for legal services, or limit or impair the ability to enforce such a contract for legal services. [2002 c 323 § 5.]

64.50.050 Construction professional right to offer to cure defects—Notice to homeowner. (1) The construction professional shall provide notice to each homeowner upon entering into a contract for sale, construction, or substantial remodel of a residence, of the construction professional's right to offer to cure construction defects before a homeowner may commence litigation against the construction professional. Such notice shall be conspicuous and may be included as part of the underlying contract signed by the homeowner. In the sale of a condominium unit, the requirement for delivery of such notice shall be deemed satisfied if contained in a public offering statement delivered in accordance with chapter 64.34 RCW.

(2) The notice required by this subsection shall be in substantially the following form:

CHAPTER 64.50 RCW CONTAINS IMPORTANT REQUIREMENTS YOU MUST FOLLOW BEFORE YOU MAY FILE A LAWSUIT FOR DEFECTIVE CONSTRUCTION AGAINST THE SELLER OR BUILDER OF YOUR HOME. FORTY-FIVE DAYS BEFORE YOU FILE YOUR LAWSUIT, YOU MUST DELIVER TO THE SELLER OR BUILDER A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS YOU ALLEGE ARE DEFECTIVE AND PROVIDE YOUR SELLER OR BUILDER THE OPPORTU-

NITY TO MAKE AN OFFER TO REPAIR OR PAY FOR THE DEFECTS. YOU ARE NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY THE BUILDER OR SELLER. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER STATE LAW, AND FAILURE TO FOLLOW THEM MAY AFFECT YOUR ABILITY TO FILE A LAWSUIT.

(3) This chapter shall not preclude or bar any action if notice is not given to the homeowner as required by this section. [2002 c 323 § 6.]

64.50.060 Interpretation of chapter regarding certain relationships and rights. Nothing in this chapter shall be construed to hinder or otherwise affect the employment, agency, or contractual relationship between and among homeowners and construction professionals during the process of construction or remodeling and does not preclude the termination of those relationships as allowed under current law. Nothing in this chapter shall negate or otherwise restrict a construction professional's right to access or inspection provided by law, covenant, easement, or contract. [2002 c 323 § 7.]

Title 65

RECORDING, REGISTRATION, AND LEGAL PUBLICATION

Chapters

- 65.04 Duties of county auditor.**
- 65.08 Recording.**
- 65.12 Registration of land titles (Torrens Act).**
- 65.16 Legal publications.**
- 65.20 Classification of manufactured homes.**

Assessor's plats: Chapter 58.18 RCW.

Assignment, satisfaction of mortgages: Chapter 61.16 RCW.

Civil procedure, legal publication generally: Chapter 4.28 RCW.

Community property

claim of spouse to be filed: RCW 26.16.100.

purchaser protected by record title: RCW 26.16.095.

Copies of recorded instruments as evidence: Chapter 5.44 RCW.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

County auditor: Chapter 36.22 RCW.

Crop liens: Chapter 60.11 RCW.

Eminent domain by

corporations, judgment or decree: RCW 8.20.090.

county, decree: RCW 8.08.060.

school districts, decree: RCW 8.16.110.

state, judgment or decree: RCW 8.04.120.

Eminent domain, state lands, decree: RCW 8.28.010.

Fees of county officers: Chapter 36.18 RCW.

Field notes of irregular subdivided tracts: RCW 84.40.170.

Filing reports, claims, tax returns, etc.: RCW 1.12.070.

Lis pendens, effect of filing: RCW 4.28.320.

Notice of proposed constitutional amendments, publication of: RCW 29A.52.330, 29A.52.340.

Plats: Chapter 58.08 RCW, RCW 84.40.170.

Powers of appointment: Chapter 11.95 RCW.

RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.

Retail installment sales of goods and services: Chapter 63.14 RCW.

Secretary of state, duties: RCW 43.07.030.

65.04.130 Fees to be paid or tendered.

65.04.140 Auditor as custodian of records.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

County auditor: Chapter 36.22 RCW.

Fees of county officers, generally: Chapter 36.18 RCW.

Powers of appointment: Chapter 11.95 RCW.

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

(1) "Recording officer" means the county auditor, or in charter counties the county official charged with the responsibility for recording instruments in the county records.

(2) "File," "filed," or "filing" means the act of delivering or transmitting electronically an instrument to the auditor or recording officer for recording into the official public records.

(3) "Record," "recorded," or "recording" means the process, such as electronic, mechanical, optical, magnetic, or microfilm storage used by the auditor or recording officer after filing to incorporate the instrument into the public records.

(4) "Recording number" means a unique number that identifies the storage location (book or volume and page, reel and frame, instrument number, auditor or recording officer file number, receiving number, electronic retrieval code, or other specific place) of each instrument in the public records accessible in the same recording office where the instrument containing the reference to the location is found.

(5) "Grantor/grantee" for recording purposes means the names of the parties involved in the transaction used to create the recording index. There will always be at least one grantor and one grantee for any document. In some cases, the grantor and the grantee will be the same individual(s), or one of the parties may be the public.

(6) "Legible and capable of being imaged" means all text, seals, drawings, signatures, or other content within the document must be legible and capable of producing a readable image, regardless of what process is used for recording. [1999 c 233 § 10; 1998 c 27 § 3; 1996 c 229 § 1; 1991 c 26 § 3.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.04.020 Duty to provide records. For the purpose of recording deeds and other instruments of writing, required or permitted by law to be recorded, the county auditor shall procure such media for records as the business of the office requires. [1999 c 233 § 11; 1985 c 44 § 14; 1893 c 119 § 10; Code 1881 § 2726; RRS § 10600.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.04.030 Instruments to be recorded or filed. The auditor or recording officer must, upon the payment of the

Chapter 65.04 RCW

DUTIES OF COUNTY AUDITOR

Sections

- 65.04.015 Definitions.
- 65.04.020 Duty to provide records.
- 65.04.030 Instruments to be recorded or filed.
- 65.04.033 Notice of abandoned cemetery document—Recording requirements.
- 65.04.040 Method for recording instruments—Marginal notations—Arrangement of records.
- 65.04.045 Recorded instruments—Requirements—Form.
- 65.04.047 Recorded instruments—Cover sheet—When required—Form.
- 65.04.048 Additional fee for certain documents not meeting requirements—Signed statement.
- 65.04.050 Index of instruments, how made and kept—Recording of plat names.
- 65.04.060 Record when lien is discharged.
- 65.04.070 Recording judgments affecting real property.
- 65.04.080 Entries when instruments offered for record.
- 65.04.090 Further endorsements—Delivery.
- 65.04.110 Liability of auditor for damages.
- 65.04.115 Names on documents, etc., to be printed or typewritten—Indexing.

fees as required in RCW 36.18.010 for the same, acknowledge receipt therefor in writing or printed form and record in large and well bound books, or by photographic, photomechanical, electronic format, or other approved process, the following:

(1) Deeds, grants and transfers of real property, mortgages and releases of mortgages of real estate, instruments or agreements relating to community or separate property, powers of attorney to convey real estate, and leases which have been acknowledged or proved: PROVIDED, That deeds, contracts and mortgages of real estate described by lot and block and addition or plat, shall not be filed or recorded until the plat of such addition has been filed and made a matter of record;

(2) Patents to lands and receivers' receipts, whether for mineral, timber, homestead or preemption claims or cash entries;

(3) All such other papers or writing as are required by law to be recorded and such as are required by law to be filed. [1996 c 229 § 2; 1991 c 26 § 4; 1985 c 44 § 15; 1967 c 98 § 1; 1919 c 182 § 1; 1893 c 119 § 11; Code 1881 § 2727; 1865 p 26 § 1; RRS § 10601.]

Claim of spouse in community realty to be filed: RCW 26.16.100.

Marriage certificate to county auditor, filing and recording, etc.: RCW 26.04.090, 26.04.100.

Purchaser of community realty protected by record title: RCW 26.16.095.

65.04.033 Notice of abandoned cemetery document—Recording requirements. Any person who has knowledge of the existence of any cemetery, abandoned cemetery, historical cemetery, or historic grave that has not been dedicated pursuant to RCW 68.24.010 through 68.24.040 may file for recording, in the county in which the cemetery or grave is located, a notice of abandoned cemetery document providing notice of the existence of the cemetery or grave. Such document shall contain the legal description of the property, the approximate location of the cemetery or grave within the property, the name of the owner or reputed owner of the property, and the assessor's tax parcel or account number. The auditor or recording officer shall index the document to the names of the property owner and the person executing the document. [1999 c 367 § 1.]

65.04.040 Method for recording instruments—Marginal notations—Arrangement of records. Any state, county, or municipal officer charged with the duty of recording instruments in public records shall record them by *record location number in the order filed, irrespective of the type of instrument, using a process that has been tested and approved for the intended purpose by the state archivist.

In addition, the county auditor or recording officer, in the exercise of the duty of recording instruments in public records, may, in lieu of transcription, record all instruments, that he or she is charged by law to record, by any electronic data transfer, photographic, photostatic, microfilm, microcard, miniature photographic or other process that actually reproduces or forms a durable medium for so reproducing the original, and which has been tested and approved for the intended purpose by the state archivist. If the county auditor or recording officer records any instrument by a process

approved by the state archivist it shall not be necessary thereafter to make any notations or marginal notes, which are otherwise required by law, thereon if, in lieu of making said notations thereon, the auditor or recording officer immediately makes a note of such in the general index in the column headed "remarks," listing the record number location of the instrument to which the current entry relates back.

Previously recorded or filed instruments may be processed and preserved by any means authorized under this section for the original recording of instruments. The county auditor or recording officer may provide for the use of the public, media containing reproductions of instruments and other materials that have been recorded pursuant to the provisions of this section. The contents of the media may be arranged according to date of filing, irrespective of type of instrument, or in such other manner as the county auditor or recording officer deems proper. [1996 c 229 § 3; 1991 c 26 § 5; 1985 c 44 § 16; 1967 c 98 § 2; 1959 c 254 § 1; 1919 c 125 § 1; RRS § 10602.]

***Reviser's note:** The definition "record location number" was changed to "recording number" by 1999 c 233 § 10.

Fees for recording instruments: RCW 36.18.010.

State archivist: RCW 40.14.020.

65.04.045 Recorded instruments—Requirements—Form. (1) When any instrument is presented to a county auditor or recording officer for recording, the first page of the instrument shall contain:

(a) A top margin of at least three inches and a one-inch margin on the bottom and sides, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins;

(b) The top left-hand side of the page shall contain the name and address to whom the instrument will be returned;

(c) The title or titles, or type or types, of the instrument to be recorded indicating the kind or kinds of documents or transactions contained therein immediately below the three-inch margin at the top of the page. The auditor or recording officer shall be required to index only the title or titles captioned on the document;

(d) Reference numbers of documents assigned or released with reference to the document page number where additional references can be found, if applicable;

(e) The names of the grantor(s) and grantee(s), as defined under RCW 65.04.015, with reference to the document page number where additional names are located, if applicable;

(f) An abbreviated legal description of the property, and for purposes of this subsection, "abbreviated legal description of the property" means lot, block, plat, or section, township, range, and quarter/quarter section, and reference to the document page number where the full legal description is included, if applicable;

(g) The assessor's property tax parcel or account number set forth separately from the legal description or other text.

(2) All pages of the document shall be on sheets of paper of a weight and color capable of producing a legible image that are not larger than fourteen inches long and eight and one-half inches wide with text printed or written in eight point type or larger. All text within the document must be of sufficient color and clarity to ensure that when the text is

imaged all text is readable. Further, all pages presented for recording must have at minimum a one-inch margin on the top, bottom, and sides for all pages except page one, except that an instrument may be recorded if a minor portion of a notary seal, incidental writing, or minor portion of a signature extends beyond the margins, be prepared in ink color capable of being imaged, and have all seals legible and capable of being imaged. No attachments, except firmly attached bar code or address labels, may be affixed to the pages.

The information provided on the instrument must be in substantially the following form:

This Space Provided for Recorder's Use

When Recorded Return to:

.....

Document Title(s)

Grantor(s)

Grantee(s)

Legal Description

Assessor's Property Tax Parcel or Account Number

Reference Numbers of Documents Assigned or Released

[1999 c 233 § 12; 1998 c 27 § 1; 1996 c 143 § 2.]

Effective date—1999 c 233: See note following RCW 4.28.320.

Effective date—1996 c 143: See note following RCW 36.18.010.

65.04.047 Recorded instruments—Cover sheet—When required—Form. (1) If the first page of an instrument presented for recording does not contain the information required by RCW 65.04.045(1), the person preparing the instrument for recording shall prepare a cover sheet that contains the required information. The cover sheet shall be attached to the instrument and shall be recorded as a part of the instrument. An additional page fee as determined under RCW 36.18.010 shall be collected for recording of the cover sheet. Any errors in the cover sheet shall not affect the transactions contained in the instrument itself. The cover sheet need not be separately signed or acknowledged. The cover sheet information shall be used to generate the auditor's grantor/grantee index, however, the names and legal description in the instrument itself will determine the legal chain of title. The cover sheet shall be substantially the following form:

Return Address

Please print or type information

Document Title(s) (or transactions contained therein):

1.

(2004 Ed.)

2.
3.
4.

Grantor(s) (Last name first, then first name and initials)

1.
2.
3.
4.

5. Additional names on page __ of document.

Grantee(s) (Last name first, then first name and initials)

1.
2.
3.
4.

5. Additional names on page __ of document.

Legal Description (abbreviated: i.e., lot, block, plat or section, township, range)

Additional legal description is on page __ of document.

Assessor's Property Tax Parcel or Account Number at the time of recording:

Reference Number(s) of Documents assigned or released:

Additional references on page __ of document.

The Auditor or Recording Officer will rely on the information provided on this form. The staff will not read the document to verify the accuracy of or the completeness of the indexing information provided herein.

(2) Documents which are exempt from format requirements and which may be recorded with a properly completed cover sheet include: Documents which were signed prior to January 1, 1997; military separation documents; documents executed outside of the United States; certified copies of documents; any birth or death certificate; marriage certificates from outside the state of Washington; any document, one of whose original signer is deceased or otherwise incapacitated; and judgments or other documents formatted to meet court requirements. [1999 c 233 § 13; 1998 c 27 § 2; 1996 c 143 § 3.]

Effective date—1999 c 233: See note following RCW 4.28.320.

Effective date—1996 c 143: See note following RCW 36.18.010.

65.04.048 Additional fee for certain documents not meeting requirements—Signed statement. (1) Documents which must be recorded immediately and which do not meet margin and font size requirements may be recorded for an additional fee of fifty dollars. Documents which do not meet legibility requirements must not be recorded as a nonstandard recording.

(2) In addition to preparing a properly completed cover sheet as described in RCW 65.04.047, the person preparing the document for recording must sign a statement which must be attached to the document and which must read substantially as follows: "I am requesting an emergency nonstandard

recording for an additional fee as provided in RCW 36.18.010. I understand that the recording processing requirements may cover up or otherwise obscure some part of the text of the original document." [1999 c 233 § 14.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.04.050 Index of instruments, how made and kept—Recording of plat names. Every auditor or recording officer must keep a general index, direct and inverted. The index may be either printed on paper or produced on microfilm or microfiche, or it can be created from a computerized data base and displayed on a video display terminal. Any reference to a prior *record location number may be entered in the remarks column. Any property legal description contained in the instrument must be entered in the description of property column of the general index. The direct index shall be divided into eight columns, and with heads to the respective columns, as follows: Date of reception, grantor, grantee, nature of instrument, volume and page where recorded and/or the auditor's file number, remarks, description of property, assessor's property tax parcel or account number. The auditor or recording officer shall correctly enter in such index every instrument concerning or affecting real estate which by law is required to be recorded, the names of grantors being in alphabetical order. The inverted index shall also be divided into eight columns, precisely similar, except that "grantee" shall occupy the second column and "grantor" the third, the names of grantees being in alphabetical order. The auditor or recording officer may combine the direct and indirect indexes into a single index if it contains all the information required to be contained in the separate direct and indirect indexes and the names of all grantors and grantees can be found by a person searching the combined index. For the purposes of this chapter, the term "grantor" means any person conveying or encumbering the title to any property, or any person against whom any lis pendens, judgment, notice of lien, order of sale, execution, writ of attachment, or claims of separate or community property shall be placed on record. The auditor or recording officer shall also enter in the general index, the name of the party or parties platting a town, village, or addition in the column prescribed for "grantors," describing the grantee in such case as "the public." However, the auditor or recording officer shall not receive or record any such plat or map until it has been approved by the mayor and common council of the municipality in which the property so platted is situated, or if the property be not situated within any municipal corporation, then the plat must be first approved by the county legislative authority. The auditor or recording officer shall not receive for record any plat, map, or subdivision of land bearing a name the same or similar to the name of any map or plat already on record in the office. The auditor or recording officer may establish a name reservation system to preclude the possibility of duplication of names. [1996 c 143 § 4; 1991 c 26 § 6; 1893 c 119 § 12; Code 1881 § 2728; 1869 p 314 § 24; RRS § 10603.]

***Reviser's note:** The definition "record location number" was changed to "recording number" by 1999 c 233 § 10.

Effective date—1996 c 143: See note following RCW 36.18.010.

65.04.060 Record when lien is discharged. Whenever any mortgage, bond, lien, or instrument incumbering real estate, has been satisfied, released or discharged, by the recording of an instrument of release, or acknowledgment of satisfaction, the auditor shall immediately note, in the comment section of the index, the recording number of the original mortgage, bond, lien, or instrument. [1999 c 233 § 15; 1985 c 44 § 17; Code 1881 § 2729; 1869 p 315 § 25; RRS § 10604.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.04.070 Recording judgments affecting real property. The auditor must file and record with the record of deeds, grants and transfers certified copies of final judgments or decrees partitioning or affecting the title or possession of real property, any part of which is situated in the county of which he is recorder. Every such certified copy or partition, from the time of filing the same with the auditor for record, imparts notice to all persons of the contents thereof, and subsequent purchasers, mortgagees and lien holders purchase and take with like notice and effect as if such copy or decree was a duly recorded deed, grant or transfer. [Code 1881 § 2730; RRS § 10605.]

65.04.080 Entries when instruments offered for record. When any instrument, paper, or notice, authorized or required by law to be filed or recorded, is deposited in or electronically transmitted to the county auditor's office for filing or record, that officer must indorse upon the same the time when it was received, noting the year, month, day, hour and minute of its reception, and note that the document was received by electronic transmission, and must file, or file and record the same without delay, together with the acknowledgments, proofs, and certificates written or printed upon or annexed to the same, with the plats, surveys, schedules and other papers thereto annexed, in the order and as of the time when the same was received for filing or record, and must note on the instrument filed, or at the foot of the record the exact time of its reception, and the name of the person at whose request it was filed or recorded: PROVIDED, That the county auditor shall not be required to accept for filing, or filing and recording, any instrument unless there appear upon the face thereof, the name and nature of the instrument offered for filing, or filing and recording, as the case may be. [1996 c 229 § 4; 1985 c 44 § 18; 1927 c 187 § 1; Code 1881 § 2731; 1869 p 313 § 19; RRS § 10606.]

65.04.090 Further endorsements—Delivery. The recording officer must also endorse upon such an instrument, paper, or notice, the time when and the book and page in which it is recorded, and must thereafter either electronically transmit or deliver it to the party leaving the same for record or to the address on the face of the document. [2003 c 239 § 1; 1996 c 229 § 5; Code 1881 § 2732; RRS § 10607.]

65.04.110 Liability of auditor for damages. If any county auditor to whom an instrument, proved or acknowledged according to law, or any paper or notice which may by law be recorded is delivered or electronically transmitted for

record: (1) Neglects or refuses to record such instrument, paper or notice, within a reasonable time after receiving the same; or (2) records any instruments, papers or notices untruly, or in any other manner than as directed in this chapter; or, (3) neglects or refuses to keep in his or her office such indexes as are required by *this act, or to make the proper entries therein; or, (4) neglects or refuses to make the searches and to give the certificate required by *this act; or if such searches or certificate are incomplete and defective in any important particular affecting the property in respect to which the search is requested; or, (5) alters, changes, or obliterates any records deposited in his or her office, or inserts any new matter therein; he or she is liable to the party aggrieved for the amount of damage which may be occasioned thereby. However, if the name or names and address hand printed, printed, or typewritten on any instrument, proved or acknowledged according to law, or on any paper or notice which may by law be filed or recorded, is or are incorrect, or misspelled or not the true name or names of the party or parties appearing thereon, the county auditor shall not, by reason of such fact, be liable for any loss or damage resulting therefrom. [1996 c 229 § 6; 1965 c 134 § 1; Code 1881 § 2734; RRS § 10609.]

***Reviser's note:** The language "this act" appears in Code 1881 c 211, codified herein as RCW 5.44.070, 36.16.030 through 36.16.050, 36.16.070, 36.16.080, 36.22.110 through 36.22.130, 36.22.150, 65.04.020, 65.04.030, 65.04.050 through 65.04.110, 65.04.130, and 65.04.140.

65.04.115 Names on documents, etc., to be printed or typewritten—Indexing. The name or names appearing on all documents or instruments, proved or acknowledged according to law, or on any paper which may by law be filed or recorded shall be hand printed, printed or typewritten so as to be legible and the county auditor shall index said documents and instruments in accordance with the hand printed, printed or typewritten name or names appearing thereon. [1965 c 134 § 2.]

65.04.130 Fees to be paid or tendered. Said county auditor is not bound to record any instrument, or file any paper or notice, or furnish any copies, or to render any service connected with his office, until his fees for the same, as prescribed by law, are if demanded paid or tendered. [Code 1881 § 2735; RRS § 10610.]

65.04.140 Auditor as custodian of records. The county auditor in his capacity of recorder of deeds is sole custodian of all books in which are recorded deeds, mortgages, judgments, liens, incumbrances and other instruments of writing, indexes thereto, maps, charts, town plats, survey and other books and papers constituting the records and files in said office of recorder of deeds, and all such records and files are, and shall be, matters of public information, free of charge to any and all persons demanding to inspect or to examine the same, or to search the same for titles of property. It is said recorder's duty to arrange in suitable places the indexes of said books of record, and when practicable, the record books themselves, to the end that the same may be accessible to the public and convenient for said public inspection, examination and search, and not interfere with the said auditor's personal control and responsibility for the same, or prevent him from

promptly furnishing the said records and files of his said office to persons demanding any information from the same. The said auditor or recorder must and shall, upon demand, and without charge, freely permit any and all persons, during reasonable office hours, to inspect, examine and search any or all of the records and files of his said office, and to gather any information therefrom, and to make any desired notes or memoranda about or concerning the same, and to prepare an abstract or abstracts of title to any and all property therein contained. [1886 p 163 § 1; 1883 p 34 § 1; Code 1881 § 2736; RRS § 10611.]

Chapter 65.08 RCW RECORDING

Sections

| | |
|-----------|---|
| 65.08.030 | Recorded irregular instrument imparts notice. |
| 65.08.050 | Recording land office receipts. |
| 65.08.060 | Terms defined. |
| 65.08.070 | Real property conveyances to be recorded. |
| 65.08.090 | Letters patent. |
| 65.08.095 | Conveyances of fee title by public bodies. |
| 65.08.100 | Certified copies. |
| 65.08.110 | Certified copies—Effect. |
| 65.08.120 | Assignment of mortgage—Notice. |
| 65.08.130 | Revocation of power of attorney. |
| 65.08.140 | No liability for error in recording when properly indexed. |
| 65.08.150 | Duty to record. |
| 65.08.160 | Recording master form instruments and mortgages or deeds of trust incorporating master form provisions. |
| 65.08.170 | Notice of additional water or sewer facility tap or connection charges—Required—Contents. |
| 65.08.180 | Notice of additional water or sewer facility tap or connection charges—Duration—Certificate of payment and release. |

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Powers of appointment: Chapter 11.95 RCW.

65.08.030 Recorded irregular instrument imparts notice. An instrument in writing purporting to convey or encumber real estate or any interest therein, which has been recorded in the auditor's office of the county in which the real estate is situated, although the instrument may not have been executed and acknowledged in accordance with the law in force at the time of its execution, shall impart the same notice to third persons, from the date of recording, as if the instrument had been executed, acknowledged, and recorded, in accordance with the laws regulating the execution, acknowledgment, and recording of the instrument then in force. [1953 c 115 § 1. Prior: 1929 c 33 § 8; RRS § 10599.]

65.08.050 Recording land office receipts. Every cash or final receipt from any receiver, and every cash or final certificate from any register of the United States land office, evidencing that final payment has been made to the United States as required by law, or that the person named in such certificate is entitled, on presentation thereof, to a patent from the United States for land within the state of Washington, shall be recorded by the county auditor of the county wherein such land lies, on request of any party presenting the same, and any record heretofore made of any such cash or final receipt or certificate shall, from the date when this section becomes a law, and every record hereafter made of any such receipt or certificate shall, from the date of recording, impart to third persons and all the world, full notice of all the rights and equities of the person named in said cash or final receipt

or certificate in the land described in such receipt or certificate. [1890 p 92 § 1; RRS § 10613.]

65.08.060 Terms defined. (1) The term "real property" as used in RCW 65.08.060 through 65.08.150 includes lands, tenements and hereditaments and chattels real and mortgage liens thereon except a leasehold for a term not exceeding two years.

(2) The term "purchaser" includes every person to whom any estate or interest in real property is conveyed for a valuable consideration and every assignee of a mortgage, lease or other conditional estate.

(3) The term "conveyance" includes every written instrument by which any estate or interest in real property is created, transferred, mortgaged or assigned or by which the title to any real property may be affected, including an instrument in execution of a power, although the power be one of revocation only, and an instrument releasing in whole or in part, postponing or subordinating a mortgage or other lien; except a will, a lease for a term of not exceeding two years, and an instrument granting a power to convey real property as the agent or attorney for the owner of the property. "To convey" is to execute a "conveyance" as defined in this subdivision.

(4) The term "recording officer" means the county auditor or, in charter counties, the county official charged with the responsibility for recording instruments in the county records. [1999 c 233 § 16; 1984 c 73 § 1; 1927 c 278 § 1; RRS § 10596-1.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.08.070 Real property conveyances to be recorded.

A conveyance of real property, when acknowledged by the person executing the same (the acknowledgment being certified as required by law), may be recorded in the office of the recording officer of the county where the property is situated. Every such conveyance not so recorded is void as against any subsequent purchaser or mortgagee in good faith and for a valuable consideration from the same vendor, his heirs or devisees, of the same real property or any portion thereof whose conveyance is first duly recorded. An instrument is deemed recorded the minute it is filed for record. [1927 c 278 § 2; RRS § 10596-2. Prior: 1897 c 5 § 1; Code 1881 § 2314; 1877 p 312 § 4; 1873 p 465 § 4; 1863 p 430 § 4; 1860 p 299 § 4; 1858 p 28 § 1; 1854 p 403 § 4.]

RCW 65.08.070 applicable to rents and profits of real property: RCW 7.28.230.

65.08.090 Letters patent. Letters patent from the United States or the state of Washington granting real property may be recorded in the office of the recording officer of the county where such property is situated in the same manner and with like effect as a conveyance that is entitled to be recorded. [1927 c 278 § 4; RRS § 10596-4.]

65.08.095 Conveyances of fee title by public bodies. Every conveyance of fee title to real property hereafter executed by the state or by any political subdivision or municipal corporation thereof shall be recorded by the grantor, after having been reviewed as to form by the grantee, at the expense of the grantee at the time of delivery to the grantee,

and shall constitute legal delivery at the time of filing for record. [1963 c 49 § 1.]

65.08.100 Certified copies. A copy of a conveyance of or other instrument affecting real property recorded or filed in the office of the secretary of state or the commissioner of public lands, or of the record thereof, when certified in the manner required to entitle the same to be read in evidence, may be recorded with the certificate in the office of any recording officer of the state. [1927 c 278 § 5; RRS § 10596-5.]

65.08.110 Certified copies—Effect. A copy of a record, when certified or authenticated to entitle it to be read in evidence, may be recorded in any office where the original instrument would be entitled to be recorded. Such record has the same effect as if the original were so recorded. A copy of the record of a conveyance of or other instrument affecting separate parcels of real property situated in more than one county, when certified or authenticated to entitle it to be read in evidence may be recorded in the office of the recording officer of any county in which any such parcel is situated with the same effect as though the original instrument were so recorded. [1927 c 278 § 6; RRS § 10596-6.]

65.08.120 Assignment of mortgage—Notice. The recording of an assignment of a mortgage is not in itself notice to the mortgagor, his heirs, assigns or personal representatives, to invalidate a payment made by any of them to a prior holder of the mortgage. [1927 c 278 § 7; RRS § 10596-7.]

65.08.130 Revocation of power of attorney. A power of attorney or other instrument recorded pursuant to RCW 65.08.060 through 65.08.150 is not deemed revoked by any act of the party by whom it was executed unless the instrument of revocation is also recorded in the same office in which the instrument granting the power was recorded. [1927 c 278 § 8; RRS § 10596-8.]

65.08.140 No liability for error in recording when properly indexed. A recording officer is not liable for recording an instrument in a wrong book, volume or set of records if the instrument is properly indexed with a reference to the volume and page or recording number where the instrument is actually of record. [1999 c 233 § 17; 1927 c 278 § 9; RRS § 10596-9. Formerly RCW 65.04.120.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.08.150 Duty to record. A recording officer, upon payment or tender to him of the lawful fees therefor, shall record in his office any instrument authorized or permitted to be so recorded by the laws of this state or by the laws of the United States. [1943 c 23 § 1; 1927 c 278 § 10; RRS § 10596-10. Formerly RCW 65.04.010.]

65.08.160 Recording master form instruments and mortgages or deeds of trust incorporating master form provisions. A mortgage or deed of trust of real estate may be

recorded and constructive notice of the same and the contents thereof given in the following manner:

(1) An instrument containing a form or forms of covenants, conditions, obligations, powers, and other clauses of a mortgage or deed of trust may be recorded in the office of the county auditor of any county and the auditor of such county, upon the request of any person, on tender of the lawful fees therefor, shall record the same. Every such instrument shall be entitled on the face thereof as a "Master form recorded by . . . (name of person causing the instrument to be recorded)." Such instrument need not be acknowledged to be entitled to record.

(2) When any such instrument is recorded, the county auditor shall index such instrument under the name of the person causing it to be recorded in the manner provided for miscellaneous instruments relating to real estate.

(3) Thereafter any of the provisions of such master form instrument may be incorporated by reference in any mortgage or deed of trust of real estate situated within this state, if such reference in the mortgage or deed of trust states that the master form instrument was recorded in the county in which the mortgage or deed of trust is offered for record, the date when and the book and page or pages or recording number where such master form instrument was recorded, and that a copy of such master form instrument was furnished to the person executing the mortgage or deed of trust. The recording of any mortgage or deed of trust which has so incorporated by reference therein any of the provisions of a master form instrument recorded as provided in this section shall have like effect as if such provisions of the master form so incorporated by reference had been set forth fully in the mortgage or deed of trust.

(4) Whenever a mortgage or deed of trust is presented for recording on which is set forth matter purporting to be a copy or reproduction of such master form instrument or of part thereof, identified by its title as provided in subsection (1) of this section and stating the date when it was recorded and the book and page where it was recorded, preceded by the words "do not record" or "not to be recorded," and plainly separated from the matter to be recorded as a part of the mortgage or deed of trust in such manner that it will not appear upon a photographic reproduction of any page containing any part of the mortgage or deed of trust, such matter shall not be recorded by the county auditor to whom the instrument is presented for recording; in such case the county auditor shall record only the mortgage or deed of trust apart from such matter and shall not be liable for so doing, any other provisions of law to the contrary notwithstanding. [1999 c 233 § 18; 1967 c 148 § 1.]

Effective date—1999 c 233: See note following RCW 4.28.320.

65.08.170 Notice of additional water or sewer facility tap or connection charges—Required—Contents. When any municipality as defined in RCW 35.91.020 or any county has levied or intends to levy a charge on property pertaining to:

(1) The amount required by the provisions of a contract pursuant to RCW 35.91.020 under which the water or sewer facilities so tapped into or used were constructed; or

(2) Any connection charges which are in fact reimbursement for the cost of facilities constructed by the sale of revenue bonds; or

(3) The additional connection charge authorized in RCW 35.92.025;

such municipality or county shall record in the office in which deeds are recorded of the county or counties in which such facility is located a notice of additional tap or connection charges. Such notice shall contain either the legal description of the land affected by such additional tap or connection charges or a map making appropriate references to the United States government survey showing in outline the land affected or to be affected by such additional tap or connection charges. [1977 c 72 § 1.]

65.08.180 Notice of additional water or sewer facility tap or connection charges—Duration—Certificate of payment and release. The notice required by RCW 65.08.170, when duly recorded, shall be effective until there is recorded in the same office in which the notice was recorded a certificate of payment and release executed by the municipality or county. Such certificate shall contain a legal description of the particular parcel of land so released and shall be recorded within thirty days of the date of payment thereof. [1977 c 72 § 2.]

Chapter 65.12 RCW

REGISTRATION OF LAND TITLES (TORRENS ACT)

Sections

| | |
|-----------|---|
| 65.12.005 | Registration authorized—Who may apply. |
| 65.12.010 | Land subject to a lesser estate. |
| 65.12.015 | Tax title land—Conditions to registration. |
| 65.12.020 | Application. |
| 65.12.025 | Various lands in one application. |
| 65.12.030 | Amendment of application. |
| 65.12.035 | Form of application. |
| 65.12.040 | Venue—Power of the court. |
| 65.12.050 | Registrars of titles. |
| 65.12.055 | Bond of registrar. |
| 65.12.060 | Deputy registrar—Duties—Vacancy. |
| 65.12.065 | Registrar not to practice law—Liability for deputy. |
| 65.12.070 | Nonresident to appoint agent. |
| 65.12.080 | Filing application—Docket and record entries. |
| 65.12.085 | Filing abstract of title. |
| 65.12.090 | Examiner of titles—Appointment—Oath—Bond. |
| 65.12.100 | Copy of application as <i>lis pendens</i> . |
| 65.12.110 | Examination of title. |
| 65.12.120 | Summons to issue. |
| 65.12.125 | Summons—Form. |
| 65.12.130 | Parties to action. |
| 65.12.135 | Service of summons. |
| 65.12.140 | Copy mailed to nonresidents—Proof—Expense. |
| 65.12.145 | Guardians ad litem. |
| 65.12.150 | Who may appear—Answer. |
| 65.12.155 | Judgment by default—Proof. |
| 65.12.160 | Cause set for trial—Default—Referral. |
| 65.12.165 | Court may require further proof. |
| 65.12.170 | Application dismissed or withdrawn. |
| 65.12.175 | Decree of registration—Effect—Appellate review. |
| 65.12.180 | Rights of persons not served. |
| 65.12.190 | Limitation of actions. |
| 65.12.195 | Title free from incumbrances—Exceptions. |
| 65.12.200 | Decree—Contents—Filing. |
| 65.12.210 | Interest acquired after filing application. |
| 65.12.220 | Registration—Effect. |
| 65.12.225 | Withdrawal authorized—Effect. |
| 65.12.230 | Application to withdraw. |
| 65.12.235 | Certificate of withdrawal. |
| 65.12.240 | Effect of recording. |

| | |
|-----------|---|
| 65.12.245 | Title prior to withdrawal unaffected. |
| 65.12.250 | Entry of registration—Records. |
| 65.12.255 | Certificate of title. |
| 65.12.260 | Owner's certificate—Receipt. |
| 65.12.265 | Tenants in common. |
| 65.12.270 | Subsequent certificates. |
| 65.12.275 | Exchange of certificates—Platting land. |
| 65.12.280 | Effective date of certificate. |
| 65.12.290 | Certificate of title as evidence. |
| 65.12.300 | Indexes and files—Forms. |
| 65.12.310 | Tract and alphabetical indexes. |
| 65.12.320 | Dealings with registered land. |
| 65.12.330 | Registration has effect of recording. |
| 65.12.340 | Filing—Numbering—Indexing—Public records. |
| 65.12.350 | Duplicate of instruments certified—Fees. |
| 65.12.360 | New certificate—Register of less than fee—When form of memorial in doubt. |
| 65.12.370 | Owner's certificate to be produced when new certificate issued. |
| 65.12.375 | Owner's duplicate certificate. |
| 65.12.380 | Conveyance of registered land. |
| 65.12.390 | Certificate of tax payment. |
| 65.12.400 | Registered land charged as other land. |
| 65.12.410 | Conveyances by attorney in fact. |
| 65.12.420 | Encumbrances by owner. |
| 65.12.430 | Registration of mortgages. |
| 65.12.435 | Dealings with mortgages. |
| 65.12.440 | Foreclosures on registered land. |
| 65.12.445 | Registration of final decree—New certificate. |
| 65.12.450 | Title on foreclosure—Registration. |
| 65.12.460 | Petition for new certificate. |
| 65.12.470 | Registration of leases. |
| 65.12.480 | Instruments with conditions. |
| 65.12.490 | Transfers between trustees. |
| 65.12.500 | Trustee may register land. |
| 65.12.510 | Creation of lien on registered land. |
| 65.12.520 | Registration of liens. |
| 65.12.530 | Entry as to plaintiff's attorney. |
| 65.12.540 | Decree. |
| 65.12.550 | Title acquired on execution. |
| 65.12.560 | Termination of proceedings. |
| 65.12.570 | Land registered only after redemption period. |
| 65.12.580 | Registration on inheritance. |
| 65.12.590 | Probate court may direct sale of registered land. |
| 65.12.600 | Trustees and receivers. |
| 65.12.610 | Eminent domain—Reversion. |
| 65.12.620 | Registration when owner's certificate withheld. |
| 65.12.630 | Reference to examiner of title. |
| 65.12.635 | Examiner of titles. |
| 65.12.640 | Registered instruments to contain names and addresses—Service of notices. |
| 65.12.650 | Adverse claims—Procedure. |
| 65.12.660 | Assurance fund. |
| 65.12.670 | Investment of fund. |
| 65.12.680 | Recoveries from fund. |
| 65.12.690 | Parties defendant—Judgment—Payment—Duties of county attorney. |
| 65.12.700 | When fund not liable—Maximum liability. |
| 65.12.710 | Limitation of actions. |
| 65.12.720 | Proceeding to change records. |
| 65.12.730 | Certificate subject of theft—Penalty. |
| 65.12.740 | Perjury. |
| 65.12.750 | Fraud—False entries—Penalty. |
| 65.12.760 | Forgery—Penalty. |
| 65.12.770 | Civil actions unaffected. |
| 65.12.780 | Fees of clerk. |
| 65.12.790 | Fees of registrar. |
| 65.12.800 | Disposition of fees. |

65.12.005 Registration authorized—Who may apply.

The owner of any estate or interest in land, whether legal or equitable, except unpatented land, may apply as hereinafter provided to have the title of said land registered. The application may be made by the applicant personally, or by an agent thereunto lawfully authorized in writing, which authority shall be executed and acknowledged in the same manner and form as is now required as to a deed, and shall be recorded in the office of the county auditor in the county in which the land, or the major portion thereof, is situated before the mak-

ing of the application by such agent. A corporation may apply by its authorized agent, and an infant or any other person under disability by his legal guardian. Joint tenants and tenants in common shall join in the application. The person in whose behalf the application is made shall be named as applicant. [1907 c 250 § 1; RRS § 10622.]

Construction—1907 c 250: "This act shall be construed liberally, so far as may be necessary for the purpose of carrying out its general intent, which is, that any owner of land may register his title and bring his land under the provisions of this act, but no one is required so to do." [1907 c 250 § 97.]

65.12.010 Land subject to a lesser estate. It shall not be an objection to bringing land under this chapter, that the estate or interest of the applicant is subject to any outstanding lesser estate, mortgage, lien or charge; but no mortgage, lien, charge or lesser estate than a fee simple shall be registered unless the estate in fee simple to the same land is registered; and every such lesser estate, mortgage, lien or charge shall be noted upon the certificate of title and the duplicate thereof, and the title or interest certified shall be subject only to such estates, mortgages, liens and charges as are so noted, except as herein provided. [1907 c 250 § 2; RRS § 10623.]

65.12.015 Tax title land—Conditions to registration. No title derived through sale for any tax or assessment, or special assessment, shall be entitled to be registered, unless it shall be made to appear that the title of the applicant, or those through whom he claims title has been adjudicated by a court of competent jurisdiction, and a decree of such court duly made and recorded, decreeing the title of the applicant, or that the applicant or those through whom he claims title have been in the actual and undisputed possession of the land under such title at least seven years, immediately prior to the application, and shall have paid all taxes and assessments legally levied thereon during said times; unless the same is vacant and unoccupied lands or lots, in which case, where title is derived through sale for any tax or assessment or special assessment for any such vacant and unoccupied lands or lots, and the applicant, or those through whom he claims title, shall have paid all taxes and assessments legally levied thereon for eight successive years immediately prior to the application, in which case such lands and lots shall be entitled to be registered as other lands provided for by this section. [1907 c 250 § 3; RRS § 10624.]

65.12.020 Application. The application shall be in writing and shall be signed and verified by the oath of the applicant, or the person acting in his behalf. It shall set forth substantially:

(1) The name and place of residence of the applicant, and if the application is by one acting in behalf of another, the name and place of residence and capacity of the person so acting.

(2) Whether the applicant (except in the case of a corporation) is married or not, and, if married, the name and residence of the husband or wife, and the age of the applicant.

(3) The description of the land and the assessed value thereof, exclusive of improvements, according to the last official assessment, the same to be taken as a basis for the payments required under RCW 65.12.670 and 65.12.790(1).

(4) The applicant's estate or interest in the same, and whether the same is subject to homestead exemption.

(5) The names of all persons or parties who appear of record to have any title, claim, estate, lien or interest in the lands described in the application for registration.

(6) Whether the land is occupied or unoccupied, and if occupied by any other person than the applicant, the name and post office address of each occupant, and what estate he has or claims in the land.

(7) Whether the land is subject to any lien or incumbrance, and if any, give the nature and amount of the same, and if recorded, the book and page of record; also give the name and post office address of each holder thereof.

(8) Whether any other person has any estate or claims any interest in the land, in law or equity, in possession, remainder, reversion or expectancy, and if any, set forth the name and post office address of every such person and the nature of his estate or claim.

(9) In case it is desired to settle or establish boundary lines, the names and post office addresses of all the owners of the adjoining lands that may be affected thereby, as far as he is able, upon diligent inquiry, to ascertain the same.

(10) If the application is on behalf of a minor, the age of such minor shall be stated.

(11) When the place of residence of any person whose residence is required to be given is unknown, it may be so stated if the applicant will also state that upon diligent inquiry he had been unable to ascertain the same. [1907 c 250 § 4; RRS § 10625.]

65.12.025 Various lands in one application. Any number of contiguous pieces of land in the same county, and owned by the same person, and in the same right, or any number of pieces of property in the same county having the same chain of title and belonging to the same person, may be included in one application. [1907 c 250 § 5; RRS § 10626.]

65.12.030 Amendment of application. The application may be amended only by supplemental statement in writing, signed and sworn to as in the case of the original application. [1907 c 250 § 6; RRS § 10627.]

65.12.035 Form of application. The form of application may, with appropriate changes, be substantially as follows:

FORM OF APPLICATION FOR INITIAL REGISTRATION OF TITLE TO LAND

State of Washington }
County of } ss.

In the superior court of the state of Washington in and for county.

In the matter of the application of to register the title to the land hereinafter described } PETITION

To the Honorable, judge of said court: I hereby make application to have registered the title to the land hereinafter described, and do solemnly swear that the answers to the questions herewith, and the statements herein contained, are true to the best of my knowledge, information and belief.

First. Name of applicant,, age, years.
Residence, (number and street, if any).
Married to (name of husband or wife).

Second. Applications made by, acting as (owner, agent or attorney). Residence, (number, street).

Third. Description of real estate is as follows:
.....
.....
.....
estate or interest therein is and subject to homestead.

Fourth. The land is occupied by (names of occupants), whose address is (number street and town or city). The estate, interest or claim of occupant is

Fifth. Liens and incumbrances on the land Name of holder or owner thereof is Whose post office address is Amount of claim, \$. Recorded, Book, page, of the records of said county.

Sixth. Other persons, firm or corporation having or claiming any estate, interest or claim in law or equity, in possession, remainder, reversion or expectancy in said land are whose addresses are respectively. Character of estate, interest or claim is

Seventh. Other facts connected with said land and appropriate to be considered in this registration proceeding are

Eighth. Therefore, the applicant prays this honorable court to find or declare the title or interest of the applicant in said land and decree the same, and order the registrar of titles to register the same and to grant such other and further relief as may be proper in the premises.

.....
(Applicant's signature)
By, agent, attorney, administrator or guardian.
Subscribed and sworn to before me this day of, A.D. 19. . .

.....
Notary Public in and for the state of Washington, residing at

[1907 c 250 § 7; RRS § 10628.]

65.12.040 Venue—Power of the court. The application for registration shall be made to the superior court of the state of Washington in and for the county wherein the land is situated. Said court shall have power to inquire into the condition of the title to and any interest in the land and any lien or encumbrance thereon, and to make all orders, judgments and decrees as may be necessary to determine, establish and declare the title or interest, legal or equitable, as against all

persons, known, or unknown, and all liens and incumbrances existing thereon, whether by law, contract, judgment, mortgage, trust deed or otherwise, and to declare the order, priority and preference as between the same, and to remove all clouds from the title. [1907 c 250 § 8; RRS § 10629.]

65.12.050 Registrars of titles. The county auditors of the several counties of this state shall be registrars of titles in their respective counties; and their deputies shall be deputy registrars. All acts performed by registrars and deputy registrars under this law shall be performed under rules and instructions established and given by the superior court having jurisdiction of the county in which they act. [1907 c 250 § 9; RRS § 10630.]

65.12.055 Bond of registrar. Every county auditor shall, before entering upon his duties as registrar of titles, give a bond with sufficient sureties, to be approved by a judge of the superior court of the state of Washington in and for his county, payable to the state of Washington, in such sum as shall be fixed by the said judge of the superior court, conditioned for the faithful discharge of his duties, and to deliver up all papers, books, records and other property belonging to the county or appertaining to his office as registrar of titles, whole, safe and undefaced, when lawfully required so to do; said bond shall be filed in the office of the secretary of state, and a copy thereof shall be filed and entered upon the records of the superior court in the county wherein the county auditor shall hold office. [1907 c 250 § 10; RRS § 10631.]

65.12.060 Deputy registrar—Duties—Vacancy. Deputy registrars shall perform any and all duties of the registrar in the name of the registrar, and the acts of such deputies shall be held to be the acts of the registrar, and in the case of the death of the registrar or his removal from office, the vacancy shall be filled in the same manner as is provided by law for filling such vacancy in the office of the county auditor. The person so appointed to fill such vacancy shall file a bond and be vested with the same powers as the registrar whose office he is appointed to fill. [1907 c 250 § 11; RRS § 10632.]

65.12.065 Registrar not to practice law—Liability for deputy. No registrar or deputy registrar shall practice as an attorney or counselor at law, nor prepare any papers in any proceeding herein provided for, nor while in the office be in partnership with any attorney or counselor at law so practicing. The registrar shall be liable for any neglect or omission of the duties of his office when occasioned by a deputy registrar, in the same manner as for his own personal neglect or omission. [1907 c 250 § 12; RRS § 10633.]

65.12.070 Nonresident to appoint agent. If the applicant is not a resident of the state of Washington, he shall file with his application a paper, duly acknowledged, appointing an agent residing in this state, giving his name in full and post office address, and shall therein agree that the service of any legal process in proceedings under or growing out of the application shall be of the same legal effect when made on said agent as if made on the applicant within this state. If the agent so appointed dies or removes from the state, the appli-

cant shall at once make another appointment in like manner, and if he fails so to do, the court may dismiss the application. [1907 c 250 § 14; RRS § 10635.]

65.12.080 Filing application—Docket and record entries. The application shall be filed in the office of the clerk of the court to which the application is made and in case of personal service a true copy thereof shall be served with the summons, and the clerk shall docket the case in a book to be kept for that purpose, which shall be known as the "land registration docket". The record entry of the application shall be entitled (name of applicant), plaintiff, against (here insert the names of all persons named in the application as being in possession of the premises, or as having any lien, incumbrance, right, title or interest in the land, and the names of all persons who shall be found by the report of the examiner hereinafter provided for to be in possession or to have any lien, incumbrance, right, title or interest in the land), also all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate described in the application herein, defendants.

All orders, judgments and decrees of the court in the case shall be appropriately entered in such docket. All final orders or decrees shall be recorded, and proper reference made thereto in such docket. [1907 c 250 § 15; RRS § 10636.]

65.12.085 Filing abstract of title. The applicant shall also file with the said clerk, at the time the application is made, an abstract of title such as is now commonly used, prepared and certified to by the county auditor of the county, or a person, firm or corporation regularly engaged in the abstract business, and having satisfied the said superior court that they have a complete set of abstract books and are in existence and doing business at the time of the filing of the application under this chapter. [1907 c 250 § 15a; RRS § 10637.]

65.12.090 Examiner of titles—Appointment—Oath—Bond. The judges of the superior court in and for the state of Washington for the counties for which they were elected or appointed shall appoint a competent attorney in each county to be examiner of titles and legal adviser of the registrar. The examiner of titles in each county shall be paid in each case by the applicant such compensation as the judge of the superior court of the state of Washington in and for that county shall determine. Every examiner of titles shall, before entering upon the duties of his office, take and subscribe an oath of office to faithfully and impartially perform the duties of his office, and shall also give a bond in such amount and with such sureties as shall be approved by the judge of the said superior court, payable in like manner and with like conditions as required of the registrar. A copy of the bond shall be entered upon the records of said court and the original shall be filed with the registrar. [1907 c 250 § 13; RRS § 10634.]

65.12.100 Copy of application as lis pendens. At the time of the filing of the application in the office of the clerk of the court, a copy thereof, certified by the clerk, shall be filed (but need not be recorded) in the office of the county

auditor, and shall have the force and effect of a lis pendens. [1907 c 250 § 16; RRS § 10638.]

65.12.110 Examination of title. Immediately after the filing of the abstract of title, the court shall enter an order referring the application to an examiner of titles, who shall proceed to examine into the title and into the truth of the matters set forth in the application, and particularly whether the land is occupied, the nature of the occupation, if occupied, and by what right, and, also as to all judgments against the applicant or those through whom he claims title, which may be a lien upon the lands described in the application; he shall search the records and investigate all the facts brought to his notice, and file in the case a report thereon, including a certificate of his opinion upon the title. The clerk of the court shall thereupon give notice to the applicant of the filing of such report. If the opinion of the examiner is adverse to the applicant, he shall be allowed by the court a reasonable time in which to elect to proceed further, or to withdraw his application. The election shall be made in writing, and filed with the clerk of the court. [1907 c 250 § 17; RRS § 10639.]

65.12.120 Summons to issue. If, in the opinion of the examiner, the applicant has a title, as alleged, and proper for registration, or if the applicant, after an adverse opinion of the examiner, elects to proceed further, the clerk of the court shall, immediately upon the filing of the examiner's opinion or the applicant's election, as the case may be, issue a summons substantially in the form hereinafter provided. The summons shall be issued by the order of the court and attested by the clerk of the court. [1907 c 250 § 18; RRS § 10640.]

65.12.125 Summons—Form. The summons provided for in RCW 65.12.135 shall be in substance in the form following, to wit:

SUMMONS ON APPLICATION FOR REGISTRATION OF LAND

State of Washington, }
County of , } ss.

In the superior court of the state of Washington in and for the county of (name of applicant), plaintiff,, versus (names of all defendants), and all other persons or parties unknown, claiming any right, title, estate, lien or interest in the real estate, described in the application herein defendants.

The state of Washington to the above-named defendants, greeting:

You are hereby summoned and required to answer the application of the applicant plaintiff in the above entitled application for registration of the following land situate in county, Washington, to wit: (description of land), and to file your answer to the said application in the office of the clerk of said court, in said county, within twenty days after the service of this summons upon you, exclusive of the day of such service; and if you fail to answer the said application within the time aforesaid, the applicant plaintiff in this action will apply to the court for the relief demanded in the application herein.

Witness,, clerk of said court and the seal thereof, at, in said county and state, this day of, A.D. 19. . .

(Seal.) Clerk.

[1907 c 250 § 206; RRS § 10644.]

65.12.130 Parties to action. The applicant shall be known in the summons as the plaintiff. All persons named in the application or found by the report of the examiner as being in possession of the premises or as having of record any lien, incumbrance, right, title, or interest in the land, and all other persons who shall be designated as follows, viz: "All other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein," shall be and shall be known as defendants. [1907 c 250 § 19; RRS § 10641.]

65.12.135 Service of summons. The summons shall be directed to the defendants and require them to appear and answer the application within twenty days after the service of the summons, exclusive of the day of service; and the summons shall be served as is now provided for the service of summons in civil actions in the superior court in this state, except as herein otherwise provided. The summons shall be served upon nonresident defendants and upon "all such unknown persons or parties," defendant, by publishing the summons in a newspaper of general circulation in the county where the application is filed, once in each week for three consecutive weeks, and the service by publication shall be deemed complete at the end of the twenty-first day from and including the first publication, provided that if any named defendant assents in writing to the registration as prayed for, which assent shall be endorsed upon the application or filed therewith and be duly witnessed and acknowledged, then in all such cases no service of summons upon the defendant shall be necessary. [1985 c 469 § 60; 1907 c 250 § 20; RRS § 10642.]

65.12.140 Copy mailed to nonresidents—Proof—Expense. The clerk of the court shall also, on or before twenty days after the first publication, send a copy thereof by mail to such defendants who are not residents of the state whose place of address is known or stated in the application, and whose appearance is not entered and who are not in person served with the summons. The certificate of the clerk that he has sent such notice, in pursuance of this section, shall be conclusive evidence thereof. Other or further notice of the application for registration may be given in such manner and to such persons as the court or any judge thereof may direct. The summons shall be served at the expense of the applicant, and proof of the service thereof shall be made as proof of service is now made in other civil actions. [1907 c 250 § 20a; RRS § 10643.]

65.12.145 Guardians ad litem. The court shall appoint a disinterested person to act as guardian ad litem for minors and other persons under disability, and for all other persons not in being who may appear to have an interest in the land. The compensation of the said guardian shall be determined

by the court, and paid as a part of the expense of the proceeding. [1907 c 250 § 21; RRS § 10645.]

65.12.150 Who may appear—Answer. Any person claiming an interest, whether named in the summons or not, may appear and file an answer within the time named in the summons, or within such further time as may be allowed by the court. The answer shall state all objections to the application, and shall set forth the interests claimed by the party filing the same, and shall be signed and sworn to by him or by some person in his behalf. [1907 c 250 § 22; RRS § 10646.]

65.12.155 Judgment by default—Proof. If no person appears and answers within the time named in the summons, or allowed by the court, the court may at once, upon the motion of the applicant, no reason to the contrary appearing, upon satisfactory proof of the applicant's right thereto, make its order and decree confirming the title of the applicant and ordering registration of the same. By the description in the summons, "all other persons unknown, claiming any right, title, lien, or interest in, to, or upon the real estate described in the application herein", all the world are made parties defendant, and shall be concluded by the default, order and decree. The court shall not be bound by the report of the examiners of title, but may require other or further proof. [1907 c 250 § 23; RRS § 10647.]

65.12.160 Cause set for trial—Default—Referral. If, in any case an appearance is entered and answer filed, the cause shall be set down for hearing on motion of either party, but a default and order shall first be entered against all persons who do not appear and answer in the manner provided in RCW 65.12.155. The court may refer the cause or any part thereof to one of the examiners of title, as referee, to hear the parties and their evidence, and make report thereon to the court. His report shall have the same force and effect as that of a referee appointed by the said superior court under the laws of this state now in force, and relating to the appointment, duties and powers of referees. [1907 c 250 § 24; RRS § 10648.]

65.12.165 Court may require further proof. The court may order such other or further hearing of the cause before the court or before the examiner of titles after the filing of the report of the examiner, referred to in RCW 65.12.160, and require such other and further proof by either of the parties to the cause as to the court shall seem meet and proper. [1907 c 250 § 25; RRS § 10649.]

65.12.170 Application dismissed or withdrawn. If, in any case, after hearing, the court finds that the applicant has not title proper for registration, a decree shall be entered dismissing the application, and such decree may be ordered to be without prejudice. The applicant may dismiss his application at any time, before the final decree, upon such terms as may be fixed by the court, and upon motion to dismiss duly made by the court. [1907 c 250 § 26; RRS § 10650.]

65.12.175 Decree of registration—Effect—Appellate review. If the court, after hearing, finds that the applicant has

title, whether as stated in his application or otherwise, proper for registration, a decree of confirmation of title and registration shall be entered. Every decree of registration shall bind the land, and quiet the title thereto, except as herein otherwise provided, and shall be forever binding and conclusive upon all persons, whether mentioned by name in the application, or included in "all other persons or parties unknown claiming any right, title, estate, lien or interest in, to, or upon the real estate described in the application herein", and such decree shall not be opened by reason of the absence, infancy or other disability of any person affected thereby, nor by any proceeding at law, or in equity, for reversing judgments or decrees, except as herein especially provided. Appellate review of the court's decision may be sought as in other civil actions. [1988 c 202 § 56; 1971 c 81 § 132; 1907 c 250 § 27; RRS § 10651.]

Severability—1988 c 202: See note following RCW 2.24.050.

65.12.180 Rights of persons not served. Any person having an interest in or lien upon the land who has not been actually served with process or notified of the filing of the application or the pendency thereof, may at any time within ninety days after the entry of such decree, and not afterwards, appear and file his sworn answer to such application in like manner as hereinbefore prescribed for making answer: PROVIDED, HOWEVER, That such person had no actual notice or information of the filing of such application or the pendency of the proceedings during the pendency thereof, or until within three months of the time of the filing of such answer, which facts shall be made to appear before answering by the affidavit of the person answering or the affidavit of some one in his behalf having knowledge of the facts, and PROVIDED, ALSO, that no innocent purchaser for value has acquired an interest. If there is any such purchaser, the decree of registration shall not be opened, but shall remain in full force and effect forever, subject only to the right of appeal hereinbefore provided; but any person aggrieved by such decree in any case may pursue his remedy by suit in the nature of an action of tort against the applicant or any other person for fraud in procuring the decree; and may also bring his action for indemnity as hereinafter provided. Upon the filing of such answer, and not less than ten days' notice having been given to the applicant, and to such other interested parties as the court may order in such manner as shall be directed by the court, the court shall proceed to review the case, and if the court is satisfied that the order or decree ought to be opened, an order shall be entered to that effect, and the court shall proceed to review the proceedings, and shall make such order in the case as shall be equitable in the premises. An appeal may be allowed in this case, as well as from all other decrees affecting any registered title within a like time, and in a like manner, as in the case of an original decree under this chapter, and not otherwise. [1907 c 250 § 28; RRS § 10652.]

65.12.190 Limitation of actions. No person shall commence any proceeding for the recovery of lands or any interest, right, lien or demand therein or upon the same adverse to the title or interest as found, or decreed in the decree of registration, unless within ninety days after the entry of the order or decree; and this section shall be construed as giving such

right of action to such person only as shall not, because of some irregularity, insufficiency, or for some other cause, be bound and concluded by such order or decree. [1907 c 250 § 29; RRS § 10653.]

65.12.195 Title free from incumbrances—Exceptions. Every person receiving a certificate of title in pursuance of a decree of registration, and every subsequent purchaser of registered land who takes a certificate of title for value and in good faith, shall hold the same free from all incumbrances except only such estates, mortgages, liens, charges and interests as may be noted in the last certificate of title in the registrar's office, and except any of the following rights or incumbrances subsisting, namely:

- (1) Any existing lease for a period not exceeding three years, when there is actual occupation of the premises under the lease.
- (2) All public highways embraced in the description of the land included in the certificates shall be deemed to be excluded from the certificate. And any subsisting right of way or other easement, for ditches or water rights, upon, over or in respect to the land.
- (3) Any tax or special assessment for which a sale of the land has not been had at the date of the certificate of title.
- (4) Such right of appeal, or right to appear and contest the application, as is allowed by this chapter. And,
- (5) Liens, claims or rights, if any, arising or existing under the constitution or laws of the United States, and which the statutes of this state cannot or do not require to appear of record in the office of the county clerk and county auditor. [1907 c 250 § 30; RRS § 10654.]

65.12.200 Decree—Contents—Filing. Every decree of registration shall bear the date of the year, day, hour and minute of its entry, and shall be signed by the judge of the superior court of the state of Washington in and for the county in which the land is situated; it shall state whether the owner is married or unmarried, and if married, the name of the husband or wife; if the owner is under disability it shall state the nature of the disability, and if a minor, shall state his age. It shall contain a description of the land as finally determined by the court, and shall set forth the estate of the owner, and also in such manner as to show their relative priority, all particular estates, mortgages, easements, liens, attachments, homesteads and other incumbrances, including rights of husband and wife, if any, to which the land or the owner's estate is subject, and shall contain any other matter or information properly to be determined by the court in pursuance of this chapter. The decree shall be stated in a convenient form for transcription upon the certificate of title, to be made as hereinafter provided by the registrar of titles. Immediately upon the filing of the decree of registration, the clerk shall file a certified copy thereof in the office of the registrar of titles. [1907 c 250 § 31; RRS § 10655.]

65.12.210 Interest acquired after filing application. Any person who shall take by conveyance, attachment, judgment, lien or otherwise any right, title or interest in the land, subsequent to the filing of a copy of the application for registration in the office of the county auditor, shall at once appear

and answer as a party defendant in the proceeding for registration, and the right, title or interest of such person shall be subject to the order or decree of the court. [1907 c 250 § 32; RRS § 10656.]

65.12.220 Registration—Effect. The obtaining of a decree of registration and receiving of a certificate of title shall be deemed an agreement running with the land and binding upon the applicant and the successors in title, that the land shall be and forever remain registered land, subject to the provisions of this chapter and of all acts amendatory thereof, unless the same shall be withdrawn from registration in the manner hereinafter provided. All dealings with the land or any estate or interest therein after the same has been brought under this chapter, and all liens, encumbrances, and charges upon the same shall be made only subject to the terms of this chapter, so long as said land shall remain registered land and until the same shall be withdrawn from registration in the manner hereinafter provided. [1917 c 62 § 1; 1907 c 250 § 33; RRS § 10657.]

65.12.225 Withdrawal authorized—Effect. The owner or owners of any lands, the title to which has been or shall hereafter be registered in the manner provided by law, shall have the right to withdraw said lands from registration in the manner hereinafter provided, and after the same have been so withdrawn from registration, shall have the right to contract concerning, convey, encumber or otherwise deal with the title to said lands as freely and to the same extent and in the same manner as though the title had not been registered. [1917 c 62 § 2; RRS § 10658.]

65.12.230 Application to withdraw. The owner or owners of registered lands, desiring to withdraw the same from registration, shall make and file with the registrar of titles in the county in which said lands are situated, an application in substantially the following form:

To the registrar of titles in the county of, state of Washington:

I, (or we),, the undersigned registered owner . . . in fee simple of the following described real property situated in the county of, state of Washington, to wit: (here insert the description of the property), hereby make application to have the title to said real property withdrawn from registration.

Witness my (or our) hand . . . and seal . . . this . . . day of, 19. . .

.....
Applicant's signature.

Said application shall be acknowledged in the same manner as is required for the acknowledgment of deeds. [1917 c 62 § 3; RRS § 10659.]

65.12.235 Certificate of withdrawal. Upon the filing of such application and the payment of a fee of five dollars, the registrar of titles, if it shall appear that the application is signed and acknowledged by all the registered owners of said land, shall issue to the [applicant] a certificate in substantially the following form:

This is to certify, That the owner (or owners) in fee simple of the following described lands situated in the county of, state of Washington, the title to which has been heretofore registered under the laws of the state of Washington, to wit: (here insert description of the property), having heretofore filed his (or their) application for the withdrawal of the title to said lands from the registry system; NOW, THEREFORE, The title to said above described lands has been withdrawn from the effect and operation of the title registry system of the state of Washington and the owner (or owners) of said lands is (or are) by law authorized to contract concerning, convey, encumber or otherwise deal with the title to said lands in the same manner and to the same extent as though said title had never been registered.

Witness my hand and seal this day of, 19. . .

.....
Registrar of Titles for
..... county.

[1973 c 121 § 1; 1917 c 62 § 4; RRS § 10660.]

65.12.240 Effect of recording. The person receiving such certificate of withdrawal shall record the same in the record of deeds in the office of the county auditor of the county in which the lands are situated and thereafter the title to said lands shall be conveyed or encumbered in the same manner as the title to lands that have not been registered. [1917 c 62 § 5; RRS § 10661.]

65.12.245 Title prior to withdrawal unaffected. *This act shall not be construed to disturb the effect of any proceedings under said registry system, wherein the question of title to said real property has been determined, but all proceedings had in connection with the registering of said title, relating to the settlement or determination of said title, prior to such withdrawal, shall have the same force and effect as if said title still remained under said registry system. [1917 c 62 § 6; RRS § 10662.]

*Reviser's note: The language "This act" appears in 1917 c 62 codified herein as RCW 65.12.220 through 65.12.245.

65.12.250 Entry of registration—Records. Immediately upon the filing of the decree of registration in the office of the registrar of titles, the registrar shall proceed to register the title or interest pursuant to the terms of the decree in the manner herein provided. The registrar shall keep a book known as the "Register of Titles", wherein he shall enter all first and subsequent original certificates of title by binding or recording them therein in the order of their numbers, consecutively, beginning with number one, with appropriate blanks for entry of memorials and notations allowed by this chapter. Each certificate, with such blanks, shall constitute a separate page of such book. All memorials and notations that may be entered upon the register shall be entered upon the page whereon the last certificate of title of the land to which they relate is entered. The term certificate of title used in this chapter shall be deemed to include all memorials and notations thereon. [1907 c 250 § 34; RRS § 10663.]

65.12.255 Certificate of title. The certificate of registration shall contain the name of the owner, a description of the land and of the estate of the owner, and shall by memorial or notation contain a description of all incumbrances, liens and interests to which the estate of the owner is subject; it shall state the residence of the owner and, if a minor, give his age; if under disability, it shall state the nature of the disability; it shall state whether married or not, and, if married, the name of the husband or wife; in case of a trust, condition or limitation, it shall state the trust, condition or limitation, as the case may be; and shall contain and conform in respect to all statements to the certified copy of the decree of registration filed with the registrar of titles as hereinbefore provided; and shall be in form substantially as follows:

FIRST CERTIFICATE OF TITLE

Pursuant to order of the superior court of the state of Washington, in and for county.

State of Washington, }
County of, } ss.

This is to certify that A. B. of, county of, state of, is now the owner of an estate (describe the estate) of, and in (describe the land), subject to the incumbrances, liens and interests noted by the memorial underwritten or indorsed thereon, subject to the exceptions and qualifications mentioned in the thirtieth section of "An Act relating to the registration and confirmation of titles to land," in the session laws of Washington for the year 1907 [RCW 65.12.195]. (Here note all statements provided herein to appear upon the certificate.)

In witness whereof, I have hereunto set my hand and affixed the official seal of my office this day of, A.D. 19. . .

(Seal)

.....
Registrar of Titles.

[1907 c 250 § 35; RRS § 10664.]

65.12.260 Owner's certificate—Receipt. The registrar shall, at the time that he enters his original certificate of title, make an exact duplicate thereof, but putting on it the words "Owner's duplicate certificate of ownership", and deliver the same to the owner or to his attorney duly authorized. For the purpose of preserving evidence of the signature and handwriting of the owner in his office, it shall be the duty of the registrar to take from the owner, in every case where it is practicable so to do, his receipt for the certificate of title which shall be signed by the owner in person. Such receipt, when signed and delivered in the registrar's office, shall be witnessed by the registrar or deputy registrar. If such receipt is signed elsewhere, it shall be witnessed and acknowledged in the same manner as is now provided for the acknowledgment of deeds. When so signed, such receipt shall be prima facie evidence of the genuineness of such signature. [1907 c 250 § 36; RRS § 10665.]

65.12.265 Tenants in common. Where two or more persons are registered owners as tenants in common or other-

wise, one owner's duplicate certificate can be issued for the entirety, or a separate duplicate owner's certificate may be issued to each owner for his undivided share. [1907 c 250 § 37; RRS § 10666.]

65.12.270 Subsequent certificates. All certificates subsequent to the first shall be in like form, except that they shall be entitled: "Transfer from No. . . .", (the number of the next previous certificate relating to the same land), and shall also contain the words "Originally registered on the . . . day of . . . , 19. . . , and entered in the book . . . at page . . . of register." [1907 c 250 § 38; RRS § 10667.]

65.12.275 Exchange of certificates—Platting land. A registered owner holding one duplicate certificate for several distinct parcels of land may surrender it and take out several certificates for portions thereof. A registered owner holding several duplicate certificates for several distinct parcels of land may surrender them and take out a single duplicate certificate for all of said parcels, or several certificates for different portions thereof. Such exchange of certificates, however, shall only be made by the order of the court upon petition therefor duly made by the owner. An owner of registered land who shall subdivide such land into lots, blocks or acre tracts shall file with the registrar of titles a plat of said land so subdivided, in the same manner and subject to the same rules of law and restrictions as is provided for platting land that is not registered. [1907 c 250 § 39; RRS § 10668.]

65.12.280 Effective date of certificate. The certificate of title shall relate back to and take effect as of the date of the decree of registration. [1907 c 250 § 40; RRS § 10669.]

65.12.290 Certificate of title as evidence. The original certificate in the registration book, any copy thereof duly certified under the signature of the registrar of titles or his deputy, and authenticated by his seal and also the owner's duplicate certificate shall be received as evidence in all the courts of this state, and shall be conclusive as to all matters contained therein, except so far as is otherwise provided in this chapter. In case of a variance between the owner's duplicate certificate and the original certificate, the original shall prevail. [1907 c 250 § 41; RRS § 10670.]

65.12.300 Indexes and files—Forms. The registrar of titles, under the direction of the court, shall make and keep indexes of all duplication and of all certified copies and decrees of registration and certificates of titles, and shall also index and file in classified order all papers and instruments filed in his office relating to applications and to registered titles. The registrar shall also, under the direction of the court, prepare and keep forms of indexes and entry books. The court shall prepare and adopt convenient forms of certificates of titles, and also general forms of memorials or notations to be used by the registrars of titles in registering the common forms of conveyance and other instruments to express briefly their effect. [1907 c 250 § 42; RRS § 10671.]

65.12.310 Tract and alphabetical indexes. The registrar of titles shall keep tract indexes, in which shall be entered

the lands registered in the numerical order of the townships, ranges, sections, and in cases of subdivisions, the blocks and lots therein, and the names of the owners, with a reference to the volume and page of the register of titles in which the lands are registered. He shall also keep alphabetical indexes, in which shall be entered, in alphabetical order, the names of all registered owners, and all other persons interested in, or holding charges upon, or any interest in, the registered land, with a reference to the volume and page of the register of titles in which the land is registered. [1907 c 250 § 43; RRS § 10672.]

65.12.320 Dealings with registered land. The owner of registered land may convey, mortgage, lease, charge or otherwise incur, dispose of or deal with the same as fully as if it had not been registered. He may use forms of deeds, trust deeds, mortgages and leases or voluntary instruments, like those now in use, and sufficient in law for the purpose intended. But no voluntary instrument of conveyance, except a will and a lease, for a term not exceeding three years, purporting to convey or affect registered land, shall take effect as a conveyance, or bind the land; but shall operate only as a contract between the parties, and as evidence of the authority to the registrar of titles to make registration. The act of registration shall be the operative act to convey or affect the land. [1907 c 250 § 44; RRS § 10673.]

65.12.330 Registration has effect of recording. Every conveyance, lien, attachment, order, decree, judgment of a court of record, or instrument or entry which would, under existing law, if recorded, filed or entered in the office of the county clerk, and county auditor, of the county in which the real estate is situate, affect the said real estate to which it relates, if the title thereto were not registered, shall, if recorded, filed or entered in the office of the registrar of titles in the county where the real estate to which such instrument relates is situate, affect in like manner the title thereto if registered, and shall be notice to all persons from the time of such recording, filing or entering. [1907 c 250 § 45; RRS § 10674.]

65.12.340 Filing—Numbering—Indexing—Public records. The registrar of titles shall number and note in a proper book to be kept for that purpose, the year, month, day, hour and minute of reception and number of all conveyances, orders or decrees, writs or other process, judgments, liens, or all other instruments, or papers or orders affecting the title of land, the title to which is registered. Every instrument so filed shall be retained in the office of the registrar of titles, and shall be regarded as registered from the time so noted, and the memorial of each instrument, when made on the certificate of title to which it refers, shall bear the same date. Every instrument so filed, whether voluntary or involuntary, shall be numbered and indexed, and indorsed with a reference to the proper certificate of title. All records and papers, relating to registered land, in the office of the registrar of titles shall be open to public inspection, in the same manner as are now the papers and records in the office of the county clerk and county auditor. [1907 c 250 § 46; RRS § 10675.]

65.12.350 Duplicate of instruments certified—Fees. Duplicates of all instruments, voluntary or involuntary, filed and registered in the office of the registrar of titles, may be presented with the originals, and shall be attested and sealed by the registrar of titles, and indorsed with the file number and other memoranda on the originals, and may be taken away by the person presenting the same. Certified copies of all instruments filed and registered may be obtained from the registrar of titles, on the payment of a fee of the same amount as is now allowed the county clerk and county auditor, for a like certified copy. [1907 c 250 § 47; RRS § 10676.]

65.12.360 New certificate—Register of less than fee—When form of memorial in doubt. No new certificate shall be entered or issued upon any transfer of registered land, which does not divest the title in fee simple of said land or some part thereof, from the owner or some one of the registered owners. All interest in the registered land, less than a freehold estate, shall be registered by filing with the registrar of titles, the instruments creating, transferring or claiming such interest, and by a brief memorandum or memorial thereof, made by a registrar of titles upon the certificate of title, and signed by him. A similar memorandum, or memorial, shall also be made on the owner's duplicate.

The cancellation or extinguishment of such interests shall be registered in the same manner. When any party in interest does not agree as to the proper memorial to be made upon the filing of any instrument, (voluntary or involuntary), presented for registration, or where the registrar of titles is in doubt as to the form of such memorial, the question shall be referred to the court for decision, either on the certificate of the registrar of titles, or upon the demand in writing of any party in interest.

The registrar of titles shall bring before the court all the papers and evidence which may be necessary for the determination of the question by the court. The court, after notice to all parties in interest and a hearing, shall enter an order prescribing the form of the memorial, and the registrar of titles shall make registration in accordance therewith. [1907 c 250 § 48; RRS § 10677.]

65.12.370 Owner's certificate to be produced when new certificate issued. No new certificates of titles shall be entered, and no memorial shall be made upon any certificate of title, in pursuance of any deed, or other voluntary instrument, unless the owner's duplicate certificate is presented with such instrument, except in cases provided for in this chapter, or upon the order of the court for cause shown; and whenever such order is made a memorial therefor shall be entered, or a new certificate issued, as directed by said order. The production of the owner's duplicate certificate, whenever any voluntary instrument is presented for registration, shall be conclusive authority from the registered owner to the registrar of titles, to enter a new certificate, or to make a memorial of registration in accordance with such instrument; and a new certificate or memorial shall be binding upon the registered owner and upon all persons claiming under him in favor of every purchaser for value and in good faith. [1907 c 250 § 49; RRS § 10678.]

65.12.375 Owner's duplicate certificate. In the event that an owner's duplicate certificate of title shall be lost, mislaid or destroyed, the owner may make affidavit of the fact before any officer authorized to administer oaths, stating, with particularly, the facts relating to such loss, mislaying or destruction, and shall file the same in the office of the registrar of titles.

Any party in interest may thereupon apply to the court, and the court shall, upon proofs of the facts set forth in the affidavits, enter an order directing the registrar of titles to make and issue a new owner's duplicate certificate, such new owner's duplicate certificate shall be printed or marked, "Certified copy of owner's duplicate certificate", and such certified copy shall stand in the place of and have like effect as the owner's duplicate certificate. [1907 c 250 § 50; RRS § 10679.]

65.12.380 Conveyance of registered land. An owner of registered land, conveying the same, or any portion thereof, in fee, shall execute a deed of conveyance, which the grantor shall file with the registrar of titles in the county where the land lies. The owner's duplicate certificate shall be surrendered at the same time and shall be by the registrar marked "Canceled". The original certificate of title shall also be marked "Canceled". The registrar of titles shall thereupon entered in the register of titles, a new certificate of title to the grantee, and shall prepare and deliver to such grantee an owner's duplicate certificate. All incumbrances, claims or interests adverse to the title of the registered owner shall be stated upon the new certificate or certificates, except insofar as they may be simultaneously released or discharged.

When only a part of the land described in a certificate is transferred, or some estate or interest in the land is to remain in the transferor, a new certificate shall be issued to him, for the part, estate or interest remaining in him. [1907 c 250 § 51; RRS § 10680.]

65.12.390 Certificate of tax payment. Before any deed, plat or other instrument affecting registered land shall be filed or registered in the office of the registrar of titles, the owner shall present a certificate from the county treasurer showing that all taxes then due thereon have been paid. [1907 c 250 § 52; RRS § 10681.]

65.12.400 Registered land charged as other land. Registered land and ownership therein shall in all respects be subject to the same burdens and incidents which attach by law to unregistered land. Nothing contained in this chapter shall in any way be construed to relieve registered land, or the owners thereof, from any rights incident to the relation of husband and wife, or from liability to attachment of mesne process, or levy on execution, or from liability from any lien of any description established by law on land or the improvements thereon, or the interest of the owner in such land or improvements, or to change the laws of descent, or the rights of partition between cotenants, or the right to take the same by eminent domain, or to relieve such land from liability to be recovered by an assignee in insolvency or trustee in bankruptcy, under the provisions of law relating thereto; or to change or affect in any way, any other rights or liabilities, created by law, applicable to unregistered land, except as oth-

erwise expressly provided in this chapter, or any amendments hereof. [1907 c 250 § 53; RRS § 10682.]

65.12.410 Conveyances by attorney in fact. Any person may by attorney convey or otherwise deal with registered land, but the letters or power of attorney shall be acknowledged and filed with the registrar of titles, and registered. Any instrument revoking such letters, or power of attorney, shall be acknowledged in like manner. [1907 c 250 § 54; RRS § 10683.]

65.12.420 Encumbrances by owner. The owner of registered land may mortgage or encumber the same, by executing a trust deed or other instrument, sufficient in law for that purpose, and such instrument may be assigned, extended, discharged, released, in whole or in part, or otherwise dealt with by the mortgagee, by any form of instrument sufficient in law for the purpose; but such trust deed or other instrument, and all instruments assigning, extending, discharging, releasing or otherwise dealing with the encumbrance, shall be registered, and shall take effect upon the title only from the time of registration. [1907 c 250 § 55; RRS § 10684.]

65.12.430 Registration of mortgages. A trust deed shall be deemed to be a mortgage, and be subject to the same rules as a mortgage, excepting as to the manner of the foreclosure thereof. The registration of a mortgage shall be made in the following manner, to wit: The owner's duplicate certificate shall be presented to the registrar of titles with the mortgage deed or instrument to be registered, and the registrar shall enter upon the original certificate of title and also upon the owner's duplicate certificate, a memorial of the purport of the instrument registered, the time of filing, and the file number of the registered instrument. He shall also note upon the instrument registered, the time of filing, and a reference to the volume and page of the register of titles, wherein the same is registered. The registrar of titles shall also, at the request of the mortgagee, make out and deliver to him a duplicate certificate of title, like the owner's duplicate, except that the words, "Mortgagee's duplicate", shall be written or printed upon such certificate in large letters, diagonally across the face. A memorandum of the issuance of the mortgagee's duplicate shall be made upon the certificate of title. [1907 c 250 § 56; RRS § 10685.]

65.12.435 Dealings with mortgages. Whenever a mortgage upon which a mortgagee's duplicate has been issued is assigned, extended or otherwise dealt with, the mortgagee's duplicate shall be presented with the instrument assigning, extending, or otherwise dealing with the mortgage, and a memorial of the instrument shall be made upon the mortgagee's duplicate, and upon the original certificate of title. When the mortgage is discharged, or otherwise extinguished, the mortgagee's duplicate shall be surrendered and stamped, "Canceled". In case only a part of the charge or of the land is intended to be released, discharged, or surrendered, the entry shall be made by a memorial according in like manner as before provided for a release or discharge.

The production of the mortgagee's duplicate certificate shall be conclusive authority to register the instrument there-

with presented. A mortgage on registered land may be discharged in whole or in part by the mortgagee in person on the register of titles in the same manner as a mortgage on unregistered land may be discharged by an entry on the margin of the record thereof, in the auditor's office, and such discharge shall be attested by the registrar of titles. [1907 c 250 § 57; RRS § 10686.]

65.12.440 Foreclosures on registered land. All charges upon registered land, or any estate or interest in the same, and any right thereunder, may be enforced as is now allowed by law, and all laws relating to the foreclosure of mortgages shall apply to mortgages upon registered land, or any estate or interest therein, except as herein otherwise provided, and except that a notice of the pendency of any suit or of any proceeding to enforce or foreclose the mortgage, or any charge, shall be filed in the office of the registrar of titles, and a memorial thereof entered on the register, at the time of, or prior to, the commencement of such suit, or the beginning of any such proceeding. A notice so filed and registered shall be notice to the registrar of titles and all persons dealing with the land or any part thereof. When a mortgagee's duplicate has been issued, such duplicate shall, at the time of the registering of the notice, be presented, and a memorial of such notice shall be entered upon the mortgagee's duplicate. [1907 c 250 § 58; RRS § 10687.]

65.12.445 Registration of final decree—New certificate. In any action affecting registered land a judgment or final decree shall be entitled to registration on the presentation of a certified copy of the entry thereof from the clerk of the court where the action is pending to the registrar of titles. The registrar of titles shall enter a memorial thereof upon the original certificates of title, and upon the owner's duplicate, and also upon the mortgagee's and lessee's duplicate, if any there be outstanding. When the registered owner of such land is, by such judgment or decree, divested of his estate in fee to the land or any part thereof, the plaintiff or defendant shall be entitled to a new certificate of title for the land, or that part thereof, designated in the judgment or decree, and the registrar of titles shall enter such new certificate of title, and issue a new owner's duplicate, in such manner as is provided in the case of voluntary conveyance: PROVIDED, HOWEVER, That no such new certificate of title shall be entered, except upon the order of the superior court of the county in which the land is situated, and upon the filing in the office of the registrar of titles, an order of the court directing the entry of such new certificate. [1907 c 250 § 59; RRS § 10688.]

65.12.450 Title on foreclosure—Registration. Any person who has, by any action or proceeding to enforce or foreclose any mortgage, lien or charge upon registered land, become the owner in fee of the land, or any part thereof, shall be entitled to have his title registered, and the registrar of titles shall, upon application therefor, enter a new certificate of title for the land, or that part thereof, of which the applicant is the owner, and issue an owner's duplicate, in such manner as in the case of a voluntary conveyance of registered land: PROVIDED, HOWEVER, No such new certificate of title shall be entered, except after the time to redeem from such

foreclosure has expired, and upon the filing in the office of the registrar of titles, an order of the superior court of the county directing the entry of such new certificates. [1907 c 250 § 60; RRS § 10689.]

65.12.460 Petition for new certificate. In all cases wherein, by this chapter, it is provided that a new certificate of title to registered land shall be entered by order of the court a person applying for such new certificate shall apply to the court by petition, setting forth the facts; and the court shall, after notice given to all parties in interest, as the court may direct, and upon hearing, make an order or decree for the entry of a new certificate to such person as shall appear to be entitled thereto. [1907 c 250 § 61; RRS § 10690.]

65.12.470 Registration of leases. Leases for registered land, for a term of three years or more, shall be registered in like manner as a mortgage, and the provisions herein relating to the registration of mortgages, shall also apply to the registration of leases. The registrar shall, at the request of the lessee, make out and deliver to him a duplicate of the certificate of title like the owner's duplicate, except the words, "Lessee's duplicate", shall be written or printed upon it in large letters diagonally across its face. [1907 c 250 § 62; RRS § 10691.]

65.12.480 Instruments with conditions. Whenever a deed, or other instrument, is filed in the office of the registrar of titles, for the purpose of effecting a transfer of or charge upon the registered land, or any estate or interest in the same, and it shall appear that the transfer or charge is to be in trust or upon condition or limitation expressed in such deed or instrument, such deed or instrument shall be registered in the usual manner, except that the particulars of the trust, condition, limitation or other equitable interest shall not be entered upon the certificate of title by memorial, but a memorandum or memorial shall be entered by the words, "in trust", or "upon condition", or other apt words, and by reference by number to the instrument authorizing or creating the same. A similar memorial shall be made upon the owner's duplicate certificate.

No transfer of, or charge upon, or dealing with, the land, estate or interest therein, shall thereafter be registered, except upon an order of the court first filed in the office of the registrar of titles, directing such transfer, charge, or dealing, in accordance with the true intent and meaning of the trust, condition or limitation. Such registration shall be conclusive evidence in favor of the person taking such transfer, charge, or right; and those claiming under him, in good faith, and for a valuable consideration, that such transfer, charge or other dealing is in accordance with the true intent and meaning of the trust, condition, or limitation. [1907 c 250 § 63; RRS § 10692.]

65.12.490 Transfers between trustees. When the title to registered land passes from a trustee to a new trustee, a new certificate shall be entered to him, and shall be registered in like manner as upon an original conveyance in trust. [1907 c 250 § 64; RRS § 10693.]

65.12.500 Trustee may register land. Any trustee shall have authority to file an application for the registration of any land held in trust by him, unless expressly prohibited by the instrument creating the trust. [1907 c 250 § 65; RRS § 10694.]

65.12.510 Creation of lien on registered land. In every case where writing of any description, or copy of any writ, order or decree is required by law to be filed or recorded in order to create or preserve any lien, right, or attachment upon unregistered land, such writing or copy, when intended to affect registered land, in lieu of recording, shall be filed and registered in the office of the registrar of titles, in the county in which the land lies, and, in addition to any particulars required in such papers, for the filing or recording, shall also contain a reference to the number of the certificate of title of the land to be affected, and also, if the attachment, right or lien is not claimed on all the land in any certificate of title, a description sufficiently accurate for the identification of the land intended to be affected. [1907 c 250 § 66; RRS § 10695.]

65.12.520 Registration of liens. All attachments, liens and rights, of every description, shall be enforced, continued, reduced, discharged and dissolved, by any proceeding or method, sufficient and proper in law to enforce, continue, reduce, discharge or dissolve, like liens or unregistered land. All certificates, writing or other instruments, permitted or required by law, to be filed or recorded, to give effect to the enforcement, continuance, reduction, discharge or dissolution of attachments, liens or other rights upon registered land, or to give notice of such enforcement, continuance, reduction, discharge or dissolution, shall in the case of like attachments, liens or other rights upon registered land, be filed with the registrar of titles, and registered in the register of titles, in lieu of filing or recording. [1907 c 250 § 67; RRS § 10696.]

65.12.530 Entry as to plaintiff's attorney. The name and address of the attorney for the plaintiff in every action affecting the title to registered land, shall, in all cases, be endorsed upon the writ or other writing filed in the office of the registrar of titles, and he shall be deemed the attorney of the plaintiff until written notice that he has ceased to be such plaintiff's attorney shall be filed for registration by the plaintiff. [1907 c 250 § 68; RRS § 10697.]

65.12.540 Decree. A judgment, decree, or order of any court shall be a lien upon, or affect registered land, or any estate or interest therein, only when a certificate under the hand and official seal of the clerk of the court in which the same is of record, stating the date and purport of the judgment, decree, or order, or a certified copy of such judgment, decree, or order, or transcript of the judgment docket, is filed in the office of the registrar, and a memorial of the same is entered upon the register of the last certificate of the title to be affected. [1907 c 250 § 69; RRS § 10698.]

65.12.550 Title acquired on execution. Any person who has acquired any right, interest or estate in registered land by virtue of any execution, judgment, order or decree of

the court, shall register his title so acquired, by filing in the office of the registrar of titles all writings or instruments permitted or required to be recorded in the case of unregistered land. If the interest or estate so acquired is the fee in the registered land, or any part thereof, the person acquiring such interest shall be entitled to have a new certificate of title, registered in him, in the same manner as is provided in the case of persons acquiring title by an action or proceeding in foreclosure of mortgages. [1907 c 250 § 70; RRS § 10699.]

65.12.560 Termination of proceedings. The certificate of the clerk of the court in which any action or proceeding shall be pending, or any judgment or decree is of record, that such action or proceeding has been dismissed or otherwise disposed of, or that the judgment, decree, or order has been satisfied, released, reversed or overruled, or of any sheriff or any other officer that the levy of any execution, attachment, or other process, certified by him, has been released, discharged, or otherwise disposed of, being filed in the office of the registrar of titles and noted upon the register, shall be sufficient to authorize the registrar to cancel or otherwise treat the memorial of such action, proceeding, judgment, decree, order, or levy, according to the purport of such certificate. [1907 c 250 § 71; RRS § 10700.]

65.12.570 Land registered only after redemption period. Whenever registered land is sold, and the same is by law subject to redemption by the owner or any other person, the purchaser shall not be entitled to have a new certificate of title entered, until the time within which the land may be redeemed has expired. At any time after the time to redeem shall have expired, the purchaser may petition the court for an order directing the entry of a new certificate of title to him, and the court shall, after such notice as it may order, and hearing, grant and make an order directing the entry of such new certificate of title. [1907 c 250 § 72; RRS § 10701.]

65.12.580 Registration on inheritance. The heirs at law and devisees, upon the death of an owner of lands, and any estate or interest therein, registered pursuant to this chapter, on the expiration of thirty days after the entry of the decree of the superior court granting letters testamentary or of administration, or, in case of an appeal from such decree, at any time after the entry of a final decree, may file a certified copy of the final decree, of the superior court having jurisdiction, and of the will, if any, with the clerk of the superior court, in the county in which the land lies, and make application to the court for an order for the entry of a new certificate of title. The court shall issue notice to the executor or administrator and all other persons in interest, and may also give notice by publication in such newspaper or newspapers as it may deem proper, to all whom it may concern; and after hearing, may direct the entry of a new certificate or certificates to the person or persons who appear to be entitled thereto as heirs or devisees. Any new certificate so entered before the final settlement of the estate of the deceased owner, in the superior courts, shall state expressly that it is entered by transfer from the last certificate by descent or devise, and that the estate is in process of settlement. After the final settlement of the estate in the superior court, or after the expiration

of the time allowed by law for bringing an action against an executor or administrator by creditors of the deceased, the heirs at law or devisees may petition the court for an order to cancel the memorial upon their certificates, stating that the estate is in the course of settlement, and the court, after such notice as it may order, and a hearing, may grant the petition: PROVIDED, HOWEVER, That the liability of registered land to be sold for claims against the estate of the deceased, shall not in any way be diminished or changed. [1907 c 250 § 73; RRS § 10702.]

65.12.590 Probate court may direct sale of registered land. Nothing contained in this chapter shall include, affect or impair the jurisdiction of the superior court to order an executor, administrator or guardian to sell or mortgage registered land for any purpose for which such order may be granted in the case of unregistered land. The purchaser or mortgagee, taking a deed or mortgage executed in pursuance of such order of the superior court, shall be entitled to register his title, and to the entry of a new certificate of title or memorial of registration, upon application to the superior court, and upon filing in the office of the registrar of titles, an order of said court, directing the entry of such certificates. [1907 c 250 § 74; RRS § 10703.]

65.12.600 Trustees and receivers. An assignee for the benefit of creditors, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person appointed by the court, shall file in the office of the registrar of titles, the instrument or instruments by which he is vested with title, estate, or interest in any registered land, or a certified copy of an order of the court showing that such assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner, or other person, is authorized to deal with such land, estate or interest, and, if it is in the power of such person, he shall, at the same time, present to the registrar of titles, the owner's duplicate certificate of title; thereupon the registrar shall enter upon the register of titles, and the duplicate certificate, if presented, a memorial thereof, with a reference to such order or deed by its file number. Such memorial having been entered, the assignee, receiver, trustee in bankruptcy, master in chancery, special commissioner or other person may, subject to the direction of the court, deal with or transfer such land as if he were a registered owner. [1907 c 250 § 75; RRS § 10704.]

65.12.610 Eminent domain—Reversion. Whenever registered land, or any right or interest therein, is taken by eminent domain, the state or body politic, or corporate or other authority exercising such right shall pay all fees on account of any memorial or registration or entry of new certificates, or duplicate thereof, and fees for the filing of instruments required by this chapter to be filed. When, for any reason, by operation of law, land which has been taken for public use reverts to the owner from whom it was taken, or his heirs or assigns, the court, upon petition of the person entitled to the benefit of the reversion, after such notice as it may order, and hearing, may order the entry of a new certificate of title to him. [1907 c 250 § 76; RRS § 10705.]

65.12.620 Registration when owner's certificate withheld. In every case where the registrar of titles enters a memorial upon a certificate of title, or enters a new certificate of title, in pursuance of any instrument executed by the registered owner, or by reason of any instrument or proceeding which affects or devises the title of the registered owner against his consent, if the outstanding owner's duplicate certificate is not presented, the registrar of titles shall not enter a new certificate or make a memorial, but the person claiming to be entitled thereto may apply by petition to the court. The court may order the registered owner, or any person withholding the duplicate certificate, to present or surrender the same, and direct the entry of a memorial or new certificate upon such presentation or surrender. If, in any case, the person withholding the duplicate certificate is not amenable to the process of the court, or cannot be found, or if, for any reason, the outstanding owner's duplicate certificate cannot be presented or surrendered without delay, the court may, by decree, annul the same, and order a new certificate of title to be entered. Such new certificate, and all duplicates thereof, shall contain a memorial of the annulment of the outstanding duplicate. If in any case of an outstanding mortgagee's or lessee's duplicate certificate shall be withheld or otherwise dealt with, like proceedings may be had to obtain registration as in case of the owner's withholding or refusing to deliver the duplicate receipt. [1907 c 250 § 77; RRS § 10706.]

65.12.630 Reference to examiner of title. In all cases where, under the provisions of this chapter, application is made to the court for an order or decree, the court may refer the matter to one of the examiners of title for hearing and report, in like manner, as is herein provided for the reference of the application for registration. [1907 c 250 § 78; RRS § 10707.]

65.12.635 Examiner of titles. Examiners of titles shall, upon the request of the registrar of titles, advise him upon any act or duty pertaining to the conduct of his office, and shall, upon request, prepare the form of any memorial to be made or entered by the registrar of titles. The examiner of titles shall have full power to administer oaths and examine witnesses involved in his investigation of titles. [1907 c 250 § 79; RRS § 10708.]

65.12.640 Registered instruments to contain names and addresses—Service of notices. Every writing and instrument required or permitted by this chapter to be filed for registration, shall contain or have endorsed upon it, the full name, place of residence and post office address of the grantee or other person requiring or claiming any right, title or interest under such instrument. Any change in residence or post office address of such person shall be endorsed by the registrar of titles in the original instrument, on receiving a sworn statement of such change. All names and addresses shall also be entered on all certificates. All notices required by, or given in pursuance of the provisions of this chapter by the registrar of titles or by the court, after original registration, shall be served upon the person to be notified; if a resident of the state of Washington, as summons in civil actions are served; and proof of such service shall be made as on the return of a summons. All such notices shall be sent by mail,

to the person to be notified, if not a resident of the state of Washington, and his residence and post office address, as stated in the certificate of title, or in any registered instrument under which he claims an interest. The certificate of the registrar of titles, or clerk of court, that any notice has been served, by mailing the same, as aforesaid, shall be conclusive proof of such notice: PROVIDED, HOWEVER, That the court may, in any case, order different or further service by publication or otherwise. [1907 c 250 § 80; RRS § 10709.]

65.12.650 Adverse claims—Procedure. Any person claiming any right or interest in registered land, adverse to the registered owner, arising subsequent to the date of the original registration, may, if no other provision is made in this chapter for registering the same, make a statement in writing, setting forth fully his alleged right or interest and how or under whom acquired, and a reference to the volume and page of the certificate of title of the registered owner, and a description of the land to which the right or interest is claimed. The statement shall be signed and sworn to, and shall state the adverse claimant's residence, and designate a place at which all notices may be served upon him. This statement shall be entitled to registration, as an adverse claim; and the court, upon the petition of any party in interest, shall grant a speedy hearing upon the question of the validity of such adverse claim, and shall enter such decree thereon as equity and justice may require.

If the claim is adjudged to be invalid, its registration shall be canceled. The court may, in any case, award such costs and damages, including reasonable attorneys' fees, as it may deem just in the premises. [1907 c 250 § 81; RRS § 10710.]

65.12.660 Assurance fund. Upon the original registration of land under this chapter, and also upon the entry of the certificate showing title as registered owners in heirs or devisees, there shall be paid to the registrar of titles, one-fortieth of one percent of the assessed value of the real estate on the basis of the last assessment for general taxation, as an assurance fund. [1973 1st ex.s. c 195 § 75; 1907 c 250 § 82; RRS § 10711.]

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

65.12.670 Investment of fund. All sums of money received by the registrar as provided for in RCW 65.12.660, shall be forthwith paid by the registrar to the county treasurer of the county in which the land lies, for the purpose of an assurance fund, under the terms of this chapter; it shall be the duty of the county treasurer, whenever the amount on hand in said assurance fund is sufficient, to invest the same, principal and income, and report annually to the superior court of the same county the condition and income thereof; and no investment of the funds, or any part thereof, shall be made without the approval of said court, by order entered of record. Said fund shall be invested only in bonds or securities of the United States, or of one of the states of the United States, or of the counties or other municipalities of this state. [1907 c 250 § 83; RRS § 10712.]

65.12.680 Recoveries from fund. Any person sustaining loss or damage, through any omission, mistake, or misfeasance of the registrar of titles, or of any examiner of titles, or of any deputy, or by the mistake or misfeasance of the clerk of the court, or any deputy, in the performance of their respective duties, under the provisions of this chapter, and any person wrongfully deprived of any land or any interest therein, through the bringing of the same, under the provisions of this chapter, or by the registration of any other person as the owner of such land, or by any mistake, omission, or misdescription in any certificate or entry, or memorial, in the register of titles, or by any cancellation, and who, by the provisions of this chapter, is barred or precluded from bringing any action for the recovery of such land, or interest therein, or claim thereon, may bring an action against the treasurer of the county in which such land is situated, for the recovery of damages to be paid out of the assurance fund. [1907 c 250 § 84; RRS § 10713.]

65.12.690 Parties defendant—Judgment—Payment—Duties of county attorney. If such action be for recovery for loss or damage arising only through any omission, mistake or misfeasance of the registrar of titles or his deputies, or of any examiner of titles, or any clerk of court or his deputy, in the performance of their respective duties, under the provisions of this chapter, then the county treasurer shall be the sole defendant to such action; but if such action be brought for loss or damage arising only through the fraud or wrongful act of some person or persons other than the registrar or his deputies, the examiners of title, the clerk of the court or his deputies, or arising jointly through the fraud or wrongful act of such other person or persons, and the omission, mistakes or misfeasance of the registrar of titles or his deputies, the examiners of titles, the clerk of the court or his deputies, then such action shall be brought against both the county treasurer and such persons or persons aforesaid. In all such actions, where there are defendants other than the county treasurer, and damages shall have been recovered, no final judgment shall be entered against the county treasurer, until execution against the other defendants shall be returned unsatisfied in whole or in part, and the officer returning the execution shall certify that the amount still due upon the execution cannot be collected except by application to the indemnity [assurance] fund. Thereupon the court, being satisfied as to the truth of such return, shall order final judgment against the treasurer, for the amount of the execution and costs, or so much thereof as remains unpaid. The county treasurer shall, upon such order of the court and final judgment, pay the amount of such judgment out of the assurance fund. It shall be the duty of the county attorney to appear and defend all such actions. If the funds in the assurance funds at any time are insufficient to pay any judgment in full, the balance unpaid shall draw interest at the legal rate of interest, and be paid with such interest out of the first funds coming into said fund. [1907 c 250 § 85; RRS § 10714.]

65.12.700 When fund not liable—Maximum liability. The assurance fund shall not be liable in any action to pay for any loss, damage or deprivation occasioned by a breach of trust, whether expressed, implied, or constructive, by any registered owner who is a trustee, or by the improper exercise

of any power of sale, in a mortgage or a trust deed. Final judgment shall not be entered against the county treasurer in any action against this chapter to recover from the assurance fund for more than a fair market value of the real estate at the time of the last payment to the assurance fund, on account of the same real estate. [1907 c 250 § 86; RRS § 10715.]

65.12.710 Limitation of actions. No action or proceeding for compensation for or by reason of any deprivation, loss or damage occasioned or sustained as provided in this chapter, shall be made, brought or taken, except within the period of six years from the time when right to bring or take such action or proceeding first accrued; except that if, at any time, when such right of action first accrues, the person entitled to bring such action, or take such proceeding, is under the age of eighteen years, or insane, imprisoned, or absent from the United States in the service of the United States, or of this state, then such person, or anyone claiming from, by, or under him, may bring the action, or take the proceeding, at any time within two years after such disability is removed, notwithstanding the time before limited in that behalf has expired. [1971 ex.s. c 292 § 49; 1907 c 250 § 87; RRS § 10716.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

65.12.720 Proceeding to change records. No erasure, alteration or amendment shall be made upon the register of titles after the entry of the certificate of title, or a memorial thereon, and the attestation of the same by the registrar of titles, except by order of the court. Any registered owner, or other person in interest, may at any time apply by petition to the court, on the ground that registered interests of any description, whether vested, contingent, expectant, or inchoate, have determined and ceased; or that new interests have arisen or been created, which do not appear upon the certificate; or that an error, omission or mistake was made in entering the certificate; or any memorial thereon, or any duplicate certificate; or that the name of any person on the certificate has been changed; or that the registered owner has been married, or if registered, has married, that the marriage has been terminated, or that a corporation which owned registered land has been dissolved, and has not conveyed the same within three years after its dissolution; or upon any other reasonable ground; and the court shall have jurisdiction to hear and determine the petition after such notice as it may order, to all parties in interest, and may order the entry of a new certificate, the entry or cancellation of a memorial upon a certificate, or grant any other relief upon such terms and conditions, requiring security if necessary, as it may deem proper: PROVIDED, HOWEVER, That this section shall not be construed to give the court authority to open the original decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of the purchaser, holding a certificate for value and in good faith, or his heirs or assigns, without his or their written consent. [1907 c 250 § 88; RRS § 10717.]

65.12.730 Certificate subject of theft—Penalty. Certificates of title or duplicate certificates entered under this chapter, shall be subjects of theft, and anyone unlawfully stealing or carrying away any such certificate, shall, upon

conviction thereof, be deemed guilty of theft under chapter 9A.56 RCW. [2003 c 53 § 291; 1907 c 250 § 89; RRS § 10718.]

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

65.12.740 Perjury. Whoever knowingly swears falsely to any statement required by this chapter to be made under oath is guilty of perjury under chapter 9A.72 RCW. [2003 c 53 § 292; 1907 c 250 § 90; RRS § 10719.]

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

65.12.750 Fraud—False entries—Penalty. Whoever fraudulently procures, or assists fraudulently procuring, or is privy to the fraudulent procurement of any certificate of title, or other instrument, or of any entry in the register of titles, or other book kept in the registrar's office, or of any erasure or alteration in any entry in any such book, or in any instrument authorized by this chapter, or knowingly defrauds or is privy to defrauding any person by means of a false or fraudulent instrument, certificate, statement, or affidavit affecting registered land, shall be guilty of a class C felony, and upon conviction, shall be fined in any sum not exceeding five thousand dollars, or imprisoned in a state correctional facility for not more than five years, or both such fine and imprisonment, in the discretion of the court. [2003 c 53 § 293; 1907 c 250 § 91; RRS § 10720.]

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

65.12.760 Forgery—Penalty. Whoever forges or procures to be forged, or assists in forging, the seal of the registrar, or the name, signature, or handwriting of any officer of the registry office, in case where such officer is expressly or impliedly authorized to affix his or her signature; or forges or procures to be forged, or assists in forging, the name, signature, or handwriting of any person whomsoever, to any instrument which is expressly or impliedly authorized to be signed by such person; or uses any document upon which any impression or part of the impression of any seal of the registrar has been forged, knowing the same to have been forged, or any document, the signature to which has been forged, shall be guilty of a class B felony, and upon conviction shall be imprisoned in a state correctional facility for not more than ten years, or fined not more than one thousand dollars, or both fined and imprisoned, in the discretion of the court. [2003 c 53 § 294; 1907 c 250 § 92; RRS § 10721.]

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

65.12.770 Civil actions unaffected. No proceeding or conviction for any act hereby declared to be a felony, shall affect any remedy which any person aggrieved or injured by such act may be entitled to at law, or in equity, against the person who has committed such act, or against his estate. [1907 c 250 § 93; RRS § 10722.]

65.12.780 Fees of clerk. On the filing of any application for registration, the applicant shall pay to the clerk of the court filing fees as set in RCW 36.18.016. When any number

of defendants enter their appearance at the same time, before default, but one fee shall be paid. Every publication in a newspaper required by this chapter shall be paid for by the party on whose application the order of publication is made, in addition to the fees above prescribed. The party at whose request any notice is issued, shall pay for the service of the same, except when sent by mail by the clerk of court, or the registrar of titles. [1995 c 292 § 19; 1907 c 250 § 94; RRS § 10723.]

65.12.790 Fees of registrar. The fees to be paid to the registrar of titles shall be as follows:

(1) At or before the time of filing of the certified copy of the application with the registrar, the applicant shall pay, to the registrar, on all land having an assessed value, exclusive of improvements, of one thousand dollars or less, thirty-one and one-quarter cents on each one thousand dollars, or major fraction thereof, of the assessed value of said land, additional.

(2) For granting certificates of title, upon each applicant, and registering the same, two dollars.

(3) For registering each transfer, including the filing of all instruments connected therewith, and the issuance and registration of the instruments connected therewith, and the issuance and registration of the new certificate of title, ten dollars.

(4) When the land transferred is held upon any trust, condition, or limitation, an additional fee of three dollars.

(5) For entry of each memorial on the register, including the filing of all instruments and papers connected therewith, and endorsements upon duplicate certificates, three dollars.

(6) For issuing each additional owner's duplicate certificate, mortgagee's duplicate certificate, or lessee's duplicate certificate, three dollars.

(7) For filing copy of will, with letters testamentary, or filing copy of letters of administration, and entering memorial thereof, two dollars and fifty cents.

(8) For the cancellation of each memorial, or charge, one dollar.

(9) For each certificate showing the condition of the register, one dollar.

(10) For any certified copy of any instrument or writing on file in his office, the same fees now allowed by law to county clerks and county auditors for like service.

(11) For any other service required, or necessary to carry out this chapter, and not hereinbefore itemized, such fee or fees as the court shall determine and establish.

(12) For registration of each mortgage and issuance of duplicate of title a fee of five dollars; for each deed of trust and issuance of duplicate of title a fee of eight dollars. [1973 1st ex.s. c 195 § 76; 1973 c 121 § 2; 1907 c 250 § 95; RRS § 10724.]

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

65.12.800 Disposition of fees. One-half of all fees provided for in RCW 65.12.790(1), shall be collected by the registrar, and paid to the county treasurer of the county in which the fees are paid, to be used for the current expenses of the county; and all the remaining fees provided for in said section, and all the subdivisions thereof, shall be collected by the registrar, and applied the same as the other fees of his office;

but his salary as county clerk or county auditor, as now provided by law, shall not be increased on account of the additional duties, or by reason of the allowance of additional fees provided for herein; and the said registrar, as such, shall receive no salary. [1907 c 250 § 96; RRS § 10725.]

Chapter 65.16 RCW LEGAL PUBLICATIONS

Sections

| | |
|-----------|--|
| 65.16.010 | Weekly publication—How made. |
| 65.16.020 | Qualifications of legal newspaper. |
| 65.16.030 | Affidavit of publication—Presumption. |
| 65.16.040 | Legal publications to be approved—Order of approval. |
| 65.16.050 | Revocation of approval—Notice. |
| 65.16.060 | Choice of newspapers. |
| 65.16.070 | List posted in clerk's office. |
| 65.16.080 | Scope of provisions. |
| 65.16.091 | Rates for legal notices. |
| 65.16.095 | Rates for political candidates. |
| 65.16.100 | Omissions for Sundays and holidays. |
| 65.16.110 | Affidavit to cover payment of fees. |
| 65.16.120 | Payment of fees in advance, on demand. |
| 65.16.130 | Publication of official notices by radio or television—Restrictions. |
| 65.16.140 | Broadcaster to retain copy or transcription. |
| 65.16.150 | Proof of publication by radio or television. |
| 65.16.160 | Publication of ordinances. |

Civil procedure, legal publication generally: Chapter 4.28 RCW.

Corporate seals, effect of absence from instrument: RCW 64.04.105.

Powers of appointment: Chapter 11.95 RCW.

65.16.010 Weekly publication—How made. The publication of legal notices required by law, or by an order of a judge or court, to be published in a newspaper once in each week for a specified number of weeks, shall be made on the day of each week in which such newspaper is published. [1893 c 127 § 27; RRS § 253.]

65.16.020 Qualifications of legal newspaper. The qualifications of a legal newspaper are that such newspaper shall have been published regularly, at least once a week, in the English language, as a newspaper of general circulation, in the city or town where the same is published at the time of application for approval, for at least six months prior to the date of such application; shall be compiled either in whole or in part in an office maintained at the place of publication; shall contain news of general interest as contrasted with news of interest primarily to an organization, group or class; shall have a policy to print all statutorily required legal notices; and shall hold a periodical class mailing permit: **PROVIDED**, That in case of the consolidation of two or more newspapers, such consolidated newspaper shall be considered as qualified if either or any of the papers so consolidated would be a qualified newspaper at the date of such legal publication, had not such consolidation taken place: **PROVIDED**, That this section shall not disqualify as a legal newspaper any publication which, prior to June 8, 1961, was adjudged a legal newspaper, so long as it continues to meet the requirements under which it qualified. [2001 c 283 § 1; 1961 c 279 § 1; 1941 c 213 § 3; 1921 c 99 § 1; Rem. Supp. 1941 § 253-1. Prior: 1917 c 61 § 1.]

65.16.030 Affidavit of publication—Presumption. All legal and other official notices shall be published in a

legal newspaper as herein defined, and the affidavit of publication shall state that the newspaper has been approved as a legal newspaper by order of the superior court of the county in which it is published, and shall be prima facie evidence of that fact. Wherever a legal notice, publication, advertisement or other official notice is required to be published by any statute or law of the state of Washington, the proof of such publication shall be the affidavit of the printer, publisher, foreman, principal clerk or business manager of the newspaper which published said notice. [1953 c 233 § 1; 1941 c 213 § 4; 1921 c 99 § 2; Rem. Supp. 1941 § 253-2.]

65.16.040 Legal publications to be approved—Order of approval. Sixty days from and after the date *this act becomes effective, a legal newspaper for the publication of any advertisement, notice, summons, report, proceeding, or other official document now or hereafter required by law to be published, shall be a newspaper which has been approved as a legal newspaper by order of the superior court of the county in which such newspaper is published. Such order may be entered without notice upon presentation of a petition by or on behalf of the publisher, setting forth the qualifications of the newspaper as required by *this act, and upon evidence satisfactory to the court that such newspaper is so qualified. [1941 c 213 § 1; Rem. Supp. 1941 § 253a.]

***Reviser's note:** (1) The language "this act" appears in 1941 c 213 codified as RCW 65.16.020 through 65.16.080.

(2) The effective date of this act is midnight June 11, 1941; see preface 1941 session laws.

65.16.050 Revocation of approval—Notice. An order of approval of a newspaper shall remain effective from the time of the entry thereof until the approval be terminated by a subsequent order of the court, which may be done whenever it shall be brought to the attention of the court that the newspaper is no longer qualified as a legal newspaper, and after notice of hearing issued by the clerk and served upon the publisher, at least ten days prior to the date of hearing, by delivering a copy of such notice to the person in charge of the business office of the publisher, or if the publisher has no business office at the time of service, by mailing a copy of such notice addressed to the publisher at the place of publication alleged in the petition for approval. [1941 c 213 § 2; Rem. Supp. 1941 § 253b.]

65.16.060 Choice of newspapers. Any summons, citation, notice of sheriff's sale, or legal advertisement of any description, the publication of which is now or may be hereafter required by law, may be published in any daily or weekly legal newspaper published in the county where the action, suit or other proceeding is pending, or is to be commenced or had, or in which such notice, summons, citation, or other legal advertisement is required to be given: **PROVIDED, HOWEVER**, That if there be more than one legal newspaper in which any such legal notice, summons, citation or legal advertisement might lawfully be published, then the plaintiff or moving party in the action, suit or proceeding shall have the exclusive right to designate in which of such qualified newspapers such legal notice, summons, citation, notice of sheriff's sale or other legal advertisement shall be

published. [1941 c 213 § 6; 1921 c 99 § 5; Rem. Supp. 1941 § 253-5.]

65.16.070 List posted in clerk's office. Publications commenced in a legal newspaper, *when this act takes effect, may be completed in that newspaper notwithstanding any failure to obtain an order of approval under *this act, and notwithstanding an order of termination of approval prior to completion of publication. The clerk of the superior court of each county shall post and keep posted in a prominent place in his office a list of the newspapers published in that county which are approved as legal newspapers. [1941 c 213 § 7; RRS § 253-5a.]

***Reviser's note:** "this act," "when this act takes effect," see note following RCW 65.16.040.

65.16.080 Scope of provisions. The provisions of *this act shall not apply in counties where no newspaper has been published for a period of one year prior to the publication of such legal or other official notices. [1941 c 213 § 5; 1921 c 99 § 3; Rem. Supp. 1941 § 253-3.]

***Reviser's note:** "this act," see note following RCW 65.16.040.

65.16.091 Rates for legal notices. The rate charged by a newspaper for legal notices shall not exceed the national advertising rate extended by the newspaper to all general advertisers and advertising agencies in its published rate card. [1977 c 34 § 3.]

65.16.095 Rates for political candidates. The rate charged by a newspaper for advertising in relation to candidates for political office shall not exceed the national advertising rate extended to all general advertisers and advertising agencies in its published rate card. [1955 c 186 § 2.]

Severability—1955 c 186: "If any section of this act shall be found unconstitutional it shall not invalidate the remaining section." [1955 c 186 § 3.]

65.16.100 Omissions for Sundays and holidays. Where any law or ordinance of any incorporated city or town in this state provides for the publication of any form of notice or advertisement for consecutive days in a daily newspaper, the publication of such notice on legal holidays and Sundays may be omitted without in any manner affecting the legality of such notice or advertisement: PROVIDED, That the publication of the required number of notices is complied with. [1921 c 99 § 6; RRS § 253-6.]

65.16.110 Affidavit to cover payment of fees. The affidavit of publication of all notices required by law to be published shall state the full amount of the fee charged for such publication and that the fee has been paid in full. [1921 c 99 § 7; RRS § 253-7.]

65.16.120 Payment of fees in advance, on demand. When, by law, any publication is required to be made by an officer of any suit, process, notice, order or other papers, the costs of such publication shall, if demanded, be tendered by the party procuring such publication before such officer shall

be compelled to make publication thereof. [Code 1881 § 2092; 1869 p 373 § 14; RRS § 504.]

65.16.130 Publication of official notices by radio or television—Restrictions. Any official of the state or any of its political subdivisions who is required by law to publish any notice required by law may supplement publication thereof by radio or television broadcast or both when, in his judgment, the public interest will be served thereby: PROVIDED, That the time, place and nature of such notice only be read or shown with no reference to any person by name then a candidate for political office, and that such broadcasts shall be made only by duly employed personnel of the station from which such broadcasts emanate, and that notices by political subdivisions may be made only by stations situated within the county of origin of the legal notice. [1961 c 85 § 1; 1951 c 119 § 1.]

65.16.140 Broadcaster to retain copy or transcription. Each radio or television station broadcasting any legal notice or notice of event shall for a period of six months subsequent to such broadcast retain at its office a copy or transcription of the text of the notice as actually broadcast which shall be available for public inspection. [1961 c 85 § 2; 1951 c 119 § 2.]

65.16.150 Proof of publication by radio or television. Proof of publication of legal notice or notice of event by radio or television broadcast shall be by affidavit of the manager, an assistant manager or a program director of the station broadcasting the same. [1961 c 85 § 3; 1951 c 119 § 3.]

65.16.160 Publication of ordinances. (1) Whenever any county is required by law to publish legal notices containing the full text of any proposed or adopted ordinance in a newspaper, the county may publish a summary of the ordinance which summary shall be approved by the governing body and which shall include:

- (a) The name of the county;
- (b) The formal identification or citation number of the ordinance;
- (c) A descriptive title;
- (d) A section-by-section summary;
- (e) Any other information which the county finds is necessary to provide a complete summary; and
- (f) A statement that the full text will be mailed upon request.

Publication of the title of an ordinance by a county authorizing the issuance of bonds, notes, or other evidences of indebtedness shall constitute publication of a complete summary of that ordinance, and a section-by-section summary shall not be required.

(2) Subsection (1) of this section notwithstanding, whenever any publication is made under this section and the proposed or adopted ordinance contains provisions regarding taxation or penalties or contains legal descriptions of real property, then the sections containing this matter shall be published in full and shall not be summarized. When a legal description of real property is involved, the notice shall also include the street address or addresses of the property

described, if any. In the case of descriptions covering more than one street address, the street addresses of the four corners of the area described shall meet this requirement.

(3) The full text of any ordinance which is summarized by publication under this section shall be mailed without charge to any person who requests the text from the adopting county. [1995 c 157 § 1; 1994 c 273 § 19; 1977 c 34 § 4.]

Chapter 65.20 RCW

CLASSIFICATION OF MANUFACTURED HOMES

Sections

| | |
|-----------|--|
| 65.20.010 | Purpose. |
| 65.20.020 | Definitions. |
| 65.20.030 | Clarification of type of property and perfection of security interests. |
| 65.20.040 | Elimination of title—Application. |
| 65.20.050 | Elimination of title—Approval. |
| 65.20.060 | Eliminating title—Lenders and conveyances. |
| 65.20.070 | Eliminating title—Removing manufactured home when title has been eliminated. |
| 65.20.080 | Eliminating title—Uniform forms. |
| 65.20.090 | Eliminating title—Fees. |
| 65.20.100 | Eliminating title—General supervision. |
| 65.20.110 | Eliminating title—Rules. |
| 65.20.120 | Eliminating title—Notice. |
| 65.20.130 | General penalties. |
| 65.20.900 | Prospective effect. |
| 65.20.910 | Effect on taxation. |
| 65.20.920 | Captions not law. |
| 65.20.930 | Short title. |
| 65.20.940 | Severability—1989 c 343. |
| 65.20.950 | Effective date—1989 c 343. |

Certificates of ownership and registration: Chapter 46.12 RCW.

65.20.010 Purpose. The legislature recognizes that confusion exists regarding the classification of manufactured homes as personal or real property. This confusion is increased because manufactured homes are treated as vehicles in some parts of state statutes, however these homes are often used as residences to house persons residing in the state of Washington. This results in a variety of problems, including: (1) Creating confusion as to the creation, perfection, and priority of security interests in manufactured homes; (2) making it more difficult and expensive to obtain financing and title insurance; (3) making it more difficult to utilize manufactured homes as an affordable housing option; and (4) increasing the risk of problems for and losses to the consumer. Therefore the purpose of this chapter is to clarify the type of property manufactured homes are, particularly relating to security interests, and to provide a statutory process to make the manufactured home real property by eliminating the title to a manufactured home when the home is affixed to land owned by the homeowner. [1989 c 343 § 1.]

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

(1) "Affixed" means that the manufactured home is installed in accordance with the installation standards in state law.

(2) "Department" means the department of licensing.

(3) "Eliminating the title" means to cancel an existing title issued by this state or a foreign jurisdiction or to waive the certificate of ownership required by chapter 46.12 RCW

(2004 Ed.)

and recording the appropriate documents in the county real property records pursuant to this chapter.

(4) "Homeowner" means the owner of a manufactured home.

(5) "Land" means real property excluding the manufactured home.

(6) "Manufactured home" or "mobile home" means a structure, designed and constructed to be transportable in one or more sections and is built on a permanent chassis and designed to be used as a dwelling with or without a permanent foundation when connected to the required utilities that include plumbing, heating, and electrical systems contained therein. The structure must comply with the national mobile home construction and safety standards act of 1974 as adopted by chapter 43.22 RCW if applicable. "Manufactured home" does not include a modular home. A structure which met the definition of a "manufactured home" at the time of manufacture is still considered to meet this definition notwithstanding that it is no longer transportable.

(7) "Owner" means, when referring to a manufactured home that is titled, the person who is the registered owner. When referring to a mobile home that is untitled pursuant to this chapter, the owner is the person who owns the land. When referring to land, the person may have fee simple title, have a leasehold estate of thirty-five years or more, or be purchasing the property on a real estate contract. Owners include joint tenants, tenants in common, holders of legal life estates, and holders of remainder interests.

(8) "Person" means any individual, trustee, partnership, corporation, or other legal entity. "Person" may refer to more than one individual or entity.

(9) "Secured party" means the legal owner when referring to a titled mobile home, or the lender securing a loan through a mortgage, deed of trust, or real estate contract when referring to land or land containing an untitled manufactured home pursuant to this chapter.

(10) "Security interest" means an interest in property to secure payment of a loan made by a secured party to a borrower.

(11) "Title" or "titled" means a certificate of ownership issued pursuant to chapter 46.12 RCW. [1989 c 343 § 2.]

65.20.030 Clarification of type of property and perfection of security interests. When a manufactured home is sold or transferred on or after March 1, 1990, and when all ownership in the manufactured home is transferred through the sale or other transfer of the manufactured home to new owners, the manufactured home shall be real property when the new owners eliminate the title pursuant to this chapter. The manufactured home shall not be real property in any form, including fixture law, unless the title is eliminated under this chapter. Where any person who owned a used manufactured home on March 1, 1990, continues to own the manufactured home on or after March 1, 1990, the interests and rights of owners, secured parties, lienholders, and others in the manufactured home shall be based on the law prior to March 1, 1990, except where the owner voluntarily eliminates the title to the manufactured home by complying with this chapter. If the title to the manufactured home is eliminated under this chapter, the manufactured home shall be treated the same as a site-built structure and ownership shall

be based on ownership of the real property through real property law. If the title to the manufactured home has not been eliminated under this chapter, ownership shall be based on chapter 46.12 RCW.

For purposes of perfecting and realizing upon security interests, manufactured homes shall always be treated as follows: (1) If the title has not been eliminated under this chapter, security interests in the manufactured home shall be perfected only under chapter 62A.9A RCW in the case of a manufactured home held as inventory by a manufacturer or dealer or chapter 46.12 RCW in all other cases, and the lien shall be treated as securing personal property for purposes of realizing upon the security interest; or (2) if the title has been eliminated under this chapter, a separate security interest in the manufactured home shall not exist, and the manufactured home shall only be secured as part of the real property through a mortgage, deed of trust, or real estate contract. [2000 c 250 § 9A-836; 1989 c 343 § 3.]

Effective date—2000 c 250: See RCW 62A.9A-701.

65.20.040 Elimination of title—Application. If a manufactured home is affixed to land that is owned by the homeowner, the homeowner may apply to the department to have the title to the manufactured home eliminated. The application package shall consist of the following:

(1) An affidavit, in the form prescribed by the department, signed by all the owners of the manufactured home and containing:

- (a) The date;
- (b) The names of all of the owners of record of the manufactured home;
- (c) The legal description of the real property;
- (d) A description of the manufactured home including model year, make, width, length, and vehicle identification number;
- (e) The names of all secured parties in the manufactured home; and

(f) A statement that the owner of the manufactured home owns the real property to which it is affixed;

(2) Certificate of ownership for the manufactured home, or the manufacturer's statement of origin in the case of a new manufactured home. Where title is held by the secured party as legal owner, the consent of the secured party must be indicated by the legal owner releasing his or her security interest;

(3) A certification by the local government indicating that the manufactured home is affixed to the land;

(4) Payment of all licensing fees, excise tax, use tax, real estate tax, recording fees, and proof of payment of all property taxes then due; and

(5) Any other information the department may require. [1989 c 343 § 4.]

65.20.050 Elimination of title—Approval. The department shall approve the application for elimination of the title when all requirements listed in RCW 65.20.040 have been satisfied and the registered and legal owners of the manufactured home have consented to the elimination of the title. After approval, the department shall have the approved application recorded in the county or counties in which the land is located and on which the manufactured home is affixed.

The county auditor shall record the approved application, and any other form prescribed by the department, in the county real property records. The manufactured home shall then be treated as real property as if it were a site-built structure. Removal of the manufactured home from the land is prohibited unless the procedures set forth in RCW 65.20.070 are complied with.

The department shall cancel the title after verification that the county auditor has recorded the appropriate documents, and the department shall maintain a record of each manufactured home title eliminated under this chapter by vehicle identification number. The title is deemed eliminated on the date the appropriate documents are recorded by the county auditor. [1989 c 343 § 5.]

65.20.060 Eliminating title—Lenders and conveyances. It is the responsibility of the owner, secured parties, and others to take action as necessary to protect their respective interests in conjunction with the elimination of the title or reissuance of a previously eliminated title.

A manufactured home whose title has been eliminated shall be conveyed by deed or real estate contract and shall only be transferred together with the property to which it is affixed, unless procedures described in RCW 65.20.070 are completed.

Nothing in this chapter shall be construed to require a lender to consent to the elimination of the title of a manufactured home, or to retitling a manufactured home under RCW 65.20.070. The obligation of the lender to consent is governed solely by the agreement between the lender and the owner of the manufactured home. Absent any express written contractual obligation, a lender may withhold consent in the lender's sole discretion. In addition, the homeowner shall comply with all reasonable requirements imposed by a lender for obtaining consent, and a lender may charge a reasonable fee for processing a request for consent. [1989 c 343 § 6.]

65.20.070 Eliminating title—Removing manufactured home when title has been eliminated. Before physical removal of an untitled manufactured home from the land the home is affixed to, the owner shall follow one of these two procedures:

(1) Where a title is to be issued or the home has been destroyed:

(a) The owner shall apply to the department for a title pursuant to chapter 46.12 RCW. In addition the owner shall provide:

(i) An affidavit in the form prescribed by the department, signed by the owners of the land and all secured parties and other lienholders in the land consenting to the removal of the home;

(ii) Payment of recording fees;

(iii) A certification from a title insurance company listing the owners and lienholders in the land and dated within ten days of the date of application for a new title under this subsection; and

(iv) Any other information the department may require;

(b) The owner shall apply for and obtain permits necessary to move a manufactured home including but not limited to the permit required by RCW 46.44.170, and comply with

other regulations regarding moving a manufactured home; and

(c) The department shall approve the application for title when the requirements of chapter 46.12 RCW and this subsection have been satisfied. Upon approval the department shall have the approved application and the affidavit recorded in the county or counties in which the land from which the home is being removed is located and the department shall issue a title. The title is deemed effective on the date the appropriate documents are recorded with the county auditor.

(2) Where the manufactured home is to be moved to a new location but again will be affixed to land owned by the homeowner a new title need not be issued, but the following procedures must be complied with:

(a) The owner shall apply to the department for a transfer in location of the manufactured home and if a new owner, a transfer in ownership by filing an application pursuant to RCW 65.20.040. In addition the owner shall include:

(i) An affidavit in the form prescribed by the department signed by all of the owners of the real property from which the manufactured home is being moved indicating their consent. The affidavit shall include the consent of all secured parties and other lienholders in the land from which the manufactured home is being moved;

(ii) A legal description and property tax parcel number of the real property from which the home is being removed and a legal description and property tax parcel number of the land on which the home is being moved to; and

(iii) A certification from a title insurance company listing the owners and lienholders in the land and dated within ten days of the application for transfer in location under this subsection;

(b) The owner shall apply for and obtain permits necessary to move a manufactured home including but not limited to RCW 46.44.170, and comply with other regulations regarding moving a manufactured home; and

(c) After approval, including verification that the owners, secured parties, and other lienholders have consented to the move, the department shall have the approved application recorded in the county or counties in which the land from which the home is being removed and the land to which the home is being moved is located. [1989 c 343 § 7.]

65.20.080 Eliminating title—Uniform forms. The department may prepare standard affidavits, lienholder's consents, and other forms to be used pursuant to this chapter. [1989 c 343 § 8.]

65.20.090 Eliminating title—Fees. The director may, in addition to the title fees and other fees and taxes required under chapter 46.12 RCW establish by rule a reasonable fee to cover the cost of processing documents and performing services by the department required under this chapter.

Fees collected by the department for services provided by the department under this chapter shall be forwarded to the state treasurer. The state treasurer shall credit such moneys to the motor vehicle fund and all department expenses incurred in carrying out the provisions of this chapter shall be paid from such fund as authorized by legislative appropriation. [1989 c 343 § 9.]

(2004 Ed.)

65.20.100 Eliminating title—General supervision.

The department shall have the general supervision and control of the elimination of titles and shall have full power to do all things necessary and proper to carry out the provisions of this chapter. The director shall have the power to appoint the county auditors as the agents of the department. [1989 c 343 § 11.]

65.20.110 Eliminating title—Rules. The department may make any reasonable rules relating to the enforcement and proper operation of this chapter. [1989 c 343 § 12.]

65.20.120 Eliminating title—Notice. County auditors shall notify county assessors regarding elimination of titles to manufactured homes, the retitling of manufactured homes, and the movement of manufactured homes under RCW 65.20.070. [1989 c 343 § 13.]

65.20.130 General penalties. Every person who falsifies or intentionally omits material information required in an affidavit, or otherwise intentionally violates a material provision of this chapter, is guilty of a gross misdemeanor punishable in accordance with RCW 9A.20.021. [1989 c 343 § 10.]

65.20.900 Prospective effect. This chapter applies prospectively only. RCW 65.20.030 applies to all security interests perfected on or after March 1, 1990. This chapter applies to the sale or transfer of manufactured homes on or after March 1, 1990, where all of the existing ownership rights and interests in the manufactured home are terminated in favor of new and different owners, or where persons who own a manufactured home on or after March 1, 1990, voluntarily elect to eliminate the title to the manufactured home under this chapter. [1989 c 343 § 14.]

65.20.910 Effect on taxation. Nothing in this chapter shall be construed to affect the taxation of manufactured homes. [1989 c 343 § 15.]

65.20.920 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1989 c 343 § 16.]

65.20.930 Short title. This chapter may be known and cited as the manufactured home real property act. [1989 c 343 § 17.]

65.20.940 Severability—1989 c 343. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 343 § 26.]

65.20.950 Effective date—1989 c 343. This act shall take effect on March 1, 1990. [1989 c 343 § 27.]

Title 66

ALCOHOLIC BEVERAGE CONTROL

Chapters

- 66.04** Definitions.
- 66.08** Liquor control board—General provisions.
- 66.12** Exemptions.
- 66.16** State liquor stores.
- 66.20** Liquor permits.
- 66.24** Licenses—Stamp taxes.
- 66.28** Miscellaneous regulatory provisions.
- 66.32** Search and seizure.
- 66.36** Abatement proceedings.
- 66.40** Local option.
- 66.44** Enforcement—Penalties.
- 66.98** Construction.

Alcoholism, intoxication, and drug addiction private establishments: Chapter 71.12 RCW. treatment: Chapter 70.96A RCW.

Hospitalization and medical aid for public employees and dependents—Premiums, governmental contributions authorized: RCW 41.04.180, 41.04.190.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

Chapter 66.04 RCW

DEFINITIONS

Sections

- 66.04.010 Definitions.
- 66.04.011 "Public place" not to include certain parks and picnic areas.

66.04.010 Definitions. (*Effective until January 1, 2005.*) In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

(3) "Beer distributor" means a person who buys beer from a brewer or brewery located either within or beyond the boundaries of the state, beer importers, or foreign produced beer from a source outside the state of Washington, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(4) "Beer importer" means a person or business within Washington who purchases beer from a United States brewery holding a certificate of approval (B5) or foreign produced

beer from a source outside the state of Washington for the purpose of selling the same pursuant to this title.

(5) "Brewer" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(6) "Board" means the liquor control board, constituted under this title.

(7) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(8) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(9) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(10) "Distiller" means a person engaged in the business of distilling spirits.

(11) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(12) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(13) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(14) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(15) "Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

(16) "Fund" means 'liquor revolving fund.'

(17) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining

room equipment and capacity, for preparing, cooking and serving suitable food for its guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

(18) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(19) "Imprisonment" means confinement in the county jail.

(20) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(21) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(22) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(23) "Package" means any container or receptacle used for holding liquor.

(24) "Permit" means a permit for the purchase of liquor under this title.

(25) "Person" means an individual, copartnership, association, or corporation.

(26) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(27) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(28) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or

playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(29) "Regulations" means regulations made by the board under the powers conferred by this title.

(30) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(31) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the non-profit organization conducting the raffle has obtained the appropriate permit from the board.

(32) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(33) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

(34) "Store" means a state liquor store established under this title.

(35) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(36) "Vendor" means a person employed by the board as a store manager under this title.

(37) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(38) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain more than fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(39) "Wine distributor" means a person who buys wine from a vintner or winery located either within or beyond the boundaries of the state for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(40) "Wine importer" means a person or business within Washington who purchases wine from a United States winery holding a certificate of approval (W7) or foreign produced wine from a source outside the state of Washington for the purpose of selling the same pursuant to this title. [2000 c 142 § 1; 1997 c 321 § 37; 1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Severability—1982 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 39 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.]

66.04.010 Definitions. (*Effective January 1, 2005.*) In this title, unless the context otherwise requires:

(1) "Alcohol" is that substance known as ethyl alcohol, hydrated oxide of ethyl, or spirit of wine, which is commonly produced by the fermentation or distillation of grain, starch, molasses, or sugar, or other substances including all dilutions and mixtures of this substance. The term "alcohol" does not include alcohol in the possession of a manufacturer or distiller of alcohol fuel, as described in RCW 66.12.130, which is intended to be denatured and used as a fuel for use in motor vehicles, farm implements, and machines or implements of husbandry.

(2) "Authorized representative" means a person who:

(a) Is required to have a federal basic permit issued pursuant to the federal alcohol administration act, 27 U.S.C. Sec. 204;

(b) Has its business located in the United States outside of the state of Washington;

(c) Acquires ownership of beer or wine for transportation into and resale in the state of Washington; and which beer or wine is produced anywhere outside Washington by a brewery or winery which does not hold a certificate of approval issued by the board; and

(d) Is appointed by the brewery or winery referenced in (c) of this subsection as its exclusive authorized representative for marketing and selling its products within the United States in accordance with a written agreement between the authorized representative and such brewery or winery pursuant to this title. The board may waive the requirement for the written agreement of exclusivity in situations consistent with the normal marketing practices of certain products, such as classified growths.

(3) "Beer" means any malt beverage or malt liquor as these terms are defined in this chapter.

(4) "Beer distributor" means a person who buys beer from a domestic brewery, microbrewery, beer certificate of approval holder, or beer importers, or who acquires foreign produced beer from a source outside of the United States, for the purpose of selling the same pursuant to this title, or who represents such brewer or brewery as agent.

(5) "Beer importer" means a person or business within Washington who purchases beer from a beer certificate of approval holder or who acquires foreign produced beer from a source outside of the United States for the purpose of selling the same pursuant to this title.

(6) "Brewer" or "brewery" means any person engaged in the business of manufacturing beer and malt liquor. Brewer includes a brand owner of malt beverages who holds a brewer's notice with the federal bureau of alcohol, tobacco, and firearms at a location outside the state and whose malt beverage is contract-produced by a licensed in-state brewery, and who may exercise within the state, under a domestic brewery license, only the privileges of storing, selling to licensed beer distributors, and exporting beer from the state.

(7) "Board" means the liquor control board, constituted under this title.

(8) "Club" means an organization of persons, incorporated or unincorporated, operated solely for fraternal, benevolent, educational, athletic or social purposes, and not for pecuniary gain.

(9) "Consume" includes the putting of liquor to any use, whether by drinking or otherwise.

(10) "Dentist" means a practitioner of dentistry duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.32 RCW.

(11) "Distiller" means a person engaged in the business of distilling spirits.

(12) "Domestic brewery" means a place where beer and malt liquor are manufactured or produced by a brewer within the state.

(13) "Domestic winery" means a place where wines are manufactured or produced within the state of Washington.

(14) "Druggist" means any person who holds a valid certificate and is a registered pharmacist and is duly and regularly engaged in carrying on the business of pharmaceutical chemistry pursuant to chapter 18.64 RCW.

(15) "Drug store" means a place whose principal business is, the sale of drugs, medicines and pharmaceutical preparations and maintains a regular prescription department and employs a registered pharmacist during all hours the drug store is open.

(16) "Employee" means any person employed by the board, including a vendor, as hereinafter in this section defined.

(17) "Fund" means 'liquor revolving fund.'

(18) "Hotel" means every building or other structure kept, used, maintained, advertised or held out to the public to be a place where food is served and sleeping accommodations are offered for pay to transient guests, in which twenty or more rooms are used for the sleeping accommodation of such transient guests and having one or more dining rooms where meals are served to such transient guests, such sleeping accommodations and dining rooms being conducted in

the same building and buildings, in connection therewith, and such structure or structures being provided, in the judgment of the board, with adequate and sanitary kitchen and dining room equipment and capacity, for preparing, cooking and serving suitable food for its guests: PROVIDED FURTHER, That in cities and towns of less than five thousand population, the board shall have authority to waive the provisions requiring twenty or more rooms.

(19) "Importer" means a person who buys distilled spirits from a distillery outside the state of Washington and imports such spirituous liquor into the state for sale to the board or for export.

(20) "Imprisonment" means confinement in the county jail.

(21) "Liquor" includes the four varieties of liquor herein defined (alcohol, spirits, wine and beer), and all fermented, spirituous, vinous, or malt liquor, or combinations thereof, and mixed liquor, a part of which is fermented, spirituous, vinous or malt liquor, or otherwise intoxicating; and every liquid or solid or semisolid or other substance, patented or not, containing alcohol, spirits, wine or beer, and all drinks or drinkable liquids and all preparations or mixtures capable of human consumption, and any liquid, semisolid, solid, or other substance, which contains more than one percent of alcohol by weight shall be conclusively deemed to be intoxicating. Liquor does not include confections or food products that contain one percent or less of alcohol by weight.

(22) "Manufacturer" means a person engaged in the preparation of liquor for sale, in any form whatsoever.

(23) "Malt beverage" or "malt liquor" means any beverage such as beer, ale, lager beer, stout, and porter obtained by the alcoholic fermentation of an infusion or decoction of pure hops, or pure extract of hops and pure barley malt or other wholesome grain or cereal in pure water containing not more than eight percent of alcohol by weight, and not less than one-half of one percent of alcohol by volume. For the purposes of this title, any such beverage containing more than eight percent of alcohol by weight shall be referred to as "strong beer."

(24) "Package" means any container or receptacle used for holding liquor.

(25) "Permit" means a permit for the purchase of liquor under this title.

(26) "Person" means an individual, copartnership, association, or corporation.

(27) "Physician" means a medical practitioner duly and regularly licensed and engaged in the practice of his profession within the state pursuant to chapter 18.71 RCW.

(28) "Prescription" means a memorandum signed by a physician and given by him to a patient for the obtaining of liquor pursuant to this title for medicinal purposes.

(29) "Public place" includes streets and alleys of incorporated cities and towns; state or county or township highways or roads; buildings and grounds used for school purposes; public dance halls and grounds adjacent thereto; those parts of establishments where beer may be sold under this title, soft drink establishments, public buildings, public meeting halls, lobbies, halls and dining rooms of hotels, restaurants, theatres, stores, garages and filling stations which are open to and are generally used by the public and to which the public is permitted to have unrestricted access; railroad trains, stages, and other public conveyances of all kinds and

character, and the depots and waiting rooms used in conjunction therewith which are open to unrestricted use and access by the public; publicly owned bathing beaches, parks, and/or playgrounds; and all other places of like or similar nature to which the general public has unrestricted right of access, and which are generally used by the public.

(30) "Regulations" means regulations made by the board under the powers conferred by this title.

(31) "Restaurant" means any establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains.

(32) "Sale" and "sell" include exchange, barter, and traffic; and also include the selling or supplying or distributing, by any means whatsoever, of liquor, or of any liquid known or described as beer or by any name whatever commonly used to describe malt or brewed liquor or of wine, by any person to any person; and also include a sale or selling within the state to a foreign consignee or his agent in the state. "Sale" and "sell" shall not include the giving, at no charge, of a reasonable amount of liquor by a person not licensed by the board to a person not licensed by the board, for personal use only. "Sale" and "sell" also does not include a raffle authorized under RCW 9.46.0315: PROVIDED, That the non-profit organization conducting the raffle has obtained the appropriate permit from the board.

(33) "Soda fountain" means a place especially equipped with apparatus for the purpose of dispensing soft drinks, whether mixed or otherwise.

(34) "Spirits" means any beverage which contains alcohol obtained by distillation, including wines exceeding twenty-four percent of alcohol by volume.

(35) "Store" means a state liquor store established under this title.

(36) "Tavern" means any establishment with special space and accommodation for sale by the glass and for consumption on the premises, of beer, as herein defined.

(37) "Vendor" means a person employed by the board as a store manager under this title.

(38) "Winery" means a business conducted by any person for the manufacture of wine for sale, other than a domestic winery.

(39) "Wine" means any alcoholic beverage obtained by fermentation of fruits (grapes, berries, apples, et cetera) or other agricultural product containing sugar, to which any saccharine substances may have been added before, during or after fermentation, and containing not more than twenty-four percent of alcohol by volume, including sweet wines fortified with wine spirits, such as port, sherry, muscatel and angelica, not exceeding twenty-four percent of alcohol by volume and not less than one-half of one percent of alcohol by volume. For purposes of this title, any beverage containing no more than fourteen percent of alcohol by volume when bottled or packaged by the manufacturer shall be referred to as "table wine," and any beverage containing alcohol in an amount more than fourteen percent by volume when bottled or packaged by the manufacturer shall be referred to as "fortified wine." However, "fortified wine" shall not include: (a) Wines that are both sealed or capped by cork closure and aged two years or more; and (b) wines that contain more than

fourteen percent alcohol by volume solely as a result of the natural fermentation process and that have not been produced with the addition of wine spirits, brandy, or alcohol.

This subsection shall not be interpreted to require that any wine be labeled with the designation "table wine" or "fortified wine."

(40) "Wine distributor" means a person who buys wine from a domestic winery, wine certificate of approval holder, or wine importer, or who acquires foreign produced wine from a source outside of the United States, for the purpose of selling the same not in violation of this title, or who represents such vintner or winery as agent.

(41) "Wine importer" means a person or business within Washington who purchases wine from a wine certificate of approval holder or who acquires foreign produced wine from a source outside of the United States for the purpose of selling the same pursuant to this title. [2004 c 160 § 1; 2000 c 142 § 1; 1997 c 321 § 37; 1991 c 192 § 1; 1987 c 386 § 3; 1984 c 78 § 5; 1982 c 39 § 1; 1981 1st ex.s. c 5 § 1; 1980 c 140 § 3; 1969 ex.s. c 21 § 13; 1935 c 158 § 1; 1933 ex.s. c 62 § 3; RRS § 7306-3. Formerly RCW 66.04.010 through 66.04.380.]

Effective date—2004 c 160: "This act takes effect January 1, 2005." [2004 c 160 § 20.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

Severability—1982 c 39: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 39 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: "The effective date of this 1969 amendatory act is July 1, 1969." [1969 ex.s. c 21 § 15.]

66.04.011 "Public place" not to include certain parks and picnic areas. "Public place" as defined in this title shall not include (a) any of those parks under the control of the state parks and recreation commission, nor, (b) parks and picnic areas adjacent to and held by the same ownership as licensed brewers and domestic wineries for the consumption of beer and wine produced by the respective brewery or winery, as prescribed by regulation adopted by the board pursuant to chapter 34.05 RCW. [1977 ex.s. c 219 § 1; 1971 ex.s. c 208 § 3.]

Chapter 66.08 RCW

LIQUOR CONTROL BOARD— GENERAL PROVISIONS

Sections

| | |
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| 66.08.010 | Title liberally construed. |
| 66.08.012 | Creation of board—Chairman—Quorum—Salary. |
| 66.08.014 | Terms of members—Vacancies—Principal office— Removal—Devotion of time to duties—Bond—Oath. |
| 66.08.016 | Employees of the board. |
| 66.08.020 | Liquor control board to administer. |
| 66.08.022 | Attorney general is general counsel of board—Duties— Assistants. |
| 66.08.024 | Annual audit—State auditor's duties—Additional audits— Public records. |
| 66.08.026 | Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined. |

(2004 Ed.)

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| 66.08.030 | Regulations—Scope. |
| 66.08.050 | Powers of board in general. |
| 66.08.0501 | Adoption of rules. |
| 66.08.055 | Oaths may be administered and affidavits, declarations received. |
| 66.08.060 | Board cannot advertise liquor—Advertising regulations. |
| 66.08.070 | Purchase of liquor by board—Consignment not prohibited— Warranty or affirmation not required for wine or malt pur- chases. |
| 66.08.075 | Officer, employee not to represent manufacturer, wholesaler in sale to board. |
| 66.08.080 | Interest in manufacture or sale of liquor prohibited. |
| 66.08.090 | Sale of liquor by employees of board. |
| 66.08.095 | Liquor for training or investigation purposes. |
| 66.08.100 | Jurisdiction of action against board—Immunity from per- sonal liability of members. |
| 66.08.120 | Preemption of field by state—Exception. |
| 66.08.130 | Inspection of books and records—Goods possessed or shipped—Refusal as violation. |
| 66.08.140 | Inspection of books and records—Financial dealings—Pen- alty for refusal. |
| 66.08.150 | Board's action as to permits and licenses—Administrative procedure act, applicability—Adjudicative proceeding— Opportunity for hearing—Summary suspension. |
| 66.08.160 | Acquisition of warehouse authorized. |
| 66.08.170 | Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Bud- get and accounting act applicable. |
| 66.08.180 | Liquor revolving fund—Distribution—Reserve for adminis- tration—Disbursement to universities and state agencies. |
| 66.08.190 | Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for non- compliance. |
| 66.08.195 | Liquor revolving fund—Definition of terms relating to bor- der areas. |
| 66.08.196 | Liquor revolving fund—Distribution of funds to border areas. |
| 66.08.198 | Liquor revolving fund—Distribution of funds to border areas—Guidelines adoption. |
| 66.08.200 | Liquor revolving fund—Computation for distribution to counties—"Unincorporated area" defined. |
| 66.08.210 | Liquor revolving fund—Computation for distribution to cit- ies. |
| 66.08.220 | Liquor revolving fund—Separate account—Distribution. Initial disbursement to wine commission—Repayment. |
| 66.08.235 | Liquor control board construction and maintenance account. |
| 66.08.240 | Transfer of funds pursuant to government service agreement. |

*Minors, access to tobacco, role of liquor control board: Chapter 70.155
RCW.*

*Public bodies may retain collection agencies to collect public debts—Fees:
RCW 19.16.500.*

66.08.010 Title liberally construed. This entire title shall be deemed an exercise of the police power of the state, for the protection of the welfare, health, peace, morals, and safety of the people of the state, and all its provisions shall be liberally construed for the accomplishment of that purpose. [1933 ex.s. c 62 § 2; RRS § 7306-2.]

66.08.012 Creation of board—Chairman—Quorum—Salary. There shall be a board, known as the "Washington state liquor control board," consisting of three members, to be appointed by the governor, with the consent of the senate, who shall each be paid an annual salary to be fixed by the governor in accordance with the provisions of RCW 43.03.040. The governor may, in his discretion, appoint one of the members as chairman of the board, and a majority of the members shall constitute a quorum of the board. [1961 c 307 § 7; 1949 c 5 § 8; 1945 c 208 § 1; 1937 c 225 § 1; 1933 ex.s. c 62 § 63; Rem. Supp. 1949 § 7306-63. Formerly RCW 43.66.010.]

Severability—1945 c 5: See RCW 66.98.080.

[Title 66 RCW—page 5]

66.08.014 Terms of members—Vacancies—Principal office—Removal—Devotion of time to duties—Bond—Oath. (1) The members of the board to be appointed after December 2, 1948 shall be appointed for terms beginning January 15, 1949, and expiring as follows: One member of the board for a term of three years from January 15, 1949; one member of the board for a term of six years from January 15, 1949; and one member of the board for a term of nine years from January 15, 1949. Each of the members of the board appointed hereunder shall hold office until his successor is appointed and qualified. After June 11, 1986, the term that began on January 15, 1985, will end on January 15, 1989, the term beginning on January 15, 1988, will end on January 15, 1993, and the term beginning on January 15, 1991, will end on January 15, 1997. Thereafter, upon the expiration of the term of any member appointed after June 11, 1986, each succeeding member of the board shall be appointed and hold office for the term of six years. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which said vacancy occurs. No vacancy in the membership of the board shall impair the right of the remaining member or members to act, except as herein otherwise provided.

(2) The principal office of the board shall be at the state capitol, and it may establish such other offices as it may deem necessary.

(3) Any member of the board may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member of the board by the tribunal shall disqualify such member for reappointment.

(4) Each member of the board shall devote his entire time to the duties of his office and no member of the board shall hold any other public office. Before entering upon the duties of his office, each of said members of the board shall enter into a surety bond executed by a surety company authorized to do business in this state, payable to the state of Washington, to be approved by the governor in the penal sum of fifty thousand dollars conditioned upon the faithful performance of his duties, and shall take and subscribe to the oath of office prescribed for elective state officers, which oath and bond shall be filed with the secretary of state. The premium for said bond shall be paid by the board. [1986 c 105 § 1; 1949 c 5 § 9; 1947 c 113 § 1; 1945 c 208 § 2; 1933 ex.s. c 62 § 64; Rem. Supp. 1949 § 7306-64. Formerly RCW 43.66.020.]

Severability—1949 c 5: See RCW 66.98.080.

66.08.016 Employees of the board. The board may employ such number of employees as in its judgment are required from time to time. [1961 c 1 § 30 (Initiative Measure No. 207, approved November 8, 1960); 1947 c 113 § 2; 1933 ex.s. c 62 § 65; Rem. Supp. 1947 § 7306-65. Formerly RCW 43.66.030.]

66.08.020 Liquor control board to administer. The administration of this title, including the general control, management and supervision of all liquor stores, shall be vested in the liquor control board, constituted under this title. [1933 ex.s. c 62 § 5; RRS § 7306-5.]

Prosecuting attorney to make annual report of liquor law prosecutions: RCW 36.27.020.

66.08.022 Attorney general is general counsel of board—Duties—Assistants. The attorney general shall be the general counsel of the liquor control board and he shall institute and prosecute all actions and proceedings which may be necessary in the enforcement and carrying out of the provisions of this chapter and Title 66 RCW.

He shall assign such assistants as may be necessary to the exclusive duty of assisting the liquor control board in the enforcement of Title 66 RCW. [1961 ex.s. c 6 § 2; 1933 ex.s. c 62 § 66; RRS § 7306-66. Formerly RCW 43.66.140.]

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.024 Annual audit—State auditor's duties—Additional audits—Public records. The state auditor shall audit the books, records, and affairs of the board annually. The board may provide for additional audits by certified public accountants. All such audits shall be public records of the state. The payment of the audits provided for in this section shall be paid as provided in RCW 66.08.026 for other administrative expenses. [1987 c 74 § 1; 1981 1st ex.s. c 5 § 2; 1961 ex.s. c 6 § 3; 1937 c 138 § 1; 1935 c 174 § 12; 1933 ex.s. c 62 § 71; RRS § 7306-71. Formerly RCW 43.66.150.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.026 Appropriation and payment of administrative expenses from liquor revolving fund—"Administrative expenses" defined. All administrative expenses of the board incurred on and after April 1, 1963, shall be appropriated and paid from the liquor revolving fund. These administrative expenses shall include, but not be limited to: The salaries and expenses of the board and its employees, the cost of establishing, leasing, maintaining, and operating state liquor stores and warehouses, legal services, pilot projects, annual or other audits, and other general costs of conducting the business of the board, and the costs of supplying, installing, and maintaining equipment used in state liquor stores and agency liquor vendor stores for the purchase of liquor using debit or credit cards. The administrative expenses shall not, however, be deemed to include costs of liquor and lottery tickets purchased, the cost of transportation and delivery to the point of distribution, other costs pertaining to the acquisition and receipt of liquor and lottery tickets, packaging and repackaging of liquor, agency commissions for agency liquor vendor stores, transaction fees associated with credit or debit card purchases for liquor in state liquor stores and in the stores of agency liquor vendors pursuant to RCW 66.16.040 and 66.16.041, sales tax, and those amounts distributed pur-

suant to RCW 66.08.180, 66.08.190, 66.08.200, 66.08.210 and 66.08.220. Agency commissions for agency liquor vendor stores shall be established by the liquor control board after consultation with and approval by the director of the office of financial management. All expenditures and payment of obligations authorized by this section are subject to the allotment requirements of chapter 43.88 RCW. [2004 c 63 § 1; 2001 c 313 § 1; 1998 c 265 § 2; 1997 c 148 § 1; 1996 c 291 § 3; 1983 c 160 § 2; 1963 c 239 § 1; 1961 ex.s. c 6 § 4. Formerly RCW 43.66.161.]

Intent—1998 c 265: See note following RCW 66.16.041.

Severability—1963 c 239: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1963 c 239 § 2.]

Effective date—Transfer of liquor revolving fund to state treasurer—Outstanding obligations—1961 ex.s. c 6: See notes following RCW 66.08.170.

66.08.030 Regulations—Scope. (1) For the purpose of carrying into effect the provisions of this title according to their true intent or of supplying any deficiency therein, the board may make such regulations not inconsistent with the spirit of this title as are deemed necessary or advisable. All regulations so made shall be a public record and shall be filed in the office of the code reviser, and thereupon shall have the same force and effect as if incorporated in this title. Such regulations, together with a copy of this title, shall be published in pamphlets and shall be distributed as directed by the board.

(2) Without thereby limiting the generality of the provisions contained in subsection (1), it is declared that the power of the board to make regulations in the manner set out in that subsection shall extend to

(a) regulating the equipment and management of stores and warehouses in which state liquor is sold or kept, and prescribing the books and records to be kept therein and the reports to be made thereon to the board;

(b) prescribing the duties of the employees of the board, and regulating their conduct in the discharge of their duties;

(c) governing the purchase of liquor by the state and the furnishing of liquor to stores established under this title;

(d) determining the classes, varieties, and brands of liquor to be kept for sale at any store;

(e) prescribing, subject to RCW 66.16.080, the hours during which the state liquor stores shall be kept open for the sale of liquor;

(f) providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each variety of liquor kept for sale under this title;

(g) prescribing an official seal and official labels and stamps and determining the manner in which they shall be attached to every package of liquor sold or sealed under this title, including the prescribing of different official seals or different official labels for different classes of liquor;

(h) providing for the payment by the board in whole or in part of the carrying charges on liquor shipped by freight or express;

(i) prescribing forms to be used for purposes of this title or the regulations, and the terms and conditions to be contained in permits and licenses issued under this title, and the qualifications for receiving a permit or license issued under

this title, including a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation;

(j) prescribing the fees payable in respect of permits and licenses issued under this title for which no fees are prescribed in this title, and prescribing the fees for anything done or permitted to be done under the regulations;

(k) prescribing the kinds and quantities of liquor which may be kept on hand by the holder of a special permit for the purposes named in the permit, regulating the manner in which the same shall be kept and disposed of, and providing for the inspection of the same at any time at the instance of the board;

(l) regulating the sale of liquor kept by the holders of licenses which entitle the holder to purchase and keep liquor for sale;

(m) prescribing the records of purchases or sales of liquor kept by the holders of licenses, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

(n) prescribing the kinds and quantities of liquor for which a prescription may be given, and the number of prescriptions which may be given to the same patient within a stated period;

(o) prescribing the manner of giving and serving notices required by this title or the regulations, where not otherwise provided for in this title;

(p) regulating premises in which liquor is kept for export from the state, or from which liquor is exported, prescribing the books and records to be kept therein and the reports to be made thereon to the board, and providing for the inspection of the premises and the books, records and the liquor so kept;

(q) prescribing the conditions and qualifications requisite for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, prescribing the manner of licensing clubs in any municipality or other locality, and providing for the inspection of clubs;

(r) prescribing the conditions, accommodations and qualifications requisite for the obtaining of licenses to sell beer and wines, and regulating the sale of beer and wines thereunder;

(s) specifying and regulating the time and periods when, and the manner, methods and means by which manufacturers shall deliver liquor within the state; and the time and periods when, and the manner, methods and means by which liquor may lawfully be conveyed or carried within the state;

(t) providing for the making of returns by brewers of their sales of beer shipped within the state, or from the state, showing the gross amount of such sales and providing for the inspection of brewers' books and records, and for the checking of the accuracy of any such returns;

(u) providing for the making of returns by the wholesalers of beer whose breweries are located beyond the boundaries of the state;

(v) providing for the making of returns by any other liquor manufacturers, showing the gross amount of liquor produced or purchased, the amount sold within and exported from the state, and to whom so sold or exported, and providing for the inspection of the premises of any such liquor manufacturers, their books and records, and for the checking of any such return;

(w) providing for the giving of fidelity bonds by any or all of the employees of the board: PROVIDED, That the premiums therefor shall be paid by the board;

(x) providing for the shipment by mail or common carrier of liquor to any person holding a permit and residing in any unit which has, by election pursuant to this title, prohibited the sale of liquor therein;

(y) prescribing methods of manufacture, conditions of sanitation, standards of ingredients, quality and identity of alcoholic beverages manufactured, sold, bottled, or handled by licensees and the board; and conducting from time to time, in the interest of the public health and general welfare, scientific studies and research relating to alcoholic beverages and the use and effect thereof;

(z) seizing, confiscating and destroying all alcoholic beverages manufactured, sold or offered for sale within this state which do not conform in all respects to the standards prescribed by this title or the regulations of the board: PROVIDED, Nothing herein contained shall be construed as authorizing the liquor board to prescribe, alter, limit or in any way change the present law as to the quantity or percentage of alcohol used in the manufacturing of wine or other alcoholic beverages. [2002 c 119 § 2; 1977 ex.s. c 115 § 1; 1971 c 62 § 1; 1943 c 102 § 1; 1933 ex.s. c 62 § 79; RRS § 7306-79. Formerly RCW 66.08.030 and 66.08.040.]

66.08.050 Powers of board in general. The board, subject to the provisions of this title and the rules, shall:

(1) Determine the localities within which state liquor stores shall be established throughout the state, and the number and situation of the stores within each locality;

(2) Appoint in cities and towns and other communities, in which no state liquor store is located, liquor vendors. In addition, the board may appoint, in its discretion, a manufacturer that also manufactures liquor products other than wine under a license under this title, as a vendor for the purpose of sale of liquor products of its own manufacture on the licensed premises only. Such liquor vendors shall be agents of the board and be authorized to sell liquor to such persons, firms or corporations as provided for the sale of liquor from a state liquor store, and such vendors shall be subject to such additional rules and regulations consistent with this title as the board may require;

(3) Establish all necessary warehouses for the storing and bottling, diluting and rectifying of stocks of liquors for the purposes of this title;

(4) Provide for the leasing for periods not to exceed ten years of all premises required for the conduct of the business; and for remodeling the same, and the procuring of their furnishings, fixtures, and supplies; and for obtaining options of renewal of such leases by the lessee. The terms of such leases in all other respects shall be subject to the direction of the board;

(5) Determine the nature, form and capacity of all packages to be used for containing liquor kept for sale under this title;

(6) Execute or cause to be executed, all contracts, papers, and documents in the name of the board, under such regulations as the board may fix;

(7) Pay all customs, duties, excises, charges and obligations whatsoever relating to the business of the board;

(8) Require bonds from all employees in the discretion of the board, and to determine the amount of fidelity bond of each such employee;

(9) Perform services for the state lottery commission to such extent, and for such compensation, as may be mutually agreed upon between the board and the commission;

(10) Accept and deposit into the general fund-local account and disburse, subject to appropriation, federal grants or other funds or donations from any source for the purpose of improving public awareness of the health risks associated with alcohol consumption by youth and the abuse of alcohol by adults in Washington state. The board's alcohol awareness program shall cooperate with federal and state agencies, interested organizations, and individuals to effect an active public beverage alcohol awareness program;

(11) Perform all other matters and things, whether similar to the foregoing or not, to carry out the provisions of this title, and shall have full power to do each and every act necessary to the conduct of its business, including all buying, selling, preparation and approval of forms, and every other function of the business whatsoever, subject only to audit by the state auditor: PROVIDED, That the board shall have no authority to regulate the content of spoken language on licensed premises where wine and other liquors are served and where there is not a clear and present danger of disorderly conduct being provoked by such language. [1997 c 228 § 1; 1993 c 25 § 1; 1986 c 214 § 2; 1983 c 160 § 1; 1975 1st ex.s. c 173 § 1; 1969 ex.s. c 178 § 1; 1963 c 239 § 3; 1935 c 174 § 10; 1933 ex.s. c 62 § 69; RRS § 7306-69.]

Severability—1975 1st ex.s. c 173: "If any phrase, clause, subsection, or section of this 1975 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1975 amendatory act without the phrase, clause, subsection, or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1975 1st ex.s. c 173 § 13.]

Effective date—1975 1st ex.s. c 173: "This 1975 amendatory act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1975." [1975 1st ex.s. c 173 § 14.]

Severability—1963 c 239: See note following RCW 66.08.026.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.08.0501 Adoption of rules. The liquor control board may adopt appropriate rules pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of chapter 321, Laws of 1997. [1997 c 321 § 56.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.08.055 Oaths may be administered and affidavits, declarations received. Every member of the board, and every employee authorized by the board to issue permits under this title may administer any oath and take and receive

any affidavit or declaration required under this title or the regulations. [1933 ex.s. c 62 § 80; RRS § 7306-80. Formerly RCW 43.66.050.]

66.08.060 Board cannot advertise liquor—Advertising regulations. The board shall not advertise liquor in any form or through any medium whatsoever. The board shall have power to adopt any and all reasonable regulations as to the kind, character and location of advertising of liquor. [1933 ex.s. c 62 § 43; RRS § 7306-43.]

66.08.070 Purchase of liquor by board—Consignment not prohibited—Warranty or affirmation not required for wine or malt purchases. (1) Every order for the purchase of liquor shall be authorized by the board, and no order for liquor shall be valid or binding unless it is so authorized and signed by the board or its authorized designee.

(2) A duplicate of every such order shall be kept on file in the office of the board.

(3) All cancellations of such orders made by the board shall be signed in the same manner and duplicates thereof kept on file in the office of the board. Nothing in this title shall be construed as preventing the board from accepting liquor on consignment.

(4) In the purchase of wine or malt beverages the board shall not require, as a term or condition of purchase, any warranty or affirmation with respect to the relationship of the price charged the board to any price charged any other buyer. [1985 c 226 § 2; 1973 1st ex.s. c 209 § 1; 1933 ex.s. c 62 § 67; RRS § 7306-67.]

Severability—1973 1st ex.s. c 209: "If any phrase, clause, subsection or section of this 1973 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this 1973 amendatory act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid." [1973 1st ex.s. c 209 § 21.]

Effective date—1973 1st ex.s. c 209: "This 1973 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1973." [1973 1st ex.s. c 209 § 22.]

66.08.075 Officer, employee not to represent manufacturer, wholesaler in sale to board. No official or employee of the liquor control board of the state of Washington shall, during his term of office or employment, or for a period of two years immediately following the termination thereof, represent directly or indirectly any manufacturer or wholesaler of liquor in the sale of liquor to the board. [1937 c 217 § 5 (adding new section 42-A to 1933 ex.s. c 62); RRS § 7306-42A. Formerly RCW 43.66.040.]

66.08.080 Interest in manufacture or sale of liquor prohibited. Except as provided by chapter 42.52 RCW, no member of the board and no employee of the board shall have any interest, directly or indirectly, in the manufacture of liquor or in any liquor sold under this title, or derive any profit or remuneration from the sale of liquor, other than the salary or wages payable to him in respect of his office or position, and shall receive no gratuity from any person in connection with such business. [1994 c 154 § 313; 1981 1st ex.s. c 5 § 3; 1933 ex.s. c 62 § 68; RRS § 7306-68.]

(2004 Ed.)

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.08.090 Sale of liquor by employees of board. No employee shall sell liquor in any other place, nor at any other time, nor otherwise than as authorized by the board under this title and the regulations. [1933 ex.s. c 62 § 31; RRS § 7306-31.]

66.08.095 Liquor for training or investigation purposes. The liquor control board may provide liquor at no charge, including liquor forfeited under chapter 66.32 RCW, to recognized law enforcement agencies within the state when the law enforcement agency will be using the liquor for bona fide law enforcement training or investigation purposes. [1993 c 26 § 3.]

66.08.100 Jurisdiction of action against board—Immunity from personal liability of members. No court of the state of Washington other than the superior court of Thurston county shall have jurisdiction over any action or proceeding against the board or any member thereof for anything done or omitted to be done in or arising out of the performance of his or their duties under this title. Neither the board nor any member or members thereof shall be personally liable in any action at law for damages sustained by any person because of any acts performed or done or omitted to be done by the board or any employee of the board in the performance of his duties and in the administration of this title. [1935 c 174 § 9 (adding new section 62-A to 1933 ex.s. c 62); RRS § 7306-62A. Formerly RCW 66.08.100 and 66.08.110.]

66.08.120 Preemption of field by state—Exception. No municipality or county shall have power to license the sale of, or impose an excise tax upon, liquor as defined in this title, or to license the sale or distribution thereof in any manner; and any power now conferred by law on any municipality or county to license premises which may be licensed under this section, or to impose an excise tax upon liquor, or to license the sale and distribution thereof, as defined in this title, shall be suspended and shall be of no further effect: PROVIDED, That municipalities and counties shall have power to adopt police ordinances and regulations not in conflict with this title or with the regulations made by the board. [1933 ex.s. c 62 § 29; RRS § 7306-29.]

66.08.130 Inspection of books and records—Goods possessed or shipped—Refusal as violation. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books and records of

- (1) any manufacturer;
- (2) any license holder;
- (3) any drug store holding a permit to sell on prescriptions;
- (4) the freight and express books and records and all waybills, bills of lading, receipts and documents in the possession of any common carrier doing business within the

[Title 66 RCW—page 9]

state, containing any information or record relating to any goods shipped or carried, or consigned or received for shipment or carriage within the state. Every manufacturer, license holder, drug store holding a permit to sell on prescriptions, and common carrier, and every owner or officer or employee of the foregoing, who neglects or refuses to produce and submit for inspection any book, record or document referred to in this section when requested to do so by the board or by a person so appointed by it shall be guilty of a violation of this title. [1981 1st ex.s. c 5 § 4; 1933 ex.s. c 62 § 56; RRS § 7306-56.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.08.140 Inspection of books and records—Financial dealings—Penalty for refusal. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board, or any person appointed by it in writing for the purpose, may inspect the books, documents and records of any person lending money to or in any manner financing any license, holder or applicant for license insofar as such books, documents and/or records pertain to the financial transaction involved. Every person who neglects or refuses to produce and submit for inspection any book, record or document as required by this section when requested to do so by the board or by a person duly appointed by it shall be guilty of a violation of this title. [1945 c 48 § 1 (adding new section 56-A to 1933 ex.s. c 62); RRS § 7306-56A.]

66.08.150 Board's action as to permits and licenses—Administrative procedure act, applicability—Adjudicative proceeding—Opportunity for hearing—Summary suspension. The action, order, or decision of the board as to any denial of an application for the reissuance of a permit or license or as to any revocation, suspension, or modification of any permit or license shall be an adjudicative proceeding and subject to the applicable provisions of chapter 34.05 RCW.

(1) An opportunity for a hearing may be provided an applicant for the reissuance of a permit or license prior to the disposition of the application, and if no such opportunity for a prior hearing is provided then an opportunity for a hearing to reconsider the application must be provided the applicant.

(2) An opportunity for a hearing must be provided a permittee or licensee prior to a revocation or modification of any permit or license and, except as provided in subsection (4) of this section, prior to the suspension of any permit or license.

(3) No hearing shall be required until demanded by the applicant, permittee, or licensee.

(4) The board may summarily suspend a license or permit for a period of up to one hundred eighty days without a prior hearing if it finds that public health, safety, or welfare imperatively require emergency action, and incorporates a finding to that effect in its order; and proceedings for revocation or other action must be promptly instituted and determined. The board's enforcement division shall complete a preliminary staff investigation of the violation before requesting an emergency suspension by the board. [2003 c 320 § 1; 1989 c 175 § 122; 1967 c 237 § 23; 1933 ex.s. c 62 § 62; RRS § 7306-62.]

[Title 66 RCW—page 10]

Effective date—1989 c 175: See note following RCW 34.05.010.

66.08.160 Acquisition of warehouse authorized. The Washington state liquor board and the state finance committee are hereby authorized to lease or purchase or acquire a site and erect a warehouse building in the city of Seattle, and for that purpose may borrow money and may issue bonds in an amount not to exceed one million five hundred thousand dollars to be amortized from liquor revenues over a period of not to exceed ten years. [1947 c 134 § 1; No RRS.]

66.08.170 Liquor revolving fund—Creation—Composition—State treasurer as custodian—Daily deposits, exceptions—Budget and accounting act applicable. There shall be a fund, known as the "liquor revolving fund", which shall consist of all license fees, permit fees, penalties, forfeitures, and all other moneys, income, or revenue received by the board. The state treasurer shall be custodian of the fund. All moneys received by the board or any employee thereof, except for change funds and an amount of petty cash as fixed by the board within the authority of law shall be deposited each day in a depository approved by the state treasurer and transferred to the state treasurer to be credited to the liquor revolving fund. During the 2001-2003 fiscal biennium, the legislature may transfer from the liquor revolving account to the state general fund such amounts as reflect the excess fund balance of the fund and reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings. Disbursements from the revolving fund shall be on authorization of the board or a duly authorized representative thereof. In order to maintain an effective expenditure and revenue control the liquor revolving fund shall be subject in all respects to chapter 43.88 RCW but no appropriation shall be required to permit expenditures and payment of obligations from such fund. [2002 c 371 § 917; 1961 ex.s. c 6 § 1; 1933 ex.s. c 62 § 73; RRS § 7306-73. Formerly RCW 43.66.060.]

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Transfer of liquor revolving fund to state treasurer—Outstanding obligations: "On June 30, 1961, the Washington state liquor control board shall deliver and transfer to the state treasurer, as custodian, all moneys and accounts which comprise the liquor revolving fund, except change funds and petty cash, and the state treasurer shall assume custody thereof. All obligations outstanding as of June 30, 1961 shall be paid out of the liquor revolving fund." [1961 ex.s. c 6 § 5.]

Effective date—1961 ex.s. c 6: "This act shall take effect on June 30, 1961." [1961 ex.s. c 6 § 7.]

66.08.180 Liquor revolving fund—Distribution—Reserve for administration—Disbursement to universities and state agencies. Except as provided in RCW 66.24.290(1), moneys in the liquor revolving fund shall be distributed by the board at least once every three months in accordance with RCW 66.08.190, 66.08.200 and 66.08.210: PROVIDED, That the board shall reserve from distribution such amount not exceeding five hundred thousand dollars as may be necessary for the proper administration of this title.

(1) All license fees, penalties and forfeitures derived under chapter 13, Laws of 1935 from spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses or spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports enter-

(2004 Ed.)

tainment facility licensees shall every three months be disbursed by the board as follows:

(a) Three hundred thousand dollars per biennium, to the death investigations account for the state toxicology program pursuant to RCW 68.50.107; and

(b) Of the remaining funds:

(i) 6.06 percent to the University of Washington and 4.04 percent to Washington State University for alcoholism and drug abuse research and for the dissemination of such research; and

(ii) 89.9 percent to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050;

(2) The first fifty-five dollars per license fee provided in RCW 66.24.320 and 66.24.330 up to a maximum of one hundred fifty thousand dollars annually shall be disbursed every three months by the board to the general fund to be used for juvenile alcohol and drug prevention programs for kindergarten through third grade to be administered by the superintendent of public instruction;

(3) Twenty percent of the remaining total amount derived from license fees pursuant to RCW 66.24.320, 66.24.330, 66.24.350, and 66.24.360, shall be transferred to the general fund to be used by the department of social and health services solely to carry out the purposes of RCW 70.96A.050; and

(4) One-fourth cent per liter of the tax imposed by RCW 66.24.210 shall every three months be disbursed by the board to Washington State University solely for wine and wine grape research, extension programs related to wine and wine grape research, and resident instruction in both wine grape production and the processing aspects of the wine industry in accordance with RCW 28B.30.068. The director of financial management shall prescribe suitable accounting procedures to ensure that the funds transferred to the general fund to be used by the department of social and health services and appropriated are separately accounted for. [2000 c 192 § 1. Prior: 1999 c 281 § 1; 1999 c 40 § 7; prior: 1997 c 451 § 3; 1997 c 321 § 57; 1995 c 398 § 16; 1987 c 458 § 10; 1986 c 87 § 1; 1981 1st ex.s. c 5 § 6; 1979 c 151 § 166; 1967 ex.s. c 75 § 1; 1965 ex.s. c 143 § 2; 1949 c 5 § 10; 1935 c 13 § 2; 1933 ex.s. c 62 § 77; Rem. Supp. 1949 § 7306-77. Formerly RCW 43.66.080.]

Effective date—1999 c 40: See note following RCW 43.103.010.

Effective date—1997 c 451: See note following RCW 66.24.290.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Effective date—1986 c 87: "This act shall take effect July 1, 1987." [1986 c 87 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: "The effective date of this 1967 amendatory act is July 1, 1967." [1967 ex.s. c 75 § 8.]

Severability—1949 c 5: See RCW 66.98.080.

Distribution for state toxicological lab: RCW 68.50.107.

Wine grape industry, instruction relating to—Purpose—Administration: RCW 28B.30.067 and 28B.30.068.

66.08.190 Liquor revolving fund—Disbursement of excess funds to state, counties, and cities—Withholding of funds for noncompliance. (1) Except for revenues gener-

ated by the 2003 surcharge of \$0.42/liter on retail sales of spirits that shall be distributed to the state general fund during the 2003-2005 biennium, when excess funds are distributed, all moneys subject to distribution shall be disbursed as follows:

(a) Three-tenths of one percent to border areas under RCW 66.08.195; and

(b) From the amount remaining after distribution under (a) of this subsection, (i) fifty percent to the general fund of the state, (ii) ten percent to the counties of the state, and (iii) forty percent to the incorporated cities and towns of the state.

(2) During the months of June, September, December, and March of each year, prior to disbursing the distribution to incorporated cities and towns under subsection (1)(b) of this section, the treasurer shall deduct from that distribution an amount that will fund that quarter's allotments under RCW 43.88.110 from any legislative appropriation from the city and town research services account. The treasurer shall deposit the amount deducted into the city and town research services account.

(3) The governor may notify and direct the state treasurer to withhold the revenues to which the counties and cities are entitled under this section if the counties or cities are found to be in noncompliance pursuant to RCW 36.70A.340. [2003 1st sp.s. c 25 § 927; 2002 c 38 § 2; 2000 c 227 § 2; 1995 c 159 § 1; 1991 sp.s. c 32 § 34; 1988 c 229 § 4; 1957 c 175 § 6. Prior: 1955 c 109 § 2; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.090.]

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

Effective date—2000 c 227: See note following RCW 43.110.060.

Effective date—1995 c 159: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 159 § 6.]

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Finding—1988 c 229: "The legislature finds and declares that certain counties and municipalities near international borders are subjected to a constant volume and flow of travelers and visitors for whom local government services must be provided. The legislature further finds that it is in the public interest and for the protection of the health, property, and welfare of the residents and visitors to provide supplemental resources to augment and maintain existing levels of police protection in such areas and to alleviate the impact of such added burdens." [1988 c 229 § 2.]

Effective date—1988 c 229 §§ 2-4: "Sections 2 through 4 of this act shall take effect July 1, 1989." [1988 c 229 § 5.]

66.08.195 Liquor revolving fund—Definition of terms relating to border areas. For the purposes of this chapter:

(1) "Border area" means any incorporated city or town, or unincorporated area, located within seven miles of the Washington-Canadian border or any unincorporated area that is a point of land surrounded on three sides by saltwater and adjacent to the Canadian border.

(2) "Border area per-capita law-enforcement spending" equals total per capita expenditures in a border area on: Law enforcement operating costs, court costs, law enforcement-related insurance, and detention expenses, minus funds allocated to a border area under RCW 66.08.190 and 66.08.196.

(3) "Border-crossing traffic total" means the number of vehicles, vessels, and aircraft crossing into the United States through a United States customs service border crossing that enter into the border area during a federal fiscal year, using border crossing statistics and criteria included in guidelines adopted by the department of community, trade, and economic development.

(4) "Border-related crime statistic" means the sum of infractions and citations issued, and arrests of persons permanently residing outside Washington state in a border area during a calendar year. [2001 c 8 § 1; 1995 c 159 § 2; 1988 c 229 § 3.]

Effective date—1995 c 159: See note following RCW 66.08.190.

Finding—Effective date—1988 c 229: See notes following RCW 66.08.190.

66.08.196 Liquor revolving fund—Distribution of funds to border areas. Distribution of funds to border areas under RCW 66.08.190 and 66.24.290 (1)(a) and (4) shall be as follows:

(1) Sixty-five percent of the funds shall be distributed to border areas ratably based on border area traffic totals;

(2) Twenty-five percent of the funds shall be distributed to border areas ratably based on border-related crime statistics; and

(3) Ten percent of the funds shall be distributed to border areas ratably based upon border area per capita law enforcement spending.

Distributions to an unincorporated area shall be made to the county in which such an area is located and may only be spent on services provided to that area. [2001 c 8 § 2; 1997 c 451 § 4; 1995 c 159 § 3.]

Effective date—1997 c 451: See note following RCW 66.24.290.

Effective date—1995 c 159: See note following RCW 66.08.190.

66.08.198 Liquor revolving fund—Distribution of funds to border areas—Guidelines adoption. The department of community, trade, and economic development shall develop guidelines to determine the figures used under the three distribution factors defined in RCW 66.08.195. At the request of any border community, the department may review these guidelines once every three years. [1995 c 159 § 4.]

Effective date—1995 c 159: See note following RCW 66.08.190.

66.08.200 Liquor revolving fund—Computation for distribution to counties—"Unincorporated area" defined. With respect to the ten percent share coming to the counties, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible county shall be determined by a division among the eligible counties according to the relation which the population of the unincorporated area of such eligible county, as last determined by the office of financial management, bears to the population of the total combined unincorporated areas of all eligible counties, as determined by the office of financial management: PROVIDED, That no county in which the sale of liquor is forbidden in the unincorporated area thereof as the result of an election shall be entitled to share in such distribution. "Unincor-

porated area" means all that portion of any county not included within the limits of incorporated cities and towns.

When a special county census has been conducted for the purpose of determining the population base of a county's unincorporated area for use in the distribution of liquor funds, the census figure shall become effective for the purpose of distributing funds as of the official census date once the census results have been certified by the office of financial management and officially submitted to the office of the secretary of state. [1979 c 151 § 167; 1977 ex.s. c 110 § 2; 1957 c 175 § 7. Prior: 1955 c 109 § 3; 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.100.]

Population determinations, office of financial management: Chapter 43.62 RCW.

66.08.210 Liquor revolving fund—Computation for distribution to cities. With respect to the forty percent share coming to the incorporated cities and towns, the computations for distribution shall be made by the state agency responsible for collecting the same as follows:

The share coming to each eligible city or town shall be determined by a division among the eligible cities and towns within the state ratably on the basis of population as last determined by the office of financial management: AND PROVIDED, That no city or town in which the sale of liquor is forbidden as the result of an election shall be entitled to any share in such distribution. [1979 c 151 § 168; 1977 ex.s. c 110 § 3; 1957 c 175 § 8. Prior: 1949 c 187 § 1, part; 1939 c 173 § 1, part; 1937 c 62 § 2, part; 1935 c 80 § 1, part; 1933 ex.s. c 62 § 78, part; Rem. Supp. 1949 § 7306-78, part. Formerly RCW 43.66.110.]

Allocation of state funds on population basis: RCW 43.62.020, 43.62.030.

Determining population of territory annexed to city: RCW 35.13.260.

66.08.220 Liquor revolving fund—Separate account—Distribution. The board shall set aside in a separate account in the liquor revolving fund an amount equal to ten percent of its gross sales of liquor to spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licensees collected from these licensees pursuant to the provisions of RCW 82.08.150, less the fifteen percent discount provided for in RCW 66.24.440; and the moneys in said separate account shall be distributed in accordance with the provisions of RCW 66.08.190, 66.08.200 and 66.08.210: PROVIDED, HOWEVER, That no election unit in which the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses is unlawful shall be entitled to share in the distribution of moneys from such separate account. [1999 c 281 § 2; 1949 c 5 § 11 (adding new section 78-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-78A. Formerly RCW 43.66.130.]

Severability—1949 c 5: See RCW 66.98.080.

66.08.230 Initial disbursement to wine commission—Repayment. To provide for the operation of the wine commission prior to its first quarterly disbursement, the liquor control board shall, on July 1, 1987, disburse one hundred ten

thousand dollars to the wine commission. However, such disbursement shall be repaid to the liquor control board by a reduction from the quarterly disbursements to the wine commission under RCW 66.24.210 of twenty-seven thousand five hundred dollars each quarter until such amount is repaid. These funds shall be used to establish the Washington wine commission and the other purposes delineated in chapter 15.88 RCW. [1987 c 452 § 12.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

66.08.235 Liquor control board construction and maintenance account. The liquor control board construction and maintenance account is created within the state treasury. The liquor control board shall deposit into this account a portion of the board's markup, as authorized by chapter 66.16 RCW, placed upon liquor as determined by the board. Moneys in the account may be spent only after appropriation. The liquor control board shall use deposits to this account to fund construction and maintenance of a centralized distribution center for liquor products intended for sale through the board's liquor store and vendor system. During the 2001-2003 fiscal biennium, the legislature may transfer from the liquor control board construction and maintenance account to the state general fund such amounts as reflect the appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings. [2002 c 371 § 918; 1997 c 75 § 1.]

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Effective date—1997 c 75: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 75 § 3.]

66.08.240 Transfer of funds pursuant to government service agreement. Funds that are distributed to counties, cities, or towns pursuant to this chapter may be transferred by the recipient county, city, or town to another unit of government pursuant to a government service agreement as provided in RCW 36.115.040 and 36.115.050. [1994 c 266 § 10.]

Chapter 66.12 RCW

EXEMPTIONS

Sections

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|-----------|--|
| 66.12.010 | Wine or beer manufactured for home use. |
| 66.12.020 | Sales of liquor to board. |
| 66.12.030 | Licensed manufacturers not prevented from storing liquor—Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected. |
| 66.12.060 | Pharmaceutical preparations, patent medicines, denatured alcohol. |
| 66.12.070 | Medicinal, culinary, and toilet preparations not usable as beverages—Sample and analysis—Clearly labeled. |
| 66.12.110 | Duty-free alcoholic beverages for personal use. |
| 66.12.120 | Bringing alcoholic beverages into state from another state—Payment of markup and tax. |
| 66.12.125 | Alcohol for use as fuel—Legislative finding and declaration. |
| 66.12.130 | Alcohol for use as fuel in motor vehicles, farm implements, machines, etc., or in combination with other petroleum products for use as fuel. |
| 66.12.140 | Use of alcoholic beverages in culinary, restaurant, or food fermentation courses. |

(2004 Ed.)

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| 66.12.150 | Beer or wine offered by hospital or nursing home for consumption on the premises. |
| 66.12.160 | Manufacture or sale of confections or food containing liquor. |
| 66.12.170 | Obtaining liquor for manufacturing confections or food products. |
| 66.12.180 | Donations to and use of wine by Washington wine commission. |
| 66.12.190 | Wine shipments from out of state—Limitations. |
| 66.12.200 | Out-of-state wine shipments—Labeling. |
| 66.12.210 | Wine shipments from out of state from unlicensed shipper—Penalties. |
| 66.12.220 | Out-of-state wine shipper's license—Revocation. |

66.12.010 Wine or beer manufactured for home use.

Nothing in this title other than RCW 66.28.140, applies to wine or beer manufactured in any home for consumption therein, and not for sale. [1981 c 255 § 1; 1955 c 39 § 1; 1933 ex.s. c 62 § 32; RRS § 7306-32.]

66.12.020 Sales of liquor to board. Nothing in this title shall apply to or prevent the sale of liquor by any person to the board. [1933 ex.s. c 62 § 48; RRS § 7306-48.]

66.12.030 Licensed manufacturers not prevented from storing liquor—Transshipment in interstate, foreign commerce—Interstate, foreign transactions protected. (1) Nothing in this title shall prevent any person licensed to manufacture liquor from keeping liquor in his warehouse or place of business.

(2) Nothing in this title shall prevent the transshipment of liquor in interstate and foreign commerce; but no person shall import liquor into the state from any other state or country, except, as herein otherwise provided, for use or sale in the state, except the board.

(3) Every provision of this title which may affect transactions in liquor between a person in this state and a person in another state or in a foreign country shall be construed to affect such transactions so far only as the legislature has power to make laws in relation thereto. [1933 ex.s. c 62 § 49; RRS § 7306-49. Formerly RCW 66.12.030, 66.12.040, and 66.12.050.]

66.12.060 Pharmaceutical preparations, patent medicines, denatured alcohol. Nothing in this title shall apply to or prevent the sale, purchase or consumption

(1) of any pharmaceutical preparation containing liquor which is prepared by a druggist according to a formula of the pharmacopoeia of the United States, or the dispensatory of the United States; or

(2) of any proprietary or patent medicine; or

(3) of wood alcohol or denatured alcohol, except in the case of the sale, purchase, or consumption of wood alcohol or denatured alcohol for beverage purposes, either alone or combined with any other liquid or substance. [1933 ex.s. c 62 § 50; RRS § 7306-50.]

66.12.070 Medicinal, culinary, and toilet preparations not usable as beverages—Sample and analysis—Clearly labeled. (1) Where a medicinal preparation contains liquor as one of the necessary ingredients thereof, and also contains sufficient medication to prevent its use as an alcoholic beverage, nothing in this title shall apply to or prevent its composition or sale by a druggist when compounded from

liquor purchased by the druggist under a special permit held by him, nor apply to or prevent the purchase or consumption of the preparation by any person for strictly medicinal purposes.

(2) Where a toilet or culinary preparation, that is to say, any perfume, lotion, or flavoring extract or essence, or dietary supplement as defined by the federal food and drug administration, contains liquor and also contains sufficient ingredient or medication to prevent its use as a beverage, nothing in this title shall apply to or prevent the sale or purchase of that preparation by any druggist or other person who manufactures or deals in the preparation, nor apply to or prevent the purchase or consumption of the preparation by any person who purchases or consumes it for any toilet or culinary purpose.

(3) In order to determine whether any particular medicinal, toilet, dietary supplement, or culinary preparation referred to in this section contains sufficient ingredient or medication to prevent its use as an alcoholic beverage, the board may cause a sample of the preparation, purchased or obtained from any person whomsoever, to be analyzed by an analyst appointed or designated by the board; and if it appears from a certificate signed by the analyst that he finds the sample so analyzed by him did not contain sufficient ingredient or medication to prevent its use as an alcoholic beverage, the certificate shall be conclusive evidence that the preparation, the sample of which was so analyzed, is not a preparation the sale or purchase of which is permitted by this section.

(4) Dietary supplements that contain more than one-half of one percent alcohol which are prepared and sold under this section shall be clearly labeled and the ingredients listed on the label in accordance with the provisions of the federal food, drug, and cosmetics act (21 U.S.C. Sec. 321) as now or hereafter amended. [1999 c 88 § 1; 1933 ex.s. c 62 § 51; RRS § 7306-51. Formerly RCW 66.12.070, 66.12.080, and 66.12.090.]

66.12.110 Duty-free alcoholic beverages for personal use. A person twenty-one years of age or over may bring into the state from without the United States, free of tax and markup, for his personal or household use such alcoholic beverages as have been declared and permitted to enter the United States duty free under federal law.

Such entry of alcoholic beverages in excess of that herein provided may be authorized by the board upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a Washington state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of this section. The board may issue a spirits, beer, and wine private club license to a charitable or nonprofit corporation of the state of Washington, the majority of the officers and directors of which are United States citizens and the minority of the officers and directors of which are citizens of the Dominion of Canada, and where the location of the premises for such spirits, beer, and wine private club license is not more than ten miles south of the border between the United States and the province of British Columbia. [1999 c 281 § 3; 1975-'76 2nd ex.s. c 20 § 1. Prior: 1975 1st ex.s. c 256 § 1; 1975 1st ex.s. c 173 § 2; 1967 c 38 § 1.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.12.120 Bringing alcoholic beverages into state from another state—Payment of markup and tax. Notwithstanding any other provision of Title 66 RCW, a person twenty-one years of age or over may, free of tax and markup, for personal or household use, bring into the state of Washington from another state no more than once per calendar month up to two liters of spirits or wine or two hundred eighty-eight ounces of beer. Additionally, such person may be authorized by the board to bring into the state of Washington from another state a reasonable amount of alcoholic beverages in excess of that provided in this section for personal or household use only upon payment of an equivalent markup and tax as would be applicable to the purchase of the same or similar liquor at retail from a state liquor store. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying into effect the provisions of this section. [1995 c 100 § 1; 1975 1st ex.s. c 173 § 3.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.12.125 Alcohol for use as fuel—Legislative finding and declaration. The legislature finds that the production of alcohol for use as a fuel or fuel supplement is of great importance to the state. Alcohol, when used as a fuel source, is less polluting to the atmosphere than conventional fuels and its use reduces the state's dependence on limited oil resources. Production of alcohol for use as a fuel provides a new use and market for Washington agricultural products and aids Washington farmers in producing food and fiber for the citizens of the state, nation, and world. Therefore, the legislature declares public policy to be one of encouragement toward the production and use of alcohol as a fuel or fuel supplement. [1980 c 140 § 1.]

66.12.130 Alcohol for use as fuel in motor vehicles, farm implements, machines, etc., or in combination with other petroleum products for use as fuel. Nothing in this title shall apply to or prevent the sale, importation, purchase, production, or blending of alcohol used solely for fuel to be used in motor vehicles, farm implements, and machines or implements of husbandry or in combination with gasoline or other petroleum products for use as such fuel. Manufacturers and distillers of such alcohol fuel are not required to obtain a license under this title. Alcohol which is produced for use as fuel shall be denatured in accordance with a formula approved by the federal bureau of alcohol, tobacco and firearms prior to the removal of the alcohol from the premises as described in the approved federal permit application: PROVIDED, That alcohol which is being transferred between plants involved in the distillation or manufacture of alcohol fuel need not be denatured if it is transferred in accordance with federal bureau of alcohol, tobacco and firearms regulation 27 CFR 19.996 as existing on July 26, 1981. The exemptions from the state liquor control laws provided by this section only apply to distillers and manufacturers of alcohol to be used solely for fuel as long as the manufacturers and distillers are the holders of an appropriate permit issued under federal law. [1981 c 179 § 1; 1980 c 140 § 2.]

66.12.140 Use of alcoholic beverages in culinary, restaurant, or food fermentation courses. (1) Nothing in this title shall prevent the use of beer, wine, and/or spirituous liquor, for cooking purposes only, in conjunction with a culinary or restaurant course offered by a college, university, community college, area vocational technical institute, or private vocational school. Further, nothing in this title shall prohibit the making of beer or wine in food fermentation courses offered by a college, university, community college, area vocational technical institute, or private vocational school.

(2) "Culinary or restaurant course" as used in this section means a course of instruction which includes practical experience in food preparation under the supervision of an instructor who is twenty-one years of age or older.

(3) Persons under twenty-one years of age participating in culinary or restaurant courses may handle beer, wine, or spirituous liquor for purposes of participating in the courses, but nothing in this section shall be construed to authorize consumption of liquor by persons under twenty-one years of age or to authorize possession of liquor by persons under twenty-one years of age at any time or place other than while preparing food under the supervision of the course instructor.

(4) Beer, wine, and/or spirituous liquor to be used in culinary or restaurant courses shall be purchased at retail from the board or a retailer licensed under this title. All such liquor shall be securely stored in the food preparation area and shall not be displayed in an area open to the general public.

(5) Colleges, universities, community colleges, area vocational technical institutes, and private vocational schools shall obtain the prior written approval of the board for use of beer, wine, and/or spirituous liquor for cooking purposes in their culinary or restaurant courses. [1982 c 85 § 8.]

66.12.150 Beer or wine offered by hospital or nursing home for consumption on the premises. Nothing in this title shall apply to or prevent a hospital, as defined in *RCW 70.39.020, or a nursing home as defined in RCW 18.51.010, from offering or supplying without charge beer or wine by the individual glass to any patient, member of a patient's family, or patient visitor, for consumption on the premises: PROVIDED, That such patient, family member, or visitor shall be at least twenty-one years of age, and that the beer or wine shall be purchased under this title. [1982 c 85 § 9.]

*Reviser's note: RCW 70.39.020 was repealed by 1982 c 223 § 10, effective June 30, 1990.

66.12.160 Manufacture or sale of confections or food containing liquor. Nothing in this title shall apply to or prevent the manufacture or sale of confections or food products containing alcohol or liquor if: (1) The confection or food product does not contain more than one percent of alcohol by weight; and (2) the confection or food product has a label stating: "This product contains liquor and the alcohol content is one percent or less of the weight of the product." Manufacturers of confections or food products are not required to obtain a license under this title. [1984 c 78 § 3.]

Finding and declaration—1984 c 78: "The legislature finds that confectioners operating in the state are at an economic disadvantage due to a continued prohibition on the use of natural alcohol flavor in candies and that other related business entities, such as bakeries and delicatessens, may use

(2004 Ed.)

natural alcohol flavors in the preparation of food for retail sale. Therefore, the legislature declares that the use of natural alcohol flavorings in an amount not to exceed the limit established in RCW 69.04.240 presents no threat to the public health and safety." [1984 c 78 § 1.]

Severability—1984 c 78: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 78 § 7.]

66.12.170 Obtaining liquor for manufacturing confections or food products. Nothing in this title shall be construed as limiting the right of any manufacturer of confections or food products from obtaining liquor from any source whatsoever if: (1) It is acquired pursuant to a permit issued under RCW 66.20.010(5); and (2) the applicable taxes imposed by this title are paid. [1984 c 78 § 4.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

66.12.180 Donations to and use of wine by Washington wine commission. The Washington wine commission created under RCW 15.88.030 may purchase or receive donations of wine from wineries and may use such wine for promotional purposes. Wine furnished to the commission under this section which is used within the state is subject to the taxes imposed under RCW 66.24.210. No license, permit, or bond is required of the Washington wine commission under this title for promotional activities conducted under chapter 15.88 RCW. [1993 c 160 § 1; 1987 c 452 § 14.]

Effective date—1993 c 160: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 160 § 3.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

66.12.190 Wine shipments from out of state—Limitations. Notwithstanding any other provision of Title 66 RCW, the holder of a license to manufacture wine in a state which affords holders of a Washington license issued under RCW 66.24.170 an equal reciprocal shipping privilege, may ship for personal use and not for resale not more than two cases of wine of its own manufacture per year, with each case containing not more than nine liters, to any state resident twenty-one years of age or older. Out-of-state wine manufacturers that are authorized to ship wine pursuant to RCW 66.12.190 through 66.12.220 shall first obtain a license from the Washington state liquor control board under procedures prescribed by rule of the board, before shipping wine into Washington. Delivery of a shipment under this section shall not be deemed to constitute a sale in this state. [1991 c 149 § 1.]

66.12.200 Out-of-state wine shipments—Labeling. The shipping container of any wine sent into or out of this state under RCW 66.12.190 shall be clearly labeled to indicate that the package cannot be delivered to a person under twenty-one years of age or to an intoxicated person. [1991 c 149 § 2.]

66.12.210 Wine shipments from out of state from unlicensed shipper—Penalties. Acceptance of any con-

tainer of wine, by a person, that is shipped into this state to a person from a person who is not licensed as provided in RCW 66.12.190, shall constitute a civil violation and be subject to the penalties imposed by chapter 66.44 RCW. [1994 c 70 § 1; 1991 c 149 § 3.]

66.12.220 Out-of-state wine shipper's license—Revocation. A license issued under RCW 66.12.190 to a wine manufacturer, shipper, or person located outside this state who, within this state, advertises for or solicits consumers to engage in interstate reciprocal wine shipment under RCW 66.12.190 through 66.12.220 shall be revoked. [1991 c 149 § 4.]

Chapter 66.16 RCW

STATE LIQUOR STORES

Sections

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| 66.16.010 | Board may establish—Price standards—Prices in special instances. |
| 66.16.030 | Vendor to be in charge. |
| 66.16.040 | Sales of liquor by employees—Identification cards—Permit holders—Sales for cash—Exception. |
| 66.16.041 | Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund balance reduction. |
| 66.16.050 | Sale of beer and wine to person licensed to sell. |
| 66.16.060 | Sealed packages may be required, exception. |
| 66.16.070 | Liquor cannot be opened or consumed on store premises. |
| 66.16.080 | Sunday closing. |
| 66.16.090 | Record of individual purchases confidential—Penalty for disclosure. |
| 66.16.100 | Fortified wine sales. |
| 66.16.110 | Birth defects from alcohol—Warning required. |

66.16.010 Board may establish—Price standards—Prices in special instances. (1) There shall be established at such places throughout the state as the liquor control board, constituted under this title, shall deem advisable, stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this title and the regulations: PROVIDED, That the prices of all liquor shall be fixed by the board from time to time so that the net annual revenue received by the board therefrom shall not exceed thirty-five percent. Effective no later than September 1, 2003, the liquor control board shall add an equivalent surcharge of \$0.42 per liter on all retail sales of spirits, excluding licensee, military, and tribal sales. The intent of this surcharge is to raise \$14,000,000 in additional general fund-state revenue for the 2003-2005 biennium. To the extent that a lesser surcharge is sufficient to raise \$14,000,000, the board may reduce the amount of the surcharge. The board shall remove the surcharge once it generates \$14,000,000, but no later than June 30, 2005.

(2) The liquor control board may, from time to time, fix the special price at which pure ethyl alcohol may be sold to physicians and dentists and institutions regularly conducted as hospitals, for use or consumption only in such hospitals; and may also fix the special price at which pure ethyl alcohol may be sold to schools, colleges and universities within the state for use for scientific purposes. Regularly conducted hospitals may have right to purchase pure ethyl alcohol on a federal permit.

(3) The liquor control board may also fix the special price at which pure ethyl alcohol may be sold to any department, branch or institution of the state of Washington, federal government, or to any person engaged in a manufacturing or industrial business or in scientific pursuits requiring alcohol for use therein.

(4) The liquor control board may also fix a special price at which pure ethyl alcohol may be sold to any private individual, and shall make regulations governing such sale of alcohol to private individuals as shall promote, as nearly as may be, the minimum purchase of such alcohol by such persons. [2003 1st sp.s. c 25 § 928; 1939 c 172 § 10; 1937 c 62 § 1; 1933 ex.s. c 62 § 4; RRS § 7306-4. Formerly RCW 66.16.010 and 66.16.020.]

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

66.16.030 Vendor to be in charge. The sale of liquor at each state liquor store shall be conducted by a person employed under this title to be known as a "vendor," who shall, together with the employees under his direction, under the regulations of the board, be responsible for the carrying out of this title and the regulations, so far as they relate to the conduct of the store and the sale of liquor thereat. [1933 ex.s. c 62 § 6; RRS § 7306-6.]

66.16.040 Sales of liquor by employees—Identification cards—Permit holders—Sales for cash—Exception. Except as otherwise provided by law, an employee in a state liquor store or agency may sell liquor to any person of legal age to purchase alcoholic beverages and may also sell to holders of permits such liquor as may be purchased under such permits.

Where there may be a question of a person's right to purchase liquor by reason of age, such person shall be required to present any one of the following officially issued cards of identification which shows his/her correct age and bears his/her signature and photograph:

(1) Liquor control authority card of identification of any state or province of Canada.

(2) Driver's license, instruction permit or identification card of any state or province of Canada, or "identocard" issued by the Washington state department of licensing pursuant to RCW 46.20.117.

(3) United States armed forces identification card issued to active duty, reserve, and retired personnel and the personnel's dependents, which may include an imbedded, digital signature in lieu of a visible signature.

(4) Passport.

(5) Merchant Marine identification card issued by the United States Coast Guard.

The board may adopt such regulations as it deems proper covering the cards of identification listed in this section.

No liquor sold under this section shall be delivered until the purchaser has paid for the liquor in cash, except as allowed under RCW 66.16.041. The use of a personal credit card does not rely upon the credit of the state as prohibited by Article VIII, section 5 of the state Constitution. [2004 c 61 § 1; 1996 c 291 § 1; 1995 c 16 § 1; 1981 1st ex.s. c 5 § 8; 1979 c 158 § 217; 1973 1st ex.s. c 209 § 3; 1971 ex.s. c 15 § 1; 1959 c 111 § 1; 1933 ex.s. c 62 § 7; RRS § 7306-7.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 ex.s. c 15 § 8.]

Renewal driver's license accepted as proper identification: RCW 46.20.185.

66.16.041 Credit and debit card purchases—Rules—Provision, installation, maintenance of equipment by board—Consideration of offsetting liquor revolving fund balance reduction. (1) The state liquor control board shall accept bank credit card and debit cards for purchases in state liquor stores, under such rules as the board may adopt. The board shall authorize liquor vendors appointed under RCW 66.08.050 to accept bank credit cards and debit cards for liquor purchases under this title, under such rules as the board may adopt.

(2) If a liquor vendor operating an agency store chooses to use credit or debit cards for liquor purchases, the board shall provide equipment and installation and maintenance of the equipment necessary to implement the use of credit and debit cards. Any equipment provided by the board to an agency liquor vendor store for this purpose may be used only for the purchase of liquor.

(3) If the revenues and expenditures associated with implementing the use of credit and debit cards for the purchase of alcohol from state liquor stores and agency stores operated by liquor vendors results in a reduction of the liquor revolving fund balance for fiscal year 1999 and the 1999-01 biennium, the board shall consider increasing the price of alcohol products to offset the reduction. [2004 c 63 § 2; 1998 c 265 § 3; 1997 c 148 § 2; 1996 c 291 § 2.]

Intent—1998 c 265: "It is the intent of the legislature that expenditures associated with the implementation of using credit and debit cards in state liquor stores and agency liquor vendor stores not have a negative impact to the liquor revolving fund balance and that transfers to the state general fund, the cities, and the counties not be reduced because of these costs." [1998 c 265 § 1.]

66.16.050 Sale of beer and wine to person licensed to sell. An employee may sell beer and wines to any licensee holding a license to sell under this title in accordance with the terms of said license. [1933 ex.s. c 62 § 8; RRS § 7306-8.]

66.16.060 Sealed packages may be required, exception. The board may in its discretion by regulation prescribe that any or all liquors other than malt liquor shall be delivered to any purchaser at a state liquor store only in a package sealed with the official seal. [1943 c 216 § 1; 1933 ex.s. c 62 § 9; RRS § 7306-9.]

66.16.070 Liquor cannot be opened or consumed on store premises. No employee in a state liquor store shall open or consume, or allow to be opened or consumed any liquor on the store premises. [1933 ex.s. c 62 § 10; RRS § 7306-10.]

66.16.080 Sunday closing. No sale or delivery of liquor shall be made on or from the premises of any state liquor store, nor shall any store be open for the sale of liquor, on Sunday, unless the board determines that unique circum-

(2004 Ed.)

stances exist which necessitate Sunday liquor sales by vendors appointed under RCW 66.08.050(2) of products of their own manufacture, not to exceed one case of liquor per customer. [1988 c 101 § 1; 1933 ex.s. c 62 § 11; RRS § 7306-11.]

66.16.090 Record of individual purchases confidential—Penalty for disclosure. All records whatsoever of the board showing purchases by any individual of liquor shall be deemed confidential, and, except subject to audit by the state auditor, shall not be permitted to be inspected by any person whatsoever, except by employees of the board to the extent permitted by the regulations; and no member of the board and no employee whatsoever shall give out any information concerning such records and neither such records nor any information relative thereto which shall make known the name of any individual purchaser shall be competent to be admitted as evidence in any court or courts except in prosecutions for illegal possession of and/or sale of liquor. Any person violating the provisions of this section shall be guilty of a misdemeanor. [1933 ex.s. c 62 § 89; RRS § 7306-89.]

66.16.100 Fortified wine sales. No state liquor store in a county with a population over three hundred thousand may sell fortified wine if the board finds that the sale would be against the public interest based on the factors in RCW 66.24.360. The burden of establishing that the sale would be against the public interest is on those persons objecting. [1997 c 321 § 42; 1987 c 386 § 5.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.16.110 Birth defects from alcohol—Warning required. The board shall cause to be posted in conspicuous places, in a number determined by the board, within each state liquor store, notices in print not less than one inch high warning persons that consumption of alcohol shortly before conception or during pregnancy may cause birth defects, including fetal alcohol syndrome and fetal alcohol effects. [1993 c 422 § 2.]

Reviser's note: 1993 c 422 directed that this section be added to chapter 66.08 RCW. This section has been codified in chapter 66.16 RCW, which relates more directly to liquor stores.

Finding—1993 c 422: "The United States surgeon general warns that women should not drink alcoholic beverages during pregnancy because of the risk of birth defects. The legislature finds that these defects include fetal alcohol syndrome, a birth defect that causes permanent antisocial behavior in the sufferer, disrupts the functions of his or her family, and, at an alarmingly increasing rate, extracts a safety and fiscal toll on society." [1993 c 422 § 1.]

Intent—1993 c 422: See RCW 70.83C.005.

Chapter 66.20 RCW LIQUOR PERMITS

Sections

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| 66.20.010 | Permits classified—Issuance—Fees. |
| 66.20.020 | Permits not transferable—False name or address prohibited—Sacramental liquor, wine. |
| 66.20.040 | Applicant must sign permit. |
| 66.20.060 | Duration. |
| 66.20.070 | Suspension or cancellation. |
| 66.20.080 | Surrender of suspended or canceled permit—New permit, when. |
| 66.20.085 | License suspension—Noncompliance with support order—Reissuance. |

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| 66.20.090 | Retaining permits wrongfully presented. |
| 66.20.100 | Physician may prescribe or administer liquor—Penalty. |
| 66.20.110 | Dentist may administer liquor—Penalty. |
| 66.20.120 | Hospital, etc., may administer liquor—Penalty. |
| 66.20.140 | Limitation on application after cancellation or suspension. |
| 66.20.150 | Purchases prohibited under canceled, suspended permit or under another's permit. |
| 66.20.160 | "Card of identification", "licensee", "store employee" defined for certain purposes. |
| 66.20.170 | Card of identification may be accepted as identification card and evidence of legal age. |
| 66.20.180 | Card of identification to be presented on request of licensee. |
| 66.20.190 | Identification card holder may be required to sign certification card—Contents—Procedure—Statement. |
| 66.20.200 | Unlawful acts relating to identification or certification card—Penalties. |
| 66.20.210 | Licensee's immunity to prosecution or suit—Certification card as evidence of good faith. |
| 66.20.300 | Alcohol servers—Definitions. |
| 66.20.310 | Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions. |
| 66.20.320 | Alcohol servers—Education program—Fees—Issuance of permits. |
| 66.20.330 | Alcohol servers—Rules. |
| 66.20.340 | Alcohol servers—Violation of rules—Penalties. |
| 66.20.350 | Alcohol servers—Deposit of fees. |

66.20.010 Permits classified—Issuance—Fees. Upon application in the prescribed form being made to any employee authorized by the board to issue permits, accompanied by payment of the prescribed fee, and upon the employee being satisfied that the applicant should be granted a permit under this title, the employee shall issue to the applicant under such regulations and at such fee as may be prescribed by the board a permit of the class applied for, as follows:

(1) Where the application is for a special permit by a physician or dentist, or by any person in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, a special liquor purchase permit;

(2) Where the application is for a special permit by a person engaged within the state in mechanical or manufacturing business or in scientific pursuits requiring alcohol for use therein, or by any private individual, a special permit to purchase alcohol for the purpose named in the permit;

(3) Where the application is for a special permit to consume liquor at a banquet, at a specified date and place, a special permit to purchase liquor for consumption at such banquet, to such applicants as may be fixed by the board;

(4) Where the application is for a special permit to consume liquor on the premises of a business not licensed under this title, a special permit to purchase liquor for consumption thereon for such periods of time and to such applicants as may be fixed by the board;

(5) Where the application is for a special permit by a manufacturer to import or purchase within the state alcohol, malt, and other materials containing alcohol to be used in the manufacture of liquor, or other products, a special permit;

(6) Where the application is for a special permit by a person operating a drug store to purchase liquor at retail prices only, to be thereafter sold by such person on the prescription of a physician, a special liquor purchase permit;

(7) Where the application is for a special permit by an authorized representative of a military installation operated by or for any of the armed forces within the geographical boundaries of the state of Washington, a special permit to

purchase liquor for use on such military installation at prices to be fixed by the board;

(8) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to serve liquor without charge to delegates and guests at a convention of a trade association composed of licensees of the board, when the said liquor is served in a hospitality room or from a booth in a board-approved suppliers' display room at the convention, and when the liquor so served is for consumption in the said hospitality room or display room during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(9) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate liquor for a reception, breakfast, luncheon, or dinner for delegates and guests at a convention of a trade association composed of licensees of the board, when the liquor so donated is for consumption at the said reception, breakfast, luncheon, or dinner during the convention, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board or a spirits, beer, and wine restaurant licensee and any such beer and wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(10) Where the application is for a special permit by a manufacturer, importer, or distributor, or representative thereof, to donate and/or serve liquor without charge to delegates and guests at an international trade fair, show, or exposition held under the auspices of a federal, state, or local governmental entity or organized and promoted by a nonprofit organization, anything in Title 66 RCW to the contrary notwithstanding. Any such spirituous liquor shall be purchased from the board and any such beer or wine shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210;

(11) Where the application is for an annual special permit by a person operating a bed and breakfast lodging facility to donate or serve wine or beer without charge to overnight guests of the facility if the wine or beer is for consumption on the premises of the facility. "Bed and breakfast lodging facility," as used in this subsection, means a hotel or similar facility offering from one to eight lodging units and breakfast to travelers and guests. [1998 c 126 § 1; 1997 c 321 § 43; 1984 c 78 § 6; 1984 c 45 § 1; 1983 c 13 § 1; 1982 c 85 § 1; 1975-'76 2nd ex.s. c 62 § 2; 1959 c 111 § 2; 1951 2nd ex.s. c 13 § 1; 1933 ex.s. c 62 § 12; RRS § 7306-12.]

Effective date—1998 c 126: "This act takes effect July 1, 1998." [1998 c 126 § 17.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

66.20.020 Permits not transferable—False name or address prohibited—Sacramental liquor, wine. (1) Every permit shall be issued in the name of the applicant therefor, and no permit shall be transferable, nor shall the holder of any permit allow any other person to use the permit.

(2) No person shall apply in any false or fictitious name for the issuance to him of a permit, and no person shall fur-

nish a false or fictitious address in his application for a permit.

(3) Nothing in this title shall be construed as limiting the right of any minister, priest or rabbi, or religious organization from obtaining wine for sacramental purposes directly from any source whatsoever, whether from within the limits of the state of Washington or from outside the state; nor shall any fee be charged, directly or indirectly, for the exercise of this right. The board shall have the power and authority to make reasonable rules and regulations concerning the importing of any such liquor or wine, for the purpose of preventing any unlawful use of such right. [1933 ex.s. c 62 § 13; RRS § 7306-13. Formerly RCW 66.12.100, 66.20.020, and 66.20.030.]

66.20.040 Applicant must sign permit. No permit shall be valid or be accepted or used for the purchase of liquor until the applicant for the permit has written his signature thereon in the prescribed manner, for the purposes of identification as the holder thereof, in the presence of the employee to whom the application is made. [1933 ex.s. c 62 § 14; RRS § 7306-14.]

66.20.060 Duration. Every permit issued for use after October 1, 1955, shall expire at midnight on the thirtieth day of June of the fiscal year for which the permit was issued, except special permits for banquets and special permits to physicians, dentists, or persons in charge of an institution regularly conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people. [1955 c 180 § 1; 1935 c 174 § 1; 1933 ex.s. c 62 § 16; RRS § 7306-16.]

66.20.070 Suspension or cancellation. Where the holder of any permit issued under this title violates any provision of this title or of the regulations, or is an interdicted person, or is otherwise disqualified from holding a permit, the board, upon proof to its satisfaction of the fact or existence of such violation, interdiction, or disqualification, and in its discretion, may with or without any hearing, suspend the permit and all rights of the holder thereunder for such period as the board sees fit, or may cancel the permit. [1933 ex.s. c 62 § 17; RRS § 7306-17.]

66.20.080 Surrender of suspended or canceled permit—New permit, when. Upon receipt of notice of the suspension or cancellation of his permit, the holder of the permit shall forthwith deliver up the permit to the board. Where the permit has been suspended only, the board shall return the permit to the holder at the expiration or termination of the period of suspension. Where the permit has been suspended or canceled, no employee shall knowingly issue to the person whose permit is suspended or canceled a permit under this title until the end of the period of suspension or within the period of one year from the date of cancellation. [1933 ex.s. c 62 § 18; RRS § 7306-18.]

66.20.085 License suspension—Noncompliance with support order—Reissuance. The board shall immediately suspend the license of a person who has been certified pursu-

ant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 861.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

66.20.090 Retaining permits wrongfully presented. Where any permit is presented to an employee by a person who is not the holder of the permit, or where any permit which is suspended or canceled is presented to an employee, the employee shall retain the permit in his custody and shall forthwith notify the board of the fact of its retention. [1933 ex.s. c 62 § 19; RRS § 7306-19.]

66.20.100 Physician may prescribe or administer liquor—Penalty. Any physician who deems liquor necessary for the health of a patient, whether an interdicted person or not, whom he has seen or visited professionally may give to the patient a prescription therefor, signed by the physician, or the physician may administer the liquor to the patient, for which purpose the physician may administer the liquor purchased by him under special permit and may charge for the liquor so administered; but no prescription shall be given or liquor be administered by a physician except to bona fide patients in cases of actual need, and when in the judgment of the physician the use of liquor as medicine in the quantity prescribed or administered is necessary; and any physician who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 20; RRS § 7306-20.]

66.20.110 Dentist may administer liquor—Penalty. Any dentist who deems it necessary that any patient then under treatment by him should be supplied with liquor as a stimulant or restorative may administer to the patient the liquor so needed, and for that purpose the dentist shall administer liquor obtained by him under special permit pursuant to this title, and may charge for the liquor so administered; but no liquor shall be administered by a dentist except to bona fide patients in cases of actual need; and every dentist who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 21; RRS § 7306-21.]

66.20.120 Hospital, etc., may administer liquor—Penalty. Any person in charge of an institution regularly

conducted as a hospital or sanatorium for the care of persons in ill health, or as a home devoted exclusively to the care of aged people, may, if he holds a special permit under this title for that purpose, administer liquor purchased by him under his special permit to any patient or inmate of the institution who is in need of the same, either by way of external application or otherwise for medicinal purposes, and may charge for the liquor so administered; but no liquor shall be administered by any person under this section except to bona fide patients or inmates of the institution of which he is in charge and in cases of actual need and every person in charge of an institution who administers liquor in evasion or violation of this title shall be guilty of a violation of this title. [1933 ex.s. c 62 § 22; RRS § 7306-22.]

66.20.140 Limitation on application after cancellation or suspension. No person whose permit has been canceled within the period of twelve months next preceding, or is suspended, shall make application to any employee under this title for another permit. [1933 ex.s. c 62 § 40; RRS § 7306-40.]

66.20.150 Purchases prohibited under canceled, suspended permit or under another's permit. No person shall purchase or attempt to purchase liquor under a permit which is suspended, or which has been canceled, or of which he is not the holder. [1933 ex.s. c 62 § 41; RRS § 7306-41.]

66.20.160 "Card of identification", "licensee", "store employee" defined for certain purposes. Words and phrases as used in RCW 66.20.160 to 66.20.210, inclusive, shall have the following meaning:

"Card of identification" means any one of those cards described in RCW 66.16.040.

"Licensee" means the holder of a retail liquor license issued by the board, and includes any employee or agent of the licensee.

"Store employee" means a person employed in a state liquor store or agency to sell liquor. [1973 1st ex.s. c 209 § 4; 1971 ex.s. c 15 § 2; 1959 c 111 § 4; 1949 c 67 § 1; Rem. Supp. 1949 § 7306-19A.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.170 Card of identification may be accepted as identification card and evidence of legal age. A card of identification may for the purpose of this title and for the purpose of procuring liquor, be accepted as an identification card by any licensee or store employee and as evidence of legal age of the person presenting such card, provided the licensee or store employee complies with the conditions and procedures prescribed herein and such regulations as may be made by the board. [1973 1st ex.s. c 209 § 5; 1971 ex.s. c 15 § 3; 1959 c 111 § 5; 1949 c 67 § 2; Rem. Supp. 1949 § 7306-19B.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.180 Card of identification to be presented on request of licensee. A card of identification shall be presented by the holder thereof upon request of any licensee, store employee, peace officer, or enforcement officer of the board for the purpose of aiding the licensee, store employee, peace officer, or enforcement officer of the board to determine whether or not such person is of legal age to purchase liquor when such person desires to procure liquor from a licensed establishment or state liquor store or agency. [1973 1st ex.s. c 209 § 6; 1971 ex.s. c 15 § 4; 1959 c 111 § 6; 1949 c 67 § 3; Rem. Supp. 1949 § 7306-19C.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.190 Identification card holder may be required to sign certification card—Contents—Procedure—Statement. In addition to the presentation by the holder and verification by the licensee or store employee of such card of identification, the licensee or store employee who is still in doubt about the true age of the holder shall require the person whose age may be in question to sign a certification card and record an accurate description and serial number of his card of identification thereon. Such statement shall be upon a five-inch by eight-inch file card, which card shall be filed alphabetically by the licensee or store employee at or before the close of business on the day on which the statement is executed, in the file box containing a suitable alphabetical index and the card shall be subject to examination by any peace officer or agent or employee of the board at all times. The certification card shall also contain in bold-face type a statement stating that the signer understands that conviction for unlawful purchase of alcoholic beverages or misuse of the certification card may result in criminal penalties including imprisonment or fine or both. [1981 1st ex.s. c 5 § 9; 1975 1st ex.s. c 173 § 4; 1973 1st ex.s. c 209 § 7; 1971 ex.s. c 15 § 5; 1959 c 111 § 7; 1949 c 67 § 4; Rem. Supp. 1949 § 7306-19D.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.200 Unlawful acts relating to identification or certification card—Penalties. (1) It shall be unlawful for the owner of a card of identification to transfer the card to any other person for the purpose of aiding such person to procure alcoholic beverages from any licensee or store employee. Any person who shall permit his or her card of identification to be used by another or transfer such card to another for the purpose of aiding such transferee to obtain alcoholic beverages from a licensee or store employee or gain admission to a premises or portion of a premises classified by the board as off-limits to persons under twenty-one years of age, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution.

(2) Any person not entitled thereto who unlawfully procures or has issued or transferred to him or her a card of identification, and any person who possesses a card of identification not issued to him or her, and any person who makes any false statement on any certification card required by RCW 66.20.190, to be signed by him or her, shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution. [2003 c 53 § 295; 2002 c 175 § 41; 1994 c 201 § 1; 1987 c 101 § 4; 1973 1st ex.s. c 209 § 8; 1971 ex.s. c 15 § 6; 1969 ex.s. c 178 § 2; 1959 c 111 § 8; 1949 c 67 § 5; Rem. Supp. 1949 § 7306-19E.]

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

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

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

Unlawful transfer to minor of age identification: RCW 66.44.325.

66.20.210 Licensee's immunity to prosecution or suit—Certification card as evidence of good faith. No licensee or the agent or employee of the licensee, or store employee, shall be prosecuted criminally or be sued in any civil action for serving liquor to a person under legal age to purchase liquor if such person has presented a card of identification in accordance with RCW 66.20.180, and has signed a certification card as provided in RCW 66.20.190.

Such card in the possession of a licensee may be offered as a defense in any hearing held by the board for serving liquor to the person who signed the card and may be considered by the board as evidence that the licensee acted in good faith. [1973 1st ex.s. c 209 § 9; 1971 ex.s. c 15 § 7; 1959 c 111 § 9; 1949 c 67 § 6; Rem. Supp. 1949 § 7306-19F.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 ex.s. c 15: See note following RCW 66.16.040.

66.20.300 Alcohol servers—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 66.20.310 through 66.20.350.

(1) "Alcohol" has the same meaning as "liquor" in RCW 66.04.010.

(2) "Alcohol server" means any person serving or selling alcohol, spirits, wines, or beer for consumption at an on-premises retail licensed facility as a regular requirement of his or her employment, and includes those persons eighteen years of age or older permitted by the liquor laws of this state to serve alcoholic beverages with meals.

(3) "Board" means the Washington state liquor control board.

(4) "Training entity" means any liquor licensee associations, independent contractors, private persons, and private or public schools, that have been certified by the board.

(5) "Retail licensed premises" means any premises licensed to sell alcohol by the glass or by the drink, or in original containers primarily for consumption on the premises as authorized by RCW 66.24.320, 66.24.330, 66.24.350,

66.24.400, 66.24.425, 66.24.450, and 66.24.570. [1997 c 321 § 44; 1996 c 218 § 2; 1995 c 51 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Findings—1995 c 51: "The legislature finds that education of alcohol servers on issues such as the physiological effects of alcohol on consumers, liability and legal implications of serving alcohol, driving while intoxicated, and methods of intervention with the problem customer are important in protecting the health and safety of the public. The legislature further finds that it is in the best interest of the citizens of the state of Washington to have an alcohol server education program." [1995 c 51 § 1.]

66.20.310 Alcohol servers—Permits—Requirements—Suspension, revocation—Violations—Exemptions.

(1)(a) There shall be an alcohol server permit, known as a class 12 permit, for a manager or bartender selling or mixing alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(b) There shall be an alcohol server permit, known as a class 13 permit, for a person who only serves alcohol, spirits, wines, or beer for consumption at an on-premises licensed facility.

(c) As provided by rule by the board, a class 13 permit holder may be allowed to act as a bartender without holding a class 12 permit.

(2)(a) Effective January 1, 1997, except as provided in (d) of this subsection, every person employed, under contract or otherwise, by an annual retail liquor licensee holding a license as authorized by RCW 66.24.320, 66.24.330, 66.24.350, 66.24.400, 66.24.425, 66.24.450, or 66.24.570, who as part of his or her employment participates in any manner in the sale or service of alcoholic beverages shall have issued to them a class 12 or class 13 permit.

(b) Every class 12 and class 13 permit issued shall be issued in the name of the applicant and no other person may use the permit of another permit holder. The holder shall present the permit upon request to inspection by a representative of the board or a peace officer. The class 12 or class 13 permit shall be valid for employment at any retail licensed premises described in (a) of this subsection.

(c) No licensee described in (a) of this subsection, except as provided in (d) of this subsection, may employ or accept the services of any person without the person first having a valid class 12 or class 13 permit.

(d) Within sixty days of initial employment, every person whose duties include the compounding, sale, service, or handling of liquor shall have a class 12 or class 13 permit.

(e) No person may perform duties that include the sale or service of alcoholic beverages on a retail licensed premises without possessing a valid alcohol server permit.

(3) A permit issued by a training entity under this section is valid for employment at any retail licensed premises described in subsection (2)(a) of this section for a period of five years unless suspended by the board.

(4) The board may suspend or revoke an existing permit if any of the following occur:

(a) The applicant or permittee has been convicted of violating any of the state or local intoxicating liquor laws of this state or has been convicted at any time of a felony; or

(b) The permittee has performed or permitted any act that constitutes a violation of this title or of any rule of the board.

(5) The suspension or revocation of a permit under this section does not relieve a licensee from responsibility for any act of the employee or agent while employed upon the retail licensed premises. The board may, as appropriate, revoke or suspend either the permit of the employee who committed the violation or the license of the licensee upon whose premises the violation occurred, or both the permit and the license.

(6)(a) After January 1, 1997, it is a violation of this title for any retail licensee or agent of a retail licensee as described in subsection (2)(a) of this section to employ in the sale or service of alcoholic beverages, any person who does not have a valid alcohol server permit or whose permit has been revoked, suspended, or denied.

(b) It is a violation of this title for a person whose alcohol server permit has been denied, suspended, or revoked to accept employment in the sale or service of alcoholic beverages.

(7) Grocery stores licensed under RCW 66.24.360, the primary commercial activity of which is the sale of grocery products and for which the sale and service of beer and wine for on-premises consumption with food is incidental to the primary business, and employees of such establishments, are exempt from RCW 66.20.300 through 66.20.350. [1997 c 321 § 45. Prior: 1996 c 311 § 1; 1996 c 218 § 3; 1995 c 51 § 3.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.320 Alcohol servers—Education program—Fees—Issuance of permits. (1) The board shall regulate a required alcohol server education program that includes:

(a) Development of the curriculum and materials for the education program;

(b) Examination and examination procedures;

(c) Certification procedures, enforcement policies, and penalties for education program instructors and providers;

(d) The curriculum for an approved class 12 alcohol permit training program that includes but is not limited to the following subjects:

(i) The physiological effects of alcohol including the effects of alcohol in combination with drugs;

(ii) Liability and legal information;

(iii) Driving while intoxicated;

(iv) Intervention with the problem customer, including ways to stop service, ways to deal with the belligerent customer, and alternative means of transportation to get the customer safely home;

(v) Methods for checking proper identification of customers;

(vi) Nationally recognized programs, such as TAM (Techniques in Alcohol Management) and TIPS (Training for Intervention Programs) modified to include Washington laws and regulations.

(2) The board shall provide the program through liquor licensee associations, independent contractors, private persons, private or public schools certified by the board, or any combination of such providers.

(3) Each training entity shall provide a class 12 permit to the manager or bartender who has successfully completed a course the board has certified. A list of the individuals receiv-

ing the class 12 permit shall be forwarded to the board on the completion of each course given by the training entity.

(4) After January 1, 1997, the board shall require all alcohol servers applying for a class 13 alcohol server permit to view a video training session. Retail liquor licensees shall fully compensate employees for the time spent participating in this training session.

(5) When requested by a retail liquor licensee, the board shall provide copies of videotaped training programs that have been produced by private vendors and make them available for a nominal fee to cover the cost of purchasing and shipment, with the fees being deposited in the liquor revolving fund for distribution to the board as needed.

(6) Each training entity may provide the board with a video program of not less than one hour that covers the subjects in subsection (1)(d)(i) through (v) of this section that will be made available to a licensee for the training of a class 13 alcohol server.

(7) Applicants shall be given a class 13 permit upon the successful completion of the program.

(8) A list of the individuals receiving the class 13 permit shall be forwarded to the board on the completion of each video training program.

(9) The board shall develop a model permit for the class 12 and 13 permits. The board may provide such permits to training entities or licensees for a nominal cost to cover production.

(10)(a) Persons who have completed a nationally recognized alcohol management or intervention program since July 1, 1993, may be issued a class 12 or 13 permit upon providing proof of completion of such training to the board.

(b) Persons who completed the board's alcohol server training program after July 1, 1993, but before July 1, 1995, may be issued a class 13 permit upon providing proof of completion of such training to the board. [1996 c 311 § 2; 1995 c 51 § 4.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.330 Alcohol servers—Rules. The board shall adopt rules to implement RCW 66.20.300 through 66.20.350 including, but not limited to, procedures and grounds for denying, suspending, or revoking permits. [1995 c 51 § 5.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.340 Alcohol servers—Violation of rules—Penalties. A violation of any of the rules of the board adopted to implement RCW 66.20.300 through 66.20.350 is a misdemeanor, punishable by a fine of not more than two hundred fifty dollars for a first offense. A subsequent offense is punishable by a fine of not more than five hundred dollars, or imprisonment for not more than ninety days, or both the fine and imprisonment. [1995 c 51 § 6.]

Findings—1995 c 51: See note following RCW 66.20.300.

66.20.350 Alcohol servers—Deposit of fees. Fees collected by the board under RCW 66.20.300 through 66.20.350 shall be deposited in the liquor revolving fund in accordance with RCW 66.08.170. [1995 c 51 § 7.]

Findings—1995 c 51: See note following RCW 66.20.300.

Chapter 66.24 RCW
LICENSES—STAMP TAXES

Sections

- 66.24.010 Issuance, transferability, refusal, suspension, or cancellation—Grounds, hearings, procedure—Rules—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses.
- 66.24.012 License suspension—Noncompliance with support order—Reissuance.
- 66.24.015 Nonrefundable application fee for retail license.
- 66.24.025 Transfer of license—Fee—Exception—Corporate changes, approval—Fee.
- 66.24.120 Vacation of suspension on payment of penalty.
- 66.24.140 Distiller's license—Fee.
- 66.24.150 Manufacturer's license—Scope—Fee.
- 66.24.160 Liquor importer's license—Fee.
- 66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets.
- 66.24.185 Bonded wine warehouse storage license—Qualifications and requirements—Fee.
- 66.24.200 Wine distributor's license—Fee.
- 66.24.203 Wine importer's license—Principal office—Report—Labels—Fee.
- 66.24.206 Certificate of approval required for out-of-state winery or manufacturer to sell or ship to Washington distributors or importers—Reports—Agreement with board—Fee.
- 66.24.210 Imposition of taxes on all wines and cider sold to wine distributors and liquor control board—Additional taxes imposed—Distributions.
- 66.24.215 Levy of assessment on wine producers and growers to fund wine commission—Assessment rate changes—Procedures—Disbursement—Continuation.
- 66.24.230 Monthly reports of winery, wine importer, and wine distributor—Prohibited, authorized sales.
- 66.24.240 Domestic brewery's license—Fee—Distribution and/or retail—Contract-production—Sales at qualifying farmers markets.
- 66.24.244 Microbrewery's license—Endorsement for on-premises consumption—Fees—Determination of status as tavern or beer and/or wine restaurant—Sales at qualifying farmers markets.
- 66.24.250 Beer distributor's license—Fee.
- 66.24.261 Beer importer's license—Principal office—Report—Labels—Fee.
- 66.24.270 Manufacturer's monthly report to board of quantity of malt liquor sales or strong beer made to beer distributors—Certificate of approval and report for out-of-state or imported beer—Fee.
- 66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes.
- 66.24.305 Refunds of taxes on unsalable wine and beer.
- 66.24.310 Representative's license—Qualifications—Conditions and restrictions—Fee.
- 66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement.
- 66.24.330 Tavern license—Fees.
- 66.24.350 Snack bar license—Fee.
- 66.24.354 Combined license—Sale of beer and wine for consumption on and off premises—Conditions—Fee.
- 66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—International export endorsement.
- 66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory.
- 66.24.375 "Society or organization" defined for certain purposes.
- 66.24.380 Special occasion license—Fee—Penalty.
- 66.24.395 Interstate common carrier's licenses—Class CCI—Fees—Scope.
- 66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when.
- 66.24.410 Liquor by the drink, spirits, beer, and wine restaurant license—Terms defined.
- 66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement.
- 66.24.425 Liquor by the drink, spirits, beer, and wine restaurant license—Restaurants not serving the general public.

- 66.24.440 Liquor by the drink, spirits, beer, and wine restaurant, spirits, beer, and wine private club, and sports entertainment facility license—Purchase of liquor by licensees—Discount.
- 66.24.450 Liquor by the drink, spirits, beer, and wine private club license—Qualifications—Fee.
- 66.24.452 Private club beer and wine license—Fee.
- 66.24.455 Bowling establishments—Extension of premises to concourse and lane areas—Beer and/or wine restaurant, tavern, snack bar, spirits, beer, and wine restaurant, spirits, beer, and wine private club, or beer and wine private club licensees.
- 66.24.480 Bottle clubs—License required.
- 66.24.481 Public place or club—License or permit required—Penalty.
- 66.24.495 Nonprofit arts organization license—Fee.
- 66.24.520 Grower's license—Fee.
- 66.24.530 Duty free exporter's license—Class S—Fee.
- 66.24.540 Motel license—Fee.
- 66.24.550 Beer and wine gift delivery license—Fee—Limitations.
- 66.24.570 Sports/entertainment facility license—Fee—Caterer's endorsement.
- 66.24.580 Public house license—Fees—Limitations.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.24.010 Issuance, transferability, refusal, suspension, or cancellation—Grounds, hearings, procedure—Rules—Duration of licenses or certificates of approval—Conditions and restrictions—Posting—Notice to local authorities—Proximity to churches, schools, etc.—Temporary licenses. (1) Every license shall be issued in the name of the applicant, and the holder thereof shall not allow any other person to use the license.

(2) For the purpose of considering any application for a license, the board may cause an inspection of the premises to be made, and may inquire into all matters in connection with the construction and operation of the premises. For the purpose of reviewing any application for a license and for considering the denial, suspension or revocation of any license, the liquor control board may consider any prior criminal conduct of the applicant including a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation. The provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. The board may, in its discretion, grant or refuse the license applied for. Authority to approve an uncontested or unopposed license may be granted by the board to any staff member the board designates in writing. Conditions for granting such authority shall be adopted by rule. No retail license of any kind may be issued to:

(a) A person who has not resided in the state for at least one month prior to making application, except in cases of licenses issued to dining places on railroads, boats, or aircraft;

(b) A copartnership, unless all of the members thereof are qualified to obtain a license, as provided in this section;

(c) A person whose place of business is conducted by a manager or agent, unless such manager or agent possesses the same qualifications required of the licensee;

(d) A corporation or a limited liability company, unless it was created under the laws of the state of Washington or

holds a certificate of authority to transact business in the state of Washington.

(3)(a) The board may, in its discretion, subject to the provisions of RCW 66.08.150, suspend or cancel any license; and all rights of the licensee to keep or sell liquor thereunder shall be suspended or terminated, as the case may be.

(b) The board shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(c) The board may request the appointment of administrative law judges under chapter 34.12 RCW who shall have power to administer oaths, issue subpoenas for the attendance of witnesses and the production of papers, books, accounts, documents, and testimony, examine witnesses, and to receive testimony in any inquiry, investigation, hearing, or proceeding in any part of the state, under such rules and regulations as the board may adopt.

(d) Witnesses shall be allowed fees and mileage each way to and from any such inquiry, investigation, hearing, or proceeding at the rate authorized by RCW 34.05.446, as now or hereafter amended. Fees need not be paid in advance of appearance of witnesses to testify or to produce books, records, or other legal evidence.

(e) In case of disobedience of any person to comply with the order of the board or a subpoena issued by the board, or any of its members, or administrative law judges, or on the refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the judge of the superior court of the county in which the person resides, on application of any member of the board or administrative law judge, shall compel obedience by contempt proceedings, as in the case of disobedience of the requirements of a subpoena issued from said court or a refusal to testify therein.

(4) Upon receipt of notice of the suspension or cancellation of a license, the licensee shall forthwith deliver up the license to the board. Where the license has been suspended only, the board shall return the license to the licensee at the expiration or termination of the period of suspension. The board shall notify all vendors in the city or place where the licensee has its premises of the suspension or cancellation of the license; and no employee may allow or cause any liquor to be delivered to or for any person at the premises of that licensee.

(5)(a) At the time of the original issuance of a spirits, beer, and wine restaurant license, the board shall prorate the license fee charged to the new licensee according to the number of calendar quarters, or portion thereof, remaining until the first renewal of that license is required.

(b) Unless sooner canceled, every license issued by the board shall expire at midnight of the thirtieth day of June of the fiscal year for which it was issued. However, if the board deems it feasible and desirable to do so, it may establish, by rule pursuant to chapter 34.05 RCW, a system for staggering the annual renewal dates for any and all licenses authorized

by this chapter. If such a system of staggered annual renewal dates is established by the board, the license fees provided by this chapter shall be appropriately prorated during the first year that the system is in effect.

(6) Every license issued under this section shall be subject to all conditions and restrictions imposed by this title or by the regulations in force from time to time. All conditions and restrictions imposed by the board in the issuance of an individual license shall be listed on the face of the individual license along with the trade name, address, and expiration date.

(7) Every licensee shall post and keep posted its license, or licenses, in a conspicuous place on the premises.

(8)(a) Unless (b) of this subsection applies, before the board issues a license to an applicant it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns.

(b) If the application for a special occasion license is for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on property owned by the county but located within an incorporated city or town, the county legislative authority shall be the entity notified by the board under (a) of this subsection. The board shall send a duplicate notice to the incorporated city or town within which the fair is located.

(c) The incorporated city or town through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the board within twenty days after date of transmittal of such notice, written objections against the applicant or against the premises for which the license is asked.

(d) The written objections shall include a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the liquor control board may in its discretion hold a formal hearing subject to the applicable provisions of Title 34 RCW.

(e) Upon the granting of a license under this title the board shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative authority if the license is granted outside the boundaries of incorporated cities or towns. When the license is for a special occasion license for an event held during a county, district, or area fair as defined by RCW 15.76.120, and the county, district, or area fair is located on county-owned property but located within an incorporated city or town, the duplicate shall be sent to both the incorporated city or town and the county legislative authority.

(9) Before the board issues any license to any applicant, it shall give (a) due consideration to the location of the business to be conducted under such license with respect to the proximity of churches, schools, and public institutions and (b) written notice by certified mail of the application to churches, schools, and public institutions within five hundred feet of the premises to be licensed. The board shall issue no beer retailer license for either on-premises or off-premises consumption or wine retailer license for either on-premises or off-premises consumption or spirits, beer, and wine restaur-

rant license covering any premises not now licensed, if such premises are within five hundred feet of the premises of any tax-supported public elementary or secondary school measured along the most direct route over or across established public walks, streets, or other public passageway from the outer property line of the school grounds to the nearest public entrance of the premises proposed for license, and if, after receipt by the school or public institution of the notice as provided in this subsection, the board receives written notice, within twenty days after posting such notice, from an official representative or representatives of the school within five hundred feet of said proposed licensed premises, indicating to the board that there is an objection to the issuance of such license because of proximity to a school. For the purpose of this section, church shall mean a building erected for and used exclusively for religious worship and schooling or other activity in connection therewith. No liquor license may be issued or reissued by the board to any motor sports facility or licensee operating within the motor sports facility unless the motor sports facility enforces a program reasonably calculated to prevent alcohol or alcoholic beverages not purchased within the facility from entering the facility and such program is approved by local law enforcement agencies. It is the intent under this subsection that a retail license shall not be issued by the board where doing so would, in the judgment of the board, adversely affect a private school meeting the requirements for private schools under Title 28A RCW, which school is within five hundred feet of the proposed licensee. The board shall fully consider and give substantial weight to objections filed by private schools. If a license is issued despite the proximity of a private school, the board shall state in a letter addressed to the private school the board's reasons for issuing the license.

(10) The restrictions set forth in subsection (9) of this section shall not prohibit the board from authorizing the assumption of existing licenses now located within the restricted area by other persons or licenses or relocations of existing licensed premises within the restricted area. In no case may the licensed premises be moved closer to a church or school than it was before the assumption or relocation.

(11) Nothing in this section prohibits the board, in its discretion, from issuing a temporary retail or distributor license to an applicant assuming an existing retail or distributor license to continue the operation of the retail or distributor premises during the period the application for the license is pending and when the following conditions exist:

(a) The licensed premises has been operated under a retail or distributor license within ninety days of the date of filing the application for a temporary license;

(b) The retail or distributor license for the premises has been surrendered pursuant to issuance of a temporary operating license;

(c) The applicant for the temporary license has filed with the board an application to assume the retail or distributor license at such premises to himself or herself; and

(d) The application for a temporary license is accompanied by a temporary license fee established by the board by rule.

A temporary license issued by the board under this section shall be for a period not to exceed sixty days. A temporary license may be extended at the discretion of the board for

(2004 Ed.)

an additional sixty-day period upon payment of an additional fee and upon compliance with all conditions required in this section.

Refusal by the board to issue or extend a temporary license shall not entitle the applicant to request a hearing. A temporary license may be canceled or suspended summarily at any time if the board determines that good cause for cancellation or suspension exists. RCW 66.08.130 and chapter 34.05 RCW shall apply to temporary licenses.

Application for a temporary license shall be on such form as the board shall prescribe. If an application for a temporary license is withdrawn before issuance or is refused by the board, the fee which accompanied such application shall be refunded in full. [2004 c 133 § 1; 2002 c 119 § 3; 1998 c 126 § 2. Prior: 1997 c 321 § 1; 1997 c 58 § 873; 1995 c 232 § 1; 1988 c 200 § 1; 1987 c 217 § 1; 1983 c 160 § 3; 1982 c 85 § 2; 1981 1st ex.s. c 5 § 10; 1981 c 67 § 31; 1974 ex.s. c 66 § 1; 1973 1st ex.s. c 209 § 10; 1971 c 70 § 1; 1969 ex.s. c 178 § 3; 1947 c 144 § 1; 1935 c 174 § 3; 1933 ex.s. c 62 § 27; Rem. Supp. 1947 § 7306-27. Formerly RCW 66.24.010, part and 66.24.020 through 66.24.100. FORMER PART OF SECTION: 1937 c 217 § 1 (23U) now codified as RCW 66.24.025.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: "This act takes effect July 1, 1998." [1997 c 321 § 64.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective dates—Severability—1981 c 67: See notes following RCW 34.12.010.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: "The effective date of this 1971 amendatory act is July 1, 1971." [1971 c 70 § 4.]

66.24.012 License suspension—Noncompliance with support order—Reissuance. The board shall immediately suspend the license of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license shall be automatic upon the board's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 862.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

66.24.015 Nonrefundable application fee for retail license. An application for a new annual retail license under this title shall be accompanied by payment of a nonrefundable seventy-five dollar fee to cover expenses incurred in processing the application. If the application is approved, the application fee shall be applied toward the fee charged for the license. [1988 c 200 § 4.]

66.24.025 Transfer of license—Fee—Exception—Corporate changes, approval—Fee. (1) If the board approves, a license may be transferred, without charge, to the surviving spouse only of a deceased licensee if the parties were maintaining a marital community and the license was issued in the names of one or both of the parties. For the purpose of considering the qualifications of the surviving party or parties to receive a liquor license, the liquor control board may require a criminal history record information check. The board may submit the criminal history record information check to the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior arrests and convictions of the individual or individuals who filled out the forms. The board shall require fingerprinting of any applicant whose criminal history record information check is submitted to the federal bureau of investigation.

(2) The proposed sale of more than ten percent of the outstanding and/or issued stock of a licensed corporation or any proposed change in the officers of a licensed corporation must be reported to the board, and board approval must be obtained before such changes are made. A fee of seventy-five dollars will be charged for the processing of such change of stock ownership and/or corporate officers. [2002 c 119 § 4; 1995 c 232 § 2; 1981 1st ex.s. c 5 § 11; 1973 1st ex.s. c 209 § 11; 1971 c 70 § 2; 1937 c 217 § 1 (23U) (adding new section 23-U to 1933 ex.s. c 62); RRS § 7306-23U.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1971 c 70: See note following RCW 66.24.010.

66.24.120 Vacation of suspension on payment of penalty. The board in suspending any license may further provide in the order of suspension that such suspension shall be vacated upon payment to the board by the licensee of a monetary penalty in an amount then fixed by the board. [1973 1st ex.s. c 209 § 12; 1939 c 172 § 7 (adding new section 27-C to 1933 ex.s. c 62); RRS § 7306-27C.]

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.140 Distiller's license—Fee. There shall be a license to distillers, including blending, rectifying and bottling; fee two thousand dollars per annum: PROVIDED, That the board shall license stills used and to be used solely and only by a commercial chemist for laboratory purposes, and not for the manufacture of liquor for sale, at a fee of twenty dollars per annum: PROVIDED, FURTHER, That

the board shall license stills used and to be used solely and only for laboratory purposes in any school, college or educational institution in the state, without fee: PROVIDED, FURTHER, That the board shall license stills which shall have been duly licensed as fruit and/or wine distilleries by the federal government, used and to be used solely as fruit and/or wine distilleries in the production of fruit brandy and wine spirits, at a fee of two hundred dollars per annum. [1981 1st ex.s. c 5 § 28; 1937 c 217 § 1 (23D) (adding new section 23-D to 1933 ex.s. c 62); RRS § 7306-23D.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.150 Manufacturer's license—Scope—Fee. There shall be a license to manufacturers of liquor, including all kinds of manufacturers except those licensed as distillers, domestic brewers, microbreweries, wineries, and domestic wineries, authorizing such licensees to manufacture, import, sell, and export liquor from the state; fee five hundred dollars per annum. [1997 c 321 § 2; 1981 1st ex.s. c 5 § 29; 1937 c 217 § 1 (23A) (adding new section 23-A to 1933 ex.s. c 62); RRS § 7306-23A.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.160 Liquor importer's license—Fee. A liquor importer's license may be issued to any qualified person, firm or corporation, entitling the holder thereof to import into the state any liquor other than beer or wine; to store the same within the state, and to sell and export the same from the state; fee six hundred dollars per annum. Such liquor importer's license shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board, and shall be issued only upon such terms and conditions as may be imposed by the board. No liquor importer's license shall be required in sales to the Washington state liquor control board. [1981 1st ex.s. c 5 § 30; 1970 ex.s. c 13 § 1. Prior: 1969 ex.s. c 275 § 2; 1969 ex.s. c 21 § 1; 1937 c 217 § 1 (23J) (adding new section 23-J to 1933 ex.s. c 62); RRS § 7306 (23J).]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.170 Domestic winery license—Winery as distributor and/or retailer of own wine—Off-premise samples—Domestic wine made into sparkling wine—Sales at qualifying farmers markets. (1) There shall be a license for domestic wineries; fee to be computed only on the liters manufactured: Less than two hundred fifty thousand liters per year, one hundred dollars per year; and two hundred fifty thousand liters or more per year, four hundred dollars per year.

(2) The license allows for the manufacture of wine in Washington state from grapes or other agricultural products.

(3) Any domestic winery licensed under this section may also act as a distributor and/or retailer of wine of its own production. Any winery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(4) A domestic winery licensed under this section, at locations separate from any of its production or manufacturing sites, may serve samples of its own products, with or without charge, and sell wine of its own production at retail for off-premise consumption, provided that: (a) Each additional location has been approved by the board under RCW 66.24.010; (b) the total number of additional locations does not exceed two; and (c) a winery may not act as a distributor at any such additional location. Each additional location is deemed to be part of the winery license for the purpose of this title. Nothing in this subsection shall be construed to prevent a domestic winery from holding multiple domestic winery licenses.

(5)(a) A domestic winery licensed under this section may apply to the board for an endorsement to sell wine of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars. An endorsement issued pursuant to this subsection does not count toward the two additional retail locations limit specified in this section.

(b) For each month during which a domestic winery will sell wine at a qualifying farmers market, the winery must provide the board or its designee a list of the dates, times, and locations at which bottled wine may be offered for sale. This list must be received by the board before the winery may offer wine for sale at a qualifying farmers market.

(c) The wine sold at qualifying farmers markets must be made entirely from grapes grown in a recognized Washington appellation or from other agricultural products grown in this state.

(d) Each approved location in a qualifying farmers market is deemed to be part of the winery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a winery. The winery may not store wine at a farmers market beyond the hours that the winery offers bottled wine for sale. The winery may not act as a distributor from a farmers market location.

(e) Before a winery may sell bottled wine at a qualifying farmers market, the farmers market must apply to the board for authorization for any winery with an endorsement approved under this subsection to sell bottled wine at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved winery may sell bottled wine; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled wine may be sold. Before authorizing a qualifying farmers market to allow an approved winery to sell bottled wine at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer.

(6) Wine produced in Washington state by a domestic winery licensee may be shipped out-of-state for the purpose of making it into sparkling wine and then returned to such licensee for resale. Such wine shall be deemed wine manufactured in the state of Washington for the purposes of RCW 66.24.206, and shall not require a special license. [2003 c 44 § 1; 2000 c 141 § 1; 1997 c 321 § 3; 1991 c 192 § 2; 1982 c 85 § 4; 1981 1st ex.s. c 5 § 31; 1939 c 172 § 1 (23C); 1937 c 217 § 1 (23C) (adding new section 23-C to 1933 ex.s. c 62); RRS § 7306-23C. Formerly RCW 66.24.170, 66.24.180, and 66.24.190.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.185 Bonded wine warehouse storage license—Qualifications and requirements—Fee. (1) There shall be a license for bonded wine warehouses which shall authorize the storage of bottled wine only. Under this license a licensee may maintain a warehouse for the storage of wine off the premises of a winery.

(2) The board shall adopt similar qualifications for a bonded wine warehouse license as required for obtaining a domestic winery license as specified in RCW 66.24.010 and 66.24.170. A licensee must be a sole proprietor, a partnership, a limited liability company, or a corporation. One or more domestic wineries may operate as a partnership, corporation, business co-op, or agricultural co-op for the purposes of obtaining a bonded wine warehouse license.

(3) All bottled wine shipped to a bonded wine warehouse from a winery or another bonded wine warehouse shall remain under bond and no tax imposed under RCW

66.24.210 shall be due, unless the wine is removed from bond and shipped to a licensed Washington wine distributor. Wine may be removed from a bonded wine warehouse only for the purpose of being (a) exported from the state, (b) shipped to a licensed Washington wine distributor, or (c) returned to a winery or bonded wine warehouse.

(4) Warehousing of wine by any person other than (a) a licensed domestic winery or a bonded wine warehouse licensed under the provisions of this section, (b) a licensed Washington wine distributor, (c) a licensed Washington wine importer, (d) a wine certificate of approval holder (W7), or (e) the liquor control board, is prohibited.

(5) A license applicant shall hold a federal permit for a bonded wine cellar and may be required to post a continuing wine tax bond of such an amount and in such a form as may be required by the board prior to the issuance of a bonded wine warehouse license. The fee for this license shall be one hundred dollars per annum.

(6) The board shall adopt rules requiring a bonded wine warehouse to be physically secure, zoned for the intended use and physically separated from any other use.

(7) Every licensee shall submit to the board a monthly report of movement of bottled wines to and from a bonded wine warehouse in a form prescribed by the board. The board may adopt other necessary procedures by which bonded wine warehouses are licensed and regulated. [1999 c 281 § 4; 1997 c 321 § 4; 1984 c 19 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.200 Wine distributor's license—Fee. (*Effective until January 1, 2005.*) There shall be a license for wine distributors to sell wine, purchased from licensed Washington wineries, wine certificate of approval holders (W7), licensed wine importers, or suppliers of foreign wine located outside the state of Washington, to licensed wine retailers and other wine distributors and to export the same from the state; fee six hundred sixty dollars per year for each distributing unit. [1997 c 321 § 5; 1981 1st ex.s. c 5 § 32; 1969 ex.s. c 21 § 2; 1937 c 217 § 1 (23K) (adding new section 23-K to 1933 ex.s. c 62); RRS § 7306-23K.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.200 Wine distributor's license—Fee. (*Effective January 1, 2005.*) There shall be a license for wine distributors to sell wine, purchased from licensed Washington wineries, wine certificate of approval holders, licensed wine importers, or suppliers of foreign wine located outside of the United States, to licensed wine retailers and other wine distributors and to export the same from the state; fee six hundred sixty dollars per year for each distributing unit. [2004 c 160 § 2; 1997 c 321 § 5; 1981 1st ex.s. c 5 § 32; 1969 ex.s. c 21 § 2; 1937 c 217 § 1 (23K) (adding new section 23-K to 1933 ex.s. c 62); RRS § 7306-23K.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.203 Wine importer's license—Principal office—Report—Labels—Fee. (*Effective until January 1, 2005.*) There shall be a license for wine importers that authorizes the licensee to import wine manufactured within the United States by certificate of approval holders (W7) into the state of Washington. The licensee may also import wine manufactured outside the United States.

(1) Wine so imported may be sold to licensed wine distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a wine importer shall establish and maintain a principal office within the state at which shall be kept proper records of all wine imported into the state under this license.

(3) No wine importer's license shall be granted to a non-resident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a wine importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of wine sold or delivered to each licensed wine distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Wine imported under this license must conform to the provisions of RCW 66.28.110 and have received label approval from the board. The board shall not certify wines labeled with names that may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic winery or imported nor wines that fail to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [1997 c 321 § 6.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.203 Wine importer's license—Principal office—Report—Labels—Fee. (*Effective January 1, 2005.*) There shall be a license for wine importers that authorizes the licensee to import wine purchased from certificate of approval holders into the state of Washington. The licensee may also import, from suppliers located outside of the United States, wine manufactured outside the United States.

(1) Wine so imported may be sold to licensed wine distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a wine importer shall establish and maintain a principal office within the state at which shall be kept proper records of all wine imported into the state under this license.

(3) No wine importer's license shall be granted to a non-resident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a wine importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of wine sold or delivered to each licensed wine distributor. Failure to file such

reports may result in the suspension or cancellation of this license.

(5) Wine imported under this license must conform to the provisions of RCW 66.28.110 and have received label approval from the board. The board shall not certify wines labeled with names that may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic winery or imported nor wines that fail to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [2004 c 160 § 3; 1997 c 321 § 6.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.206 Certificate of approval required for out-of-state winery or manufacturer to sell or ship to Washington distributors or importers—Reports—Agreement with board—Fee. (*Effective until January 1, 2005.*) A United States winery or manufacturer of wine, located outside the state of Washington, must hold a certificate of approval (W7) to allow sales and shipment of the certificate of approval holder's wine to licensed Washington wine distributors or importers. The certificate of approval shall not be granted unless and until such winery or manufacturer of wine shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of wine sold or delivered to each licensed wine distributor or importer, during the preceding month, and shall further have agreed with the board, that such wineries or manufacturers, and all general sales corporations or agencies maintained by them, and all of their trade representatives, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be one hundred dollars per year, which sum shall accompany the application for such certificate. [1997 c 321 § 7; 1981 1st ex.s. c 5 § 34; 1973 1st ex.s. c 209 § 13; 1969 ex.s. c 21 § 10.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.206 Out-of-state winery or manufacturer—Certificate of approval—Fee. (*Effective January 1, 2005.*) (1)(a) A United States winery or manufacturer of wine located outside the state of Washington must hold a certificate of approval to allow sales and shipment of the certificate of approval holder's wine to licensed Washington wine distributors or importers.

(b) Authorized representatives must hold a certificate of approval to allow sales and shipment of United States pro-

duced wine to licensed Washington wine distributors or importers.

(c) Authorized representatives must also hold a certificate of approval to allow sales and shipments of foreign produced wine to licensed Washington wine distributors or importers.

(2) The certificate of approval shall not be granted unless and until such winery or manufacturer of wine or authorized representative shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of wine sold or delivered to each licensed wine distributor or importer, during the preceding month, and shall further have agreed with the board, that such wineries, manufacturers, or authorized representatives, and all general sales corporations or agencies maintained by them, and all of their trade representatives, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(3) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be from time to time established by the board at a level that is sufficient to defray the costs of administering the certificate of approval program. The fee shall be fixed by rule by the board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. [2004 c 160 § 4; 1997 c 321 § 7; 1981 1st ex.s. c 5 § 34; 1973 1st ex.s. c 209 § 13; 1969 ex.s. c 21 § 10.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.210 Imposition of taxes on all wines and cider sold to wine distributors and liquor control board—Additional taxes imposed—Distributions. (1) There is hereby imposed upon all wines except cider sold to wine distributors and the Washington state liquor control board, within the state a tax at the rate of twenty and one-fourth cents per liter. There is hereby imposed on all cider sold to wine distributors and the Washington state liquor control board within the state a tax at the rate of three and fifty-nine one-hundredths cents per liter: PROVIDED, HOWEVER, That wine sold or shipped in bulk from one winery to another winery shall not be subject to such tax. The tax provided for in this section shall be collected by direct payments based on wine purchased by wine distributors. Every person purchasing wine under the provisions of this section shall on or before the twentieth day of each month report to the board all purchases during the preceding calendar month in such manner and upon such forms as may be prescribed by the board, and with such report shall pay the tax due from the purchases covered by such report unless the same has previously been paid. Any such purchaser of wine whose applicable tax payment is not postmarked by the twentieth day following the month of purchase will be assessed a penalty at the rate of two percent a

month or fraction thereof. The board may require that every such person shall execute to and file with the board a bond to be approved by the board, in such amount as the board may fix, securing the payment of the tax. If any such person fails to pay the tax when due, the board may forthwith suspend or cancel the license until all taxes are paid.

(2) An additional tax is imposed equal to the rate specified in RCW 82.02.030 multiplied by the tax payable under subsection (1) of this section. All revenues collected during any month from this additional tax shall be transferred to the state general fund by the twenty-fifth day of the following month.

(3) An additional tax is imposed on wines subject to tax under subsection (1) of this section, at the rate of one-fourth of one cent per liter for wine sold after June 30, 1987. After June 30, 1996, such additional tax does not apply to cider. An additional tax of five one-hundredths of one cent per liter is imposed on cider sold after June 30, 1996. All revenues collected under this subsection (3) shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(4) An additional tax is imposed on all wine subject to tax under subsection (1) of this section. The additional tax is equal to twenty-three and forty-four one-hundredths cents per liter on fortified wine as defined in *RCW 66.04.010(38) when bottled or packaged by the manufacturer, one cent per liter on all other wine except cider, and eighteen one-hundredths of one cent per liter on cider. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(5)(a) An additional tax is imposed on all cider subject to tax under subsection (1) of this section. The additional tax is equal to two and four one-hundredths cents per liter of cider sold after June 30, 1996, and before July 1, 1997, and is equal to four and seven one-hundredths cents per liter of cider sold after June 30, 1997.

(b) All revenues collected from the additional tax imposed under this subsection (5) shall be deposited in the health services account under RCW 43.72.900.

(6) For the purposes of this section, "cider" means table wine that contains not less than one-half of one percent of alcohol by volume and not more than seven percent of alcohol by volume and is made from the normal alcoholic fermentation of the juice of sound, ripe apples or pears. "Cider" includes, but is not limited to, flavored, sparkling, or carbonated cider and cider made from condensed apple or pear must. [2001 c 124 § 1; 1997 c 321 § 8; 1996 c 118 § 1; 1995 c 232 § 3; 1994 sp.s. c 7 § 901 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 160 § 2; 1991 c 192 § 3; 1989 c 271 § 501; 1987 c 452 § 11; 1983 2nd ex.s. c 3 § 10; 1982 1st ex.s. c 35 § 23; 1981 1st ex.s. c 5 § 12; 1973 1st ex.s. c 204 § 2; 1969 ex.s. c 21 § 3; 1943 c 216 § 2; 1939 c 172 § 3; 1935 c 158 § 3 (adding new section 24-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-24A. Formerly RCW 66.04.120, 66.24.210, part, 66.24.220, and 66.24.230, part. FORMER PART OF SECTION: 1933 ex.s. c 62 § 25, part, now codified as RCW 66.24.230.]

*Reviser's note: RCW 66.04.010 was amended by 2004 c 160 § 1, changing subsection (38) to subsection (39), effective January 1, 2005.

Effective date—2001 c 124: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 c 124 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1996 c 118: "This act shall take effect July 1, 1996." [1996 c 118 § 2.]

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: "Sections 901 through 909, chapter 7, Laws of 1994 sp. sess. shall be submitted as a single ballot measure to the people for their adoption and ratification, or rejection, at the next succeeding general election to be held in this state, in accordance with Article II, section 1 of the state Constitution, as amended, and the laws adopted to facilitate the operation thereof unless section 13, chapter 2, Laws of 1994, has been declared invalid or otherwise enjoined or stayed by a court of competent jurisdiction." [1994 sp.s. c 7 § 911 (Referendum Bill No. 43, approved November 8, 1994).]

Reviser's note: Sections 901 through 909, chapter 7, Laws of 1994 sp. sess., were adopted and ratified by the people at the November 8, 1994, general election.

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

Effective date—1993 c 160: See note following RCW 66.12.180.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Floor stocks tax: "There is hereby imposed upon every licensed wine distributor who possesses wine for resale upon which the tax has not been paid under section 2, chapter 204, Laws of 1973, a floor stocks tax of sixty-five cents per wine gallon on wine in his or her possession or under his or her control on June 30, 1973. Each such distributor shall within twenty days after June 30, 1973, file a report with the Washington state liquor control board in such form as the board may prescribe, showing the wine products on hand July 1, 1973, converted to gallons thereof and the amount of tax due thereon. The tax imposed by this section shall be due and payable within twenty days after July 1, 1973, and thereafter bear interest at the rate of one percent per month." [1997 c 321 § 9; 1973 1st ex.s. c 204 § 3.]

Effective date—1973 1st ex.s. c 204: See note following RCW 82.08.150.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

Giving away liquor prohibited—Exceptions: RCW 66.28.040.

No tax on wine shipped to bonded warehouse: RCW 66.24.185.

66.24.215 Levy of assessment on wine producers and growers to fund wine commission—Assessment rate changes—Procedures—Disbursement—Continuation.

(1) To provide for permanent funding of the wine commission after July 1, 1989, agricultural commodity assessments shall be levied by the board on wine producers and growers as follows:

(a) Beginning on July 1, 1989, the assessment on wine producers shall be two cents per gallon on sales of packaged Washington wines.

(b) Beginning on July 1, 1989, the assessment on growers of Washington vinifera wine grapes shall be levied as provided in RCW 15.88.130.

(c) After July 1, 1993, assessment rates under subsection (1)(a) of this section may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of wine producers. The weight

of each producer's vote shall be equal to the percentage of that producer's share of Washington vinifera wine production in the prior year.

(d) After July 1, 1993, assessment amounts under subsection (1)(b) of this section may be changed pursuant to a referendum conducted by the Washington wine commission and approved by a majority vote of grape growers. The weight of each grower's vote shall be equal to the percentage of that grower's share of Washington vinifera grape sales in the prior year.

(2) Assessments collected under this section shall be disbursed quarterly to the Washington wine commission for use in carrying out the purposes of chapter 15.88 RCW.

(3) Prior to July 1, 1996, a referendum shall be conducted to determine whether to continue the Washington wine commission as representing both wine producers and grape growers. The voting shall not be weighted. The wine producers shall vote whether to continue the commission's coverage of wineries and wine production. The grape producers shall vote whether to continue the commission's coverage of issues pertaining to grape growing. If a majority of both wine and grape producers favor the continuation of the commission, the assessments shall continue as provided in subsection (2)(b) and (d) of this section. If only one group of producers favors the continuation, the assessments shall only be levied on the group which favored the continuation. [1988 c 257 § 7; 1987 c 452 § 13.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

66.24.230 Monthly reports of winery, wine importer, and wine distributor—Prohibited, authorized sales. (Effective until January 1, 2005.) Every winery, wine importer, and wine distributor licensed under this title shall make monthly reports to the board pursuant to the regulations. Such winery, wine importer, and wine distributor shall make no sales of wine within the state of Washington except to the board, or as otherwise provided in this title. [1997 c 321 § 10; 1969 ex.s. c 21 § 4; 1933 ex.s. c 62 § 25; RRS § 7306-25. Formerly RCW 66.24.210 and 66.24.230. FORMER PART OF SECTION: 1943 c 216 § 2, part, now codified in RCW 66.24.210.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.230 Monthly reports of domestic winery, wine certificate of approval holder, wine importer, and wine distributor—Prohibited, authorized sales. (Effective January 1, 2005.) Every domestic winery, wine certificate of approval holder, wine importer, and wine distributor licensed under this title shall make monthly reports to the board pursuant to the regulations. Such domestic winery, wine certificate of approval holder, wine importer, and wine distributor shall make no sales of wine within the state of Washington except to the board, or as otherwise provided in this title. [2004 c 160 § 5; 1997 c 321 § 10; 1969 ex.s. c 21 § 4; 1933 ex.s. c 62 § 25; RRS § 7306-25. Formerly RCW 66.24.210 and 66.24.230. FORMER PART OF SECTION: 1943 c 216 § 2, part, now codified in RCW 66.24.210.]

Effective date—2004 c 160: See note following RCW 66.04.010.

(2004 Ed.)

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.24.240 Domestic brewery's license—Fee—Distribution and/or retail—Contract-production—Sales at qualifying farmers markets. (1) There shall be a license for domestic breweries; fee to be two thousand dollars for production of sixty thousand barrels or more of malt liquor per year.

(2) Any domestic brewery, except for a brand owner of malt beverages under *RCW 66.04.010(5), licensed under this section may also act as a distributor and/or retailer for beer of its own production. Any domestic brewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(3) Any domestic brewery licensed under this section may contract-produce beer for a brand owner of malt beverages defined under *RCW 66.04.010(5), and this contract-production is not a sale for the purposes of RCW 66.28.170 and 66.28.180.

(4)(a) A domestic brewery licensed under this section and qualified for a reduced rate of taxation pursuant to RCW 66.24.290(3)(b) may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a domestic brewery will sell beer at a qualifying farmers market, the domestic brewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the domestic brewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the domestic brewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection do not include the tasting or sampling privilege of a domestic brewery. The domestic brewery may not store beer at a farmers market beyond the hours that the domestic brewery offers bottled beer for sale. The domestic brewery may not act as a distributor from a farmers market location.

(e) Before a domestic brewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any domestic brewery with an endorsement approved under this subsection to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved domestic brewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved domestic brewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of such application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization

granted under this subsection (4)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and such additional rules as may be necessary to implement this section.

(g) For the purposes of this subsection:

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer. [2003 c 154 § 1; 2000 c 142 § 2; 1997 c 321 § 11; 1985 c 226 § 1; 1982 c 85 § 5; 1981 1st ex.s. c 5 § 13; 1937 c 217 § 1 (23B) (adding new section 23-B to 1933 ex.s. c 62); RRS § 7306-23B.]

***Reviser's note:** RCW 66.04.010 was amended by 2004 c 160 § 1, changing subsection (5) to subsection (6), effective January 1, 2005.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.244 Microbrewery's license—Endorsement for on-premises consumption—Fees—Determination of status as tavern or beer and/or wine restaurant—Sales at qualifying farmers markets. (1) There shall be a license for microbreweries; fee to be one hundred dollars for production of less than sixty thousand barrels of malt liquor, including strong beer, per year.

(2) Any microbrewery license under this section may also act as a distributor and/or retailer for beer and strong beer of its own production. Strong beer may not be sold at a farmers market or under any endorsement which may authorize microbreweries to sell beer at farmers markets. Any microbrewery operating as a distributor and/or retailer under this subsection shall comply with the applicable laws and rules relating to distributors and/or retailers.

(3) The board may issue an endorsement to this license allowing for on-premises consumption of beer, including strong beer, wine, or both of other manufacture if purchased from a Washington state-licensed distributor. Each endorsement shall cost two hundred dollars per year, or four hundred dollars per year allowing the sale and service of both beer and wine.

(4) The microbrewer obtaining such endorsement must determine, at the time the endorsement is issued, whether the licensed premises will be operated either as a tavern with persons under twenty-one years of age not allowed as provided for in RCW 66.24.330, or as a beer and/or wine restaurant as described in RCW 66.24.320.

(5)(a) A microbrewery licensed under this section may apply to the board for an endorsement to sell bottled beer of its own production at retail for off-premises consumption at a qualifying farmers market. The annual fee for this endorsement is seventy-five dollars.

(b) For each month during which a microbrewery will sell beer at a qualifying farmers market, the microbrewery must provide the board or its designee a list of the dates, times, and locations at which bottled beer may be offered for sale. This list must be received by the board before the microbrewery may offer beer for sale at a qualifying farmers market.

(c) The beer sold at qualifying farmers markets must be produced in Washington.

(d) Each approved location in a qualifying farmers market is deemed to be part of the microbrewery license for the purpose of this title. The approved locations under an endorsement granted under this subsection (5) do not constitute the tasting or sampling privilege of a microbrewery. The microbrewery may not store beer at a farmers market beyond the hours that the microbrewery offers bottled beer for sale. The microbrewery may not act as a distributor from a farmers market location.

(e) Before a microbrewery may sell bottled beer at a qualifying farmers market, the farmers market must apply to the board for authorization for any microbrewery with an endorsement approved under this subsection (5) to sell bottled beer at retail at the farmers market. This application shall include, at a minimum: (i) A map of the farmers market showing all booths, stalls, or other designated locations at which an approved microbrewery may sell bottled beer; and (ii) the name and contact information for the on-site market managers who may be contacted by the board or its designee to verify the locations at which bottled beer may be sold. Before authorizing a qualifying farmers market to allow an approved microbrewery to sell bottled beer at retail at its farmers market location, the board shall notify the persons or entities of the application for authorization pursuant to RCW 66.24.010 (8) and (9). An authorization granted under this subsection (5)(e) may be withdrawn by the board for any violation of this title or any rules adopted under this title.

(f) The board may adopt rules establishing the application and approval process under this section and any additional rules necessary to implement this section.

(g) For the purposes of this subsection (5):

(i) "Qualifying farmers market" means an entity that sponsors a regular assembly of vendors at a defined location for the purpose of promoting the sale of agricultural products

grown or produced in this state directly to the consumer under conditions that meet the following minimum requirements:

(A) There are at least five participating vendors who are farmers selling their own agricultural products;

(B) The total combined gross annual sales of vendors who are farmers exceeds the total combined gross annual sales of vendors who are processors or resellers;

(C) The total combined gross annual sales of vendors who are farmers, processors, or resellers exceeds the total combined gross annual sales of vendors who are not farmers, processors, or resellers;

(D) The sale of imported items and secondhand items by any vendor is prohibited; and

(E) No vendor is a franchisee.

(ii) "Farmer" means a natural person who sells, with or without processing, agricultural products that he or she raises on land he or she owns or leases in this state or in another state's county that borders this state.

(iii) "Processor" means a natural person who sells processed food that he or she has personally prepared on land he or she owns or leases in this state or in another state's county that borders this state.

(iv) "Reseller" means a natural person who buys agricultural products from a farmer and resells the products directly to the consumer. [2003 c 167 § 1; 2003 c 154 § 2; 1998 c 126 § 3; 1997 c 321 § 12.]

Reviser's note: This section was amended by 2003 c 154 § 2 and by 2003 c 167 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 167: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 167 § 14.]

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.250 Beer distributor's license—Fee. (Effective until January 1, 2005.) There shall be a license for beer distributors to sell beer and strong beer, purchased from licensed Washington breweries, beer certificate of approval holders (B5), licensed beer importers, or suppliers of foreign beer located outside the state of Washington, to licensed beer retailers and other beer distributors and to export same from the state of Washington; fee six hundred sixty dollars per year for each distributing unit. [2003 c 167 § 2; 1997 c 321 § 13; 1981 1st ex.s. c 5 § 14; 1937 c 217 § 1 (23E) (adding new section 23-E to 1933 ex.s. c 62); RRS § 7306-23E.]

Report to legislature—2003 c 167: "The liquor control board shall report to the legislature by December 1, 2004, on the impacts of strong beer sales." [2003 c 167 § 13.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.250 Beer distributor's license—Fee. (Effective January 1, 2005.) There shall be a license for beer distributors to sell beer and strong beer, purchased from licensed

(2004 Ed.)

Washington breweries, beer certificate of approval holders, licensed beer importers, or suppliers of foreign beer located outside of the United States, to licensed beer retailers and other beer distributors and to export same from the state of Washington; fee six hundred sixty dollars per year for each distributing unit. [2004 c 160 § 6; 2003 c 167 § 2; 1997 c 321 § 13; 1981 1st ex.s. c 5 § 14; 1937 c 217 § 1 (23E) (adding new section 23-E to 1933 ex.s. c 62); RRS § 7306-23E.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Report to legislature—2003 c 167: "The liquor control board shall report to the legislature by December 1, 2004, on the impacts of strong beer sales." [2003 c 167 § 13.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.261 Beer importer's license—Principal office—Report—Labels—Fee. (Effective until January 1, 2005.) There shall be a license for beer importers that authorizes the licensee to import beer and strong beer manufactured within the United States by certificate of approval holders (B5) into the state of Washington. The licensee may also import beer and strong beer manufactured outside the United States.

(1) Beer and strong beer so imported may be sold to licensed beer distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a beer importer shall establish and maintain a principal office within the state at which shall be kept proper records of all beer and strong beer imported into the state under this license.

(3) No beer importer's license shall be granted to a non-resident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a beer importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of beer and strong beer sold or delivered to each licensed beer distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Beer and strong beer imported under this license must conform to the provisions of RCW 66.28.120 and have received label approval from the board. The board shall not certify beer or strong beer labeled with names which may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic brewery or imported nor shall it certify beer or strong beer which fails to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [2003 c 167 § 3; 1997 c 321 § 14.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.261 Beer importer's license—Principal office—Report—Labels—Fee. (Effective January 1, 2005.) There shall be a license for beer importers that autho-

rizes the licensee to import beer and strong beer purchased from beer certificate of approval holders into the state of Washington. The licensee may also import, from suppliers located outside of the United States, beer and strong beer manufactured outside the United States.

(1) Beer and strong beer so imported may be sold to licensed beer distributors or exported from the state.

(2) Every person, firm, or corporation licensed as a beer importer shall establish and maintain a principal office within the state at which shall be kept proper records of all beer and strong beer imported into the state under this license.

(3) No beer importer's license shall be granted to a non-resident of the state nor to a corporation whose principal place of business is outside the state until such applicant has established a principal office and agent within the state upon which service can be made.

(4) As a requirement for license approval, a beer importer shall enter into a written agreement with the board to furnish on or before the twentieth day of each month, a report under oath, detailing the quantity of beer and strong beer sold or delivered to each licensed beer distributor. Failure to file such reports may result in the suspension or cancellation of this license.

(5) Beer and strong beer imported under this license must conform to the provisions of RCW 66.28.120 and have received label approval from the board. The board shall not certify beer or strong beer labeled with names which may be confused with other nonalcoholic beverages whether manufactured or produced from a domestic brewery or imported nor shall it certify beer or strong beer which fails to meet quality standards established by the board.

(6) The license fee shall be one hundred sixty dollars per year. [2004 c 160 § 7; 2003 c 167 § 3; 1997 c 321 § 14.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.270 Manufacturer's monthly report to board of quantity of malt liquor sales or strong beer made to beer distributors—Certificate of approval and report for out-of-state or imported beer—Fee. (Effective until January 1, 2005.) (1) Every person, firm or corporation, holding a license to manufacture malt liquors or strong beer within the state of Washington, shall, on or before the twentieth day of each month, furnish to the Washington state liquor control board, on a form to be prescribed by the board, a statement showing the quantity of malt liquors and strong beer sold for resale during the preceding calendar month to each beer distributor within the state of Washington.

(2) A United States brewery or manufacturer of beer or strong beer, located outside the state of Washington, must hold a certificate of approval (B5) to allow sales and shipment of the certificate of approval holder's beer or strong beer to licensed Washington beer distributors or importers. The certificate of approval shall not be granted unless and until such brewer or manufacturer of beer or strong beer shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report

under oath, on a form to be prescribed by the board, showing the quantity of beer and strong beer sold or delivered to each licensed beer distributor or importer during the preceding month, and shall further have agreed with the board, that such brewer or manufacturer of beer or strong beer and all general sales corporations or agencies maintained by them, and all of their trade representatives, corporations, and agencies, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(3) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be one hundred dollars per year, which sum shall accompany the application for such certificate. [2003 c 167 § 4; 1997 c 321 § 15; 1981 1st ex.s. c 5 § 35; 1973 1st ex.s. c 209 § 14; 1969 ex.s. c 178 § 4; 1937 c 217 § 1 (23F) (adding new section 23-F to 1933 ex.s. c 62); RRS § 7306-23F. Formerly RCW 66.24.270 and 66.24.280.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.270 Manufacturer's monthly report of malt liquor or strong beer sales—Certificate of approval—Report for out-of-state or imported beer—Fee. (Effective January 1, 2005.) (1) Every person, firm or corporation, holding a license to manufacture malt liquors or strong beer within the state of Washington, shall, on or before the twentieth day of each month, furnish to the Washington state liquor control board, on a form to be prescribed by the board, a statement showing the quantity of malt liquors and strong beer sold for resale during the preceding calendar month to each beer distributor within the state of Washington.

(2)(a) A United States brewery or manufacturer of beer or strong beer, located outside the state of Washington, must hold a certificate of approval to allow sales and shipment of the certificate of approval holder's beer or strong beer to licensed Washington beer distributors or importers.

(b) Authorized representatives must hold a certificate of approval to allow sales and shipment of United States produced beer or strong beer to licensed Washington beer distributors or importers.

(c) Authorized representatives must also hold a certificate of approval to allow sales and shipments of foreign produced beer or strong beer to licensed Washington beer distributors or importers.

(3) The certificate of approval shall not be granted unless and until such brewer or manufacturer of beer or strong beer or authorized representative shall have made a written agreement with the board to furnish to the board, on or before the twentieth day of each month, a report under oath, on a form to be prescribed by the board, showing the quantity of beer and strong beer sold or delivered to each licensed beer distributor or importer during the preceding month, and shall further have agreed with the board, that such brewer or man-

ufacturer of beer or strong beer or authorized representative and all general sales corporations or agencies maintained by them, and all of their trade representatives, corporations, and agencies, shall and will faithfully comply with all laws of the state of Washington pertaining to the sale of intoxicating liquors and all rules and regulations of the Washington state liquor control board. A violation of the terms of this agreement will cause the board to take action to suspend or revoke such certificate.

(4) The fee for the certificate of approval, issued pursuant to the provisions of this title, shall be from time to time established by the board at a level that is sufficient to defray the costs of administering the certificate of approval program. The fee shall be fixed by rule by the board in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. [2004 c 160 § 8; 2003 c 167 § 4; 1997 c 321 § 15; 1981 1st ex.s. c 5 § 35; 1973 1st ex.s. c 209 § 14; 1969 ex.s. c 178 § 4; 1937 c 217 § 1 (23F) (adding new section 23-F to 1933 ex.s. c 62); RRS § 7306-23F. Formerly RCW 66.24.270 and 66.24.280.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

66.24.290 Authorized, prohibited sales—Monthly reports—Added tax—Distribution—Late payment penalty—Additional taxes, purposes. (1) Any microbrewer or domestic brewery or beer distributor licensed under this title may sell and deliver beer and strong beer to holders of authorized licenses direct, but to no other person, other than the board; and every such brewery or beer distributor shall report all sales to the board monthly, pursuant to the regulations, and shall pay to the board as an added tax for the privilege of manufacturing and selling the beer and strong beer within the state a tax of one dollar and thirty cents per barrel of thirty-one gallons on sales to licensees within the state and on sales to licensees within the state of bottled and canned beer, including strong beer, shall pay a tax computed in gallons at the rate of one dollar and thirty cents per barrel of thirty-one gallons. Any brewery or beer distributor whose applicable tax payment is not postmarked by the twentieth day following the month of sale will be assessed a penalty at the rate of two percent per month or fraction thereof. Beer and strong beer shall be sold by breweries and distributors in sealed barrels or packages. The moneys collected under this subsection shall be distributed as follows: (a) Three-tenths of a percent shall be distributed to border areas under RCW 66.08.195; and (b) of the remaining moneys: (i) Twenty percent shall be distributed to counties in the same manner as under RCW 66.08.200; and (ii) eighty percent shall be distributed to incorporated cities and towns in the same manner as under RCW 66.08.210.

(2) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to two dollars per barrel of thirty-one

gallons. All revenues collected during any month from this additional tax shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520 by the twenty-fifth day of the following month.

(3)(a) An additional tax is imposed on all beer and strong beer subject to tax under subsection (1) of this section. The additional tax is equal to ninety-six cents per barrel of thirty-one gallons through June 30, 1995, two dollars and thirty-nine cents per barrel of thirty-one gallons for the period July 1, 1995, through June 30, 1997, and four dollars and seventy-eight cents per barrel of thirty-one gallons thereafter.

(b) The additional tax imposed under this subsection does not apply to the sale of the first sixty thousand barrels of beer each year by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of this exemption.

(c) All revenues collected from the additional tax imposed under this subsection (3) shall be deposited in the health services account under RCW 43.72.900.

(4) An additional tax is imposed on all beer and strong beer that is subject to tax under subsection (1) of this section that is in the first sixty thousand barrels of beer and strong beer by breweries that are entitled to a reduced rate of tax under 26 U.S.C. Sec. 5051, as existing on July 1, 1993, or such subsequent date as may be provided by the board by rule consistent with the purposes of the exemption under subsection (3)(b) of this section. The additional tax is equal to one dollar and forty-eight and two-tenths cents per barrel of thirty-one gallons. By the twenty-fifth day of the following month, three percent of the revenues collected from this additional tax shall be distributed to border areas under RCW 66.08.195 and the remaining moneys shall be transferred to the state general fund.

(5) The board may make refunds for all taxes paid on beer and strong beer exported from the state for use outside the state.

(6) The board may require filing with the board of a bond to be approved by it, in such amount as the board may fix, securing the payment of the tax. If any licensee fails to pay the tax when due, the board may forthwith suspend or cancel his or her license until all taxes are paid. [2003 c 167 § 5; 1999 c 281 § 14. Prior: 1997 c 451 § 1; 1997 c 321 § 16; 1995 c 232 § 4; 1994 sp.s. c 7 § 902 (Referendum Bill No. 43, approved November 8, 1994); 1993 c 492 § 311; 1989 c 271 § 502; 1983 2nd ex.s. c 3 § 11; 1982 1st ex.s. c 35 § 24; 1981 1st ex.s. c 5 § 16; 1965 ex.s. c 173 § 30; 1933 ex.s. c 62 § 24; RRS § 7306-24.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 451: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 451 § 5.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Contingent partial referendum—1994 sp.s. c 7 §§ 901-909: See note following RCW 66.24.210.

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

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

Construction—Severability—Effective dates—1983 2nd ex.s. c 3: See notes following RCW 82.04.255.

Severability—Effective dates—1982 1st ex.s. c 35: See notes following RCW 82.08.020.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1965 ex.s. c 173: See note following RCW 82.98.030.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

66.24.305 Refunds of taxes on unsalable wine and beer. The board may refund the tax on wine imposed by RCW 66.24.210, and the tax on beer imposed by RCW 66.24.290, when such taxpaid products have been deemed to be unsalable and are destroyed within the state in accordance with procedures established by the board. [1975 1st ex.s. c 173 § 11.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.24.310 Representative's license—Qualifications—Conditions and restrictions—Fee. (1) No person shall canvass for, solicit, receive, or take orders for the purchase or sale of liquor, nor contact any licensees of the board in goodwill activities, unless such person shall be the accredited representative of a person, firm, or corporation holding a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a beer distributor's license, a microbrewer's license, a domestic brewer's license, a beer importer's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington, or the accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, and shall have applied for and received a representative's license: PROVIDED, HOWEVER, That the provisions of this section shall not apply to drivers who deliver beer or wine;

(2) Every representative's license issued under this title shall be subject to all conditions and restrictions imposed by this title or by the rules and regulations of the board; the board, for the purpose of maintaining an orderly market, may limit the number of representative's licenses issued for representation of specific classes of eligible employers;

(3) Every application for a representative's license must be approved by a holder of a certificate of approval issued pursuant to RCW 66.24.270 or 66.24.206, a licensed beer distributor, a licensed domestic brewer, a licensed beer importer, a licensed microbrewer, a licensed domestic winery, a licensed wine importer, a licensed wine distributor, or by a distiller, manufacturer, importer, or distributor of spirituous liquor, or foreign produced beer or wine, as the rules and regulations of the board shall require;

(4) The fee for a representative's license shall be twenty-five dollars per year;

(5) An accredited representative of a distiller, manufacturer, importer, or distributor of spirituous liquor may, after he or she has applied for and received a representative's

license, contact retail licensees of the board only in goodwill activities pertaining to spirituous liquor products. [1997 c 321 § 17; 1981 1st ex.s. c 5 § 36; 1975-'76 2nd ex.s. c 74 § 1; 1971 ex.s. c 138 § 1; 1969 ex.s. c 21 § 5; 1939 c 172 § 2; 1937 c 217 § 1 (23I) (adding new section 23-I to 1933 ex.s. c 62); RRS § 7306-23I.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1975-'76 2nd ex.s. c 74: "The effective date of this 1976 amendatory act shall be July 1, 1976." [1975-'76 2nd ex.s. c 74 § 4.]

Effective date—1969 ex.s. c 21: See note following RCW 64.04.010.

66.24.320 Beer and/or wine restaurant license—Containers—Fee—Caterer's endorsement. There shall be a beer and/or wine restaurant license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. A patron of the licensee may remove from the premises, recorked or recapped in its original container, any portion of wine that was purchased for consumption with a meal.

(1) The annual fee shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license.

(2)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove from the liquor stocks at the licensed premises, only those types of liquor that are authorized under the on-premises license privileges for sale and service at event locations at a specified date and, except as provided in subsection (3) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(3) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises under the following conditions:

(a) Agreements between the domestic winery and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcohol beverages to be served, and be filed with the board; and

(b) The domestic winery and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services. [2004 c 62 § 2. Prior: 2003 c 345 § 1; 2003 c 167 § 6; 1998 c 126 § 4; 1997 c 321 § 18; 1995 c 232 § 6; 1991 c 42 § 1; 1987 c 458 § 11; 1981 1st ex.s. c 5 § 37; 1977 ex.s. c 9 § 1; 1969 c 117 § 1; 1967 ex.s. c 75 § 2; 1941 c 220 § 1; 1937 c 217 § 1 (23M) (adding new section 23-M to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23M.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.330 Tavern license—Fees. There shall be a beer and wine retailer's license to be designated as a tavern license to sell beer, including strong beer, or wine, or both, at retail, for consumption on the premises. Such licenses may be issued only to a person operating a tavern that may be frequented only by persons twenty-one years of age and older.

The annual fee for such license shall be two hundred dollars for the beer license, two hundred dollars for the wine license, or four hundred dollars for a combination beer and wine license. Licensees who have a fee increase of more than one hundred dollars as a result of this change shall have their fees increased fifty percent of the amount the first renewal year and the remaining amount beginning with the second renewal period. New licensees obtaining a license after July 1, 1998, shall pay the full amount of four hundred dollars. [2003 c 167 § 7; 1997 c 321 § 19; 1995 c 232 § 7; 1991 c 42 § 2; 1987 c 458 § 12; 1981 1st ex.s. c 5 § 38; 1977 ex.s. c 9 § 2; 1973 1st ex.s. c 209 § 15; 1967 ex.s. c 75 § 3; 1941 c 220 § 2; 1937 c 217 § 1 (23N) (adding new section 23-N to 1933 ex.s. c 62); Rem. Supp. 1941 § 7306-23N.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1987 c 458: See note following RCW 48.21.160.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.350 Snack bar license—Fee. There shall be a beer retailer's license to be designated as a snack bar license to sell beer by the opened bottle or can at retail, for consumption upon the premises only, such license to be issued to places where the sale of beer is not the principal business conducted; fee one hundred twenty-five dollars per year. [1997 c 321 § 20; 1991 c 42 § 3; 1981 1st ex.s. c 5 § 40; 1967 ex.s. c 75 § 5; 1937 c 217 § 1 (23P) (adding new section 23-P to 1933 ex.s. c 62); RRS § 7306-23P.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.

66.24.354 Combined license—Sale of beer and wine for consumption on and off premises—Conditions—Fee. There shall be a beer and wine retailer's license that may be combined only with the on-premises licenses described in either RCW 66.24.320 or 66.24.330. The combined license permits the sale of beer and wine for consumption off the premises.

(2004 Ed.)

(1) Beer and wine sold for consumption off the premises must be in original sealed packages of the manufacturer or bottler.

(2) Beer may be sold to a purchaser in a sanitary container brought to the premises by the purchaser and filled at the tap by the retailer at the time of sale.

(3) Licensees holding this type of license also may sell malt liquor in kegs or other containers that are capable of holding four gallons or more of liquid and are registered in accordance with RCW 66.28.200.

(4) The board may impose conditions upon the issuance of this license to best protect and preserve the health, safety, and welfare of the public.

(5) The annual fee for this license shall be one hundred twenty dollars. [1997 c 321 § 21.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.360 Grocery store license—Fees—Restricted license—Determination of public interest—Inventory—International export endorsement. There shall be a beer and/or wine retailer's license to be designated as a grocery store license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores.

(1) Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid.

(2) The annual fee for the grocery store license is one hundred fifty dollars for each store.

(3) The board shall issue a restricted grocery store license authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a grocery store license must maintain a minimum three thousand dollar inventory of food products for human consumption, not including pop, beer, strong beer, or wine.

(5) Upon approval by the board, the grocery store licensee may also receive an endorsement to permit the international export of beer, strong beer, and wine.

(a) Any beer, strong beer, or wine sold under this endorsement must have been purchased from a licensed beer or wine distributor licensed to do business within the state of Washington.

(b) Any beer, strong beer, and wine sold under this endorsement must be intended for consumption outside the state of Washington and the United States and appropriate records must be maintained by the licensee.

(c) A holder of this special endorsement to the grocery store license shall be considered not in violation of RCW 66.28.010.

(d) Any beer, strong beer, or wine sold under this license must be sold at a price no less than the acquisition price paid by the holder of the license.

(e) The annual cost of this endorsement is five hundred dollars and is in addition to the license fees paid by the licensee for a grocery store license. [2003 c 167 § 8; 1997 c 321 § 22; 1993 c 21 § 1; 1991 c 42 § 4; 1987 c 46 § 1; 1981 1st ex.s. c 5 § 41; 1967 ex.s. c 75 § 6; 1937 c 217 § 1 (23Q) (adding new section 23-Q to 1933 ex.s. c 62); RRS § 7306-23Q.]

Application to certain retailers—2003 c 167 §§ 8 and 9: "Sections 8 and 9 of this act apply to retailers who hold a restricted grocery store license or restricted beer and/or wine specialty shop license on or after July 1, 2003." [2003 c 167 § 12.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Effective date—1967 ex.s. c 75: See note following RCW 66.08.180.
Employees under eighteen allowed to handle beer or wine: RCW 66.44.340.

66.24.371 Beer and/or wine specialty shop license—Fee—Samples—Restricted license—Determination of public interest—Inventory. (1) There shall be a beer and/or wine retailer's license to be designated as a beer and/or wine specialty shop license to sell beer, strong beer, and/or wine at retail in bottles, cans, and original containers, not to be consumed upon the premises where sold, at any store other than the state liquor stores. Licensees obtaining a written endorsement from the board may also sell malt liquor in kegs or other containers capable of holding less than five and one-half gallons of liquid. The annual fee for the beer and/or wine specialty shop license is one hundred dollars for each store.

(2) Licensees under this section may provide, free or for a charge, single-serving samples of two ounces or less to customers for the purpose of sales promotion. Sampling activities of licensees under this section are subject to RCW 66.28.010 and 66.28.040 and the cost of sampling under this section may not be borne, directly or indirectly, by any manufacturer, importer, or distributor of liquor.

(3) The board shall issue a restricted beer and/or wine specialty shop license, authorizing the licensee to sell beer and only table wine, if the board finds upon issuance or renewal of the license that the sale of strong beer or fortified wine would be against the public interest. In determining the public interest, the board shall consider at least the following factors:

(a) The likelihood that the applicant will sell strong beer or fortified wine to persons who are intoxicated;

(b) Law enforcement problems in the vicinity of the applicant's establishment that may arise from persons purchasing strong beer or fortified wine at the establishment; and

(c) Whether the sale of strong beer or fortified wine would be detrimental to or inconsistent with a government-operated or funded alcohol treatment or detoxification program in the area.

If the board receives no evidence or objection that the sale of strong beer or fortified wine would be against the public interest, it shall issue or renew the license without restriction, as applicable. The burden of establishing that the sale of strong beer or fortified wine by the licensee would be against the public interest is on those persons objecting.

(4) Licensees holding a beer and/or wine specialty shop license must maintain a minimum three thousand dollar wholesale inventory of beer, strong beer, and/or wine. [2003 c 167 § 9; 1997 c 321 § 23.]

Application to certain retailers—2003 c 167 §§ 8 and 9: See note following RCW 66.24.360.

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.375 "Society or organization" defined for certain purposes. "Society or organization" as used in RCW 66.24.380 means a not-for-profit group organized and operated solely for charitable, religious, social, political, educational, civic, fraternal, athletic, or benevolent purposes. No portion of the profits from events sponsored by a not-for-profit group may be paid directly or indirectly to members, officers, directors, or trustees except for services performed for the organization. Any compensation paid to its officers and executives must be only for actual services and at levels comparable to the compensation for like positions within the state. A society or organization which is registered with the secretary of state or the federal internal revenue service as a nonprofit organization may submit such registration as proof that it is a not-for-profit group. [1997 c 321 § 61; 1981 c 287 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1981 c 287: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 c 287 § 3.]

66.24.380 Special occasion license—Fee—Penalty. There shall be a retailer's license to be designated as a special occasion license to be issued to a not-for-profit society or organization to sell spirits, beer, and wine by the individual serving for on-premises consumption at a specified event, such as at picnics or other special occasions, at a specified date and place; fee sixty dollars per day.

(1) The not-for-profit society or organization is limited to sales of no more than twelve calendar days per year. For the purposes of this subsection, special occasion licensees that are "agricultural area fairs" or "agricultural county, district, and area fairs," as defined by RCW 15.76.120, that receive a special occasion license may, once per calendar year, count as one event fairs that last multiple days, so long as alcohol sales are at set dates, times, and locations, and the

board receives prior notification of the dates, times, and locations. The special occasion license applicant will pay the sixty dollars per day for this event.

(2) The licensee may sell beer and/or wine in original, unopened containers for off-premises consumption if permission is obtained from the board prior to the event.

(3) Sale, service, and consumption of spirits, beer, and wine is to be confined to specified premises or designated areas only.

(4) Spirituous liquor sold under this special occasion license must be purchased at a state liquor store or agency without discount at retail prices, including all taxes.

(5) Any violation of this section is a class 1 civil infraction having a maximum penalty of two hundred fifty dollars as provided for in chapter 7.80 RCW. [2004 c 133 § 2; 1997 c 321 § 24; 1988 c 200 § 2; 1981 1st ex.s. c 5 § 43; 1973 1st ex.s. c 209 § 17; 1969 ex.s. c 178 § 5; 1937 c 217 § 1 (23S) (adding new section 23-S to 1933 ex.s. c 62); RRS § 7306-23S.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—Effective date—1973 1st ex.s. c 209: See notes following RCW 66.08.070.

"Society or organization" defined for certain purposes: RCW 66.24.375.

66.24.395 Interstate common carrier's licenses—

Class CCI—Fees—Scope. (1)(a) There shall be a license that may be issued to corporations, associations, or persons operating as federally licensed commercial common passenger carriers engaged in interstate commerce, in or over territorial limits of the state of Washington on passenger trains, vessels, or airplanes. Such license shall permit the sale of spirituous liquor, wine, and beer at retail for passenger consumption within the state upon one such train passenger car, vessel, or airplane, while in or over the territorial limits of the state. Such license shall include the privilege of transporting into and storing within the state such liquor for subsequent retail sale to passengers in passenger train cars, vessels or airplanes. The fees for such master license shall be seven hundred fifty dollars per annum (class CCI-1): PROVIDED, That upon payment of an additional sum of five dollars per annum per car, or vessel, or airplane, the privileges authorized by such license classes shall extend to additional cars, or vessels, or airplanes operated by the same licensee within the state, and a duplicate license for each additional car, or vessel, or airplane shall be issued: PROVIDED, FURTHER, That such licensee may make such sales and/or service upon cars, or vessels, or airplanes in emergency for not more than five consecutive days without such license: AND PROVIDED, FURTHER, That such license shall be valid only while such cars, or vessels, or airplanes are actively operated as common carriers for hire in interstate commerce and not while they are out of such common carrier service.

(b) Alcoholic beverages sold and/or served for consumption by such interstate common carriers while within or over the territorial limits of this state shall be subject to such board markup and state liquor taxes in an amount to approximate the revenue that would have been realized from such markup and taxes had the alcoholic beverages been purchased in Washington: PROVIDED, That the board's markup shall be

(2004 Ed.)

applied on spirituous liquor only. Such common carriers shall report such sales and/or service and pay such markup and taxes in accordance with procedures prescribed by the board.

(2) Alcoholic beverages sold and delivered in this state to interstate common carriers for use under the provisions of this section shall be considered exported from the state, subject to the conditions provided in subsection (1)(b) of this section. The storage facilities for liquor within the state by common carriers licensed under this section shall be subject to written approval by the board. [1997 c 321 § 25; 1981 1st ex.s. c 5 § 44; 1975 1st ex.s. c 245 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.24.400 Liquor by the drink, spirits, beer, and wine restaurant license—Liquor by the bottle for hotel or club guests—Removing unconsumed liquor, when.

(1) There shall be a retailer's license, to be known and designated as a spirits, beer, and wine restaurant license, to sell spirituous liquor by the individual glass, beer, and wine, at retail, for consumption on the premises, including mixed drinks and cocktails compounded or mixed on the premises only: PROVIDED, That a hotel, or club licensed under chapter 70.62 RCW with overnight sleeping accommodations, that is licensed under this section may sell liquor by the bottle to registered guests of the hotel or club for consumption in guest rooms, hospitality rooms, or at banquets in the hotel or club: PROVIDED FURTHER, That a patron of a bona fide hotel, restaurant, or club licensed under this section may remove from the premises recorked or recapped in its original container any portion of wine which was purchased for consumption with a meal, and registered guests who have purchased liquor from the hotel or club by the bottle may remove from the premises any unused portion of such liquor in its original container. Such license may be issued only to bona fide restaurants, hotels and clubs, and to dining, club and buffet cars on passenger trains, and to dining places on passenger boats and airplanes, and to dining places at civic centers with facilities for sports, entertainment, and conventions, and to such other establishments operated and maintained primarily for the benefit of tourists, vacationers and travelers as the board shall determine are qualified to have, and in the discretion of the board should have, a spirits, beer, and wine restaurant license under the provisions and limitations of this title.

(2) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this chapter [section] is one hundred twenty dollars. [2001 c 199 § 4; 1998 c 126 § 5; 1997 c 321 § 26; 1987 c 196 § 1; 1986 c 208 § 1; 1981 c 94 § 2; 1977 ex.s. c 9 § 4; 1971 ex.s. c 208 § 1; 1949 c 5 § 1 (adding new section 23-S-1 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-1.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1986 c 208: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of state government and its existing public institutions, and shall take effect on May 1, 1986." [1986 c 208 § 2.]

Severability—1949 c 5: See RCW 66.98.080.

66.24.410 Liquor by the drink, spirits, beer, and wine restaurant license—Terms defined. (1) "Spirituous liquor," as used in RCW 66.24.400 to 66.24.450, inclusive, means "liquor" as defined in RCW 66.04.010, except "wine" and "beer" sold as such.

(2) "Restaurant" as used in RCW 66.24.400 to 66.24.450, inclusive, means an establishment provided with special space and accommodations where, in consideration of payment, food, without lodgings, is habitually furnished to the public, not including drug stores and soda fountains: PROVIDED, That such establishments shall be approved by the board and that the board shall be satisfied that such establishment is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. The service of only fry orders or such food and victuals as sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition.

(3) "Hotel," "clubs," "wine" and "beer" are used in RCW 66.24.400 to 66.24.450, inclusive, with the meaning given in chapter 66.04 RCW: PROVIDED, That any such hotel shall be provided with special space and accommodations where, in consideration of payment, food is habitually furnished to the public: PROVIDED FURTHER, That the board shall be satisfied that such hotel is maintained in a substantial manner as a place for preparing, cooking and serving of complete meals. The service of only fry orders, sandwiches, hamburgers, or salads shall not be deemed in compliance with this definition. [1983 c 3 § 164; 1981 1st ex.s. c 5 § 17; 1969 ex.s. c 112 § 1; 1957 c 263 § 2. Prior: 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.420 Liquor by the drink, spirits, beer, and wine restaurant license—Schedule of fees—Location—Number of licenses—Caterer's endorsement. (1) The spirits, beer, and wine restaurant license shall be issued in accordance with the following schedule of annual fees:

(a) The annual fee for a spirits, beer, and wine restaurant license shall be graduated according to the dedicated dining area and type of service provided as follows:

| | |
|-------------------------------------|---------|
| Less than 50% dedicated dining area | \$2,000 |
| 50% or more dedicated dining area | \$1,600 |
| Service bar only | \$1,000 |

(b) The annual fee for the license when issued to any other spirits, beer, and wine restaurant licensee outside of incorporated cities and towns shall be prorated according to the calendar quarters, or portion thereof, during which the license is open for business, except in case of suspension or revocation of the license.

(c) Where the license shall be issued to any corporation, association or person operating a bona fide restaurant in an

airport terminal facility providing service to transient passengers with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a restaurant in an airport terminal facility shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and such food service shall be available on request in other licensed places on the premises: PROVIDED, FURTHER, That an additional license fee of twenty-five percent of the annual master license fee shall be required for such duplicate licenses.

(d) Where the license shall be issued to any corporation, association, or person operating dining places at a publicly or privately owned civic or convention center with facilities for sports, entertainment, or conventions, or a combination thereof, with more than one place where liquor is to be dispensed and sold, such license shall be issued upon the payment of the annual fee, which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to additional places on the premises at the discretion of the board and a duplicate license may be issued for each such additional place: PROVIDED, That the holder of a master license for a dining place at such a publicly or privately owned civic or convention center shall be required to maintain in a substantial manner at least one place on the premises for preparing, cooking, and serving of complete meals, and food service shall be available on request in other licensed places on the premises: PROVIDED FURTHER, That an additional license fee of ten dollars shall be required for such duplicate licenses.

(e) Where the license shall be issued to any corporation, association or person operating more than one building containing dining places at privately owned facilities which are open to the public and where there is a continuity of ownership of all adjacent property, such license shall be issued upon the payment of an annual fee which shall be a master license and shall permit such sale within and from one such place. Such license may be extended to the additional dining places on the property or, in the case of a spirits, beer, and wine restaurant licensed hotel, property owned or controlled by leasehold interest by that hotel for use as a conference or convention center or banquet facility open to the general public for special events in the same metropolitan area, at the discretion of the board and a duplicate license may be issued for each additional place: PROVIDED, That the holder of the master license for the dining place shall not offer alcoholic beverages for sale, service, and consumption at the additional place unless food service is available at both the location of the master license and the duplicate license: PROVIDED FURTHER, That an additional license fee of twenty dollars shall be required for such duplicate licenses.

(2) The board, so far as in its judgment is reasonably possible, shall confine spirits, beer, and wine restaurant licenses to the business districts of cities and towns and other communities, and not grant such licenses in residential districts, nor within the immediate vicinity of schools, without being lim-

ited in the administration of this subsection to any specific distance requirements.

(3) The board shall have discretion to issue spirits, beer, and wine restaurant licenses outside of cities and towns in the state of Washington. The purpose of this subsection is to enable the board, in its discretion, to license in areas outside of cities and towns and other communities, establishments which are operated and maintained primarily for the benefit of tourists, vacationers and travelers, and also golf and country clubs, and common carriers operating dining, club and buffet cars, or boats.

(4) The total number of spirits, beer, and wine restaurant licenses issued in the state of Washington by the board, not including spirits, beer, and wine private club licenses, shall not in the aggregate at any time exceed one license for each fifteen hundred of population in the state, determined according to the yearly population determination developed by the office of financial management pursuant to RCW 43.62.030.

(5) Notwithstanding the provisions of subsection (4) of this section, the board shall refuse a spirits, beer, and wine restaurant license to any applicant if in the opinion of the board the spirits, beer, and wine restaurant licenses already granted for the particular locality are adequate for the reasonable needs of the community.

(6)(a) The board may issue a caterer's endorsement to this license to allow the licensee to remove the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and, except as provided in subsection (7) of this section, place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(7) Licensees under this section that hold a caterer's endorsement are allowed to use this endorsement on a domestic winery premises under the following conditions:

(a) Agreements between the domestic winery and the retail licensee shall be in writing, contain no exclusivity clauses regarding the alcohol beverages to be served, and be filed with the board; and

(b) The domestic winery and the retail licensee shall be separately contracted and compensated by the persons sponsoring the event for their respective services. [2004 c 62 § 3; 2003 c 345 § 2; 1998 c 126 § 6; 1997 c 321 § 27; 1996 c 218 § 4; 1995 c 55 § 1; 1981 1st ex.s. c 5 § 45; 1979 c 87 § 1; 1977 ex.s. c 219 § 4; 1975 1st ex.s. c 245 § 1; 1971 ex.s. c 208 § 2; 1970 ex.s. c 13 § 2. Prior: 1969 ex.s. c 178 § 6; 1969 ex.s. c 136 § 1; 1965 ex.s. c 143 § 3; 1949 c 5 § 3 (adding new section 23-S-3 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-3.]

Effective date—1998 c 126: See note following RCW 66.20.010.

(2004 Ed.)

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.425 Liquor by the drink, spirits, beer, and wine restaurant license—Restaurants not serving the general public.

(1) The board may, in its discretion, issue a spirits, beer, and wine restaurant license to a business which qualifies as a "restaurant" as that term is defined in RCW 66.24.410 in all respects except that the business does not serve the general public but, through membership qualification, selectively restricts admission to the business. For purposes of RCW 66.24.400 and 66.24.420, all licenses issued under this section shall be considered spirits, beer, and wine restaurant licenses and shall be subject to all requirements, fees, and qualifications in this title, or in rules adopted by the board, as are applicable to spirits, beer, and wine restaurant licenses generally except that no service to the general public may be required.

(2) No license shall be issued under this section to a business:

(a) Which shall not have been in continuous operation for at least one year immediately prior to the date of its application; or

(b) Which denies membership or admission to any person because of race, creed, color, national origin, sex, or the presence of any sensory, mental, or physical handicap.

(3) The board may issue an endorsement to the spirits, beer, and wine restaurant license issued under this section that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement is an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours before the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine restaurant license that allows the holder of a spirits, beer, and wine restaurant license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this chapter [section] is one hundred twenty dollars. [2001 c 199 § 3; 2001 c 198 § 1; 1998 c 126 § 7; 1997 c 321 § 28; 1982 c 85 § 3.]

Reviser's note: This section was amended by 2001 c 198 § 1 and by 2001 c 199 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.440 Liquor by the drink, spirits, beer, and wine restaurant, spirits, beer, and wine private club, and sports entertainment facility license—Purchase of liquor

[Title 66 RCW—page 41]

by licensees—Discount. Each spirits, beer, and wine restaurant, spirits, beer, and wine private club, and sports entertainment facility licensee shall be entitled to purchase any spirituous liquor items salable under such license from the board at a discount of not less than fifteen percent from the retail price fixed by the board, together with all taxes. [1998 c 126 § 8; 1997 c 321 § 29; 1949 c 5 § 5 (adding new section 23-S-5 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-5.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—1949 c 5: See RCW 66.98.080.

66.24.450 Liquor by the drink, spirits, beer, and wine private club license—Qualifications—Fee. (1) No club shall be entitled to a spirits, beer, and wine private club license:

(a) Unless such private club has been in continuous operation for at least one year immediately prior to the date of its application for such license;

(b) Unless the private club premises be constructed and equipped, conducted, managed, and operated to the satisfaction of the board and in accordance with this title and the regulations made thereunder;

(c) Unless the board shall have determined pursuant to any regulations made by it with respect to private clubs, that such private club is a bona fide private club; it being the intent of this section that license shall not be granted to a club which is, or has been, primarily formed or activated to obtain a license to sell liquor, but solely to a bona fide private club, where the sale of liquor is incidental to the main purposes of the spirits, beer, and wine private club, as defined in *RCW 66.04.010(7).

(2) The annual fee for a spirits, beer, and wine private club license, whether inside or outside of an incorporated city or town, is seven hundred twenty dollars per year.

(3) The board may issue an endorsement to the spirits, beer, and wine private club license that allows up to forty nonclub, member-sponsored events using club liquor. Visitors and guests may attend these events only by invitation of the sponsoring member or members. These events may not be open to the general public. The fee for the endorsement shall be an annual fee of nine hundred dollars. Upon the board's request, the holder of the endorsement must provide the board or the board's designee with the following information at least seventy-two hours prior to the event: The date, time, and location of the event; the name of the sponsor of the event; and a brief description of the purpose of the event.

(4) The board may issue an endorsement to the spirits, beer, and wine private club license that allows the holder of a spirits, beer, and wine private club license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this chapter [section] is one hundred twenty dollars. [2001 c 199 § 1; 1999 c 281 § 5. Prior: 1998 c 126 § 9; 1998 c 114 § 1; 1997 c 321 § 30; 1981 1st ex.s. c 5 § 18; 1949 c 5 § 6; 1937 c 217 § 1 (23T) (adding new section 23-T to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23T.]

***Reviser's note:** RCW 66.04.010 was amended by 2004 c 160 § 1, changing subsection (7) to subsection (8), effective January 1, 2005.

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1998 c 114: "This act takes effect July 1, 1998." [1998 c 114 § 3.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Severability—1949 c 5: See RCW 66.98.080.

66.24.452 Private club beer and wine license—Fee.

(1) There shall be a beer and wine license to be issued to a private club for sale of beer, strong beer, and wine for on-premises consumption.

(2) Beer, strong beer, and wine sold by the licensee may be on tap or by open bottles or cans.

(3) The fee for the private club beer and wine license is one hundred eighty dollars per year.

(4) The board may issue an endorsement to the private club beer and wine license that allows the holder of a private club beer and wine license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits, strong beer, and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars. [2003 c 167 § 10; 2001 c 199 § 2; 1997 c 321 § 31.]

Effective date—2003 c 167: See note following RCW 66.24.244.

Report to legislature—2003 c 167: See note following RCW 66.24.250.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.455 Bowling establishments—Extension of premises to concourse and lane areas—Beer and/or wine restaurant, tavern, snack bar, spirits, beer, and wine restaurant, spirits, beer, and wine private club, or beer and wine private club licensees. Subject to approval by the board, holders of beer and/or wine restaurant, tavern, snack bar, spirits, beer, and wine restaurant, spirits, beer, and wine private club, or beer and wine private club licenses may extend their premises for the sale, service, and consumption of liquor authorized under their respective licenses to the concourse or lane areas in a bowling establishment where the concourse or lane areas are adjacent to the food preparation service facility. [1998 c 126 § 10; 1997 c 321 § 32; 1994 c 201 § 2; 1974 ex.s. c 65 § 1.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.480 Bottle clubs—License required. "Bottle club" means a club or association operating for profit or otherwise and conducting or maintaining premises in which the members or other persons may resort for the primary or incidental purpose of keeping or consuming liquor on the premises.

Except as permitted under a license issued by the Washington state liquor control board, it is unlawful for any person to conduct or maintain by himself or by associating with others, or to in any manner aid, assist, or abet in conducting or maintaining a bottle club. [1951 c 120 § 2 (adding a new section to Title 66 RCW).]

Reviser's note: As to the constitutionality of this section, see *Derby Club v. Beckett*, 41 Wn. 2d 869 (1953).

66.24.481 Public place or club—License or permit required—Penalty. No public place or club, or agent, servant or employee thereof, shall keep or allow to be kept, either by itself, its agent, servant or employee, or any other person, any liquor in any place maintained or conducted by such public place or club, nor shall it permit the drinking of any liquor in any such place, unless the sale of liquor in said place is authorized by virtue of a valid and subsisting license issued by the Washington state liquor control board, or the consumption of liquor in said place is authorized by a special banquet permit issued by said board. Every person who violates any provision of this section shall be guilty of a gross misdemeanor.

"Public place," for purposes of this section only, shall mean in addition to the definition set forth in *RCW 66.04.010(24), any place to which admission is charged or in which any pecuniary gain is realized by the owner or operator of such place in selling or vending food or soft drinks. [1969 ex.s. c 250 § 2; 1953 c 141 § 1 (adding a new section to chapter 66.24 RCW).]

***Reviser's note:** RCW 66.04.010 was amended by 1980 c 140 § 3, changing subsection (24) to subsection (23). RCW 66.04.010 was subsequently amended by 1997 c 321 § 37, changing subsection (23) to subsection (27). RCW 66.04.010 was subsequently amended by 2000 c 142 § 1, changing subsection (27) to subsection (28). RCW 66.04.010 was subsequently amended by 2004 c 160 § 1, changing subsection (28) to subsection (29), effective January 1, 2005.

66.24.495 Nonprofit arts organization license—Fee.

(1) There shall be a license to be designated as a nonprofit arts organization license. This shall be a special license to be issued to any nonprofit arts organization which sponsors and presents productions or performances of an artistic or cultural nature in a specific theater or other appropriate designated indoor premises approved by the board. The license shall permit the licensee to sell liquor to patrons of productions or performances for consumption on the premises at these events. The fee for the license shall be two hundred fifty dollars per annum.

(2) For the purposes of this section, the term "nonprofit arts organization" means an organization which is organized and operated for the purpose of providing artistic or cultural exhibitions, presentations, or performances or cultural or art education programs, as defined in subsection (3) of this section, for viewing or attendance by the general public. The organization must be a not-for-profit corporation under chapter 24.03 RCW and managed by a governing board of not less than eight individuals none of whom is a paid employee of the organization or by a corporation sole under chapter 24.12 RCW. In addition, the corporation must satisfy the following conditions:

(a) No part of its income may be paid directly or indirectly to its members, stockholders, officers, directors, or trustees except in the form of services rendered by the corporation in accordance with its purposes and bylaws;

(b) Salary or compensation paid to its officers and executives must be only for actual services rendered, and at levels comparable to the salary or compensation of like positions within the state;

(2004 Ed.)

(c) Assets of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of any member or individual except a nonprofit organization, association, or corporation;

(d) The corporation must be duly licensed or certified when licensing or certification is required by law or regulation;

(e) The proceeds derived from sales of liquor, except for reasonable operating costs, must be used in furtherance of the purposes of the organization;

(f) Services must be available regardless of race, color, national origin, or ancestry; and

(g) The liquor control board shall have access to its books in order to determine whether the corporation is entitled to a license.

(3) The term "artistic or cultural exhibitions, presentations, or performances or cultural or art education programs" includes and is limited to:

(a) An exhibition or presentation of works of art or objects of cultural or historical significance, such as those commonly displayed in art or history museums;

(b) A musical or dramatic performance or series of performances; or

(c) An educational seminar or program, or series of such programs, offered by the organization to the general public on an artistic, cultural, or historical subject. [1997 c 321 § 33; 1981 c 142 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.520 Grower's license—Fee. There shall be a grower's license to sell wine made from grapes or other agricultural products owned at the time of vinification by the licensee in bulk to holders of domestic wineries', distillers', or manufacturers' licenses or for export. The wine shall be made upon the premises of a domestic winery licensee and is referred to in this section as grower's wine. A grower's license authorizes the agricultural product grower to contract for the manufacturing of wine from the grower's own agricultural product, store wine in bulk made from agricultural products produced by the holder of this license, and to sell wine in bulk made from the grower's own agricultural products to a winery or distillery in the state of Washington or to export in bulk for sale out-of-state. The annual fee for a grower's license shall be seventy-five dollars. For the purpose of chapter 66.28 RCW, a grower licensee shall be deemed a manufacturer. [1986 c 214 § 1.]

66.24.530 Duty free exporter's license—Class S—Fee. (1) There shall be a license to be designated as a class S license to qualified duty free exporters authorizing such exporters to sell beer and wine to vessels for consumption outside the state of Washington.

(2) To qualify for a license under subsection (1) of this section, the exporter shall have:

(a) An importer's basic permit issued by the United States bureau of alcohol, tobacco, and firearms and a customs house license in conjunction with a common carriers bond;

(b) A customs bonded warehouse, or be able to operate from a foreign trade zone; and

(c) A notarized signed statement from the purchaser stating that the product is for consumption outside the state of Washington.

(3) The license for qualified duty free exporters shall authorize the duty free exporter to purchase from a brewery, winery, beer wholesaler, wine wholesaler, beer importer, or wine importer licensed by the state of Washington.

(4) Beer and/or wine sold and delivered in this state to duty free exporters for use under this section shall be considered exported from the state.

(5) The fee for this license shall be one hundred dollars per annum. [1987 c 386 § 1.]

66.24.540 Motel license—Fee. There shall be a retailer's license to be designated as a motel license. The motel license may be issued to a motel regardless of whether it holds any other class of license under this title. No license may be issued to a motel offering rooms to its guests on an hourly basis. The license authorizes the licensee to:

(1) Sell, at retail, in locked honor bars, spirits in individual bottles not to exceed fifty milliliters, beer in individual cans or bottles not to exceed twelve ounces, and wine in individual bottles not to exceed one hundred eighty-seven milliliters, to registered guests of the motel for consumption in guest rooms.

(a) Each honor bar must also contain snack foods. No more than one-half of the guest rooms may have honor bars.

(b) All spirits to be sold under the license must be purchased from the board.

(c) The licensee shall require proof of age from the guest renting a guest room and requesting the use of an honor bar. The guest shall also execute an affidavit verifying that no one under twenty-one years of age shall have access to the spirits, beer, and wine in the honor bar.

(2) Provide without additional charge, to overnight guests of the motel, beer and wine by the individual serving for on-premises consumption at a specified regular date, time, and place as may be fixed by the board. Self-service by attendees is prohibited. All beer and wine service must be done by an alcohol server as defined in RCW 66.20.300 and comply with RCW 66.20.310.

The annual fee for a motel license is five hundred dollars.

"Motel" as used in this section means a transient accommodation licensed under chapter 70.62 RCW.

As used in this section, "spirits," "beer," and "wine" have the meanings defined in RCW 66.04.010. [1999 c 129 § 1; 1997 c 321 § 34; 1993 c 511 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.550 Beer and wine gift delivery license—Fee—Limitations. There shall be a beer and wine retailer's license to be designated as a beer and wine gift delivery license to solicit, take orders for, sell, and deliver beer and/or wine in bottles and original packages to persons other than the person placing the order. A beer and wine gift delivery license may be issued only to a business solely engaged in the sale or sale and delivery of gifts at retail which holds no other class of

license under this title or to a person in the business of selling flowers or floral arrangements at retail. No minimum beer and/or wine inventory requirement shall apply to holders of beer and wine gift delivery licenses. The fee for this license is seventy-five dollars per year. Delivery of beer and/or wine under a beer and wine gift delivery license shall be made in accordance with all applicable provisions of this title and the rules of the board, and no beer and/or wine so delivered shall be opened on any premises licensed under this title. A beer and wine gift delivery license does not authorize door-to-door solicitation of gift wine delivery orders. Deliveries of beer and/or wine under a beer and wine gift delivery license shall be made only in conjunction with gifts or flowers. [1997 c 321 § 35; 1989 c 149 § 1; 1986 c 40 § 1; 1982 c 85 § 10.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.570 Sports/entertainment facility license—Fee—Caterer's endorsement. (1) There is a license for sports entertainment facilities to be designated as a sports/entertainment facility license to sell beer, wine, and spirits at retail, for consumption upon the premises only, the license to be issued to the entity providing food and beverage service at a sports entertainment facility as defined in this section. The cost of the license is two thousand five hundred dollars per annum.

(2) For purposes of this section, a sports entertainment facility includes a publicly or privately owned arena, coliseum, stadium, or facility where sporting events are presented for a price of admission. The facility does not have to be exclusively used for sporting events.

(3) The board may impose reasonable requirements upon a licensee under this section, such as requirements for the availability of food and victuals including but not limited to hamburgers, sandwiches, salads, or other snack food. The board may also restrict the type of events at a sports entertainment facility at which beer, wine, and spirits may be served. When imposing conditions for a licensee, the board must consider the seating accommodations, eating facilities, and circulation patterns in such a facility, and other amenities available at a sports entertainment facility.

(4)(a) The board may issue a caterer's endorsement to the license under this section to allow the licensee to remove from the liquor stocks at the licensed premises, for use as liquor for sale and service at event locations at a specified date and place not currently licensed by the board. If the event is open to the public, it must be sponsored by a society or organization as defined by RCW 66.24.375. If attendance at the event is limited to members or invited guests of the sponsoring individual, society, or organization, the requirement that the sponsor must be a society or organization as defined by RCW 66.24.375 is waived. Cost of the endorsement is three hundred fifty dollars.

(b) The holder of this license with catering endorsement shall, if requested by the board, notify the board or its designee of the date, time, place, and location of any catered event. Upon request, the licensee shall provide to the board all necessary or requested information concerning the society or organization that will be holding the function at which the endorsed license will be utilized.

(5) The board may issue an endorsement to the beer, wine, and spirits sports/entertainment facility license that allows the holder of a beer, wine, and spirits sports/entertainment facility license to sell for off-premises consumption wine vinted and bottled in the state of Washington and carrying a label exclusive to the license holder selling the wine. Spirits and beer may not be sold for off-premises consumption under this section. The annual fee for the endorsement under this section is one hundred twenty dollars. [2003 c 345 § 3; 2001 c 199 § 5; 1997 c 321 § 36; 1996 c 218 § 1.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.24.580 Public house license—Fees—Limitations.

(1) A public house license allows the licensee:

(a) To annually manufacture no less than two hundred fifty gallons and no more than two thousand four hundred barrels of beer on the licensed premises;

(b) To sell product, that is produced on the licensed premises, at retail on the licensed premises for consumption on the licensed premises;

(c) To sell beer or wine not of its own manufacture for consumption on the licensed premises if the beer or wine has been purchased from a licensed beer or wine wholesaler;

(d) To hold other classes of retail licenses at other locations without being considered in violation of RCW 66.28.010;

(e) To apply for and, if qualified and upon the payment of the appropriate fee, be licensed as a spirits, beer, and wine restaurant to do business at the same location. This fee is in addition to the fee charged for the basic public house license.

(2) While the holder of a public house license is not to be considered in violation of the prohibitions of ownership or interest in a retail license in RCW 66.28.010, the remainder of RCW 66.28.010 applies to such licensees.

(3) A public house licensee must pay all applicable taxes on production as are required by law, and all appropriate taxes must be paid for any product sold at retail on the licensed premises.

(4) The employees of the licensee must comply with the provisions of mandatory server training in RCW 66.20.300 through 66.20.350.

(5) The holder of a public house license may not hold a wholesaler's or importer's license, act as the agent of another manufacturer, wholesaler, or importer, or hold a brewery or winery license.

(6) The annual license fee for a public house is one thousand dollars.

(7) The holder of a public house license may hold other licenses at other locations if the locations are approved by the board.

(8) Existing holders of annual retail liquor licenses may apply for and, if qualified, be granted a public house license at one or more of their existing liquor licensed locations without discontinuing business during the application or construction stages. [1999 c 281 § 6; 1996 c 224 § 2.]

Intent—1996 c 224: "It is the intent of the legislature that holders of annual on-premises retail liquor licenses be allowed to operate manufacturing facilities on those premises. This privilege is viewed as a means of enhancing and meeting the needs of the licensees' patrons without being in violation of the tied-house statute prohibitions of RCW 66.28.010. Furthermore, it is the intention of the legislature that this type of business not be viewed as primarily a manufacturing facility. Rather, the public house lic-

(2004 Ed.)

ensee shall be viewed as an annual retail licensee who is making malt liquor for on-premises consumption by the patrons of the licensed premises." [1996 c 224 § 1.]

Chapter 66.28 RCW

MISCELLANEOUS REGULATORY PROVISIONS

Sections

| | |
|-----------|---|
| 66.28.010 | Manufacturers, importers, and distributors barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions. |
| 66.28.030 | Responsibility of brewer, domestic brewers and microbrewer, vintner, manufacturer holding certificate approval and importer for conduct of distributor—Penalties. |
| 66.28.040 | Giving away of liquor prohibited—Exceptions. |
| 66.28.042 | Providing food and beverages for business meetings permitted. |
| 66.28.043 | Providing food, beverages, transportation, and admission to events permitted. |
| 66.28.045 | Furnishing samples to board—Standards for accountability—Regulations. |
| 66.28.050 | Solicitation of orders prohibited. |
| 66.28.060 | Distillers to make monthly report—No sale except to board. |
| 66.28.070 | Restrictions on purchases of beer or wine by retail licensee, brewer, winery, wholesaler, special occasion licensees. |
| 66.28.080 | Permit for music and dancing upon licensed premises. |
| 66.28.090 | Licensed premises or banquet permit premises open to inspection—Failure to allow, violation. |
| 66.28.100 | Spirits to be labeled—Contents. |
| 66.28.110 | Wine to be labeled—Contents. |
| 66.28.120 | Malt liquor to be labeled—Contents. |
| 66.28.130 | Selling or serving of liquor to or consumption by standing or walking person. |
| 66.28.140 | Removing family beer or wine from home for exhibition or use at wine tastings or competitions—Conditions. |
| 66.28.150 | Breweries, wineries, distilleries, wholesalers, and agents authorized to conduct courses of instruction on beer and wine. |
| 66.28.155 | Breweries, wineries, distilleries, wholesalers, and agents authorized to conduct educational activities on licensed premises of retailer. |
| 66.28.160 | Promotion of liquor at colleges and universities. |
| 66.28.170 | Wine or malt beverage manufacturers—Discrimination in price to purchaser for resale prohibited. |
| 66.28.180 | Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda. |
| 66.28.190 | Sales of nonliquor food and food ingredients. |
| 66.28.200 | Keg registration—Special endorsement for grocery store licensee—Requirements of seller. |
| 66.28.210 | Keg registration—Requirements of purchaser. |
| 66.28.220 | Keg registration—Identification of containers—Rules—Fees—Sale in violation of rules unlawful. |
| 66.28.230 | Keg registration—Furnishing to minors—Penalties. |
| 66.28.240 | Keg registration—State preemption. |
| 66.28.260 | Beer distributors—Restricted transactions. |

Grower licensee deemed a manufacturer: RCW 66.24.520.

Labels, unlawful refilling, etc., of trademarked containers: Chapter 19.76 RCW.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.28.010 Manufacturers, importers, and distributors barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions. (Effective until January 1, 2005.) (1)(a) No manufacturer, importer, or distributor, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a

manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, or distributor own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, or distributor has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, or distributor shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, or distributor as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, or distributor shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, or distributor sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(d) Nothing in this section prohibits retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer. [2004 c 62 § 1; 2002 c 109 § 1; 2000 c 177 § 1. Prior: 1998 c 127 § 1; 1998 c 126 § 11; 1997 c 321 § 46; prior: 1996 c 224 § 3; 1996 c 106 § 1; 1994 c 63 § 1; 1992 c

78 § 1; 1985 c 363 § 1; 1982 c 85 § 7; 1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90; prior: 1909 c 84 § 1.]

Effective date—1998 c 127: "This act takes effect July 1, 1998." [1998 c 127 § 2.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Intent—1996 c 224: See note following RCW 66.24.580.

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

66.28.010 Manufacturers, importers, distributors, and authorized representatives barred from interest in retail business or location—Advances prohibited—"Financial interest" defined—Exceptions. (Effective January 1, 2005.) (1)(a) No manufacturer, importer, distributor, or authorized representative, or person financially interested, directly or indirectly, in such business; whether resident or nonresident, shall have any financial interest, direct or indirect, in any licensed retail business, unless the retail business is owned by a corporation in which a manufacturer or importer has no direct stock ownership and there are no interlocking officers and directors, the retail license is held by a corporation that is not owned directly or indirectly by a manufacturer or importer, the sales of liquor are incidental to the primary activity of operating the property as a hotel, alcoholic beverages produced by the manufacturer or importer or their subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation or the retail licensee; nor shall any manufacturer, importer, distributor, or authorized representative own any of the property upon which such licensed persons conduct their business; nor shall any such licensed person, under any arrangement whatsoever, conduct his or her business upon property in which any manufacturer, importer, distributor, or authorized representative has any interest unless title to that property is owned by a corporation in which a manufacturer has no direct stock ownership and there are no interlocking officers or directors, the retail license is held by a corporation that is not owned directly or indirectly by the manufacturer, the sales of liquor are incidental to the primary activity of operating the property either as a hotel or as an amphitheater offering live musical and similar live entertainment activities to the public, alcoholic beverages produced by the manufacturer or any of its subsidiaries are not sold at the licensed premises, and the board reviews the ownership and proposed method of operation of all involved entities and determines that there will not be an unacceptable level of control or undue influence over the operation of the retail licensee. Except as provided in subsection (3) of this section, no manufacturer, importer, distributor, or authorized representative shall advance moneys or moneys' worth to a licensed person under an arrangement, nor shall such licensed person receive, under an arrangement, an advance of moneys or moneys' worth. "Person" as used in this section only shall

not include those state or federally chartered banks, state or federally chartered savings and loan associations, state or federally chartered mutual savings banks, or institutional investors which are not controlled directly or indirectly by a manufacturer, importer, distributor, or authorized representative as long as the bank, savings and loan association, or institutional investor does not influence or attempt to influence the purchasing practices of the retailer with respect to alcoholic beverages. Except as otherwise provided in this section, no manufacturer, importer, distributor, or authorized representative shall be eligible to receive or hold a retail license under this title, nor shall such manufacturer, importer, distributor, or authorized representative sell at retail any liquor as herein defined. A corporation granted an exemption under this subsection may use debt instruments issued in connection with financing construction or operations of its facilities.

(b) Nothing in this section shall prohibit a licensed domestic brewery or microbrewery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the brewery premises and nothing in this section shall prohibit a domestic winery from being licensed as a retailer pursuant to chapter 66.24 RCW for the purpose of selling beer or wine at retail on the winery premises. Such beer and wine so sold at retail shall be subject to the taxes imposed by RCW 66.24.290 and 66.24.210 and to reporting and bonding requirements as prescribed by regulations adopted by the board pursuant to chapter 34.05 RCW, and beer and wine that is not produced by the brewery or winery shall be purchased from a licensed beer or wine distributor.

(c) Nothing in this section shall prohibit a licensed distiller, domestic brewery, microbrewery, domestic winery, or a lessee of a licensed domestic brewer, microbrewery, or domestic winery, from being licensed as a spirits, beer, and wine restaurant pursuant to chapter 66.24 RCW for the purpose of selling liquor at a spirits, beer, and wine restaurant premises on the property on which the primary manufacturing facility of the licensed distiller, domestic brewer, microbrewery, or domestic winery is located or on contiguous property owned or leased by the licensed distiller, domestic brewer, microbrewery, or domestic winery as prescribed by rules adopted by the board pursuant to chapter 34.05 RCW.

(d) Nothing in this section prohibits retail licensees with a caterer's endorsement issued under RCW 66.24.320 or 66.24.420 from operating on a domestic winery premises.

(2) Financial interest, direct or indirect, as used in this section, shall include any interest, whether by stock ownership, mortgage, lien, or through interlocking directors, or otherwise. Pursuant to rules promulgated by the board in accordance with chapter 34.05 RCW manufacturers, distributors, and importers may perform, and retailers may accept the service of building, rotating and restocking case displays and stock room inventories; rotating and rearranging can and bottle displays of their own products; provide point of sale material and brand signs; price case goods of their own brands; and perform such similar normal business services as the board may by regulation prescribe.

(3)(a) This section does not prohibit a manufacturer, importer, or distributor from providing services to a special occasion licensee for: (i) Installation of draft beer dispensing

equipment or advertising, (ii) advertising, pouring, or dispensing of beer or wine at a beer or wine tasting exhibition or judging event, or (iii) a special occasion licensee from receiving any such services as may be provided by a manufacturer, importer, or distributor. Nothing in this section shall prohibit a retail licensee, or any person financially interested, directly or indirectly, in such a retail licensee from having a financial interest, direct or indirect, in a business which provides, for a compensation commensurate in value to the services provided, bottling, canning or other services to a manufacturer, so long as the retail licensee or person interested therein has no direct financial interest in or control of said manufacturer.

(b) A person holding contractual rights to payment from selling a liquor distributor's business and transferring the license shall not be deemed to have a financial interest under this section if the person (i) lacks any ownership in or control of the distributor, (ii) is not employed by the distributor, and (iii) does not influence or attempt to influence liquor purchases by retail liquor licensees from the distributor.

(c) The board shall adopt such rules as are deemed necessary to carry out the purposes and provisions of subsection (3)(a) of this section in accordance with the administrative procedure act, chapter 34.05 RCW.

(4) A license issued under RCW 66.24.395 does not constitute a retail license for the purposes of this section.

(5) A public house license issued under RCW 66.24.580 does not violate the provisions of this section as to a retailer having an interest directly or indirectly in a liquor-licensed manufacturer. [2004 c 160 § 9; 2004 c 62 § 1; 2002 c 109 § 1; 2000 c 177 § 1. Prior: 1998 c 127 § 1; 1998 c 126 § 11; 1997 c 321 § 46; prior: 1996 c 224 § 3; 1996 c 106 § 1; 1994 c 63 § 1; 1992 c 78 § 1; 1985 c 363 § 1; 1982 c 85 § 7; 1977 ex.s. c 219 § 2; 1975-'76 2nd ex.s. c 74 § 3; 1975 1st ex.s. c 173 § 6; 1937 c 217 § 6; 1935 c 174 § 14; 1933 ex.s. c 62 § 90; RRS § 7306-90; prior: 1909 c 84 § 1.]

Reviser's note: This section was amended by 2004 c 62 § 1 and by 2004 c 160 § 9, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1998 c 127: "This act takes effect July 1, 1998." [1998 c 127 § 2.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Intent—1996 c 224: See note following RCW 66.24.580.

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Giving away of liquor prohibited—Exceptions: RCW 66.28.040.

66.28.030 Responsibility of brewer, domestic brewers and microbrewer, vintner, manufacturer holding certificate approval and importer for conduct of distributor—Penalties. (*Effective until January 1, 2005.*) Every licensed brewer, domestic brewer and microbrewer, domestic winery, manufacturer holding a certificate of approval, licensed wine importer, and licensed beer importer shall be responsible for the conduct of any licensed beer or wine distributor in selling, or contracting to sell, to retail licensees, beer or wine manufactured by such brewer, domestic brewer

and microbrewer, domestic winery, manufacturer holding a certificate of approval, or imported by such beer or wine importer. Where the board finds that any licensed beer or wine distributor has violated any of the provisions of this title or of the regulations of the board in selling or contracting to sell beer or wine to retail licensees, the board may, in addition to any punishment inflicted or imposed upon such distributor, prohibit the sale of the brand or brands of beer or wine involved in such violation to any or all retail licensees within the trade territory usually served by such distributor for such period of time as the board may fix, irrespective of whether the brewer manufacturing such beer or the beer importer importing such beer or the domestic winery manufacturing such wine or the wine importer importing such wine or the certificate of approval holder manufacturing such beer or wine actually participated in such violation. [1997 c 321 § 47; 1975 1st ex.s. c 173 § 8; 1969 ex.s. c 21 § 6; 1939 c 172 § 8 (adding new section 27-D to 1933 ex.s. c 62); RRS § 7306-27D.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.030 Responsibility of breweries, microbreweries, wineries, certificate of approval holders, and importers for conduct of distributors—Penalties. (*Effective January 1, 2005.*) Every domestic brewery and microbrewery, domestic winery, certificate of approval holder, licensed wine importer, and licensed beer importer shall be responsible for the conduct of any licensed beer or wine distributor in selling, or contracting to sell, to retail licensees, beer or wine manufactured by such domestic brewery, microbrewery, domestic winery, manufacturer holding a certificate of approval, sold by an authorized representative holding a certificate of approval, or imported by such beer or wine importer. Where the board finds that any licensed beer or wine distributor has violated any of the provisions of this title or of the regulations of the board in selling or contracting to sell beer or wine to retail licensees, the board may, in addition to any punishment inflicted or imposed upon such distributor, prohibit the sale of the brand or brands of beer or wine involved in such violation to any or all retail licensees within the trade territory usually served by such distributor for such period of time as the board may fix, irrespective of whether the brewer manufacturing such beer or the beer importer importing such beer or the domestic winery manufacturing such wine or the wine importer importing such wine or the certificate of approval holder manufacturing such beer or wine or acting as authorized representative actually participated in such violation. [2004 c 160 § 10; 1997 c 321 § 47; 1975 1st ex.s. c 173 § 8; 1969 ex.s. c 21 § 6; 1939 c 172 § 8 (adding new section 27-D to 1933 ex.s. c 62); RRS § 7306-27D.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.040 Giving away of liquor prohibited—Exceptions. (*Effective until January 1, 2005.*) Except as permitted by the board under RCW 66.20.010, no brewery, distributor, distiller, winery, importer, rectifier, or other manufacturer of liquor shall, within the state, give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a brewery, distributor, winery, distiller, or importer from furnishing samples of beer, wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a brewery, winery, distillery, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150 and 66.28.155; nothing in this section shall prevent a winery or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a brewer from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; and nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises. [2000 c 179 § 1. Prior: 1998 c 256 § 1; 1998 c 126 § 12; 1997 c 39 § 1; 1987 c 452 § 15; 1983 c 13 § 2; 1983 c 3 § 165; 1982 1st ex.s. c 26 § 2; 1981 c 182 § 2; 1975 1st ex.s. c 173 § 10; 1969 ex.s. c 21 § 7; 1935 c 174 § 4; 1933 ex.s. c 62 § 30; RRS § 7306-30.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.040 Giving away of liquor prohibited—Exceptions. (*Effective January 1, 2005.*) Except as permitted by the board under RCW 66.20.010, no domestic brewery, microbrewery, distributor, distiller, domestic winery, importer, rectifier, certificate of approval holder, or other manufacturer of liquor shall, within the state of Washington, give to any person any liquor; but nothing in this section nor in RCW 66.28.010 shall prevent a domestic brewery, microbrewery, distributor, domestic winery, distiller, certificate of approval holder, or importer from furnishing samples of beer,

(2004 Ed.)

wine, or spirituous liquor to authorized licensees for the purpose of negotiating a sale, in accordance with regulations adopted by the liquor control board, provided that the samples are subject to taxes imposed by RCW 66.24.290 and 66.24.210, and in the case of spirituous liquor, any product used for samples must be purchased at retail from the board; nothing in this section shall prevent the furnishing of samples of liquor to the board for the purpose of negotiating the sale of liquor to the state liquor control board; nothing in this section shall prevent a domestic brewery, microbrewery, domestic winery, distillery, certificate of approval holder, or distributor from furnishing beer, wine, or spirituous liquor for instructional purposes under RCW 66.28.150; nothing in this section shall prevent a domestic winery, certificate of approval holder, or distributor from furnishing wine without charge, subject to the taxes imposed by RCW 66.24.210, to a not-for-profit group organized and operated solely for the purpose of enology or the study of viticulture which has been in existence for at least six months and that uses wine so furnished solely for such educational purposes or a domestic winery, or an out-of-state certificate of approval holder, from furnishing wine without charge or a domestic brewery, or an out-of-state certificate of approval holder, from furnishing beer without charge, subject to the taxes imposed by RCW 66.24.210 or 66.24.290, to a nonprofit charitable corporation or association exempt from taxation under section 501(c)(3) of the internal revenue code of 1986 (26 U.S.C. Sec. 501(c)(3)) for use consistent with the purpose or purposes entitling it to such exemption; nothing in this section shall prevent a domestic brewery or microbrewery from serving beer without charge, on the brewery premises; nothing in this section shall prevent donations of wine for the purposes of RCW 66.12.180; and nothing in this section shall prevent a domestic winery from serving wine without charge, on the winery premises. [2004 c 160 § 11; 2000 c 179 § 1. Prior: 1998 c 256 § 1; 1998 c 126 § 12; 1997 c 39 § 1; 1987 c 452 § 15; 1983 c 13 § 2; 1983 c 3 § 165; 1982 1st ex.s. c 26 § 2; 1981 c 182 § 2; 1975 1st ex.s. c 173 § 10; 1969 ex.s. c 21 § 7; 1935 c 174 § 4; 1933 ex.s. c 62 § 30; RRS § 7306-30.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1998 c 126: See note following RCW 66.20.010.

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

Effective date—1969 ex.s. c 21: See note following RCW 66.04.010.

66.28.042 Providing food and beverages for business meetings permitted. (*Effective until January 1, 2005.*) A liquor manufacturer, importer, or wholesaler may provide to licensed retailers and their employees food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and may provide local ground transportation to and from such meetings. The value of the food, beverage, or transportation provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 66.28.040. The board may adopt rules for the implementation of this section. [1990 c 125 § 1.]

66.28.042 Providing food and beverages for business meetings permitted. (*Effective January 1, 2005.*) A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may provide to licensed retailers and their employees food and beverages for consumption at a meeting at which the primary purpose is the discussion of business, and may provide local ground transportation to and from such meetings. The value of the food, beverage, or transportation provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 68.28.040. The board may adopt rules for the implementation of this section. [2004 c 160 § 12; 1990 c 125 § 1.]

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.043 Providing food, beverages, transportation, and admission to events permitted. (*Effective until January 1, 2005.*) A liquor manufacturer, importer, or wholesaler may provide to licensed retailers and their employees tickets or admission fees for athletic events or other forms of entertainment occurring within the state of Washington, if the manufacturer, importer, wholesaler, or any of their employees accompanies the licensed retailer or its employees to the event. A liquor manufacturer, importer, or wholesaler may also provide to licensed retailers and their employees food and beverages for consumption at such events, and local ground transportation to and from activities allowed under this section. The value of the food, beverage, transportation, or admission to events provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 68.28.040. The board may adopt rules for the implementation of this section. [1990 c 125 § 2.]

66.28.043 Providing food, beverages, transportation, and admission to events permitted. (*Effective January 1, 2005.*) A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may provide to licensed retailers and their employees tickets or admission fees for athletic events or other forms of entertainment occurring within the state of Washington, if the manufacturer, importer, distributor, authorized representative holding a certificate of approval, or any of their employees accompanies the licensed retailer or its employees to the event. A liquor manufacturer, importer, authorized representative holding a certificate of approval, or distributor may also provide to licensed retailers and their employees food and beverages for consumption at such events, and local ground transportation to and from activities allowed under this section. The value of the food, beverage, transportation, or admission to events provided under this section shall not be considered the advancement of moneys or moneys' worth within the meaning of RCW 66.28.010, nor shall it be considered the giving away of liquor within the meaning of RCW 68.28.040. The board may adopt rules for the implementation of this section. [2004 c 160 § 13; 1990 c 125 § 2.]

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.045 Furnishing samples to board—Standards for accountability—Regulations. The legislature finds the furnishing of samples of liquor to the state liquor control board is an integral and essential part of the operation of the state liquor business. The legislature further finds that it is necessary to establish adequate standards for the accountability of the receipt, use and disposition of liquor samples. The board shall adopt appropriate regulations pursuant to chapter 34.05 RCW for the purpose of carrying out the provisions of this section. [1975 1st ex.s. c 173 § 9.]

Severability—Effective date—1975 1st ex.s. c 173: See notes following RCW 66.08.050.

66.28.050 Solicitation of orders prohibited. No person shall canvass for, solicit, receive, or take orders for the purchase or sale of any liquor, or act as representative for the purchase or sale of liquor except as authorized by RCW 66.24.310 or by RCW 66.24.550. [1997 c 321 § 49; 1982 c 85 § 11; 1975-'76 2nd ex.s. c 74 § 2; 1969 ex.s. c 21 § 8; 1937 c 217 § 4; 1933 ex.s. c 62 § 42; RRS § 7306-42.]

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective date—1975-'76 2nd ex.s. c 74: See note following RCW 66.24.310.

Effective date—1969 ex.s. c 21: See note following RCW 64.04.010.

66.28.060 Distillers to make monthly report—No sale except to board. Every distillery licensed under this title shall make monthly reports to the board pursuant to the regulations. No such distillery shall make any sale of spirits within the state of Washington except to the board. [1933 ex.s. c 62 § 26; RRS § 7306-26.]

66.28.070 Restrictions on purchases of beer or wine by retail licensee, brewer, winery, wholesaler, special occasion licensees. (1) Except as provided in subsection (2) of this section, it shall be unlawful for any retail beer or wine licensee to purchase beer or wine, except from a duly licensed wholesaler or the board, and it shall be unlawful for any brewer, winery, or beer or wine wholesaler to purchase beer or wine, except from a duly licensed beer or wine wholesaler or importer.

(2) A beer or wine retailer licensee may purchase beer or wine from a government agency which has lawfully seized beer or wine from a licensed beer or wine retailer, or from a board-authorized retailer, or from a licensed retailer which has discontinued business if the wholesaler has refused to accept beer or wine from that retailer for return and refund. Beer and wine purchased under this subsection shall meet the quality standards set by its manufacturer.

(3) Special occasion licensees holding either a *class G or J license may only purchase beer or wine from a beer or wine retailer duly licensed to sell beer or wine for off-premises consumption, the board, or from a duly licensed beer or wine wholesaler. [1994 c 201 § 5; 1994 c 63 § 2; 1987 c 205 § 1; 1937 c 217 § 1(23H) (adding new section 23-H to 1933 ex.s. c 62); RRS § 7306-23H.]

Reviser's note: *(1) "Class G licenses" were redesignated as "special occasion licenses" by 1997 c 321 § 24, effective July 1, 1998. RCW 66.24.500, governing class J licenses, was repealed by 1997 c 321 § 63, effective July 1, 1998. "Class J licenses" were replaced by "special occasion licenses" under RCW 66.24.380.

(2) This section was amended by 1994 c 63 § 2 and by 1994 c 201 § 5,

each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

66.28.080 Permit for music and dancing upon licensed premises. It shall be unlawful for any person, firm or corporation holding any retailer's license to permit or allow upon the premises licensed any music, dancing, or entertainment whatsoever, unless and until permission thereto is specifically granted by appropriate license or permit of the proper authorities of the city or town in which such licensed premises are situated, or the board of county commissioners, if the same be situated outside an incorporated city or town: PROVIDED, That the words "music and entertainment," as herein used, shall not apply to radios or mechanical musical devices. [1969 ex.s. c 178 § 8; 1949 c 5 § 7; 1937 c 217 § 3 (adding new section 27-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-27A.]

Severability—1949 c 5: See RCW 66.98.080.

66.28.090 Licensed premises or banquet permit premises open to inspection—Failure to allow, violation. (1) All licensed premises used in the manufacture, storage, or sale of liquor, or any premises or parts of premises used or in any way connected, physically or otherwise, with the licensed business, and/or any premises where a banquet permit has been granted, shall at all times be open to inspection by any liquor enforcement officer, inspector or peace officer.

(2) Every person, being on any such premises and having charge thereof, who refuses or fails to admit a liquor enforcement officer, inspector or peace officer demanding to enter therein in pursuance of this section in the execution of his/her duty, or who obstructs or attempts to obstruct the entry of such liquor enforcement officer, inspector or officer of the peace, or who refuses to allow a liquor enforcement officer, and/or an inspector to examine the books of the licensee, or who refuses or neglects to make any return required by this title or the regulations, shall be guilty of a violation of this title. [1981 1st ex.s. c 5 § 20; 1935 c 174 § 7; 1933 ex.s. c 62 § 52; RRS § 7306-52.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.28.100 Spirits to be labeled—Contents. Every person manufacturing spirits as defined in this title shall put upon all packages containing spirits so manufactured a distinctive label, showing the nature of the contents, the name of the person by whom the spirits were manufactured, the place where the spirits were manufactured, and showing the alcoholic content of such spirits. For the purpose of this section the contents of packages containing spirits shall be shown by the use of the words "whiskey", "rum", "brandy", and the like, on the outside of such packages. [1933 ex.s. c 62 § 46; RRS § 7306-46.]

66.28.110 Wine to be labeled—Contents. Every person producing, manufacturing, bottling or distributing wine shall put upon all packages a distinctive label such as will provide the consumer with adequate information as to the identity and quality of the product, the alcoholic content thereof, the net contents of the package, the name of the pro-

(2004 Ed.)

ducer, manufacturer or bottler thereof and such other information as the board may by regulation prescribe. [1939 c 172 § 4; 1933 ex.s. c 62 § 45; RRS § 7306-45.]

66.28.120 Malt liquor to be labeled—Contents. Every person manufacturing or distributing malt liquor for sale within the state shall put upon all packages containing malt liquor so manufactured or distributed a distinctive label showing the nature of the contents, the name of the person by whom the malt liquor was manufactured, and the place where it was manufactured. For the purpose of this section, the contents of packages containing malt liquor shall be shown by the use of the word "beer," "ale," "malt liquor," "lager," "stout," or "porter," on the outside of the packages. [1997 c 100 § 1; 1982 c 39 § 2; 1961 c 36 § 1; 1933 ex.s. c 62 § 44; RRS § 7306-44.]

Severability—1982 c 39: See note following RCW 66.04.010.

66.28.130 Selling or serving of liquor to or consumption by standing or walking person. It shall not be unlawful for a retail licensee whose premises are open to the general public to sell, supply or serve liquor to a person for consumption on the licensed retail premises if said person is standing or walking, nor shall it be unlawful for such licensee to permit any said person so standing or walking to consume liquor on such premises: PROVIDED HOWEVER, That the retail licensee of such a premises may at his discretion, promulgate a house rule that no person shall be served nor allowed to consume liquor unless said person is seated. [1969 ex.s. c 112 § 2.]

66.28.140 Removing family beer or wine from home for exhibition or use at wine tastings or competitions—Conditions. (1) An adult member of a household may remove family beer or wine from the home for exhibition or use at organized beer or wine tastings or competitions, subject to the following conditions:

(a) The quantity removed by a producer for these purposes is limited to a quantity not exceeding one gallon;

(b) Family beer or wine is not removed for sale or for the use of any person other than the producer. This subparagraph does not preclude any necessary tasting of the beer or wine when the exhibition or beer or wine tasting includes judging the merits of the wine by judges who have been selected by the organization sponsoring the affair; and

(c) When the display contest or judging purpose has been served, any remaining portion of the sample is returned to the family premises from which removed.

(2) As used in this section, "family beer or wine" means beer or wine manufactured in the home for consumption therein, and not for sale. [1994 c 201 § 6; 1981 c 255 § 2.]

66.28.150 Breweries, wineries, distilleries, wholesalers, and agents authorized to conduct courses of instruction on beer and wine. (*Effective until January 1, 2005.*) A brewery, winery, distillery, wholesaler, or its licensed agent may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, on the subject of beer, wine, or spirituous liquor, including but not limited to, the history, nature, values, and

characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, or spirituous liquor. The brewery, winery, distillery, wholesaler, or its licensed agent may furnish beer, wine, or spirituous liquor and such other equipment, materials, and utensils as may be required for use in connection with the instruction or courses of instruction. The instruction or courses of instruction may be given at the premises of the brewery, winery, distillery, or wholesaler, at the premises of a retail licensee, or elsewhere. [1997 c 39 § 2; 1982 1st ex.s. c 26 § 1.]

66.28.150 Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct courses of instruction on beer and wine. (*Effective January 1, 2005.*) A domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may, without charge, instruct licensees and their employees, or conduct courses of instruction for licensees and their employees, on the subject of beer, wine, or spirituous liquor, including but not limited to, the history, nature, values, and characteristics of beer, wine, or spirituous liquor, the use of wine lists, and the methods of presenting, serving, storing, and handling beer, wine, or spirituous liquor. The domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may furnish beer, wine, or spirituous liquor and such other equipment, materials, and utensils as may be required for use in connection with the instruction or courses of instruction. The instruction or courses of instruction may be given at the premises of the domestic brewery, microbrewery, domestic winery, distillery, or authorized representative holding a certificate of approval, at the premises of a retail licensee, or elsewhere within the state of Washington. [2004 c 160 § 14; 1997 c 39 § 2; 1982 1st ex.s. c 26 § 1.]

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.155 Breweries, wineries, distilleries, wholesalers, and agents authorized to conduct educational activities on licensed premises of retailer. (*Effective until January 1, 2005.*) A brewery, winery, distillery, wholesaler, or its licensed agent may conduct educational activities or provide product information to the consumer on the licensed premises of a retailer. Information on the subject of wine, beer, or spirituous liquor, including but not limited to, the history, nature, quality, and characteristics of a wine, beer, or spirituous liquor, methods of harvest, production, storage, handling, and distribution of a wine, beer, or spirituous liquor, and the general development of the wine, beer, and spirituous liquor industry may be provided by a brewery, winery, distillery, wholesaler, or its licensed agent to the public on the licensed premises of a retailer. The retailer requesting such activity shall attempt to schedule a series of brewery, winery, or distillery and wholesaler appearances in an effort to equitably represent the industries. Nothing in this section permits a brewery, winery, distillery, wholesaler, or its licensed agent to receive compensation or financial benefit from the educational activities or product information presented on the licensed premises of a retailer. The promotional value of such

educational activities or product information shall not be considered advancement of moneys or of moneys' worth within the meaning of RCW 66.28.010. [1997 c 39 § 3; 1984 c 196 § 1.]

66.28.155 Breweries, microbreweries, wineries, distilleries, distributors, certificate of approval holders, and agents authorized to conduct educational activities on licensed premises of retailer. (*Effective January 1, 2005.*) A domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent may conduct educational activities or provide product information to the consumer on the licensed premises of a retailer. Information on the subject of wine, beer, or spirituous liquor, including but not limited to, the history, nature, quality, and characteristics of a wine, beer, or spirituous liquor, methods of harvest, production, storage, handling, and distribution of a wine, beer, or spirituous liquor, and the general development of the wine, beer, and spirituous liquor industry may be provided by a domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent to the public on the licensed premises of a retailer. The retailer requesting such activity shall attempt to schedule a series of brewery, winery, authorized representative, or distillery and distributor appearances in an effort to equitably represent the industries. Nothing in this section permits a domestic brewery, microbrewery, domestic winery, distillery, distributor, certificate of approval holder, or its licensed agent to receive compensation or financial benefit from the educational activities or product information presented on the licensed premises of a retailer. The promotional value of such educational activities or product information shall not be considered advancement of moneys or of moneys' worth within the meaning of RCW 66.28.010. [2004 c 160 § 15; 1997 c 39 § 3; 1984 c 196 § 1.]

Effective date—2004 c 160: See note following RCW 66.04.010.

66.28.160 Promotion of liquor at colleges and universities. (*Effective until January 1, 2005.*) No liquor manufacturer, importer, wholesaler, retailer, agent thereof, or campus representative of any of the foregoing, may conduct promotional activities for any liquor product on the campus of any college or university nor may any such entities engage in activities that facilitate or promote the consumption of alcoholic beverages by the students of the college or university at which the activity takes place. This section does not prohibit the following:

- (1) The sale of alcoholic beverages, by retail licensees on their licensed premises, to persons of legal age and condition to consume alcoholic beverages;
- (2) Sponsorship of broadcasting services for events on a college or university campus;
- (3) Liquor advertising in campus publications; or
- (4) Financial assistance to an activity and acknowledgment of the source of the assistance, if the assistance, activity, and acknowledgment are each approved by the college or university administration. [1985 c 352 § 20.]

Severability—1985 c 352: See note following RCW 10.05.010.

66.28.160 Promotion of liquor at colleges and universities. (*Effective January 1, 2005.*) No liquor manufacturer, importer, distributor, retailer, authorized representative holding a certificate of approval, agent thereof, or campus representative of any of the foregoing, may conduct promotional activities for any liquor product on the campus of any college or university nor may any such entities engage in activities that facilitate or promote the consumption of alcoholic beverages by the students of the college or university at which the activity takes place. This section does not prohibit the following:

- (1) The sale of alcoholic beverages, by retail licensees on their licensed premises, to persons of legal age and condition to consume alcoholic beverages;
- (2) Sponsorship of broadcasting services for events on a college or university campus;
- (3) Liquor advertising in campus publications; or
- (4) Financial assistance to an activity and acknowledgment of the source of the assistance, if the assistance, activity, and acknowledgment are each approved by the college or university administration. [2004 c 160 § 16; 1985 c 352 § 20.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Severability—1985 c 352: See note following RCW 10.05.010.

66.28.170 Wine or malt beverage manufacturers—Discrimination in price to purchaser for resale prohibited. (*Effective until January 1, 2005.*) It is unlawful for a manufacturer of wine or malt beverages holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a brewery license, or a domestic winery license to discriminate in price in selling to any purchaser for resale in the state. [1997 c 321 § 50; 1985 c 226 § 3.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.170 Wine or malt beverage manufacturers—Discrimination in price to purchaser for resale prohibited. (*Effective January 1, 2005.*) It is unlawful for a manufacturer of wine or malt beverages holding a certificate of approval issued under RCW 66.24.270 or 66.24.206 or the manufacturer's authorized representative, a brewery, or a domestic winery to discriminate in price in selling to any purchaser for resale in the state of Washington. [2004 c 160 § 17; 1997 c 321 § 50; 1985 c 226 § 3.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda. (*Effective until January 1, 2005.*) It is unlawful for a person, firm, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer distributor's license, a domestic brewer's license, a micro-brewer's license, a beer importer's license, a beer distributor's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington to modify any prices without prior notification to and approval of the board.

(2004 Ed.)

(1) Intent. This section is enacted, pursuant to the authority of this state under the twenty-first amendment to the United States Constitution, to promote the public's interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption; to promote the fair and efficient three-tier system of distribution of such beverages; and to confirm existing board rules as the clear expression of state policy to regulate the manner of selling and pricing of wine and malt beverages by licensed suppliers and distributors.

(2) Beer and wine distributor price posting.

(a) Every beer or wine distributor shall file with the board at its office in Olympia a price posting showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine distributor shall be sold to retailers within the state.

(b) Each price posting shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth:

(i) All brands, types, packages, and containers of beer offered for sale by such beer and/or wine distributor;

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine distributor may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer and/or wine distributor and then in effect, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be posted that is below acquisition cost plus ten percent of acquisition cost. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(e) Distributor prices on a "close-out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the distributor who posts such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) The board may reject any price posting that it deems to be in violation of this section or any rule, or portion thereof, or that would tend to disrupt the orderly sale and distribution of beer and wine. Whenever the board rejects any posting, the licensee submitting the posting may be heard by the board and shall have the burden of showing that the posting is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer and wine. If the posting is accepted, it shall become effective at the time fixed by the board. If the posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this section.

(g) Prior to the effective date of the posted prices, all price postings filed as required by this section constitute investigative information and shall not be subject to disclosure, pursuant to RCW 42.17.310(1)(d).

(h) Any beer and/or wine distributor or employee authorized by the distributor-employer may sell beer and/or wine at the distributor's posted prices to any annual or special occasion retail licensee upon presentation to the distributor or employee at the time of purchase of a special permit issued by the board to such licensee.

(i) Every annual or special occasion retail licensee, upon purchasing any beer and/or wine from a distributor, shall immediately cause such beer or wine to be delivered to the licensed premises, and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(ii) Beer and wine sold as provided in this section shall be delivered by the distributor or an authorized employee either to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises. A distributor's prices to retail licensees shall be the same at both such places of delivery.

(3) Beer and wine suppliers' price filings, contracts, and memoranda.

(a) Every brewery and winery offering beer and/or wine for sale within the state shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral agreement which such brewery or winery may have with any beer or wine distributor, which contracts or memoranda shall contain a schedule of prices charged to distributors for all items and all terms of sale, including all regular and special discounts; all advertising, sales and trade allowances, and incentive programs; and all commissions, bonuses or gifts, and any and all other discounts or allowances. Whenever changed or modified, such revised contracts or memoranda shall forthwith be filed with the board as provided for by rule. The provisions of this section also apply to certificate of approval holders, beer and/or wine importers, and beer and/or wine distributors who sell to other beer and/or wine distributors.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery; all additional information required may be filed as a supplement to the price schedule forms.

(b) Prices filed by a brewery or winery shall be uniform prices to all distributors on a statewide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be filed that is below acquisition/production cost plus ten percent of that cost, except that acquisition cost plus ten percent of acquisition cost does not apply to sales of beer or wine between a beer or wine importer who sells beer or wine to another beer or wine importer or to a beer or wine distributor, or to a beer or wine distributor who sells beer or wine to another beer or wine distributor. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition/production cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(c) No brewery, winery, certificate of approval holder, beer or wine importer, or beer or wine distributor may sell or offer to sell any beer or wine to any persons whatsoever in

this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.

(d) No brewery or winery may sell or offer to sell any package or container of beer or wine to any distributor at a price differing from the price for such package or container as shown in the schedule of prices filed by the brewery or winery and then in effect, according to rules adopted by the board.

(e) The board may reject any supplier's price filing, contract, or memorandum of oral agreement, or portion thereof that it deems to be in violation of this section or any rule or that would tend to disrupt the orderly sale and distribution of beer or wine. Whenever the board rejects any such price filing, contract, or memorandum, the licensee submitting the price filing, contract, or memorandum may be heard by the board and shall have the burden of showing that the price filing, contract, or memorandum is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer or wine. If the price filing, contract, or memorandum is accepted, it shall become effective at a time fixed by the board. If the price filing, contract, or memorandum, or portion thereof, is rejected, the last effective price filing, contract, or memorandum shall remain in effect until such time as an amended price filing, contract, or memorandum is filed and approved, in accordance with the provisions of this section.

(f) Prior to the effective date of the posted prices, all prices, contracts, and memoranda filed as required by this section constitute investigative information and shall not be subject to disclosure, pursuant to RCW 42.17.310(1)(d). [2004 c 269 § 1; 1997 c 321 § 51; 1995 c 232 § 10; 1985 c 226 § 4.]

Effective date—2004 c 269: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 269 § 2.]

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.180 Price modification by certain persons, firms, or corporations—Board notification and approval—Intent—Price posting—Price filing, contracts, memoranda. (Effective January 1, 2005.) It is unlawful for a person, firm, or corporation holding a certificate of approval issued under RCW 66.24.270 or 66.24.206, a beer distributor's license, a domestic brewery license, a micro-brewery license, a beer importer's license, a beer distributor's license, a domestic winery license, a wine importer's license, or a wine distributor's license within the state of Washington to modify any prices without prior notification to and approval of the board.

(1) Intent. This section is enacted, pursuant to the authority of this state under the twenty-first amendment to the United States Constitution, to promote the public's interest in fostering the orderly and responsible distribution of malt beverages and wine towards effective control of consumption; to promote the fair and efficient three-tier system of distribution of such beverages; and to confirm existing board rules as the clear expression of state policy to regulate the manner of selling and pricing of wine and malt beverages by licensed suppliers and distributors.

(2) Beer and wine distributor price posting.

(a) Every beer or wine distributor shall file with the board at its office in Olympia a price posting showing the wholesale prices at which any and all brands of beer and wine sold by such beer and/or wine distributor shall be sold to retailers within the state.

(b) Each price posting shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth:

(i) All brands, types, packages, and containers of beer offered for sale by such beer and/or wine distributor;

(ii) The wholesale prices thereof to retail licensees, including allowances, if any, for returned empty containers.

(c) No beer and/or wine distributor may sell or offer to sell any package or container of beer or wine to any retail licensee at a price differing from the price for such package or container as shown in the price posting filed by the beer and/or wine distributor and then in effect, according to rules adopted by the board.

(d) Quantity discounts are prohibited. No price may be posted that is below acquisition cost plus ten percent of acquisition cost. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(e) Distributor prices on a "close-out" item shall be accepted by the board if the item to be discontinued has been listed on the state market for a period of at least six months, and upon the further condition that the distributor who posts such a close-out price shall not restock the item for a period of one year following the first effective date of such close-out price.

(f) The board may reject any price posting that it deems to be in violation of this section or any rule, or portion thereof, or that would tend to disrupt the orderly sale and distribution of beer and wine. Whenever the board rejects any posting, the licensee submitting the posting may be heard by the board and shall have the burden of showing that the posting is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer and wine. If the posting is accepted, it shall become effective at the time fixed by the board. If the posting is rejected, the last effective posting shall remain in effect until such time as an amended posting is filed and approved, in accordance with the provisions of this section.

(g) Prior to the effective date of the posted prices, all price postings filed as required by this section constitute investigative information and shall not be subject to disclosure, pursuant to RCW 42.17.310(1)(d).

(h) Any beer and/or wine distributor or employee authorized by the distributor-employer may sell beer and/or wine at the distributor's posted prices to any annual or special occasion retail licensee upon presentation to the distributor or employee at the time of purchase of a special permit issued by the board to such licensee.

(i) Every annual or special occasion retail licensee, upon purchasing any beer and/or wine from a distributor, shall immediately cause such beer or wine to be delivered to the licensed premises, and the licensee shall not thereafter permit such beer to be disposed of in any manner except as authorized by the license.

(ii) Beer and wine sold as provided in this section shall be delivered by the distributor or an authorized employee either to the retailer's licensed premises or directly to the retailer at the distributor's licensed premises. A distributor's prices to retail licensees shall be the same at both such places of delivery.

(3) Beer and wine suppliers' price filings, contracts, and memoranda.

(a) Every domestic brewery, microbrewery, and domestic winery offering beer and/or wine for sale within the state shall file with the board at its office in Olympia a copy of every written contract and a memorandum of every oral agreement which such brewery or winery may have with any beer or wine distributor, which contracts or memoranda shall contain a schedule of prices charged to distributors for all items and all terms of sale, including all regular and special discounts; all advertising, sales and trade allowances, and incentive programs; and all commissions, bonuses or gifts, and any and all other discounts or allowances. Whenever changed or modified, such revised contracts or memoranda shall forthwith be filed with the board as provided for by rule. The provisions of this section also apply to certificate of approval holders, beer and/or wine importers, and beer and/or wine distributors who sell to other beer and/or wine distributors.

Each price schedule shall be made on a form prepared and furnished by the board, or a reasonable facsimile thereof, and shall set forth all brands, types, packages, and containers of beer or wine offered for sale by such licensed brewery or winery; all additional information required may be filed as a supplement to the price schedule forms.

(b) Prices filed by a domestic brewery, microbrewery, domestic winery, or certificate of approval holder shall be uniform prices to all distributors on a statewide basis less bona fide allowances for freight differentials. Quantity discounts are prohibited. No price shall be filed that is below acquisition/production cost plus ten percent of that cost, except that acquisition cost plus ten percent of acquisition cost does not apply to sales of beer or wine between a beer or wine importer who sells beer or wine to another beer or wine importer or to a beer or wine distributor, or to a beer or wine distributor who sells beer or wine to another beer or wine distributor. However, the board is empowered to review periodically, as it may deem appropriate, the amount of the percentage of acquisition/production cost as a minimum mark-up over cost and to modify such percentage by rule of the board, except such percentage shall be not less than ten percent.

(c) No domestic brewery, microbrewery, domestic winery, certificate of approval holder, beer or wine importer, or beer or wine distributor may sell or offer to sell any beer or wine to any persons whatsoever in this state until copies of such written contracts or memoranda of such oral agreements are on file with the board.

(d) No domestic brewery, microbrewery, domestic winery, or certificate of approval holder may sell or offer to sell any package or container of beer or wine to any distributor at a price differing from the price for such package or container as shown in the schedule of prices filed by the domestic brewery, microbrewery, domestic winery, or certificate of approval holder and then in effect, according to rules adopted by the board.

(e) The board may reject any supplier's price filing, contract, or memorandum of oral agreement, or portion thereof that it deems to be in violation of this section or any rule or that would tend to disrupt the orderly sale and distribution of beer or wine. Whenever the board rejects any such price filing, contract, or memorandum, the licensee submitting the price filing, contract, or memorandum may be heard by the board and shall have the burden of showing that the price filing, contract, or memorandum is not in violation of this section or a rule or does not tend to disrupt the orderly sale and distribution of beer or wine. If the price filing, contract, or memorandum is accepted, it shall become effective at a time fixed by the board. If the price filing, contract, or memorandum, or portion thereof, is rejected, the last effective price filing, contract, or memorandum shall remain in effect until such time as an amended price filing, contract, or memorandum is filed and approved, in accordance with the provisions of this section.

(f) Prior to the effective date of the posted prices, all prices, contracts, and memoranda filed as required by this section constitute investigative information and shall not be subject to disclosure, pursuant to RCW 42.17.310(1)(d). [2004 c 269 § 1; 2004 c 160 § 18; 1997 c 321 § 51; 1995 c 232 § 10; 1985 c 226 § 4.]

Reviser's note: This section was amended by 2004 c 160 § 18 and by 2004 c 269 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2004 c 269: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 269 § 2.]

Effective date—2004 c 160: See note following RCW 66.04.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.190 Sales of nonliquor food and food ingredients. RCW 66.28.010 notwithstanding, persons licensed under RCW 66.24.200 as wine distributors and persons licensed under RCW 66.24.250 as beer distributors may sell at wholesale nonliquor food and food ingredients on thirty-day credit terms to persons licensed as retailers under this title, but complete and separate accounting records shall be maintained on all sales of nonliquor food and food ingredients to ensure that such persons are in compliance with RCW 66.28.010.

For the purpose of this section, "nonliquor food and food ingredients" includes all food and food ingredients for human consumption as defined in RCW 82.08.0293 as it exists on July 1, 2004. [2003 c 168 § 305; 1997 c 321 § 52; 1988 c 50 § 1.]

Effective dates—Part headings not law—2003 c 168: See notes following RCW 82.08.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.28.200 Keg registration—Special endorsement for grocery store licensee—Requirements of seller. (1) Licensees holding a beer and/or wine restaurant or a tavern license in combination with an off-premises beer and wine retailer's license may sell malt liquor in kegs or other containers capable of holding four gallons or more of liquid. Under a special endorsement from the board, a grocery store lic-

ense may sell malt liquor in containers no larger than five and one-half gallons. The sale of any container holding four gallons or more must comply with the provisions of this section and RCW 66.28.210 through 66.28.240.

(2) Any person who sells or offers for sale the contents of kegs or other containers containing four gallons or more of malt liquor, or leases kegs or other containers that will hold four gallons of malt liquor, to consumers who are not licensed under chapter 66.24 RCW shall do the following for any transaction involving the container:

(a) Require the purchaser of the malt liquor to sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(b) Require the purchaser to provide one piece of identification pursuant to RCW 66.16.040;

(c) Require the purchaser to sign a sworn statement, under penalty of perjury, that:

(i) The purchaser is of legal age to purchase, possess, or use malt liquor;

(ii) The purchaser will not allow any person under the age of twenty-one years to consume the beverage except as provided by RCW 66.44.270;

(iii) The purchaser will not remove, obliterate, or allow to be removed or obliterated, the identification required under RCW 66.28.220 to be affixed to the container;

(d) Require the purchaser to state the particular address where the malt liquor will be consumed, or the particular address where the keg or other container will be physically located; and

(e) Require the purchaser to maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

(3) A violation of this section is a gross misdemeanor. [2003 c 53 § 296; 1998 c 126 § 13; 1997 c 321 § 38; 1993 c 21 § 2; 1989 c 271 § 229.]

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

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

Effective dates—1989 c 271: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately, except:

(1) Sections 502 and 504 of this act shall take effect June 1, 1989; and

(2) Sections 229 through 233, 501, 503, and 505 through 509 of this act shall take effect July 1, 1989." [1989 c 271 § 607.]

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.210 Keg registration—Requirements of purchaser. (1) Any person who purchases the contents of kegs or other containers containing four gallons or more of malt liquor, or purchases or leases the container shall:

(a) Sign a declaration and receipt for the keg or other container or beverage in substantially the form provided in RCW 66.28.220;

(b) Provide one piece of identification pursuant to RCW 66.16.040;

(c) Be of legal age to purchase, possess, or use malt liquor;

(d) Not allow any person under the age of twenty-one to consume the beverage except as provided by RCW 66.44.270;

(e) Not remove, obliterate, or allow to be removed or obliterated, the identification required under rules adopted by the board;

(f) Not move, keep, or store the keg or its contents, except for transporting to and from the distributor, at any place other than that particular address declared on the receipt and declaration; and

(g) Maintain a copy of the declaration and receipt next to or adjacent to the keg or other container, in no event a distance greater than five feet, and visible without a physical barrier from the keg, during the time that the keg or other container is in the purchaser's possession or control.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 297; 1989 c 271 § 230.]

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

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.220 Keg registration—Identification of containers—Rules—Fees—Sale in violation of rules unlawful.

(1) The board shall adopt rules requiring retail licensees to affix appropriate identification on all containers of four gallons or more of malt liquor for the purpose of tracing the purchasers of such containers. The rules may provide for identification to be done on a statewide basis or on the basis of smaller geographical areas.

(2) The board shall develop and make available forms for the declaration and receipt required by RCW 66.28.200. The board may charge grocery store licensees for the costs of providing the forms and that money collected for the forms shall be deposited into the liquor revolving fund for use by the board, without further appropriation, to continue to administer the cost of the keg registration program.

(3) It is unlawful for any person to sell or offer for sale kegs or other containers containing four gallons or more of malt liquor to consumers who are not licensed under chapter 66.24 RCW if the kegs or containers are not identified in compliance with rules adopted by the board.

(4) A violation of this section is a gross misdemeanor. [2003 c 53 § 298; 1999 c 281 § 7; 1993 c 21 § 3; 1989 c 271 § 231.]

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

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.230 Keg registration—Furnishing to minors—Penalties. Except as provided in RCW 66.44.270, a person who intentionally furnishes a keg or other container containing four or more gallons of malt liquor to a person under the age of twenty-one years is guilty of a gross misdemeanor punishable under RCW 9.92.020. [1999 c 189 § 1; 1989 c 271 § 232.]

Application—1999 c 189: "This act applies to crimes committed on or after July 25, 1999." [1999 c 189 § 5.]

Effective dates—1989 c 271: See note following RCW 66.28.200.

(2004 Ed.)

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.240 Keg registration—State preemption. The state of Washington fully occupies and preempts the entire field of keg registration. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to keg registration that are consistent with this chapter. Such local ordinances shall have the same or lesser penalties as provided for by state law. Local laws and ordinances that are inconsistent with, more restrictive than, or exceed the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality. [1989 c 271 § 233.]

Effective dates—1989 c 271: See note following RCW 66.28.200.

Severability—1989 c 271: See note following RCW 9.94A.510.

66.28.260 Beer distributors—Restricted transactions. Licensed beer distributors may not buy or sell beer, for purposes of distribution, at farmers market locations authorized by the board pursuant to chapter 154, Laws of 2003. [2003 c 154 § 3.]

Chapter 66.32 RCW SEARCH AND SEIZURE

Sections

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| 66.32.010 | Possession of contraband liquor. |
| 66.32.020 | Search warrant—Search and seizure. |
| 66.32.030 | Service of warrant—Receipt for seized property. |
| 66.32.040 | Forfeiture of liquor directed if kept unlawfully. |
| 66.32.050 | Hearing. |
| 66.32.060 | Claimants may appear. |
| 66.32.070 | Judgment of forfeiture—Disposition of proceeds of property sold. |
| 66.32.080 | Forfeiture action no bar to criminal prosecution. |
| 66.32.090 | Seized liquor to be reported to board. |

66.32.010 Possession of contraband liquor. Except as permitted by the board, no liquor shall be kept or had by any person within this state unless the package in which the liquor was contained had, while containing that liquor, been sealed with the official seal adopted by the board, except in the case of:

- (1) Liquor imported by the board; or
- (2) Liquor manufactured in the state for sale to the board or for export; or
- (3) Beer, purchased in accordance with the provisions of law; or
- (4) Wine or beer exempted in RCW 66.12.010. [1955 c 39 § 3. Prior: 1943 c 216 § 3(1); 1933 ex.s. c 62 § 33(1); Rem. Supp. 1943 § 7306-33(1).]

66.32.020 Search warrant—Search and seizure. If, upon the sworn complaint of any person, it is made to appear to any judge of the superior court or district court, that there is probable cause to believe that intoxicating liquor is being manufactured, sold, bartered, exchanged, given away, furnished, or otherwise disposed of or kept in violation of the provisions of this title, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to a civil officer of the state duly authorized to enforce or

assist in enforcing any law thereof, or to an inspector of the board, commanding the civil officer or inspector to search the premises, room, house, building, boat, vehicle, structure or place designated and described in the complaint and warrant, and to seize all intoxicating liquor there found, together with the vessels in which it is contained, and all implements, furniture, and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing, or otherwise disposing of the liquor, and to safely keep the same, and to make a return of the warrant within ten days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession they were found, if any, and if no person is found in the possession of the articles, the return shall so state. [1987 c 202 § 220; 1955 c 288 § 1; 1955 c 39 § 4. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

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

66.32.030 Service of warrant—Receipt for seized property. A copy of the warrant, together with a detailed receipt for the property taken shall be served upon the person found in possession of any intoxicating liquor, furniture, or fixtures so seized, and if no person is found in possession thereof, a copy of the warrant and receipt shall be left in a conspicuous place upon the premises wherein they are found. [1955 c 39 § 5. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

66.32.040 Forfeiture of liquor directed if kept unlawfully. All liquor seized pursuant to the authority of a search warrant or an arrest shall, upon adjudication that it was kept in violation of this title, be forfeited and upon forfeiture be disposed of by the agency seizing the liquor. [1993 c 26 § 1; 1955 c 39 § 6. Prior: 1943 c 216 § 3(2), part; 1933 ex.s. c 62 § 23(2), part; Rem. Supp. 1943 § 7306-33(2), part.]

66.32.050 Hearing. Upon the return of the warrant as provided herein, the judge shall fix a time, not less than ten days, and not more than thirty days thereafter, for the hearing of the return, when he or she shall proceed to hear and determine whether or not the articles seized, or any part thereof, were used or in any manner kept or possessed by any person with the intention of violating any of the provisions of this title. [1987 c 202 § 221; 1955 c 39 § 7. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

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

66.32.060 Claimants may appear. At the hearing, any person claiming any interest in any of the articles seized may appear and be heard upon filing a written claim setting forth particularly the character and extent of his interest, and the burden shall rest upon the claimant to show, by competent evidence, his property right or interest in the articles claimed, and that they were not used in violation of any of the provisions of this title, and were not in any manner kept or possessed with the intention of violating any of its provisions. [1955 c 39 § 8. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

[Title 66 RCW—page 58]

66.32.070 Judgment of forfeiture—Disposition of proceeds of property sold. If, upon the hearing, the evidence warrants, or, if no person appears as claimant, the judge shall thereupon enter a judgment of forfeiture, and order such articles destroyed forthwith: PROVIDED, That if, in the opinion of the judge, any of the forfeited articles other than intoxicating liquors are of value and adapted to any lawful use, the judge shall, as a part of the order and judgment, direct that the articles other than intoxicating liquor be sold as upon execution by the officer having them in custody, and the proceeds of the sale after payment of all costs of the proceedings shall be paid into the liquor revolving fund. [1987 c 202 § 222; 1955 c 39 § 9. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

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

66.32.080 Forfeiture action no bar to criminal prosecution. Action under RCW 66.32.010 through 66.32.080 and the forfeiture, destruction, or sale of any articles thereunder shall not bar prosecution under any other provision. [1955 c 39 § 10. Prior: 1943 c 216 § 3(3), part; 1933 ex.s. c 62 § 33(2), part; Rem. Supp. 1943 § 7306-33(3), part.]

66.32.090 Seized liquor to be reported to board. In every case in which liquor is seized by a sheriff or deputy of any county or by a police officer of any municipality or by a member of the Washington state patrol, or any other authorized peace officer or inspector, it shall be the duty of the sheriff or deputy of any county, or chief of police of the municipality, or the chief of the Washington state patrol, as the case may be, to forthwith report in writing to the board of particulars of such seizure. [1993 c 26 § 2; 1987 c 202 § 223; 1935 c 174 § 8; 1933 ex.s. c 62 § 55; RRS § 7306-55.]

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

Chapter 66.36 RCW

ABATEMENT PROCEEDINGS

Sections

66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen.

66.36.010 Places where liquor unlawfully kept declared a nuisance—Abatement of activity and realty—Judgment—Bond to reopen. Any room, house, building, boat, vehicle, structure or place, except premises licensed under this title, where liquor, as defined in this title, is manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all property kept in and used in maintaining such a place, are hereby declared to be a common nuisance. The prosecuting attorney of the county in which such nuisance is situated shall institute and maintain an action in the superior court of such county in the name of the state of Washington to abate and perpetually enjoin such nuisance. The plaintiff shall not be required to give bond in such action, and restraining orders, temporary injunctions and permanent injunctions may be granted in said cause as in other injunc-

(2004 Ed.)

tion proceedings, and upon final judgment against the defendant, such court may also order that said room, house, building, boat, vehicle, structure or place, shall be closed for a period of one year; or until the owner, lessee, tenant or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal sum of not less than one thousand dollars payable to the state of Washington, and conditioned that liquor will not thereafter be manufactured, kept, sold, bartered, exchanged, given away, furnished or otherwise disposed of thereon or therein in violation of the provisions of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and that he will pay all fines, costs and damages assessed against him for any violation of this title or of the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. If any condition of such bond be violated, the whole amount may be recovered as a penalty for the use of the county wherein the premises are situated.

In all cases where any person has been convicted of a violation of this title or the laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor an action may be brought in the superior court of the county in which the premises are situated, to abate as a nuisance any real estate or other property involved in the commission of said offense, and in any such action a certified copy of the record of such conviction shall be admissible in evidence and prima facie evidence that the room, house, building, boat, vehicle, structure or place against which such action is brought is a public nuisance. [1939 c 172 § 9 (adding new section 33-A to 1933 ex.s. c 62); RRS § 7306-33A. Formerly RCW 66.36.010 through 66.36.040.]

Chapter 66.40 RCW LOCAL OPTION

Sections

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| 66.40.010 | Local option units. |
| 66.40.020 | Election may be held. |
| 66.40.030 | License elections. |
| 66.40.040 | Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection. |
| 66.40.100 | Check of petitions. |
| 66.40.110 | Form of ballot. |
| 66.40.120 | Canvass of votes—Effect. |
| 66.40.130 | Effect of election as to licenses. |
| 66.40.140 | Certificate of result to board—Grace period—Permitted activities. |
| 66.40.150 | Concurrent liquor elections in same election unit prohibited. |

66.40.010 Local option units. For the purpose of an election upon the question of whether the sale of liquors shall be permitted, the election unit shall be any incorporated city or town, or all that portion of any county not included within the limits of incorporated cities and towns. [1957 c 263 § 3. Prior: (i) 1933 ex.s. c 62 § 82; RRS § 7306-82. (ii) 1949 c 5 § 2, part (adding new section 23-S-2 to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-23S-2, part.]

Severability—1949 c 5: See RCW 66.98.080.

66.40.020 Election may be held. Within any unit referred to in RCW 66.40.010, upon compliance with the

(2004 Ed.)

conditions hereinafter prescribed, there may be held, at the time and as a part of any general election, an election upon the question of whether the sale of liquor shall be permitted within such unit; and in the event that any such election is held in any such unit, no other election under this section shall be held prior to the next succeeding general election. [1933 ex.s. c 62 § 83; RRS § 7306-83.]

66.40.030 License elections. Within any unit referred to in RCW 66.40.010, there may be held a separate election upon the question of whether the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses, shall be permitted within such unit. The conditions and procedure for holding such election shall be those prescribed by RCW 66.40.020, 66.40.040, 66.40.100, 66.40.110 and 66.40.120. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "against the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and after ninety days from and after the date of the canvass, it shall not be lawful for licensees to maintain and operate premises within the election unit licensed under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses. The addition after an election under this section of new territory to a city, town, or county, by annexation, disincorporation, or otherwise, shall not extend the prohibition against the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses to the new territory. Elections held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, shall be limited to the question of whether the sale of liquor by means other than under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses shall be permitted within such election unit. [1999 c 281 § 8; 1994 c 55 § 1; 1949 c 5 § 12 (adding new section 83-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-83A.]

Severability—1949 c 5: See RCW 66.98.080.

66.40.040 Petition for election—Contents—Procedure—Signatures, filing, form, copies, fees, etc.—Public inspection. Any unit referred to in RCW 66.40.010 may hold such election upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit, upon the filing with the county auditor of the county within which such unit is located, of a petition subscribed by qualified electors of the unit equal in number to at least thirty percent of the electors voting at the last general election within such unit. Such petition shall designate the unit in which the election is desired to be had, the date upon which the election is desired to be held, and the question that is desired to be submitted. The persons signing such a petition shall state their post office address, the name or number of the precinct in which they reside, and in case the subscriber be a resident of a city, the street and house number, if any, of his residence, and the date of signature. Said petition shall be filed not less

than sixty days nor more than ninety days prior to the date upon which the election is to be held. No signature shall be valid unless the above requirements are complied with, and unless the date of signing the same is less than ninety days preceding the date of filing. No signature shall be withdrawn after the filing of such petition. Such petition may consist of one or more sheets and shall be fastened together as one document, filed as a whole, and when filed shall not be withdrawn or added to. Such petition shall be a public document and shall be subject to the inspection of the public. Upon the request of anyone filing such a petition and paying, or tendering to the county auditor one dollar for each hundred names, or fraction thereof, signed thereto, together with a copy thereof, said county auditor shall immediately compare the original and copy and attach to such copy and deliver to such person his official certificate that such copy is a true copy of the original, stating the date when such original was filed in his office; and said officer shall furnish, upon the demand of any person, a copy of said petition, upon payment of the same fee required for the filing of original petitions. [1933 ex.s. c 62 § 84; RRS § 7306-84. Formerly RCW 66.40.040 through 66.40.090.]

66.40.100 Check of petitions. Upon the filing of a petition as hereinbefore provided, the county auditor with whom it is filed shall cause the names on said petition to be compared with the names on the voters' official registration records provided for by law with respect to such unit. The officer or deputy making the comparison shall place his initials in ink opposite the signatures of those persons who are shown by such registration records to be legal voters and shall certify that the signatures so initialed are the signatures of legal voters of the state of Washington and of said unit, and shall sign such certificate. In the event that said petition, after such comparison, shall be found to have been signed by the percentage of legal voters of said unit referred to in RCW 66.40.040, the question shall be placed upon the ballot at the next general election. [1933 ex.s. c 62 § 85; RRS § 7306-85.]

66.40.110 Form of ballot. Upon the ballot to be used at such general election the question shall be submitted in the following form:

"Shall the sale of liquor be permitted within (here specify the unit in which election is to be held)." Immediately below said question shall be placed the alternative answers, as follows:

"For sale of liquor ()
Against sale of liquor ()."

Each person desiring to vote in favor of permitting the sale of liquor within the unit in which the election is to be held shall designate his choice beside the words "For sale of liquor", and those desiring to vote against the permitting of the sale of liquor within such unit shall designate their choice beside the words "Against sale of liquor", and the ballot shall be counted accordingly. [1933 ex.s. c 62 § 86; RRS § 7306-86.]

66.40.120 Canvass of votes—Effect. The returns of any such election shall be canvassed in the manner provided

by law. If the majority of qualified electors voting upon said question at said election shall have voted "For sale of liquor" within the unit in which the election is held, the sale of liquor may be continued in accordance with the provisions of this title. If the majority of the qualified electors voting on such question at any such election shall vote "Against sale of liquor", then, within thirty days after such canvass no sale or purchase of liquor, save as herein provided, shall be made within such unit until such permission so to do be subsequently granted at an election held for that purpose under the provisions of this title. [1933 ex.s. c 62 § 87; RRS § 7306-87.]

66.40.130 Effect of election as to licenses. Ninety days after December 2, 1948, spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses may be issued in any election unit in which the sale of liquor is then lawful. No spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility license shall be issued in any election unit in which the sale of liquor is forbidden as the result of an election held under RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, unless a majority of the qualified electors in such election unit voting upon this initiative at the general election in November, 1948, vote in favor of this initiative, or unless at a subsequent general election in which the question of whether the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses shall be permitted within such unit is submitted to the electorate, as provided in RCW 66.40.030, a majority of the qualified electors voting upon such question vote "for the sale of liquor under spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses." [1999 c 281 § 9; 1949 c 5 § 13 (adding new section 87-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-87A.]

Severability—1949 c 5: See RCW 66.98.080.

66.40.140 Certificate of result to board—Grace period—Permitted activities. Whenever a majority of qualified voters voting upon said question in any such unit shall have voted "Against sale of liquor", the county auditor shall file with the liquor control board a certificate showing the result of the canvass at such election; and thereafter, except as hereinafter provided, it shall not be lawful for a liquor store to be operated therein nor for licensees to maintain and operate licensed premises therein except as hereinafter provided:

(1) As to any stores maintained by the board within any such unit at the time of such licensing, the board shall have a period of thirty days from and after the date of the canvass of the vote upon such election to continue operation of its store or stores therein.

(2) As to any premises licensed hereunder within any such unit at the time of such election, such licensee shall have a period of sixty days from and after the date of the canvass of the vote upon such election in which to discontinue operation of its store or stores therein.

(3) Nothing herein contained shall prevent any distillery, brewery, rectifying plant or winery or the licensed operators

thereof from selling its manufactured product, manufactured within such unit, outside the boundaries thereof.

(4) Nothing herein contained shall prevent any person residing in any unit in which the sale of liquor shall have been forbidden by popular vote as herein provided, who is otherwise qualified to receive and hold a permit under this title, from lawfully purchasing without the unit and transporting into or receiving within the unit, liquor lawfully purchased by him outside the boundaries of such unit. [1933 ex.s. c 62 § 88; RRS § 7306-88.]

66.40.150 Concurrent liquor elections in same election unit prohibited. No election in any unit referred to in RCW 66.40.010, 66.40.020, 66.40.040, 66.40.100, 66.40.110, 66.40.120 and 66.40.140, upon the question of whether the sale of liquor shall be permitted within the boundaries of such unit shall be held at the same time as an election is held in the same unit upon the question of whether the sale of liquor under the provisions of RCW 66.40.030 shall be permitted. In the event valid and sufficient petitions are filed which would otherwise place both questions on the same ballot that question upon which the petition was filed with the county auditor first shall be placed on the ballot to the exclusion of the other. [1949 c 93 § 1 (adding new section 88-A to 1933 ex.s. c 62); Rem. Supp. 1949 § 7306-88A.]

**Chapter 66.44 RCW
ENFORCEMENT—PENALTIES**

Sections

- 66.44.010 Local officers to enforce law—Authority of board—Liquor enforcement officers.
- 66.44.040 Sufficiency of description of offenses in complaints, informations, process, etc.
- 66.44.050 Description of offense in words of statutes—Proof required.
- 66.44.060 Proof of unlawful sale establishes prima facie intent.
- 66.44.070 Certified analysis is prima facie evidence of alcoholic content.
- 66.44.080 Service of process on corporation.
- 66.44.090 Acting without license.
- 66.44.100 Opening or consuming liquor in public place—Penalty.
- 66.44.120 Unlawful use of seal.
- 66.44.130 Sales of liquor by drink or bottle.
- 66.44.140 Unlawful sale, transportation of spirituous liquor without stamp or seal—Unlawful operation, possession of still or mash.
- 66.44.150 Buying liquor illegally.
- 66.44.160 Illegal possession, transportation of alcoholic beverages.
- 66.44.170 Illegal possession of liquor with intent to sell—Prima facie evidence, what is.
- 66.44.175 Violations of law.
- 66.44.180 General penalties—Jurisdiction for violations.
- 66.44.193 Sales on university or college campus.
- 66.44.200 Sales to persons apparently under the influence of liquor—Purchases or consumption by persons apparently under the influence of liquor on licensed premises—Penalty—Notice—Separation of actions.
- 66.44.210 Obtaining liquor for ineligible person.
- 66.44.240 Drinking in public conveyance—Penalty against carrier—Exception.
- 66.44.250 Drinking in public conveyance—Penalty against individual—Restricted application.
- 66.44.265 Candidates giving or purchasing liquor on election day prohibited.
- 66.44.270 Furnishing liquor to minors—Possession, use—Penalties—Exhibition of effects—Exceptions.
- 66.44.280 Minor applying for permit.
- 66.44.290 Minor purchasing or attempting to purchase liquor—Penalty.
- 66.44.292 Sales to minors by licensee or employee—Board notification to prosecuting attorney to formulate charges against minors.
- 66.44.300 Treats, gifts, purchases of liquor for or from minor, or holding out minor as at least twenty-one, in public place where liquor sold.

- 66.44.310 Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licensees.
- 66.44.316 Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment.
- 66.44.318 Employees aged eighteen to twenty-one stocking, merchandising, and handling beer and wine.
- 66.44.325 Unlawful transfer to minor of age identification.
- 66.44.328 Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty.
- 66.44.330 Prosecutions to be reported by prosecuting attorney and police court.
- 66.44.340 Employees eighteen years and over allowed to sell and handle beer and wine for certain licensed employers.
- 66.44.350 Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for certain licensed employers.
- 66.44.365 Juvenile driving privileges—Alcohol or drug violations.
- 66.44.370 Resisting or opposing officers in enforcement of title.
- 66.44.800 Compliance by Washington wine commission.

Minors

*access to tobacco, role of liquor control board: Chapter 70.155 RCW.
prohibited to enter bars or taverns: RCW 26.28.080.*

Sale or gift of tobacco to persons under certain age is gross misdemeanor: RCW 26.28.080.

State institutions, bringing in liquor prohibited: RCW 72.23.300.

66.44.010 Local officers to enforce law—Authority of board—Liquor enforcement officers. (1) All county and municipal peace officers are hereby charged with the duty of investigating and prosecuting all violations of this title, and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and all fines imposed for violations of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor shall belong to the county, city or town wherein the court imposing the fine is located, and shall be placed in the general fund for payment of the salaries of those engaged in the enforcement of the provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor: PROVIDED, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended.

(2) In addition to any and all other powers granted, the board shall have the power to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor.

(3) In addition to the other duties under this section, the board shall enforce chapters 82.24 and 82.26 RCW.

(4) The board may appoint and employ, assign to duty and fix the compensation of, officers to be designated as liquor enforcement officers. Such liquor enforcement officers shall have the power, under the supervision of the board, to enforce the penal provisions of this title and the penal laws of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor. They shall have the power and authority to serve and execute all warrants and process of law issued by the courts in enforcing the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW. They shall have the power to arrest without a warrant any person or persons found in the

act of violating any of the penal provisions of this title or of any penal law of this state relating to the manufacture, importation, transportation, possession, distribution and sale of liquor, and the provisions of chapters 82.24 and 82.26 RCW. [1998 c 18 § 1; 1987 c 202 § 224; 1969 ex.s. c 199 § 28; 1939 c 172 § 5; 1935 c 174 § 11; 1933 ex.s. c 62 § 70; RRS § 7306-70. Formerly RCW 66.44.010 through 66.44.030.]

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

66.44.040 Sufficiency of description of offenses in complaints, informations, process, etc. In describing the offense respecting the sale, or keeping for sale or other disposal, of liquor, or the having, keeping, giving, purchasing or consumption of liquor in any information, summons, conviction, warrant, or proceeding under this title, it shall be sufficient to simply state the sale, or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of liquor, without stating the name or kind of such liquor or the price thereof, or to whom it was sold or disposed of, or by whom consumed, or from whom it was purchased or received; and it shall not be necessary to state the quantity of liquor so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity. [1933 ex.s. c 62 § 57; RRS § 7306-57.]

66.44.050 Description of offense in words of statutes—Proof required. The description of any offense under this title, in the words of this title, or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this title, may be proved by the defendant, but need not be specified or negated in the information; but if it is so specified or negated, no proof in relation to the matter so specified or negated shall be required on the part of the informant or complainant. [1933 ex.s. c 62 § 58; RRS § 7306-58.]

66.44.060 Proof of unlawful sale establishes prima facie intent. In any proceeding under this title, proof of one unlawful sale of liquor shall suffice to establish prima facie the intent or purpose of unlawfully keeping liquor for sale in violation of this title. [1933 ex.s. c 62 § 59; RRS § 7306-59.]

66.44.070 Certified analysis is prima facie evidence of alcoholic content. A certificate, signed by any person appointed or designated by the board in writing as an analyst, as to the percentage of alcohol contained in any liquid, drink, liquor, or combination of liquors, when produced in any court or before any court shall be prima facie evidence of the percentage of alcohol contained therein. [1933 ex.s. c 62 § 60; RRS § 7306-60.]

66.44.080 Service of process on corporation. In all prosecutions, actions, or proceedings under the provisions of this title against a corporation, every summons, warrant, order, writ or other proceeding may be served on the corporation in the same manner as is now provided by law for service of civil process. [1933 ex.s. c 62 § 61; RRS § 7306-61.]

66.44.090 Acting without license. Any person doing any act required to be licensed under this title without having in force a license issued to him shall be guilty of a gross misdemeanor. [1955 c 289 § 2. Prior: (i) 1933 ex.s. c 62 § 28; RRS § 7306-28.(ii) 1939 c 172 § 6(1); 1935 c 174 § 6(1); 1933 ex.s. c 62 § 92(1); RRS § 7306-92(1).]

66.44.100 Opening or consuming liquor in public place—Penalty. Except as permitted by this title, no person shall open the package containing liquor or consume liquor in a public place. Every person who violates any provision of this section shall be guilty of a class 3 civil infraction under chapter 7.80 RCW. [1999 c 189 § 3; 1981 1st ex.s. c 5 § 21; 1933 ex.s. c 62 § 34; RRS § 7306-34.]

Application—1999 c 189: See note following RCW 66.28.230.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.120 Unlawful use of seal. (1) No person other than an employee of the board shall keep or have in his or her possession any official seal prescribed under this title, unless the same is attached to a package which has been purchased from a vendor or store employee; nor shall any person keep or have in his or her possession any design in imitation of any official seal prescribed under this title, or calculated to deceive by its resemblance thereto, or any paper upon which any design in imitation thereof, or calculated to deceive as aforesaid, is stamped, engraved, lithographed, printed, or otherwise marked.

(2)(a) Except as provided in (b) of this subsection, every person who willfully violates this section is guilty of a gross misdemeanor and shall be liable on conviction thereof for a first offense to imprisonment in the county jail for a period of not less than three months nor more than six months, without the option of the payment of a fine, and for a second offense, to imprisonment in the county jail for not less than six months nor more than one year, without the option of the payment of a fine.

(b) A third or subsequent offense is a class C felony, punishable by imprisonment in a state correctional facility for not less than one year nor more than two years. [2003 c 53 § 299; 1992 c 7 § 42; 1933 ex.s. c 62 § 47; RRS § 7306-47.]

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

66.44.130 Sales of liquor by drink or bottle. Except as otherwise provided in this title, every person who sells by the drink or bottle, any liquor shall be guilty of a violation of this title. [1955 c 289 § 3. Prior: 1939 c 172 § 6(2); 1935 c 174 § 15(2); 1933 ex.s. c 62 § 92(2); RRS § 7306-92(2).]

66.44.140 Unlawful sale, transportation of spirituous liquor without stamp or seal—Unlawful operation, possession of still or mash. Every person who shall sell or offer for sale, or transport in any manner, any spirituous liquor, without government stamp or seal attached thereto, or who shall operate without a license, any still or other device for the production of spirituous liquor, or shall have in his possession or under his control any mash capable of being distilled into spirituous liquor except as provided in RCW 66.12.130, shall be guilty of a gross misdemeanor and upon

conviction thereof shall upon his first conviction be fined not less than five hundred dollars and confined in the county jail not less than six months, and upon second and subsequent conviction shall be fined not less than one thousand dollars and confined in the county jail not less than one year. [1980 c 140 § 4; 1955 c 289 § 4. Prior: 1939 c 172 § 6(3); 1935 c 174 § 15(3); 1933 ex.s. c 62 § 92(3); RRS § 7306-92(3).]

66.44.150 Buying liquor illegally. If any person in this state buys alcoholic beverages from any person other than the board, a state liquor store, or some person authorized by the board to sell them, he shall be guilty of a misdemeanor. [1955 c 289 § 5. Prior: 1939 c 172 § 6(4); 1935 c 174 § 15(4); 1933 ex.s. c 62 § 92(4); RRS § 7306-92(4).]

66.44.160 Illegal possession, transportation of alcoholic beverages. Except as otherwise provided in this title, any person who has or keeps or transports alcoholic beverages other than those purchased from the board, a state liquor store, or some person authorized by the board to sell them, shall be guilty of a violation of this title. [1955 c 289 § 6. Prior: 1939 c 172 § 6(5); 1935 c 174 § 15(5); 1933 ex.s. c 62 § 92(5); RRS § 7306-92(5).]

66.44.170 Illegal possession of liquor with intent to sell—Prima facie evidence, what is. Any person who keeps or possesses liquor upon his person or in any place, or on premises conducted or maintained by him as principal or agent with the intent to sell it contrary to provisions of this title, shall be guilty of a violation of this title. The possession of liquor by the principal or agent on premises conducted or maintained, under federal authority, as a retail dealer in liquors, shall be prima facie evidence of the intent to sell liquor. [1955 c 289 § 7. Prior: 1937 c 144 § 1 (adding new section 92A to 1933 ex.s. c 62); RRS § 7306-92A.].

66.44.175 Violations of law. Every person who violates any provision of this title or the regulations shall be guilty of a violation of this title, whether otherwise declared or not. [1933 ex.s. c 62 § 91; RRS § 7306-91.].

66.44.180 General penalties—Jurisdiction for violations. (1) Every person guilty of a violation of this title for which no penalty has been specifically provided:

(a) For a first offense, is guilty of a misdemeanor punishable by a fine of not more than five hundred dollars, or by imprisonment for not more than two months, or both;

(b) For a second offense, is guilty of a gross misdemeanor punishable by imprisonment for not more than six months; and

(c) For a third or subsequent offense, is guilty of a gross misdemeanor punishable by imprisonment for not more than one year.

(2) If the offender convicted of an offense referred to in this section is a corporation, it shall for a first offense be liable to a penalty of not more than five thousand dollars, and for a second or subsequent offense to a penalty of not more than ten thousand dollars, or to forfeiture of its corporate license, or both.

(2004 Ed.)

(3) Every district judge and municipal judge shall have concurrent jurisdiction with superior court judges of the state of Washington of all violations of the provisions of this title and may impose any punishment provided therefor. [2003 c 53 § 300; 1987 c 202 § 225; 1981 1st ex.s. c 5 § 22; 1935 c 174 § 16; 1933 ex.s. c 62 § 93; RRS § 7306-93.]

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

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

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.193 Sales on university or college campus. If an institution of higher education chooses to allow the sale of alcoholic beverages on campus, the legislature encourages the institution to feature products produced in the state of Washington. [2003 c 51 § 2.]

66.44.200 Sales to persons apparently under the influence of liquor—Purchases or consumption by persons apparently under the influence of liquor on licensed premises—Penalty—Notice—Separation of actions. (1) No person shall sell any liquor to any person apparently under the influence of liquor.

(2)(a) No person who is apparently under the influence of liquor may purchase or consume liquor on any premises licensed by the board.

(b) A violation of this subsection is an infraction punishable by a fine of not more than five hundred dollars.

(c) A defendant's intoxication may not be used as a defense in an action under this subsection.

(d) Until July 1, 2000, every establishment licensed under RCW 66.24.330 or 66.24.420 shall conspicuously post in the establishment notice of the prohibition against the purchase or consumption of liquor under this subsection.

(3) An administrative action for violation of subsection (1) of this section and an infraction issued for violation of subsection (2) of this section arising out of the same incident are separate actions and the outcome of one shall not determine the outcome of the other. [1998 c 259 § 1; 1933 ex.s. c 62 § 36; RRS § 7306-36.]

66.44.210 Obtaining liquor for ineligible person. Except in the case of liquor administered by a physician or dentist or sold upon a prescription in accordance with the provisions of this title, no person shall procure or supply, or assist directly or indirectly in procuring or supplying, liquor for or to anyone whose permit is suspended or has been canceled. [1933 ex.s. c 62 § 38; RRS § 7306-38.]

66.44.240 Drinking in public conveyance—Penalty against carrier—Exception. Every person engaged wholly or in part in the business of carrying passengers for hire, and every agent, servant, or employee of such person, who knowingly permits any person to drink any intoxicating liquor in any public conveyance, except in the compartment where such liquor is sold or served under the authority of a license lawfully issued, is guilty of a misdemeanor. This section does not apply to a public conveyance that is commercially chartered for group use or a for-hire vehicle licensed under city,

county, or state law. [1983 c 165 § 29; 1909 c 249 § 442; RRS § 2694.]

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

Alcoholic beverages, drinking or open container in vehicle on highway, exceptions: RCW 46.61.519.

66.44.250 Drinking in public conveyance—Penalty against individual—Restricted application. Every person who drinks any intoxicating liquor in any public conveyance, except in a compartment or place where sold or served under the authority of a license lawfully issued, is guilty of a misdemeanor. With respect to a public conveyance that is commercially chartered for group use and with respect to a for-hire vehicle licensed under city, county, or state law, this section applies only to the driver of the vehicle. [1983 c 165 § 30; 1909 c 249 § 441; RRS § 2693.]

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

Alcoholic beverages, drinking or open container in vehicle on highway, exceptions: RCW 46.61.519.

66.44.265 Candidates giving or purchasing liquor on election day prohibited. It shall be unlawful for a candidate for office or for nomination thereto whose name appears upon the ballot at any election to give to or purchase for another person, not a member of his or her family, any liquor in or upon any premises licensed by the state for the sale of any such liquor by the drink during the hours that the polls are open on the day of such election. [1971 ex.s. c 112 § 2.]

66.44.270 Furnishing liquor to minors—Possession, use—Penalties—Exhibition of effects—Exceptions. (1) It is unlawful for any person to sell, give, or otherwise supply liquor to any person under the age of twenty-one years or permit any person under that age to consume liquor on his or her premises or on any premises under his or her control. For the purposes of this subsection, "premises" includes real property, houses, buildings, and other structures, and motor vehicles and watercraft. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(2)(a) It is unlawful for any person under the age of twenty-one years to possess, consume, or otherwise acquire any liquor. A violation of this subsection is a gross misdemeanor punishable as provided for in chapter 9A.20 RCW.

(b) It is unlawful for a person under the age of twenty-one years to be in a public place, or to be in a motor vehicle in a public place, while exhibiting the effects of having consumed liquor. For purposes of this subsection, exhibiting the effects of having consumed liquor means that a person has the odor of liquor on his or her breath and either: (i) Is in possession of or close proximity to a container that has or recently had liquor in it; or (ii) by speech, manner, appearance, behavior, lack of coordination, or otherwise, exhibits that he or she is under the influence of liquor. This subsection (2)(b) does not apply if the person is in the presence of a parent or guardian or has consumed or is consuming liquor under circumstances described in subsection (4) or (5) of this section.

(3) Subsections (1) and (2)(a) of this section do not apply to liquor given or permitted to be given to a person under the age of twenty-one years by a parent or guardian and consumed in the presence of the parent or guardian. This subsection shall not authorize consumption or possession of liquor by a person under the age of twenty-one years on any premises licensed under chapter 66.24 RCW.

(4) This section does not apply to liquor given for medicinal purposes to a person under the age of twenty-one years by a parent, guardian, physician, or dentist.

(5) This section does not apply to liquor given to a person under the age of twenty-one years when such liquor is being used in connection with religious services and the amount consumed is the minimal amount necessary for the religious service.

(6) Conviction or forfeiture of bail for a violation of this section by a person under the age of twenty-one years at the time of such conviction or forfeiture shall not be a disqualification of that person to acquire a license to sell or dispense any liquor after that person has attained the age of twenty-one years. [1998 c 4 § 1; 1993 c 513 § 1; 1987 c 458 § 3; 1955 c 70 § 2. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1); prior: Code 1881 § 939; 1877 p 205 § 5.]

Severability—1987 c 458: See note following RCW 48.21.160.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.44.280 Minor applying for permit. Every person under the age of twenty-one years who makes application for a permit shall be guilty of an offense against this title. [1955 c 70 § 3. Prior: 1935 c 174 § 6(2); 1933 ex.s. c 62 § 37(2); RRS § 7306-37(2).]

66.44.290 Minor purchasing or attempting to purchase liquor—Penalty. (1) Every person under the age of twenty-one years who purchases or attempts to purchase liquor shall be guilty of a violation of this title. This section does not apply to persons between the ages of eighteen and twenty-one years who are participating in a controlled purchase program authorized by the liquor control board under rules adopted by the board. Violations occurring under a private, controlled purchase program authorized by the liquor control board may not be used for criminal or administrative prosecution.

(2) An employer who conducts an in-house controlled purchase program authorized under this section shall provide his or her employees a written description of the employer's in-house controlled purchase program. The written description must include notice of actions an employer may take as a consequence of an employee's failure to comply with company policies regarding the sale of alcohol during an in-house controlled purchase.

(3) An in-house controlled purchase program authorized under this section shall be for the purposes of employee training and employer self-compliance checks. An employer may not terminate an employee solely for a first-time failure to comply with company policies regarding the sale of alcohol during an in-house controlled purchase program authorized under this section.

(4) Every person between the ages of eighteen and twenty, inclusive, who is convicted of a violation of this sec-

tion is guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community restitution. [2003 c 53 § 301; 2001 c 295 § 1; 1965 c 49 § 1; 1955 c 70 § 4. Prior: 1935 c 174 § 6(1); 1933 ex.s. c 62 § 37(1); RRS § 7306-37(1).]

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

66.44.292 Sales to minors by licensee or employee—Board notification to prosecuting attorney to formulate charges against minors. The Washington state liquor control board shall furnish notification of any hearing or hearings held, wherein any licensee or his employee is found to have sold liquor to a minor, to the prosecuting attorney of the county in which the sale took place, upon which the prosecuting attorney may formulate charges against said minor or minors for such violation of RCW 66.44.290 as may appear. [1981 1st ex.s. c 5 § 23; 1965 c 49 § 3.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.300 Treats, gifts, purchases of liquor for or from minor, or holding out minor as at least twenty-one, in public place where liquor sold. Any person who invites a minor into a public place where liquor is sold and treats, gives or purchases liquor for such minor, or permits a minor to treat, give or purchase liquor for the adult; or holds out such minor to be twenty-one years of age or older to the owner or employee of the liquor establishment, a law enforcement officer, or a liquor enforcement officer shall be guilty of a misdemeanor. [1994 c 201 § 7; 1941 c 78 § 1; Rem. Supp. 1941 § 7306-37A.]

66.44.310 Minors frequenting off-limits area—Misrepresentation of age—Penalty—Classification of licensees. (1) Except as otherwise provided by RCW 66.44.316 and 66.44.350, it shall be a misdemeanor:

(a) To serve or allow to remain in any area classified by the board as off-limits to any person under the age of twenty-one years;

(b) For any person under the age of twenty-one years to enter or remain in any area classified as off-limits to such a person, but persons under twenty-one years of age may pass through a restricted area in a facility holding a spirits, beer, and wine private club license;

(c) For any person under the age of twenty-one years to represent his or her age as being twenty-one or more years for the purpose of purchasing liquor or securing admission to, or remaining in any area classified by the board as off-limits to such a person.

(2) The Washington state liquor control board shall have the power and it shall be its duty to classify licensed premises or portions of licensed premises as off-limits to persons under the age of twenty-one years of age. [1998 c 126 § 14; 1997 c 321 § 53; 1994 c 201 § 8; 1981 1st ex.s. c 5 § 24; 1943 c 245 § 1 (adding new section 36-A to 1933 ex.s. c 62); Rem. Supp. 1943 § 7306-36A. Formerly RCW 66.24.130 and 66.44.310.]

Effective date—1998 c 126: See note following RCW 66.20.010.

(2004 Ed.)

Effective date—1997 c 321: See note following RCW 66.24.010.

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

Minors, access to tobacco, role of liquor control board: Chapter 70.155 RCW.

66.44.316 Certain persons eighteen years and over permitted to enter and remain upon licensed premises during employment. It is lawful for:

(1) Professional musicians, professional disc jockeys, or professional sound or lighting technicians actively engaged in support of professional musicians or professional disc jockeys, eighteen years of age and older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment as musicians, disc jockeys, or sound or lighting technicians;

(2) Persons eighteen years of age and older performing janitorial services to enter and remain on premises licensed under the provisions of Title 66 RCW when the premises are closed but only during and in the course of their performance of janitorial services;

(3) Employees of amusement device companies, which employees are eighteen years of age or older, to enter and to remain in any premises licensed under the provisions of Title 66 RCW, but only during and in the course of their employment for the purpose of installing, maintaining, repairing, or removing an amusement device. For the purposes of this section amusement device means coin-operated video games, pinball machines, juke boxes, or other similar devices; and

(4) Security and law enforcement officers, and fire fighters eighteen years of age or older to enter and to remain in any premises licensed under Title 66 RCW, but only during and in the course of their official duties and only if they are not the direct employees of the licensee. However, the application of the [this] subsection to security officers is limited to casual, isolated incidents arising in the course of their duties and does not extend to continuous or frequent entering or remaining in any licensed premises.

This section shall not be construed as permitting the sale or distribution of any alcoholic beverages to any person under the age of twenty-one years. [1985 c 323 § 1; 1984 c 136 § 1; 1980 c 22 § 1; 1973 1st ex.s. c 96 § 1.]

66.44.318 Employees aged eighteen to twenty-one stocking, merchandising, and handling beer and wine. Licensees holding nonretail class liquor licenses are permitted to allow their employees between [the] ages of eighteen and twenty-one to stock, merchandise, and handle beer or wine on or about the nonretail premises if there is an adult twenty-one years of age or older on duty supervising such activities on the premises. [1995 c 100 § 2.]

66.44.325 Unlawful transfer to minor of age identification. Any person who transfers in any manner an identification of age to a minor for the purpose of permitting such minor to obtain alcoholic beverages shall be guilty of a misdemeanor punishable as provided by RCW 9A.20.021, except that a minimum fine of two hundred fifty dollars shall be imposed and any sentence requiring community restitution shall require not fewer than twenty-five hours of community

[Title 66 RCW—page 65]

restitution: PROVIDED, That corroborative testimony of a witness other than the minor shall be a condition precedent to conviction. [2002 c 175 § 43; 1987 c 101 § 2; 1961 c 147 § 1.]

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

Cards of identification: RCW 66.20.160 through 66.20.210.

66.44.328 Preparation or acquisition and supply to persons under age twenty-one of facsimile of official identification card—Penalty. No person may forge, alter, counterfeit, otherwise prepare or acquire and supply to a person under the age of twenty-one years a facsimile of any of the officially issued cards of identification that are required for presentation under RCW 66.16.040. A violation of this section is a gross misdemeanor punishable as provided by RCW 9A.20.021 except that a minimum fine of two thousand five hundred dollars shall be imposed. [1987 c 101 § 3.]

66.44.330 Prosecutions to be reported by prosecuting attorney and police court. See RCW 36.27.020(12).

66.44.340 Employees eighteen years and over allowed to sell and handle beer and wine for certain licensed employers. Employers holding grocery store or beer and/or wine specialty shop licenses exclusively are permitted to allow their employees, between the ages of eighteen and twenty-one years, to sell, stock, and handle beer or wine in, on or about any establishment holding a grocery store or beer and/or wine specialty shop license exclusively: PROVIDED, That there is an adult twenty-one years of age or older on duty supervising the sale of liquor at the licensed premises: PROVIDED, That minor employees may make deliveries of beer and/or wine purchased from licensees holding grocery store or beer and/or wine specialty shop licenses exclusively, when delivery is made to cars of customers adjacent to such licensed premises but only, however, when the minor employee is accompanied by the purchaser. [1999 c 281 § 11; 1986 c 5 § 1; 1981 1st ex.s. c 5 § 48; 1969 ex.s. c 38 § 1.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.350 Employees eighteen years and over allowed to serve and carry liquor, clean up, etc., for certain licensed employers. Notwithstanding provisions of RCW 66.44.310, employees holding beer and/or wine restaurant; beer and/or wine private club; snack bar; spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports entertainment facility licenses who are licensees eighteen years of age and over may take orders for, serve and sell liquor in any part of the licensed premises except cocktail lounges, bars, or other areas classified by the Washington state liquor control board as off-limits to persons under twenty-one years of age: PROVIDED, That such employees may enter such restricted areas to perform work assignments including picking up liquor for service in other parts of the licensed premises, performing clean up work, setting up and arranging tables, delivering supplies, delivering messages, serving food, and seating patrons: PROVIDED FURTHER, That such employees shall remain in the areas off-limits to

minors no longer than is necessary to carry out their aforementioned duties: PROVIDED FURTHER, That such employees shall not be permitted to perform activities or functions of a bartender. [1999 c 281 § 12; 1988 c 160 § 1; 1975 1st ex.s. c 204 § 1.]

66.44.365 Juvenile driving privileges—Alcohol or drug violations. (1) If a juvenile thirteen years of age or older and under the age of eighteen is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, a juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 69.41, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 118; 1988 c 148 § 3.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

66.44.370 Resisting or opposing officers in enforcement of title. No person shall knowingly or wilfully resist or oppose any state, county, or municipal peace officer, or liquor enforcement officer, in the discharge of his/her duties under Title 66 RCW, or aid and abet such resistance or opposition. Any person who violates this section shall be guilty of a violation of this title and subject to arrest by any such officer. [1981 1st ex.s. c 5 § 27.]

Severability—Effective date—1981 1st ex.s. c 5: See RCW 66.98.090 and 66.98.100.

66.44.800 Compliance by Washington wine commission. Nothing contained in chapter 15.88 RCW shall affect the compliance by the Washington wine commission with this chapter. [1987 c 452 § 17.]

Construction—Effective dates—Severability—1987 c 452: See RCW 15.88.900 through 15.88.902.

Chapter 66.98 RCW CONSTRUCTION

Sections

| | |
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| 66.98.010 | Short title. |
| 66.98.020 | Severability and construction—1933 ex.s. c 62. |
| 66.98.030 | Effect of act on certain laws—1933 ex.s. c 62. |
| 66.98.040 | Effective date and application—1937 c 217. |
| 66.98.050 | Effective date and application—1939 c 172. |

- 66.98.060 Rights of spirits, beer, and wine restaurant licensees—1949 c 5.
 66.98.070 Regulations by board—1949 c 5.
 66.98.080 Severability—1949 c 5.
 66.98.090 Severability—1981 1st ex.s. c 5.
 66.98.100 Effective date—1981 1st ex.s. c 5.

66.98.010 Short title. This act may be cited as the "Washington State Liquor Act." [1933 ex.s. c 62 § 1; RRS § 7306-1.]

66.98.020 Severability and construction—1933 ex.s. c 62. If any clause, part or section of this act shall be adjudged invalid, such judgment shall not affect nor invalidate the remainder of the act, but shall be confined in its operation to the clause, part or section directly involved in the controversy in which such judgment was rendered. If the operation of any clause, part or section of this act shall be held to impair the obligation of contract, or to deny to any person any right or protection secured to him by the Constitution of the United States of America, or by the Constitution of the state of Washington, it is hereby declared that, had the invalidity of such clause, part or section been considered at the time of the enactment of this act, the remainder of the act would nevertheless have been adopted without such and any and all such invalid clauses, parts or sections. [1933 ex.s. c 62 § 94; RRS § 7306-94.]

66.98.030 Effect of act on certain laws—1933 ex.s. c 62. Nothing in this act shall be construed to amend or repeal chapter 2 of the Laws of 1933, or any portion thereof. [1933 ex.s. c 62 § 95; RRS § 7306-95.]

Reviser's note: 1933 c 2 referred to herein consisted of two sections, section 1 of which is codified as RCW 66.44.320 and section 2 was a repeal of earlier liquor laws.

66.98.040 Effective date and application—1937 c 217. This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: PROVIDED, HOWEVER, That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under *chapter 62, Laws of 1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1937: AND PROVIDED FURTHER, That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1937 c 217 § 8; RRS § 7306-97.]

***Reviser's note:** Chapter 62, Laws of 1933, extraordinary session, is the basic liquor act codified in this title. The 1937 act in which it appears amended it.

66.98.050 Effective date and application—1939 c 172. This act is necessary for the support of the state government and its existing public institutions and shall take effect immediately: PROVIDED, HOWEVER, That any person, who shall at the time this act takes effect be the bona fide holder of a license duly issued under *chapter 62, Laws of

1933, extraordinary session, as amended by chapters 13, 80, 158 and 174, Laws of 1935 and chapters 62 and 217, Laws of 1937, shall be entitled to exercise the rights and privileges granted by such license until the 30th day of September, 1939: AND PROVIDED FURTHER, That all persons lawfully engaged in activities not required to be licensed prior to the taking effect of this act but which are required to be licensed under the provisions of this act shall have thirty days from and after the taking effect of this act in which to comply with the same. [1939 c 172 § 11; RRS § 7306-97a.]

***Reviser's note:** Chapter 62, Laws of 1933, extraordinary session, is the basic liquor act codified in this title. The 1939 act in which it appears amended it.

66.98.060 Rights of spirits, beer, and wine restaurant licensees—1949 c 5. Notwithstanding any provisions of chapter 62, Laws of 1933 ex. sess., as last amended, or of any provisions of any other law which may otherwise be applicable, it shall be lawful for the holder of a spirits, beer, and wine restaurant license to sell beer, wine, and spirituous liquor in this state in accordance with the terms of chapter 5, Laws of 1949. [1998 c 126 § 15; 1997 c 321 § 54; 1949 c 5 § 14; No RRS. Formerly: RCW 66.24.460.]

Effective date—1998 c 126: See note following RCW 66.20.010.

Effective date—1997 c 321: See note following RCW 66.24.010.

66.98.070 Regulations by board—1949 c 5. For the purpose of carrying into effect the provisions of this act, the board shall have the same power to make regulations not inconsistent with the spirit of this act as is provided by RCW 66.08.030. [1949 c 5 § 15; No RRS. Formerly: RCW 66.24.470.]

66.98.080 Severability—1949 c 5. If any section or provision of this act shall be adjudged to be invalid, such adjudication shall not affect the validity of the act as whole or any section, provision, or part thereof not adjudged to be invalid. [1949 c 5 § 17; No RRS.]

66.98.090 Severability—1981 1st ex.s. c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 1st ex.s. c 5 § 50.]

66.98.100 Effective date—1981 1st ex.s. c 5. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. [1981 1st ex.s. c 5 § 51.]

Title 67

SPORTS AND RECREATION—CONVENTION FACILITIES

Chapters

- 67.04** **Baseball.**
- 67.08** **Boxing, martial arts, and wrestling.**
- 67.12** **Dancing, billiards, pool, and bowling.**
- 67.14** **Billiard tables, bowling alleys, and miscellaneous games—1873 act.**
- 67.16** **Horse racing.**
- 67.17** **Live horse racing compact.**
- 67.20** **Parks, bathing beaches, public camps.**
- 67.24** **Fraud in sporting contest.**
- 67.28** **Public stadium, convention, arts, and tourism facilities.**
- 67.30** **Multipurpose sports stadia.**
- 67.38** **Cultural arts, stadium and convention districts.**
- 67.40** **Convention and trade facilities.**
- 67.42** **Amusement rides.**
- 67.70** **State lottery.**

Alcoholic beverage control: Title 66 RCW.

Bicycles—Operation and equipment: RCW 46.61.750 through 46.61.780.

Business and occupation tax—Exemptions—Boxing, sparring, or wrestling matches: RCW 82.04.340.

Cities and towns

admissions tax: RCW 35.21.280.

auditoriums, art museums, swimming pools, etc.—Power to acquire: RCW 35.21.020, 35A.11.020.

powers vested in legislative bodies of noncharter and charter code cities: RCW 35A.11.020.

Common carriers—Commutation or excursion tickets: RCW 81.28.080.

Controlled substances: Chapter 69.50 RCW.

Counties

admissions tax: Chapter 36.38 RCW.

fairs and poultry shows: Chapter 36.37 RCW.

joint armory sites: RCW 36.64.050.

parks and recreational facilities: Chapter 36.68 RCW.

recreation districts act for counties: Chapter 36.69 RCW.

southwest Washington fair: Chapter 36.90 RCW.

County park and recreation service areas—Use of local service funds in exercise of powers enumerated: Chapter 36.68 RCW.

Cruelty to animals—Prevention: Chapter 16.52 RCW.

Doors of buildings used by public—Requirements—Penalty: RCW 70.54.070.

Driving delinquencies: Chapter 46.61 RCW.

Earthquake standards for construction (public meeting places): Chapter 70.86 RCW.

Excise taxes: Motor vehicle fuel tax—Exemptions: RCW 82.36.230.

Explosives: Chapter 70.74 RCW.

Fireworks: Chapter 70.77 RCW.

First class cities

additional powers—Auditoriums, art museums: RCW 35.22.290.

leasing of land for auditoriums, etc.: RCW 35.22.300.

Food fish and shellfish

department of fish and wildlife: Chapter 77.04 RCW.

unlawful acts: Chapter 77.50 RCW.

Game and game fish: Title 77 RCW.

Horse racing commission: Chapter 67.16 RCW.

Limitation on liability of landowners for injuries to recreation users: RCW 4.24.210.

Marine recreation land act: Chapter 79A.25 RCW.

Metropolitan municipal corporations: Chapter 35.58 RCW.

Metropolitan park districts: Chapter 35.61 RCW.

Militia

armories and small arms ranges: Chapter 38.20 RCW.

membership in clubs, etc.: RCW 38.40.110.

social corporations may be formed: RCW 38.40.130.

Multipurpose community centers: Chapter 35.59 RCW.

Narcotic drugs: Chapter 69.50 RCW.

Parks and recreation commission: Chapter 79A.05 RCW.

Physical education in schools and higher institutions: RCW 28A.230.040, 28A.230.050.

Professional sports franchise, cities authorized to own and operate: RCW 35.21.695.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Public lands

director of ecology to assist city parks: RCW 79.94.185.

exchange of lands to secure city parks and playgrounds: RCW 79.94.181.

grant of lands for city park or playground purposes: RCW 79.94.175.

use of public lands for state or city park purposes: RCW 79A.50.010 through 79A.50.030.

Regulation of motor boats: Chapter 79A.60 RCW.

Second class cities, additional powers—Acquisition of property for municipal purposes: RCW 35.23.452.

State agency for surveys and maps: Chapter 58.24 RCW.

Streets—Bicycles—Paths: Chapter 35.75 RCW.

Unclassified cities—Additional powers (relating to recreation or entertainment): RCW 35.30.010(4).

Use of playgrounds for other than school purposes: RCW 28A.335.150.

Vacation of streets or alleys abutting on bodies of water by city or town prohibited with specified exceptions such as when the vacated property is to be used for recreational purposes, etc.: RCW 35.79.035.

Watercraft adrift: Chapter 79A.60 RCW.

Water recreation facilities: Chapter 70.90 RCW.

Wharves and landings—Right of riparian owner to construct: RCW 88.24.010.

Chapter 67.04 RCW BASEBALL

Sections

- 67.04.010 Penalty for bribery in relation to baseball game.
- 67.04.020 Penalty for acceptance of bribe.
- 67.04.030 Elements of offense outlined.
- 67.04.040 "Bribe" defined.
- 67.04.050 Corrupt baseball playing—Penalty.
- 67.04.060 Venue of action.
- 67.04.070 Bonus or extra compensation.
- 67.04.080 Scope of provisions as to bribes.
- 67.04.090 Baseball contracts with minors—Definitions.
- 67.04.100 Contract with minor void unless approved.
- 67.04.110 Contract with minor—Approval by prosecuting attorney.
- 67.04.120 Contract with minor—Basis of approval.
- 67.04.130 Contract with minor—Effect of disapproval.
- 67.04.140 Negotiations with minor prohibited.
- 67.04.150 Contract with minor—Penalty for violation.

Age of majority: Chapter 26.28 RCW.

67.04.010 Penalty for bribery in relation to baseball game. Any person who shall bribe or offer to bribe, any baseball player with intent to influence his play, action or conduct in any baseball game, or any person who shall bribe or offer to bribe any umpire of a baseball game, with intent to influence him to make a wrong decision or to bias his opinion or judgment in relation to any baseball game or any play occurring therein, or any person who shall bribe or offer to bribe any manager, or other official of a baseball club, league or association, by whatsoever name called, conducting said game of baseball to throw or lose a game of baseball, shall be guilty of a gross misdemeanor. [1921 c 181 § 1; RRS § 2321-1.]

67.04.020 Penalty for acceptance of bribe. Any baseball player who shall accept or agree to accept, a bribe offered for the purpose of wrongfully influencing his play, action or conduct in any baseball game, or any umpire of a baseball game who shall accept or agree to accept a bribe offered for the purpose of influencing him to make a wrong decision, or biasing his opinions, rulings or judgment with regard to any play, or any manager of a baseball club, or club or league official, who shall accept, or agree to accept, any bribe offered for the purpose of inducing him to lose or cause to be lost any baseball game, as set forth in RCW 67.04.010, shall be guilty of a gross misdemeanor. [1921 c 181 § 2; RRS § 2321-2.]

67.04.030 Elements of offense outlined. To complete the offenses mentioned in RCW 67.04.010 and 67.04.020, it shall not be necessary that the baseball player, manager, umpire or official, shall, at the time, have been actually employed, selected or appointed to perform their respective duties; it shall be sufficient if the bribe be offered, accepted or agreed to with the view of probable employment, selection or appointment of the person to whom the bribe is offered, or by whom it is accepted. Neither shall it be necessary that such baseball player, umpire or manager actually play or participate in a game or games concerning which said bribe is offered or accepted; it shall be sufficient if the bribe be given, offered or accepted in view of his or their possibly participating therein. [1921 c 181 § 3; RRS § 2321-3.]

67.04.040 "Bribe" defined. By a "bribe" as used in RCW 67.04.010 through 67.04.080, is meant any gift, emolument, money or thing of value, testimonial, privilege, appointment or personal advantage, or the promise of either, bestowed or promised for the purpose of influencing, directly or indirectly, any baseball player, manager, umpire, club or league official, to see which game an admission fee may be charged, or in which game of baseball any player, manager or umpire is paid any compensation for his services. Said bribe as defined in RCW 67.04.010 through 67.04.080 need not be direct; it may be such as is hidden under the semblance of a sale, bet, wager, payment of a debt, or in any other manner designed to cover the true intention of the parties. [1921 c 181 § 4; RRS § 2321-4.]

67.04.050 Corrupt baseball playing—Penalty. Any baseball player, manager or club or league official who shall commit any wilful act of omission or commission in playing, or directing the playing, of a baseball game, with intent to cause the ball club, with which he is affiliated, to lose a baseball game; or any umpire officiating in a baseball game, or any club or league official who shall commit any wilful act connected with his official duties for the purpose and with the intent to cause a baseball club to win or lose a baseball game, which it would not otherwise have won or lost under the rules governing the playing of said game, shall be guilty of a gross misdemeanor. [1921 c 181 § 5; RRS § 2321-5.]

67.04.060 Venue of action. In all prosecutions under RCW 67.04.010 through 67.04.080 the venue may be laid in any county where the bribe herein referred to was given, offered or accepted, or in which the baseball game was played in relation to which the bribe was offered, given or accepted, or the acts referred to in RCW 67.04.050 committed. [1921 c 181 § 6; RRS § 2321-6.]

67.04.070 Bonus or extra compensation. Nothing in RCW 67.04.010 through 67.04.080 shall be construed to prohibit the giving or offering of any bonus or extra compensation to any manager or baseball player by any person to encourage such manager or player to a higher degree of skill, ability or diligence in the performance of his duties. [1921 c 181 § 7; RRS § 2321-7.]

67.04.080 Scope of provisions as to bribes. RCW 67.04.010 through 67.04.080 shall apply only to baseball league and club officials, umpires, managers and players who act in such capacity in games where the public is generally invited to attend and a general admission fee is charged. [1921 c 181 § 8; RRS § 2321-8.]

67.04.090 Baseball contracts with minors—Definitions. As used in RCW 67.04.090 through 67.04.150 the following terms shall have the following meanings:

- (1) "Minor" shall mean any person under the age of eighteen years, and who has not graduated from high school: PROVIDED, That should he become eighteen during his senior year he shall be a minor until the end of the school year;
- (2) "Contract" shall mean any contract, agreement, bonus or gratuity arrangement, whether oral or written;
- (3) "Organized professional baseball" shall mean and include all persons, firms, corporations, associations, or teams or clubs, or agents thereof, engaged in professional baseball, or in promoting the interest of professional baseball, or sponsoring or managing other persons, firms, corporations, associations, teams, or clubs who play baseball in any of the major or minor professional baseball leagues, or any such league hereafter organized;
- (4) "Agent" shall, in addition to its generally accepted legal meaning, mean and include those persons commonly known as "baseball scouts";
- (5) "Prosecuting attorney" shall mean the prosecuting attorney, or his regular deputy, of the county in which the minor's parent is domiciled;

(6) "Parent" shall mean parent, parents or guardian. [1951 c 78 § 2.]

Purpose—1951 c 78: "The welfare of the children of this state is of paramount interest to the people of the state. It is the purpose of this act to foster the education of minors and to protect their moral and physical well-being. Organized professional baseball has in numerous cases induced minors to enter into contracts and agreements which have been unfair and injurious to them." [1951 c 78 § 1.]

Severability—1951 c 78: "If any portion, section, or clause of this act, shall be declared or found invalid by any court of competent jurisdiction, such adjudication shall not affect the remainder of this act." [1951 c 78 § 9.]

67.04.100 Contract with minor void unless approved.

Any contract between organized professional baseball and a minor shall be null and void and contrary to the public policy of the state, unless and until such contract be approved as hereinafter provided. [1951 c 78 § 3.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.110 Contract with minor—Approval by prosecuting attorney. No contract within RCW 67.04.090 through 67.04.150 shall be null and void, nor shall any of the prohibitions or penalties provided in RCW 67.04.090 through 67.04.150 be applicable if such contract be first approved in writing by the prosecuting attorney. Such approval may be sought jointly, or at the request of either party seeking a contract. [1951 c 78 § 4.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.120 Contract with minor—Basis of approval.

The prosecuting attorney shall have the authority to examine all the parties to the proposed contract and any other interested person and shall approve such contract if the following facts and circumstances are found to exist:

(1) That the minor has not been signed, approached, or contacted, directly or indirectly, pertaining to a professional baseball contract except as herein permitted by approval of the prosecuting attorney;

(2) That the minor has been apprised of the fact that approval of the contract may deprive him of his amateur status;

(3) That the parent of the minor and the minor have consented to the contract;

(4) That the prosecuting attorney has concluded that the contract conforms to the provisions of RCW 67.04.090 through 67.04.150, and is a valid and binding contract;

(5) That the contract permits the minor to have at least five months available each year to continue his high school education. [1951 c 78 § 5.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

Employment permits: RCW 28A.225.080.

67.04.130 Contract with minor—Effect of disapproval. Should the prosecuting attorney not approve the contract as above provided, then such contract shall be void, and the status of the minor shall remain as if no contract had been made, unless the prosecuting attorney's determination be the result of arbitrary or capricious action. [1951 c 78 § 6.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.140 Negotiations with minor prohibited. No representative of organized professional baseball nor agent, nor person purporting to be able to represent any institution in organized baseball, whether so authorized to represent such institution or not, shall initiate or participate in any negotiations which would induce an evasion of this law in any way, including the removal of any minor to another state, or violate the minor's high school athletic eligibility. [1951 c 78 § 7.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

67.04.150 Contract with minor—Penalty for violation. Any person, firm, corporation, association, or agent thereof, who enters into a contract with a minor, or gives a bonus or any gratuity to any minor to secure the minor's promise to enter into a contract in violation of the provisions of RCW 67.04.090 through 67.04.150, or shall otherwise violate any provisions of RCW 67.04.090 through 67.04.150, shall be guilty of a gross misdemeanor. [1951 c 78 § 8.]

Purpose—Severability—1951 c 78: See notes following RCW 67.04.090.

Chapter 67.08 RCW

BOXING, MARTIAL ARTS, AND WRESTLING

(Formerly: Boxing, sparring, and wrestling)

Sections

- 67.08.002 Definitions.
- 67.08.007 Officers, employees, inspectors.
- 67.08.010 Licenses for boxing, martial arts, and wrestling events—Telecasts.
- 67.08.015 Duties of department—Exemptions—Rules.
- 67.08.017 Director—Powers.
- 67.08.030 Promoters—Bond—Medical insurance.
- 67.08.040 Issuance of license.
- 67.08.050 Statement and report of event—Tax on gross receipts—Complimentary tickets.
- 67.08.055 Simultaneous or closed circuit telecasts—Report—Tax on gross receipts.
- 67.08.060 Inspectors—Duties—Fee and travel expenses for attending events.
- 67.08.080 Rounds and bouts limited—Weight of gloves—Rules.
- 67.08.090 Physician's attendance—Examination of contestants—Urinalysis.
- 67.08.100 Annual licenses—Fees—Qualifications—Revocation—Exceptions.
- 67.08.105 License and renewal fees.
- 67.08.110 Unprofessional conduct—Sham or fake event.
- 67.08.130 Failure to make report—Additional tax—Hearing—Disciplinary action.
- 67.08.140 Penalty for conducting events without license—Penalty.
- 67.08.150 General penalty.
- 67.08.160 Ambulance or paramedical unit at location.
- 67.08.170 Security—Promoter's responsibility.
- 67.08.180 Unprofessional conduct—Prohibited acts.
- 67.08.200 Unprofessional conduct—Written complaint—Investigation—Immunity of complainant.
- 67.08.220 Unprofessional conduct—Order upon finding—Penalties—Costs.
- 67.08.240 Unprofessional conduct—What constitutes.
- 67.08.300 Immunity of director and director's agents.
- 67.08.310 Uniform regulation of business and professions act.
- 67.08.900 Severability—1933 c 184.
- 67.08.901 Severability—1993 c 278.
- 67.08.902 Effective date—1993 c 278.
- 67.08.903 Severability—1997 c 205.

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

(1) "Amateur" means a person who has never received nor competed for any purse or other article of value, either for expenses of training or for participating in an event, other than a prize of fifty dollars in value or less.

(2) "Boxing" means the sport of attack and defense which uses the contestants fists and where the contestants compete with the intent not to injure or disable an opponent, but to win by decision, knockout, or technical knockout, but does not include professional wrestling.

(3) "Chiropractor" means a person licensed under chapter 18.25 RCW as a doctor of chiropractic or under the laws of any jurisdiction in which that person resides.

(4) "Department" means the department of licensing.

(5) "Director" means the director of the department of licensing or the director's designee.

(6) "Event" includes, but is not limited to, a boxing, wrestling, or martial arts contest, sparring, fisticuffs, match, show, or exhibition.

(7) "Event physician" means the physician licensed under RCW 67.08.100 and who is responsible for the activities described in RCW 67.08.090.

(8) "Face value" means the dollar value of a ticket or order, which value must reflect the dollar amount that the customer is required to pay or, for a complimentary ticket, would have been required to pay to purchase a ticket with equivalent seating priority, in order to view the event.

(9) "Gross receipts" means the amount received from the face value of all tickets sold and complimentary tickets redeemed.

(10) "Kickboxing" means a type of boxing in which blows are delivered with the fist and any part of the leg below the hip, including the foot and where the contestants compete with the intent not to injure or disable an opponent, but to win by decision, knockout, or technical knockout.

(11) "Martial arts" means a type of boxing including sumo, judo, karate, kung fu, tae kwon do, pankration, muay thai, or other forms of full-contact martial arts or self-defense conducted on a full-contact basis where weapons are not used and the participants utilize kicks, punches, blows, or other techniques with the intent not to injure or disable an opponent, but to defeat an opponent or win by decision, knockout, technical knockout, or submission.

(12) "No holds barred fighting," also known as "frontier fighting" and "extreme fighting," means a contest, exhibition, or match between contestants where any part of the contestant's body may be used as a weapon or any means of fighting may be used with the specific purpose to intentionally injure the other contestant in such a manner that they may not defend themselves and a winner is declared. Rules may or may not be used.

(13) "Combative fighting," also known as "toughman fighting," "toughwoman fighting," "badman fighting," and "so you think you're tough," means a contest, exhibition, or match between contestants who use their fists, with or without gloves, or their feet, or both, and which allows contestants that are not trained in the sport to compete and the object is to defeat an opponent or to win by decision, knockout, or technical knockout.

(14) "Physician" means a person licensed under chapter 18.57, 18.36A, or 18.71 RCW as a physician or a person holding an osteopathic or allopathic physician license under the laws of any jurisdiction in which the person resides.

(15) "Professional" means a person who has received or competed for any purse or other articles of value greater than fifty dollars, either for the expenses of training or for participating in an event.

(16) "Promoter" means a person, and includes any officer, director, employee, or stockholder of a corporate promoter, who produces, arranges, stages, holds, or gives an event in this state involving a professional boxing, martial arts, or wrestling event, or shows or causes to be shown in this state a closed circuit telecast of a match involving a professional participant whether or not the telecast originates in this state.

(17) "Wrestling exhibition" or "wrestling show" means a form of sports entertainment in which the participants display their skills in a physical struggle against each other in the ring and either the outcome may be predetermined or the participants do not necessarily strive to win, or both.

(18) "Amateur event" means an event in which all the participants are "amateurs" and which is registered and sanctioned by:

- (a) United States Amateur Boxing, Inc.;
- (b) Washington Interscholastic Activities Association;
- (c) National Collegiate Athletic Association;
- (d) Amateur Athletic Union;
- (e) Golden Gloves of America;
- (f) United Full Contact Federation;
- (g) Any similar organization recognized by the department as exclusively or primarily dedicated to advancing the sport of amateur boxing, kickboxing, or martial arts, as those sports are defined in this section; or

(h) Local affiliate of any organization identified in this subsection.

(19) "Elimination tournament" means any contest in which contestants compete in a series of matches until not more than one contestant remains in any weight category. The term does not include any event that complies with the provisions of RCW 67.08.015(2) (a) or (b). [2004 c 149 § 1; 2002 c 147 § 1; 1999 c 282 § 2; 1997 c 205 § 1; 1993 c 278 § 8; 1989 c 127 § 1.]

Effective date—2004 c 149: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2004]." [2004 c 149 § 3.]

Effective date—2002 c 147: "This act takes effect January 1, 2003." [2002 c 147 § 4.]

67.08.007 Officers, employees, inspectors. The department may employ and fix the compensation of such officers, employees, and inspectors as may be necessary to administer the provisions of this chapter as amended. [1993 c 278 § 9; 1959 c 305 § 2; 1933 c 184 § 4; RRS § 8276-4. Formerly RCW 43.48.040.]

67.08.010 Licenses for boxing, martial arts, and wrestling events—Telecasts. The department shall have power to issue and take disciplinary action as provided in RCW 18.235.130 against a license to conduct, hold, or pro-

mote boxing, martial arts, or wrestling events or closed circuit telecasts of these events as provided in this chapter and chapter 18.235 RCW under such terms and conditions and at such times and places as the department may determine. [2002 c 86 § 305; 1997 c 205 § 2; 1993 c 278 § 10; 1989 c 127 § 13; 1975-'76 2nd ex.s. c 48 § 2; 1933 c 184 § 7; RRS § 8276-7. Prior: 1909 c 249 § 304; 1890 p 109 § 1; 1886 p 82 § 1.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.015 Duties of department—Exemptions—

Rules. (1) In the interest of ensuring the safety and welfare of the participants, the department shall have power and it shall be its duty to direct, supervise, and control all boxing, martial arts, and wrestling events conducted within this state and an event may not be held in this state except in accordance with the provisions of this chapter. The department may, in its discretion, issue and for cause, which includes concern for the safety and welfare of the participants, take any of the actions specified in RCW 18.235.110 against a license to promote, conduct, or hold boxing, kickboxing, martial arts, or wrestling events where an admission fee is charged by any person, club, corporation, organization, association, or fraternal society.

(2) All boxing, kickboxing, martial arts, or wrestling events that:

(a) Are conducted by any common school, college, or university, whether public or private, or by the official student association thereof, whether on or off the school, college, or university grounds, where all the participating contestants are bona fide students enrolled in any common school, college, or university, within or without this state; or

(b) Are entirely amateur events as defined in RCW 67.08.002(18) and promoted on a nonprofit basis or for charitable purposes;

are not subject to the licensing provisions of this chapter. A boxing, martial arts, kickboxing, or wrestling event may not be conducted within the state except under a license issued in accordance with this chapter and the rules of the department except as provided in this section.

(3) The director shall prohibit events unless all of the contestants are licensed or otherwise exempt from licensure as provided under this chapter.

(4) No amateur or professional no holds barred fighting or combative fighting type of contest, exhibition, match, or similar type of event, nor any elimination tournament, may be held in this state. Any person promoting such an event is guilty of a class C felony. Additionally, the director may apply to a superior court for an injunction against any and all promoters of a contest, and may request that the court seize all money and assets relating to the competition. [2004 c 149 § 2; 2002 c 86 § 306; 2000 c 151 § 2; 1999 c 282 § 3; 1997 c 205 § 3; 1993 c 278 § 12; 1989 c 127 § 14; 1977 c 9 § 2. Prior: 1975-'76 2nd ex.s. c 48 § 3; 1975 c 1 § 1; 1973 c 53 § 1; 1951 c 48 § 2.]

Effective date—2004 c 149: See note following RCW 67.08.002.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

(2004 Ed.)

67.08.017 Director—Powers. In addition to the powers described in RCW 18.235.030 and 18.235.040, the director or the director's designee has the following authority in administering this chapter:

(1) Adopt, amend, and rescind rules as deemed necessary to carry out this chapter;

(2) Adopt standards of professional conduct or practice;

(3) Enter into an assurance of discontinuance in lieu of issuing a statement of charges or conducting a hearing. The assurance shall consist of a statement of the law in question and an agreement not to violate the stated provision. The applicant or license holder shall not be required to admit to any violation of the law, and the assurance shall not be construed as such an admission. Violation of an assurance under this subsection is grounds for disciplinary action; and

(4) Establish and assess fines for violations of this chapter that may be subject to payment from a contestant's purse. [2002 c 86 § 307; 1997 c 205 § 4; 1993 c 278 § 11.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.030 Promoters—Bond—Medical insurance.

(1) Every promoter, as a condition for receiving a license, shall file with the department a surety bond in an amount to be determined by the department, but not less than ten thousand dollars, to cover all of the event locations applied for within the state during the license period, conditioned upon the faithful performance by such licensee of the provisions of this chapter, the payment of the taxes, officials, and contracts as provided for herein and the observance of all rules of the department.

(2) Boxing promoters must obtain medical insurance in an amount set by the director, but not less than fifty thousand dollars, to cover any injuries incurred by participants at the time of each event held in this state and provide proof of insurance to the department seventy-two hours before each event. The evidence of insurance must specify, at a minimum, the name of the insurance company, the insurance policy number, the effective date of the coverage, and evidence that each participant is covered by the insurance. The promoter must pay any deductible associated with the insurance policy.

(3) In lieu of the insurance requirement of subsection (2) of this section, a promoter of the boxing event who so chooses may, as a condition for receiving a license under this chapter, file proof of medical insurance coverage that is in effect for the entire term of the licensing period.

(4) The department shall cancel a boxing event if the promoter fails to provide proof of medical insurance within the proper time frame. [1997 c 205 § 5; 1993 c 278 § 13; 1989 c 127 § 6; 1933 c 184 § 9; RRS § 8276-9.]

67.08.040 Issuance of license. Upon the approval by the department of any application for a license, as hereinabove provided, and the filing of the bond the department shall forthwith issue such license. [1993 c 278 § 14; 1975-'76 2nd ex.s. c 48 § 4; 1933 c 184 § 10; RRS § 8276-10.]

67.08.050 Statement and report of event—Tax on gross receipts—Complimentary tickets. (1) Any promoter

shall within seven days prior to the holding of any event file with the department a statement setting forth the name of each licensee who is a potential participant, his or her manager or managers, and such other information as the department may require. Participant changes regarding a wrestling event may be allowed after notice to the department, if the new participant holds a valid license under this chapter. The department may stop any wrestling event in which a participant is not licensed under this chapter.

(2) Upon the termination of any event the promoter shall file with the designated department representative a written report, duly verified as the department may require showing the number of tickets sold for the event, the price charged for the tickets and the gross proceeds thereof, and such other and further information as the department may require. The promoter shall pay to the department at the time of filing the report under this section a tax equal to five percent of such gross receipts. However, the tax may not be less than twenty-five dollars. The five percent of such gross receipts shall be immediately paid by the department into the state general fund.

(3) A complimentary ticket may not have a face value of less than the least expensive ticket available for sale to the general public. The number of untaxed complimentary tickets shall be limited to ten percent of the total tickets sold per event location, not to exceed one thousand tickets. All complimentary tickets exceeding this exemption shall be subject to taxation. [2000 c 151 § 1; 1999 c 282 § 4; 1997 c 205 § 6; 1993 c 278 § 15; 1989 c 127 § 7; 1933 c 184 § 11; RRS § 8276-11. FORMER PART OF SECTION: 1939 c 54 § 1; RRS § 8276-11a, now footnoted below.]

Emergency—Effective date—1939 c 54: "That this act is necessary for the immediate support of the state government and its existing public institutions and shall take effect April 1, 1939." [1939 c 54 § 6; no RRS.]

67.08.055 Simultaneous or closed circuit telecasts—Report—Tax on gross receipts. Every licensee who charges and receives an admission fee for exhibiting a simultaneous telecast of any live, current, or spontaneous boxing or sparring match, or wrestling exhibition or show on a closed circuit telecast viewed within this state shall, within seventy-two hours after such event, furnish to the department a verified written report on a form which is supplied by the department showing the number of tickets issued or sold, and the gross receipts therefor without any deductions whatsoever. Such licensee shall also, at the same time, pay to the department a tax equal to five percent of such gross receipts paid for admission to the showing of the contest, match or exhibition. In no event, however, shall the tax be less than twenty-five dollars. The tax shall apply uniformly at the same rate to all persons subject to the tax. Such receipts shall be immediately paid by the department into the general fund of the state. [1993 c 278 § 16; 1989 c 127 § 15; 1975-'76 2nd ex.s. c 48 § 5.]

67.08.060 Inspectors—Duties—Fee and travel expenses for attending events. The department may appoint official inspectors at least one of which, in the absence of a member of the department, shall be present at any event held under the provisions of this chapter. Such inspectors shall carry a card signed by the director evidencing their authority.

It shall be their duty to see that all rules of the department and the provisions of this chapter are strictly complied with and to be present at the accounting of the gross receipts of any event, and such inspector is authorized to receive from the licensee conducting the event the statement of receipts herein provided for and to immediately transmit such reports to the department. Each inspector shall receive a fee and travel expenses from the promoter to be set by the director for each event officially attended. [1997 c 205 § 7; 1993 c 278 § 17; 1989 c 127 § 16; 1988 c 19 § 2; 1975-'76 2nd ex.s. c 34 § 154; 1959 c 305 § 4; 1933 c 184 § 12; RRS § 8276-12.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

67.08.080 Rounds and bouts limited—Weight of gloves—Rules. A boxing event held in this state may not be for more than ten rounds and no one round of any bout shall be scheduled for longer than three minutes and there shall be not less than one minute intermission between each round. In the event of bouts involving state, regional, national, or world championships the department may grant an extension of no more than two additional rounds to allow total bouts of twelve rounds. A contestant in any boxing event under this chapter may not be permitted to wear gloves weighing less than eight ounces. The director shall adopt rules to assure clean and sportsmanlike conduct on the part of all contestants and officials, and the orderly and proper conduct of the event in all respects, and to otherwise make rules consistent with this chapter, but such rules shall apply only to events held under the provisions of this chapter. The director may adopt rules with respect to round and bout limitations and clean and sportsmanlike conduct for kickboxing, martial arts, or wrestling events. [1999 c 282 § 5; 1997 c 205 § 8; 1993 c 278 § 18; 1989 c 127 § 8; 1974 ex.s. c 45 § 1; 1959 c 305 § 5; 1933 c 184 § 14; RRS § 8276-14.]

67.08.090 Physician's attendance—Examination of contestants—Urinalysis. (1) Each contestant for boxing, kickboxing, or martial arts events shall be examined within twenty-four hours before the contest by an event physician licensed by the department. The event physician shall report in writing and over his or her signature before the event the physical condition of each and every contestant to the inspector present at such contest. No contestant whose physical condition is not approved by the event physician shall be permitted to participate in any event. Blank forms for event physicians' reports shall be provided by the department and all questions upon such blanks shall be answered in full. The event physician shall be paid a fee and travel expenses by the promoter.

(2) The department may require that an event physician be present at a wrestling event. The promoter shall pay the event physician present at a wrestling event. A boxing, kickboxing, or martial arts event may not be held unless an event physician licensed by the department is present throughout the event. In addition to the event physician, a chiropractor may be included as a licensed official at a boxing, kickboxing, or martial arts event. The promoter shall pay the chiropractor present at a boxing, kickboxing, or martial arts event.

(3) Any physician licensed under RCW 67.08.100 may be selected by the department as the event physician. The

event physician present at any contest shall have authority to stop any event when in the event physician's opinion it would be dangerous to a contestant to continue, and in such event it shall be the event physician's duty to stop the event.

(4) The department may have a participant in a wrestling event examined by an event physician licensed by the department prior to the event. A participant in a wrestling event whose condition is not approved by the event physician shall not be permitted to participate in the event.

(5) Each contestant for boxing, kickboxing, martial arts, or wrestling events may be subject to a random urinalysis or chemical test within twenty-four hours before or after a contest. In addition to the unprofessional conduct specified in RCW 18.235.130, an applicant or licensee who refuses or fails to submit to the urinalysis or chemical test is subject to disciplinary action under RCW 18.235.110. If the urinalysis or chemical test is positive for substances prohibited by rules adopted by the director, the applicant or licensee has engaged in unprofessional conduct and disciplinary action may be taken under RCW 18.235.110. [2002 c 147 § 2; 2002 c 86 § 308; 1999 c 282 § 6; 1997 c 205 § 9; 1993 c 278 § 19; 1989 c 127 § 9; 1933 c 184 § 15; RRS § 8276-15.]

Reviser's note: This section was amended by 2002 c 86 § 308 and by 2002 c 147 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2002 c 147: See note following RCW 67.08.002.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.100 Annual licenses—Fees—Qualifications—

Revocation—Exceptions. (1) The department upon receipt of a properly completed application and payment of a nonrefundable fee, may grant an annual license to an applicant for the following: (a) Promoter; (b) manager; (c) boxer; (d) second; (e) wrestling participant; (f) inspector; (g) judge; (h) timekeeper; (i) announcer; (j) event physician; (k) chiropractor; (l) referee; (m) matchmaker; (n) kickboxer; and (o) martial arts participant.

(2) The application for the following types of licenses shall include a physical performed by a physician, as defined in RCW 67.08.002, which was performed by the physician with a time period preceding the application as specified by rule: (a) Boxer; (b) wrestling participant; (c) kickboxer; (d) martial arts participant; and (e) referee.

(3) An applicant for the following types of licenses for the sports of boxing, kickboxing, and martial arts shall provide annual proof of certification as having adequate experience, skill, and training from an organization approved by the department, including, but not limited to, the association of boxing commissions, the international boxing federation, the international boxing organization, the Washington state association of professional ring officials, the world boxing association, the world boxing council, or the world boxing organization for boxing officials, and the united full contact federation for kickboxing and martial arts officials: (a) Judge; (b) referee; (c) inspector; (d) timekeeper; or (e) other officials deemed necessary by the department.

(4) No person shall participate or serve in any of the above capacities unless licensed as provided in this chapter.

(5) The referees, judges, timekeepers, event physicians, chiropractors, and inspectors for any boxing, kickboxing, or martial arts event shall be designated by the department from among licensed officials.

(6) The referee for any wrestling event shall be provided by the promoter and shall be licensed as a wrestling participant.

(7) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(8) A person may not be issued a license if the person has an unpaid fine outstanding to the department.

(9) A person may not be issued a license unless they are at least eighteen years of age.

(10) This section shall not apply to contestants or participants in events at which only amateurs are engaged in contests and/or fraternal organizations and/or veterans' organizations chartered by congress or the defense department or any recognized amateur sanctioning body recognized by the department, holding and promoting athletic events and where all funds are used primarily for the benefit of their members. Upon request of the department, a promoter, contestant, or participant shall provide sufficient information to reasonably determine whether this chapter applies. [2002 c 147 § 3; 2002 c 86 § 309; 2001 c 246 § 1; 1999 c 282 § 7. Prior: 1997 c 205 § 10; 1997 c 58 § 864; 1993 c 278 § 20; 1989 c 127 § 10; 1959 c 305 § 6; 1933 c 184 § 16; RRS § 8276-16. FORMER PART OF SECTION: 1933 c 184 § 20, part; RRS § 8276-20, part, now codified in RCW 67.08.025.]

Reviser's note: This section was amended by 2002 c 86 § 309 and by 2002 c 147 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2002 c 147: See note following RCW 67.08.002.

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

67.08.105 License and renewal fees. The department shall set license and renewal fees by rule, but the fees collected do not have to offset the cost of the program as required under RCW 43.24.086. [1999 c 282 § 1.]

67.08.110 Unprofessional conduct—Sham or fake event. (1) Any person or any member of any group of persons or corporation promoting boxing events who shall participate directly or indirectly in the purse or fee of any manager of any boxers or any boxer and any licensee who shall conduct or participate in any sham or fake boxing event has

engaged in unprofessional conduct and is subject to the sanctions specified in RCW 18.235.110.

(2) A manager of any boxer, kickboxer, or martial arts participant who allows any person or any group of persons or corporation promoting boxing, kickboxing, or martial arts events to participate directly or indirectly in the purse or fee, or any boxer, kickboxer, or martial arts participant or other licensee who conducts or participates in any sham or fake boxing, kickboxing, or martial arts event has engaged in unprofessional conduct and is subject to the sanctions specified in RCW 18.235.110. [2002 c 86 § 310; 1999 c 282 § 8; 1997 c 205 § 11; 1993 c 278 § 21; 1989 c 127 § 11; 1933 c 184 § 17; RRS § 8276-17.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.130 Failure to make report—Additional tax—Hearing—Disciplinary action. Whenever any licensee shall fail to make a report of any event within the time prescribed by this chapter or when such report is unsatisfactory to the department, the director may examine the books and records of such licensee; he or she may subpoena and examine under oath any officer of such licensee and such other person or persons as he or she may deem necessary to a determination of the total gross receipts from any event and the amount of tax thereon. If, upon the completion of such examination it shall be determined that an additional tax is due, notice thereof shall be served upon the licensee, providing the licensee with an opportunity to request a hearing under chapter 34.05 RCW. The failure to request a hearing within twenty days of service of the notice constitutes a default, whereupon the director will enter a decision on the facts available. Failure to pay such additional tax within twenty days after service of a final order constitutes unprofessional conduct and the licensee may be subject to disciplinary action against its license and shall be disqualified from receiving any new license. [2002 c 86 § 311; 1997 c 205 § 13; 1993 c 278 § 23; 1933 c 184 § 19; RRS § 8276-19.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.140 Penalty for conducting events without license—Penalty. Any person, club, corporation, organization, association, fraternal society, participant, or promoter conducting or participating in boxing or wrestling events within this state without having first obtained a license therefor in the manner provided by this chapter is in violation of this chapter and shall be guilty of a misdemeanor excepting the events excluded from the operation of this chapter by RCW 67.08.015. [2002 c 86 § 312; 1997 c 205 § 14; 1993 c 278 § 24; 1989 c 127 § 17; 1988 c 19 § 3; 1959 c 305 § 7; 1951 c 48 § 1; 1933 c 184 § 22; RRS § 8276-22.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.150 General penalty. Any person, firm or corporation violating any of the provisions of this chapter for

which no penalty is herein provided shall be guilty of a misdemeanor. [1933 c 184 § 24; RRS § 8276-24.]

67.08.160 Ambulance or paramedical unit at location. A promoter shall have an ambulance or paramedical unit present at the event location. [1999 c 282 § 10; 1989 c 127 § 2.]

67.08.170 Security—Promoter's responsibility. A promoter shall ensure that adequate security personnel are in attendance at a wrestling or boxing event to control fans in attendance. The size of the security force shall be determined by mutual agreement of the promoter, the person in charge of operating the arena or other facility, and the department. [1997 c 205 § 15; 1993 c 278 § 25; 1989 c 127 § 3.]

67.08.180 Unprofessional conduct—Prohibited acts. In addition to the unprofessional conduct specified in RCW 18.235.130, the following conduct, acts, or conditions constitute unprofessional conduct for which disciplinary action may be taken:

(1) Destruction of any ticket or ticket stub, whether sold or unsold, within three months after the date of any event, by any promoter or person associated with or employed by any promoter.

(2) The deliberate cutting of himself or herself or other self mutilation by a wrestling participant while participating in a wrestling event.

(3) A conviction under chapter 69.50 RCW.

(4) Testing positive for illegal use of a controlled substance as defined in RCW 69.50.101.

(5) The striking of any person that is not a licensed participant at a wrestling event. [2002 c 86 § 313; 1997 c 205 § 16; 1989 c 127 § 4.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.200 Unprofessional conduct—Written complaint—Investigation—Immunity of complainant. A person, including but not limited to a consumer, licensee, corporation, organization, and state and local governmental agency, may submit a written complaint to the department charging a license holder or applicant with unprofessional conduct and specifying the grounds for the complaint. If the department determines that the complaint merits investigation or if the department has reason to believe, without a formal complaint, that a license holder or applicant may have engaged in unprofessional conduct, the department shall investigate to determine whether there has been unprofessional conduct. A person who files a complaint under this section in good faith is immune from suit in any civil action related to the filing or contents of the complaint. [1997 c 205 § 17.]

67.08.220 Unprofessional conduct—Order upon finding—Penalties—Costs. Upon a finding that a license holder or applicant has committed unprofessional conduct the director may issue an order providing for one or any combination of the following:

- (1) Revocation of the license;
- (2) Suspension of the license for a fixed or indefinite term;
- (3) Requiring the satisfactory completion of a specific program of remedial education;
- (4) Compliance with conditions of probation for a designated period of time;
- (5) Payment of a fine not to exceed five hundred dollars for each violation of this chapter;
- (6) Denial of the license request;
- (7) Corrective action, including paying contestants the contracted purse or compensation; or
- (8) Refund of fees billed to and collected from the consumer.

Any of the actions under this section may be totally or partly stayed by the director. All costs associated with compliance with orders issued under this section are the obligation of the license holder or applicant. [1997 c 205 § 19.]

67.08.240 Unprofessional conduct—What constitutes. The following conduct, acts, or conditions constitute unprofessional conduct for a license holder or applicant under this chapter:

- (1) Conviction of a gross misdemeanor, felony, or the commission of an act involving moral turpitude, dishonesty, or corruption whether the act constitutes a crime or not. If the act constitutes a crime, conviction in a criminal proceeding is not a condition precedent to disciplinary action. Upon such a conviction, however, the judgment and sentence is conclusive evidence at the ensuing disciplinary hearing of the guilt of the license holder or applicant of the crime described in the indictment or information, and of the person's violation of the statute on which it is based. For the purposes of this section, conviction includes all instances in which a plea of guilty or nolo contendere is the basis for the conviction and all proceedings in which the sentence has been deferred or suspended. This section does not abrogate rights guaranteed under chapter 9.96 RCW;
- (2) Misrepresentation or concealment of a material fact in obtaining a license or in reinstatement of a license;
- (3) Advertising that is false, fraudulent, or misleading;
- (4) Incompetence or negligence that results in injury to a person or that creates an unreasonable risk that a person may be harmed;
- (5) Suspension, revocation, or restriction of a license to act as a professional athletic licensee by competent authority in a state, federal, or foreign jurisdiction, a certified copy of the order, stipulation, or agreement being conclusive evidence of the revocation, suspension, or restriction;
- (6) Violation of a statute or administrative rule regulating professional athletics;
- (7) Failure to cooperate with the department's investigations by:
 - (a) Not furnishing papers or documents;
 - (b) Not furnishing in writing a full and complete explanation regarding a matter under investigation by the department; or
 - (c) Not responding to subpoenas issued by the department, whether or not the recipient of the subpoena is the subject of the proceeding;

(2004 Ed.)

(8) Failure to comply with an order issued by the director or an assurance of discontinuance entered into by the director;

(9) Aiding or abetting an unlicensed person to act in a manner that requires a professional athletics licensee [license];

(10) Misrepresentation or fraud in any aspect of the conduct of a professional athletics event; and

(11) Interference with an investigation or disciplinary proceeding by willful misrepresentation of facts before the department or by the use of threats or harassment against any person to prevent them from providing evidence in a disciplinary proceeding or other legal action. [1997 c 205 § 21.]

67.08.300 Immunity of director and director's agents. The director or individuals acting on the director's behalf are immune from suit in an action, civil or criminal, based on official acts performed in the course of their duties in the administration and enforcement of this chapter. [2002 c 86 § 314; 1997 c 205 § 24.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.310 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 315.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

67.08.900 Severability—1933 c 184. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of this chapter as a whole, or any section, provision or part thereof not adjudged invalid or unconstitutional. [1933 c 184 § 25; RRS § 8276-25.]

67.08.901 Severability—1993 c 278. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 278 § 27.]

67.08.902 Effective date—1993 c 278. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993. [1993 c 278 § 28.]

67.08.903 Severability—1997 c 205. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 205 § 26.]

Chapter 67.12 RCW

DANCING, BILLIARDS, POOL, AND BOWLING

Sections

- 67.12.021 Licenses for public dances and public recreational or entertainment activities—Fees.
 67.12.110 License required for rural pool halls, billiard halls, and bowling alleys.

Regulations of places of amusement by cities and towns, see under applicable class of city or town: Title 35 RCW and RCW 35A.11.020.

67.12.021 Licenses for public dances and public recreational or entertainment activities—Fees. Counties are authorized to adopt ordinances to license and regulate public dances and other public recreational or entertainment activities in the unincorporated areas of the county whether or not held inside or outside of a building and whether or not admission charges are imposed.

License fees may be adequate to finance the costs of issuing the license and enforcing the regulations, including related law enforcement activities. [1987 c 250 § 1.]

67.12.110 License required for rural pool halls, billiard halls, and bowling alleys. The county legislative authority of each county in the state of Washington shall have sole and exclusive authority and power to regulate, restrain, license, or prohibit the maintenance or running of pool halls, billiard halls, and bowling alleys outside of the incorporated limits of each incorporated city, town, or village in their respective counties: PROVIDED, That the annual license fee for maintenance or running such pool halls, billiard halls, and bowling alleys shall be fixed in accordance with RCW 36.32.120(3), and which license fee shall be paid annually in advance to the appropriate county official: PROVIDED FURTHER, That nothing herein or elsewhere shall be so construed as to prevent the county legislative authority from revoking any license at any time prior to the expiration thereof for any cause by such county legislative authority deemed proper. And if said county legislative authority revokes said license it shall refund the unearned portion of such license. [1985 c 91 § 10; 1909 c 112 § 1; RRS § 8289.]

Licensing under 1873 act: Chapter 67.14 RCW.

Chapter 67.14 RCW

BILLIARD TABLES, BOWLING ALLEYS, AND MISCELLANEOUS GAMES—1873 ACT

Sections

- 67.14.010 Hawkers and auctioneers must procure license—Exceptions.
 67.14.020 Sale or other disposition of liquor—County license—Penalty.
 67.14.030 Hawkers and auctioneers—Issuance of license.
 67.14.040 Retail liquor license.
 67.14.050 Wholesale liquor license—Billiard table, bowling alley licenses.
 67.14.060 Liquor sales, keeping games, without license—Penalty.
 67.14.070 Purchase of license—Bond.
 67.14.080 Duration of license.
 67.14.090 Issuance of license.
 67.14.100 When contrivance deemed kept for hire.
 67.14.110 Druggists excepted.
 67.14.120 Disposition of fees, fines, and forfeitures.

Reviser's note: The territorial act codified in this chapter, though for the most part obsolete, has never been expressly repealed. "An Act in relation to licenses," it empowers the county commissioners to license hawkers and auctioneers, persons dealing in intoxicating liquors, and persons conducting bowling alleys, billiard tables and other games. The auctioneer sec-

tions have been codified as RCW 36.71.070 and 36.71.080. As to the sections relating to intoxicating liquors, it seems clear that this field has been preempted by the state; see RCW 66.08.120. For a later enactment concerning the licensing of rural pool halls, billiard halls, and bowling alleys, see RCW 67.12.110.

Alcoholic beverage control: Title 66 RCW.

67.14.010 Hawkers and auctioneers must procure license—Exceptions. See RCW 36.71.070.

67.14.020 Sale or other disposition of liquor—County license—Penalty. If any person shall sell or dispose of any spirituous, malt, or fermented liquors or wines, in any quantity less than one gallon, without first obtaining a license therefor as hereinafter provided, such person shall, for each and every such offense, be liable to a fine of not less than five nor more than fifty dollars, with costs of prosecution. [1873 p 437 § 2; Code 1881, Bagley's Supp. p 26 § 2.]

67.14.030 Hawkers and auctioneers—Issuance of license. See RCW 36.71.080.

67.14.040 Retail liquor license. The legislative authorities of each county, in their respective counties, shall have the power to grant license to persons to keep drinking houses or saloons therein, at which spirituous, malt, or fermented liquors and wines may be sold in less quantities than one gallon; and such license shall be called a retail license upon the payment, by the person applying for such license, of the sum of three hundred dollars a year into the county treasury, and the execution of a good and sufficient bond, executed to such county in the sum of one thousand dollars, to be approved by such legislative authority or the county auditor of the county in which such license is granted, conditioned that he will keep such drinking saloon or house in a quiet, peaceable, and orderly manner: PROVIDED, The foregoing shall not be so construed as to prevent the legislative authority of any county from granting licenses to drinking saloons or houses therein, when there is but little business doing, for less than three hundred dollars, but in no case for less than one hundred dollars per annum: AND PROVIDED FURTHER, That such license shall be used only in the precinct to which it shall be granted; PROVIDED FURTHER, that no license shall be used in more than one place at the same time. AND FURTHER PROVIDED, That no license shall be granted to any person to retail spirituous liquors until he shall furnish to the legislative authority satisfactory proof that he is a person of good moral character. [1973 1st ex.s. c 154 § 100; 1875 p 124 § 1; 1873 p 438 § 4; Code 1881, Bagley's Supp. p 26 § 4.]

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

67.14.050 Wholesale liquor license—Billiard table, bowling alley licenses. Said county commissioners in their respective counties shall also have power to grant licenses to sell spirituous liquors and wines therein in greater quantities than one gallon, to be called a wholesale license upon payment of the sum of not to exceed one hundred dollars per annum into the county treasury by such person so desiring such license; also, upon payment of not to exceed a like sum into the county treasury by any person desiring a grocery license to sell lager beer to grant such person such license to

sell for the period of one year. Also, upon the payment of such sum as the county commissioners may establish and fix, by order duly entered in the record of their proceedings, not exceeding twenty-five dollars per annum for each billiard table, pigeon-hole table, or bowling alley, grant a license to any person applying for the same and giving such bond not exceeding two hundred dollars, as such commissioners may require: PROVIDED, No person shall be required to take out any license to sell any wine made from fruit produced by such person's own labor, in this territory. [1873 p 438 § 5; Code 1881, Bagley's Supp. p 27 § 5.]

License required for rural pool halls, billiard halls and bowling alleys: RCW 67.12.110.

67.14.060 Liquor sales, keeping games, without license—Penalty. Any person who shall sell spirituous liquors or wines in greater quantities than one gallon, or shall retail lager beer, or keep a billiard table or tables, or bowling alley or alleys for hire, in any county in this territory, without first taking out a license therefor, shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be fined in any sum not exceeding fifty dollars nor less than five dollars, and shall be committed to the county jail of the county where such offense may be committed, and be placed at hard labor until such fine and cost shall be paid or they may otherwise be discharged by due course of law. [1873 p 439 § 6; Code 1881, Bagley's Supp. p 27 § 6; RRS § 8290. Formerly RCW 67.12.120.]

67.14.070 Purchase of license—Bond. Any person desiring a license to do any business provided by this chapter that a license shall be taken out for doing, shall have the same granted by paying to the county treasurer of the county where he wishes to carry on such business the maximum sum that the county commissioners are by this chapter authorized to fix therefor, and executing such bond, to be approved by the county auditor, as is provided in this chapter, shall be given before license shall issue for carrying on such business. [1873 p 439 § 7; Code 1881, Bagley's Supp. p 27 § 7.]

67.14.080 Duration of license. The licenses authorized to be granted by this chapter shall at the option of the person applying for the same, be granted for six, nine, or twelve months, and the person holding such license may transact the business thereby authorized at any place in the county where such license is granted: PROVIDED, That such business shall not be transacted in but one place in the county at a time. [1873 p 439 § 8; Code 1881, Bagley's Supp. p 27 § 8.]

67.14.090 Issuance of license. Upon presentation to the county auditor of any county of the certificate of the county treasurer that any person has paid into the county treasury the amount provided by this chapter, to be paid for the transaction of any business that a license may be granted to transact, and for the time provided in this chapter, and upon the execution and delivery to such auditor of the bond hereinbefore required, it shall be the duty of such county auditor to issue such license to such person so presenting such certificate, executing and delivering such bond and making application therefor, for the period of time that the money as shown by

the treasurer's certificate would entitle the person so presenting the same to have a license issued for. [1873 p 439 § 9; Code 1881, Bagley's Supp. p 27 § 9.]

67.14.100 When contrivance deemed kept for hire.

Any person who shall keep a billiard table or tables, pigeon-hole, Jenny Lind, and all other gaming tables, or bowling alley or bowling alleys in a drinking saloon or house or in a room or building adjoining or attached thereto, and shall allow the same to be used by two or more persons to determine by play thereon which of the persons so playing shall pay for drinks, cigars, or other articles for sale in such saloon or drinking house, shall, within the meaning of this chapter, be deemed to be keeping the same for hire. [1873 p 440 § 10; Code 1881, Bagley's Supp. p 28 § 10; RRS § 8291. Formerly RCW 67.12.130.]

67.14.110 Druggists excepted. None of the provisions of this chapter shall be held to apply to the sale by apothecaries or druggists of spirituous, malt, or fermented liquors or wines for medicinal purposes, upon the prescription of a practicing physician. [1873 p 440 § 11; Code 1881, Bagley's Supp. p 28 § 11.]

67.14.120 Disposition of fees, fines, and forfeitures.

All fines and forfeitures collected under this chapter, and all moneys paid into the treasury of any county for licenses as aforesaid, shall be applied to school or county purposes as the local laws of such county may direct: PROVIDED, That this chapter shall not affect or apply to any private or local laws upon the subject of license in any county in this territory except King county, and no license shall be construed to mean more than the house or saloon kept by the same party or parties: PROVIDED, FURTHER, That no part of this chapter shall in any way apply to the county of Island: AND PROVIDED, FURTHER, That all moneys for licenses within the corporate limits of the town of Olympia shall be paid directly into the town treasury of said town as a municipal fund for the use of said town: AND PROVIDED FURTHER, That all fees, fines, forfeitures and penalties collected or assessed by a district court because of the violation of a state law shall be remitted as provided in chapter 3.62 RCW as now exists or is later amended. [1987 c 202 § 226; 1969 ex.s. c 199 § 29; 1873 p 440 § 12; Code 1881, Bagley's Supp. p 28 § 12.]

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

Collection and disposition of fines and costs: Chapter 10.82 RCW.

**Chapter 67.16 RCW
HORSE RACING**

Sections

| | |
|-----------|---|
| 67.16.010 | Definitions. |
| 67.16.012 | Washington horse racing commission—Creation—Terms—Vacancies—Bonds—Oaths. |
| 67.16.014 | Washington horse racing commission—Ex officio nonvoting members. |
| 67.16.015 | Washington horse racing commission—Organization—Secretary—Records—Annual reports. |
| 67.16.017 | Washington horse racing commission—Compensation and travel expenses. |
| 67.16.020 | Duties of commission—Race meet license—Suspension. |
| 67.16.040 | Commission to regulate and license meets—Inspection. |

- 67.16.045 Criminal history records—Dissemination.
- 67.16.050 Application for meet—Issuance of license—Fee—Cancellation, grounds, procedure.
- 67.16.060 Prohibited practices—Parimutuel system permitted—Race meet as public nuisance.
- 67.16.065 Use of public assistance electronic benefit cards prohibited—Licensee to report violations.
- 67.16.070 Races for local breeders.
- 67.16.075 Breeder's awards and owner's bonuses—Eligibility—Certification.
- 67.16.080 Horses to be registered.
- 67.16.090 Races not limited to horses of same breed.
- 67.16.100 Disposition of fees—"Fair fund."
- 67.16.101 Legislative finding—Responsibilities of horse racing commission—Availability of interest on one percent of gross receipts to support small race courses.
- 67.16.102 Withholding of additional one percent of gross receipts—Payment to owners—Interest payment on one percent and amount retained by commission—Reimbursement for new racetracks.
- 67.16.105 Gross receipts—Commission's percentage—Distributions.
- 67.16.110 Broadcasting race meets and motion picture rights reserved.
- 67.16.130 Nonprofit race meets—Licensing—Fees.
- 67.16.140 Employees of commission—Employment restriction.
- 67.16.150 Employees of commission—Commissioners—Financial interest restrictions.
- 67.16.160 Rules implementing conflict of interest laws—Wagers by commissioner.
- 67.16.170 Gross receipts—Retention of percentage by licensees.
- 67.16.175 Exotic wagers—Retention of percentage by race meets.
- 67.16.200 Parimutuel wagering at satellite locations—Simulcasts.
- 67.16.230 Satellite locations—Fees.
- 67.16.260 Advance deposit wagering.
- 67.16.270 Violation of commission rules—Penalties.
- 67.16.275 Washington horse racing commission Washington bred owners' bonus fund account.
- 67.16.280 Washington horse racing commission operating account.
- 67.16.285 Washington horse racing commission class C purse fund account.
- 67.16.300 Industrial insurance premium assessments.
- 67.16.900 Severability—General repealer—1933 c 55.

Agister and trainer liens: Chapter 60.56 RCW.

Compulsive gamblers, information for: RCW 9.46.071.

Crimes and punishments—Gambling: Chapters 9.46 and 9.47 RCW.

Exemptions to commission merchant's act: RCW 20.01.030.

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

(1) "Commission" shall mean the Washington horse racing commission, hereinafter created.

(2) "Parimutuel machine" shall mean and include both machines at the track and machines at the satellite locations, that record parimutuel bets and compute the payoff.

(3) "Person" shall mean and include individuals, firms, corporations and associations.

(4) "Race meet" shall mean and include any exhibition of thoroughbred, quarter horse, paint horse, appaloosa horse racing, arabian horse racing, or standard bred harness horse racing, where the parimutuel system is used. [2004 c 246 § 5; 1991 c 270 § 1; 1985 c 146 § 1; 1982 c 132 § 1; 1969 c 22 § 1; 1949 c 236 § 1; 1933 c 55 § 1; Rem. Supp. 1949 § 8312-1.]

Effective date—2004 c 246: See note following RCW 67.16.270.

Severability—1985 c 146: "If any provisions or application of any provisions of this chapter are invalidated by a court of law, the remainder of the chapter shall not be affected." [1985 c 146 § 15.]

Severability—1982 c 132: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 132 § 6.]

67.16.012 Washington horse racing commission—Creation—Terms—Vacancies—Bonds—Oaths. There is hereby created the Washington horse racing commission, to consist of five commissioners, appointed by the governor and confirmed by the senate. The commissioners shall be citizens, residents, and qualified electors of the state of Washington, one of whom shall be a breeder of race horses and shall be of at least one year's standing. The terms of the members shall be six years. Each member shall hold office until his or her successor is appointed and qualified. Vacancies in the office of commissioner shall be filled by appointment to be made by the governor for the unexpired term. Any commissioner may be removed at any time at the pleasure of the governor. Before entering upon the duties of his or her office, each commissioner shall enter into a surety company bond, to be approved by the governor and attorney general, payable to the state of Washington, in the penal sum of five thousand dollars, conditioned upon the faithful performance of his or her duties and the correct accounting and payment of all sums received and coming within his or her control under this chapter, and in addition thereto each commissioner shall take and subscribe to an oath of office of the same form as that prescribed by law for elective state officers. [1998 c 345 § 4; 1987 c 453 § 2; 1973 1st ex.s. c 216 § 1; 1969 ex.s. c 233 § 1; 1933 c 55 § 2; RRS § 8312-2. Formerly RCW 43.50.010.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Severability—1933 c 55: "In case any part or portion of this act shall be held unconstitutional, such holding shall not affect the validity of this act as a whole or any other part or portion of this act not adjudged unconstitutional. All acts in conflict herewith are hereby repealed." [1933 c 55 § 10.]

67.16.014 Washington horse racing commission—Ex officio nonvoting members. In addition to the commission members appointed under RCW 67.16.012, there shall be four ex officio nonvoting members consisting of: (1) Two members of the senate, one from the majority political party and one from the minority political party, both to be appointed by the president of the senate; and (2) two members of the house of representatives, one from the majority political party and one from the minority political party, both to be appointed by the speaker of the house of representatives. The appointments shall be for the term of two years or for the period in which the appointee serves as a legislator, whichever expires first. Members may be reappointed, and vacancies shall be filled in the same manner as original appointments are made. The ex officio members shall assist in the policy making, rather than administrative, functions of the commission, and shall collect data deemed essential to future legislative proposals and exchange information with the commission. The ex officio members shall be deemed engaged in legislative business while in attendance upon the business of the commission and shall be limited to such allowances therefor as otherwise provided in RCW 44.04.120, the same to be paid from the horse racing commission fund as being expenses relative to commission business. [1991 c 270 § 2; 1987 c 453 § 3.]

67.16.015 Washington horse racing commission—Organization—Secretary—Records—Annual reports. The commission shall organize by electing one of its mem-

bers chairman, and shall appoint and employ a secretary, and such other clerical, office, and other help as is necessary in the performance of the duties imposed upon it by this chapter. The commission shall keep detailed records of all meetings and of the business transacted therein, and of all the collections and disbursements. The commission shall prepare and submit an annual report to the governor. All records of the commission shall be public records and as such, subject to public inspection. [1977 c 75 § 80; 1933 c 55 § 3; RRS § 8312-3. Formerly RCW 43.50.020.]

67.16.017 Washington horse racing commission—Compensation and travel expenses. Each member of the Washington horse racing commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses in accordance with RCW 43.03.050 and 43.03.060 in going to, attending, and returning from meetings of the commission, and travel expenses incurred in the discharge of such duties as may be requested of him by a majority vote of the commission, but in no event shall a commissioner be paid in any one fiscal year in excess of one hundred twenty days, except the chairman of the commission who may be paid for not more than one hundred fifty days. [1984 c 287 § 100; 1975-'76 2nd ex.s. c 34 § 155; 1969 ex.s. c 233 § 2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

67.16.020 Duties of commission—Race meet license—Suspension. (1) It shall be the duty of the commission, as soon as it is possible after its organization, to prepare and promulgate a complete set of rules and regulations to govern the race meets in this state. It shall determine and announce the place, time and duration of race meets for which license fees are exacted; and it shall be the duty of each person holding a license under the authority of this chapter, and every owner, trainer, jockey, and attendant at any race course in this state, to comply with all rules and regulations promulgated and all orders issued by the commission. It shall be unlawful for any person to hold any race meet without having first obtained and having in force and effect a license issued by the commission as in this chapter provided; and it shall be unlawful for any owner, trainer or jockey to participate in race meets in this state without first securing a license therefor from the state racing commission, the fee for which shall be set by the commission which shall offset the cost of administration and shall not be for a period exceeding one year.

(2) The commission shall immediately suspend the license of a person who has been certified under RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order. If the person has continued to meet all other requirements for a license under this chapter during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the support order. The procedure in RCW 74.20A.320 is the exclusive administrative remedy for contesting the establish-

ment of noncompliance with a child support order, and suspension of a license under this subsection, and satisfies the requirements of RCW 34.05.422. [2000 c 86 § 5; 1989 c 385 § 5; 1985 c 146 § 2; 1982 c 32 § 1; 1933 c 55 § 4; RRS § 8312-4. Formerly RCW 67.16.020 and 67.16.030.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1982 c 32 § 6.]

67.16.040 Commission to regulate and license meets—Inspection. The commission created by this chapter is hereby authorized, and it shall be its duty, to license, regulate and supervise all race meets held in this state under the terms of this chapter, and to cause the various race courses of the state to be visited and inspected at least once a year. [1933 c 55 § 5; RRS § 8312-5.]

67.16.045 Criminal history records—Dissemination. The commission is authorized to receive criminal history record information that includes nonconviction data for any purpose associated with the investigation for suitability for involvement in horse racing activities authorized under this chapter. Dissemination or use of nonconviction data for purposes other than that authorized in this section is prohibited. [2000 c 204 § 1.]

67.16.050 Application for meet—Issuance of license—Fee—Cancellation, grounds, procedure. Every person making application for license to hold a race meet, under the provisions of this chapter shall file an application with the commission which shall set forth the time, the place, the number of days such meet will continue, and such other information as the commission may require. The commission shall be the sole judge of whether or not the race meet shall be licensed and the number of days the meet shall continue. No person who has been convicted of any crime involving moral turpitude shall be issued a license, nor shall any license be issued to any person who has violated the terms or provisions of this chapter, or any of the rules and regulations of the commission made pursuant thereto, or who has failed to pay to the commission any or all sums required under the provisions of this chapter. The license shall specify the number of days the race meet shall continue and the number of races per day, which shall include not less than six nor more than eleven live races per day, and for which a fee shall be paid daily in advance of five hundred dollars for each live race day for those licensees which had gross receipts from parimutuel machines in excess of fifty million dollars in the previous year and two hundred dollars for each day for meets which had gross receipts from parimutuel machines at or below fifty million dollars in the previous year; in addition any newly authorized live race meets shall pay two hundred dollars per day for the first year: PROVIDED, That if unforeseen obstacles arise, which prevent the holding, or completion of any race meet, the license fee for the meet, or for a portion which cannot be held may be refunded the licensee, if the commission deems the reasons for failure to hold or complete the race meet sufficient. Any unexpired license held by any person who violates any of the provisions of this chapter, or any

of the rules or regulations of the commission made pursuant thereto, or who fails to pay to the commission any and all sums required under the provisions of this chapter, shall be subject to cancellation and revocation by the commission. Such cancellation shall be made only after a summary hearing before the commission, of which three days' notice, in writing, shall be given the licensee, specifying the grounds for the proposed cancellation, and at which hearing the licensee shall be given an opportunity to be heard in opposition to the proposed cancellation. [1997 c 87 § 2; 1985 c 146 § 3; 1982 c 32 § 2; 1973 1st ex.s. c 39 § 1; 1933 c 55 § 6; RRS § 8312-6.]

Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87: See notes following RCW 67.16.200.

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

67.16.060 Prohibited practices—Parimutuel system permitted—Race meet as public nuisance. (1) It shall be unlawful:

(a) To conduct pool selling, bookmaking, or to circulate hand books; or

(b) To bet or wager on any horse race other than by the parimutuel method; or

(c) For any licensee to take more than the percentage provided in RCW 67.16.170 and 67.16.175; or

(d) For any licensee to compute breaks in the parimutuel system otherwise than at ten cents.

(2) Any willful violation of the terms of this chapter, or of any rule, regulation, or order of the commission shall constitute a gross misdemeanor and when such violation is by a person holding a license under this chapter, the commission may cancel the license held by the offender, and such cancellation shall operate as a forfeiture of all rights and privileges granted by the commission and of all sums of money paid to the commission by the offender; and the action of the commission in that respect shall be final.

(3) The commission shall have power to exclude from any and all race courses of the state of Washington any person whom the commission deems detrimental to the best interests of racing or any person who willfully violates any of the provisions of this chapter or of any rule, regulation, or order issued by the commission.

(4) Every race meet held in this state contrary to the provisions of this chapter is hereby declared to be a public nuisance. [1991 c 270 § 3; 1985 c 146 § 4; 1979 c 31 § 1; 1933 c 55 § 7; RRS § 8312-7.]

Severability—1985 c 146: See note following RCW 67.16.010.

Gambling: Chapters 9.46 and 9.47 RCW.

67.16.065 Use of public assistance electronic benefit cards prohibited—Licensee to report violations. (1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards for the purpose of parimutuel wagering authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of RCW 74.08.580. [2002 c 252 § 4.]

67.16.070 Races for local breeders. For the purpose of encouraging the breeding, within this state, of valuable thoroughbred, quarter and/or standard bred race horses, at least one race of each day's meet shall consist exclusively of Washington bred horses. [1949 c 236 § 2; 1933 c 55 § 8; Rem. Supp. 1949 § 8312-8.]

67.16.075 Breeder's awards and owner's bonuses—Eligibility—Certification. Only breeders or owners of Washington-bred horses are eligible to demand and receive a breeder's award, an owner's bonus or both. The commission shall promulgate rules and regulations to certify Washington-bred horses. In setting standards to certify horses as Washington-bred, the commission shall seek the advice of and consult with industry, including (1) the Washington Horse Breeders' Association, for thoroughbreds; (2) the Washington State Standardbred Association, for standardbred harness horses; (3) the Northern Racing Quarter Horse Association, for quarter horses; (4) the Washington State Appaloosa Racing Association, for appaloosas; and (5) the Washington State Arabian Horse Racing Association, for arabian horses. [1985 c 146 § 13.]

Severability—1985 c 146: See note following RCW 67.16.010.

67.16.080 Horses to be registered. A quarter horse to be eligible for a race meet herein shall be duly registered with the American Quarter Horse Association. An appaloosa horse to be eligible for a race meet herein shall be duly registered with the National Appaloosa Horse Club or any successor thereto. An arabian horse to be eligible for a race meet herein shall be duly registered with the Arabian Horse Registry of America, or any successor thereto. [1982 c 132 § 2; 1969 c 22 § 2; 1949 c 236 § 3; Rem. Supp. 1949 § 8312-13.]

Severability—1982 c 132: See note following RCW 67.16.010.

67.16.090 Races not limited to horses of same breed. In any race meet in which quarter horses, thoroughbred horses, appaloosa horses, standard bred harness horses, paint horses, or arabian horses participate horses of different breeds may be allowed to compete in the same race if such mixed races are so designated in the racing conditions. [1985 c 146 § 5; 1982 c 132 § 3; 1969 c 22 § 3; 1949 c 236 § 4; Rem. Supp. 1949 § 8312-14.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 132: See note following RCW 67.16.010.

67.16.100 Disposition of fees—"Fair fund." (1) All sums paid to the commission under this chapter, including those sums collected for license fees and excluding those sums collected under RCW 67.16.102 and 67.16.105(3), shall be disposed of by the commission as follows: One hundred percent thereof shall be retained by the commission for the payment of the salaries of its members, secretary, clerical, office, and other help and all expenses incurred in carrying out the provisions of this chapter. No salary, wages, expenses, or compensation of any kind shall be paid by the state in connection with the work of the commission.

(2) Any moneys collected or paid to the commission under the terms of this chapter and not expended at the close of the fiscal biennium shall be paid to the state treasurer and

be placed in the fair fund created in RCW 15.76.115. The commission may, with the approval of the office of financial management, retain any sum required for working capital. [1998 c 345 § 5; 1995 c 399 § 166; 1991 c 270 § 4. Prior: 1985 c 466 § 67; 1985 c 146 § 6; 1980 c 16 § 1; prior: 1979 c 151 § 169; 1979 c 31 § 2; 1977 c 75 § 81; 1965 c 148 § 7; 1955 c 106 § 5; 1947 c 34 § 2; 1941 c 48 § 4; 1935 c 182 § 30; 1933 c 55 § 9; Rem. Supp. 1947 § 8312-9.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

Severability—1985 c 146: See note following RCW 67.16.010.

State international trade fairs: RCW 43.31.800 through 43.31.850.

Transfer of surplus funds in state trade fair fund to general fund: RCW 43.31.832 through 43.31.834.

67.16.101 Legislative finding—Responsibilities of horse racing commission—Availability of interest on one percent of gross receipts to support small race courses. The legislature finds that:

(1) A primary responsibility of the horse racing commission is the encouragement of the training and development of the equine industry in the state of Washington whether the result of this training and development results in legalized horse racing or in the recreational use of horses;

(2) The horse racing commission has a further major responsibility to assure that any facility used as a race course should be maintained and upgraded to insure the continued safety of both the public and the horse at any time the facility is used for the training or contesting of these animals;

(3) Small race courses within the state have difficulty in obtaining sufficient funds to provide the maintenance and upgrading necessary to assure this safety at these facilities, or to permit frequent use of these facilities by 4-H children or other horse owners involved in training; and

(4) The one percent of the parimutuel machine gross receipts used to pay a special purse to the licensed owners of Washington bred horses is available for the purpose of drawing interest, thereby obtaining sufficient funds to be disbursed to achieve the necessary support to these small race courses. [1977 ex.s. c 372 § 1.]

Severability—1977 ex.s. c 372: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 372 § 3.]

67.16.102 Withholding of additional one percent of gross receipts—Payment to owners—Interest payment on one percent and amount retained by commission—Reimbursement for new racetracks. (1) Notwithstanding any other provision of chapter 67.16 RCW to the contrary the licensee shall withhold and shall pay daily to the commission, in addition to the percentages authorized by RCW 67.16.105, one percent of the gross receipts of all parimutuel machines at each race meet which sums shall, at the end of each meet, be paid by the commission to the licensed owners of those horses finishing first, second, third and fourth Washington bred only at each meet from which the additional one percent is derived in accordance with an equitable distribution formula to be promulgated by the commission prior to the com-

mencement of each race meet: PROVIDED, That nothing in this section shall apply to race meets which are nonprofit in nature, are of ten days or less, and have an average daily handle of less than one hundred twenty thousand dollars.

(2) The additional one percent specified in subsection (1) of this section shall be deposited by the commission in the Washington horse racing commission Washington bred owners' bonus fund account created in RCW 67.16.275. The interest derived from this account shall be distributed annually on an equal basis to those race courses at which independent race meets are held which are nonprofit in nature and are of ten days or less. Prior to receiving a payment under this subsection any new race course shall meet the qualifications set forth in this section for a period of two years. All funds distributed under this subsection shall be used for the purpose of maintaining and upgrading the respective racing courses and equine quartering areas of said nonprofit meets.

(3) The commission shall not permit the licensees to take into consideration the benefits derived from this section in establishing purses.

(4) The commission is authorized to pay at the end of the calendar year one-half of the one percent collected from a new licensee under subsection (1) of this section for reimbursement of capital construction of that new licensee's new race track for a period of fifteen years. This reimbursement does not include interest earned on that one-half of one percent and such interest shall continue to be collected and disbursed as provided in RCW 67.16.101 and subsection (1) of this section. [2004 c 246 § 6; 2001 c 53 § 1; 1991 c 270 § 5; 1982 c 132 § 5; 1979 c 31 § 3; 1977 ex.s. c 372 § 2; 1969 ex.s. c 233 § 3.]

Effective date—2004 c 246: See note following RCW 67.16.270.

Severability—1982 c 132: See note following RCW 67.16.010.

Severability—1977 ex.s. c 372: See note following RCW 67.16.101.

67.16.105 Gross receipts—Commission's percentage—Distributions. (1) Licensees of race meets that are nonprofit in nature and are of ten days or less shall be exempt from payment of a parimutuel tax.

(2) Licensees that do not fall under subsection (1) of this section shall withhold and pay to the commission daily for each authorized day of parimutuel wagering the following applicable percentage of all daily gross receipts from its in-state parimutuel machines:

(a) If the gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee shall withhold and pay to the commission daily 1.30 percent of the daily gross receipts; and

(b) If the gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee shall withhold and pay to the commission daily 1.803 percent of the daily gross receipts.

(3) In addition to those amounts in subsection (2) of this section, a licensee shall forward one-tenth of one percent of the daily gross receipts of all its in-state parimutuel machines to the commission for payment to those nonprofit race meets as set forth in RCW 67.16.130 and subsection (1) of this section, but said percentage shall not be charged against the licensee. Payments to nonprofit race meets under this subsection shall be distributed on a pro rata per-race-day basis and

used only for purses at race tracks that have been operating under RCW 67.16.130 and subsection (1) of this section for the five consecutive years immediately preceding the year of payment. The commission shall transfer funds generated under subsection (2) of this section equal to the difference between:

- (a)(i) Funds collected under this subsection (3);
 - (ii) Interest earned from the Washington horse racing commission operating account created in RCW 67.16.280; and
 - (iii) Fines imposed by the board of stewards in a calendar year; and
- (b) Three hundred thousand dollars;
- and distribute that amount under this subsection (3).

(4) Beginning July 1, 1999, at the conclusion of each authorized race meet, the commission shall calculate the mathematical average daily gross receipts of parimutuel wagering that is conducted only at the physical location of the live race meet at those race meets of licensees with gross receipts of all their in-state parimutuel machines of more than fifty million dollars. Such calculation shall include only the gross parimutuel receipts from wagering occurring on live racing dates, including live racing receipts and receipts derived from one simulcast race card that is conducted only at the physical location of the live racing meet, which, for the purposes of this subsection, is "the handle." If the calculation exceeds eight hundred eighty-six thousand dollars, the licensee shall within ten days of receipt of written notification by the commission forward to the commission a sum equal to the product obtained by multiplying 0.6 percent by the handle. Sums collected by the commission under this subsection shall be forwarded on the next business day following receipt thereof to the state treasurer to be deposited in the fair fund created in RCW 15.76.115. [2004 c 246 § 7; 2003 1st sp.s. c 27 § 1; 1998 c 345 § 6; 1997 c 87 § 3; 1995 c 173 § 2; 1994 c 159 § 2; 1993 c 170 § 2; 1991 c 270 § 6; 1987 c 347 § 4; 1985 c 146 § 7; 1982 c 32 § 3; 1979 c 31 § 6.]

Effective date—2004 c 246: See note following RCW 67.16.270.

Effective date—2003 1st sp.s. c 27: "This act takes effect January 1, 2004." [2003 1st sp.s. c 27 § 2.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Findings—Purpose—Report by joint legislative audit and review committee—Severability—Effective date—1997 c 87: See notes following RCW 67.16.200.

Intent—1995 c 173: "It is the intent of the legislature that one-half of the money being paid into the Washington thoroughbred racing fund continue to be directed to enhanced purses, and that one-half of the money being paid into the fund continue to be deposited into an escrow or trust account and used for the construction of a new thoroughbred racing facility in western Washington." [1995 c 173 § 1.]

Effective date—1995 c 173: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 1, 1995]." [1995 c 173 § 3.]

Intent—1994 c 159: "It is the intent of the legislature to terminate payments into the Washington thoroughbred racing fund from licensees of non-profit race meets from March 30, 1994, until June 1, 1995, and to provide that one-half of moneys that otherwise would have been paid into the fund be directed to enhanced purses and one-half of moneys be deposited in an escrow or trust account and used solely for construction of a new thoroughbred race track facility in western Washington." [1994 c 159 § 1.]

Effective date—1994 c 159: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state gov-

ernment and its existing public institutions, and shall take effect immediately [March 30, 1994]." [1994 c 159 § 4.]

Intent—1993 c 170: "It is the intent of the legislature that one-half of those moneys that would otherwise have been paid into the Washington thoroughbred racing fund be retained for the purpose of enhancing purses, excluding stakes purses, until that time as a permanent thoroughbred racing facility is built and operating in western Washington. It is recognized by the Washington legislature that the enhancement in purses provided in this legislation will not directly benefit all race tracks in Washington. It is the legislature's intent that the horse racing commission work with the horse racing community to ensure that this opportunity for increased purses will not inadvertently injure horse racing at tracks not directly benefiting from this legislation." [1993 c 170 § 1.]

Effective date—1993 c 170: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]." [1993 c 170 § 3.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

67.16.110 Broadcasting and motion picture rights reserved. All radio broadcasting rights, and motion picture rights in connection with meets licensed hereunder are reserved to the state and the commission shall lease or license same only to the highest bidder. The exercise of such rights shall at all times be under the supervision of the commission. [1980 c 32 § 10; 1933 c 55 § 11; RRS § 8312-11.]

67.16.130 Nonprofit race meets—Licensing—Fees.

(1) Notwithstanding any other provision of law or of chapter 67.16 RCW, the commission may license race meets which are nonprofit in nature, of ten days or less, and which have an average daily handle of one hundred twenty thousand dollars or less, at a daily licensing fee of ten dollars, and the sponsoring nonprofit association shall be exempt from any other fees as provided for in chapter 67.16 RCW or by rule or regulation of the commission: PROVIDED, That the commission may deny the application for a license to conduct a racing meet by a nonprofit association, if same shall be determined not to be a nonprofit association by the Washington state racing commission.

(2) Notwithstanding any other provision of law or of chapter 67.16 RCW or any rule promulgated by the commission, no license for a race meet which is nonprofit in nature, of ten days or less, and which has an average daily handle of one hundred twenty thousand dollars or less, shall be denied for the reason that the applicant has not installed an electric parimutuel tote board.

(3) As a condition to the reduction in fees as provided for in subsection (1) of this section, all fees charged to horse owners, trainers, or jockeys, or any other fee charged for a permit incident to the running of such race meet shall be retained by the commission as reimbursement for its expenses incurred in connection with the particular race meet. [1991 c 270 § 7; 1985 c 146 § 8; 1982 c 32 § 4; 1979 c 31 § 4; 1969 ex.s. c 94 § 2.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1982 c 32: See note following RCW 67.16.020.

Effective date—1969 ex.s. c 94: "This 1969 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect May 1, 1969." [1969 ex.s. c 94 § 3.]

67.16.140 Employees of commission—Employment restriction. No employee of the horse racing commission shall serve as an employee of any track at which that individual will also serve as an employee of the commission. [1973 1st ex.s. c 216 § 3.]

67.16.150 Employees of commission—Commissioners—Financial interest restrictions. No employee nor any commissioner of the horse racing commission shall have any financial interest whatsoever, other than an ownership interest in a community venture, in any track at which said employee serves as an agent or employee of the commission or at any track with respect to a commissioner. [1973 1st ex.s. c 216 § 4.]

67.16.160 Rules implementing conflict of interest laws—Wagers by commissioner. No later than ninety days after July 16, 1973, the horse racing commission shall adopt, pursuant to chapter 34.05 RCW, reasonable rules implementing to the extent applicable to the circumstances of the horse racing commission the conflict of interest laws of the state of Washington as set forth in chapter 42.52 RCW. In no case may a commissioner make any wager on the outcome of a horse race at a race meet conducted under the authority of the commission. [2004 c 274 § 3; 1994 c 154 § 314; 1973 1st ex.s. c 216 § 5.]

Effective date—2004 c 274: See note following RCW 67.16.160.

Parts and captions not law—Effective date—Severability—1994 c 154: See RCW 42.52.902, 42.52.904, and 42.52.905.

67.16.170 Gross receipts—Retention of percentage by licensees. (1) Licensees of race meets that are nonprofit in nature and are of ten days or less may retain daily for each authorized day of racing fifteen percent of daily gross receipts of all parimutuel machines at each race meet.

(2) Licensees of race meets that do not fall under subsection (1) of this section may retain daily for each authorized day of parimutuel wagering the following percentages from the daily gross receipts of all its in-state parimutuel machines:

(a) If the daily gross receipts of all its in-state parimutuel machines are more than fifty million dollars in the previous calendar year, the licensee may retain daily 13.70 percent of the daily gross receipts; and

(b) If the daily gross receipts of all its in-state parimutuel machines are fifty million dollars or less in the previous calendar year, the licensee may retain daily 14.48 percent of the daily gross receipts. [1998 c 345 § 7; 1991 c 270 § 8; 1987 c 347 § 2; 1985 c 146 § 9; 1983 c 228 § 1; 1979 c 31 § 5.]

Severability—Effective date—Contingent effective date—1998 c 345: See notes following RCW 15.04.090.

Severability—1985 c 146: See note following RCW 67.16.010.

67.16.175 Exotic wagers—Retention of percentage by race meets. (1) In addition to the amounts authorized to be retained in RCW 67.16.170, race meets may retain daily for each authorized day of racing an additional six percent of the daily gross receipts of all parimutuel machines from exotic wagers at each race meet.

(2004 Ed.)

(2) Of the amounts retained in subsection (1) of this section, one-sixth shall be used for Washington-bred breeder awards.

(3) Of the amounts retained for breeder awards under subsection (2) of this section, twenty-five percent shall be retained by a new licensee for reimbursement of capital construction of the new licensee's new race track for a period of fifteen years.

(4) As used in this section, "exotic wagers" means any multiple wager. Exotic wagers are subject to approval of the commission. [2001 c 53 § 2; 1991 c 270 § 9. Prior: 1987 c 453 § 1; 1987 c 347 § 3; 1986 c 43 § 1; 1985 c 146 § 10; 1981 c 135 § 1.]

Severability—1985 c 146: See note following RCW 67.16.010.

Severability—1981 c 135: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 135 § 2.]

67.16.200 Parimutuel wagering at satellite locations—Simulcasts. (1) A class 1 racing association licensed by the commission to conduct a race meet may seek approval from the commission to conduct parimutuel wagering at a satellite location or locations within the state of Washington. In order to participate in parimutuel wagering at a satellite location or locations within the state of Washington, the holder of a class 1 racing association license must have conducted at least one full live racing season. All class 1 racing associations must hold a live race meet within each succeeding twelve-month period to maintain eligibility to continue to participate in parimutuel wagering at a satellite location or locations. The sale of parimutuel pools at satellite locations shall be conducted simultaneous to all parimutuel wagering activity conducted at the licensee's live racing facility in the state of Washington. The commission's authority to approve satellite wagering at a particular location is subject to the following limitations:

(a) The commission may approve only one satellite location in each county in the state; however, the commission may grant approval for more than one licensee to conduct wagering at each satellite location. A satellite location shall not be operated within twenty driving miles of any class 1 racing facility. For the purposes of this section, "driving miles" means miles measured by the most direct route as determined by the commission; and

(b) A licensee shall not conduct satellite wagering at any satellite location within sixty driving miles of any other racing facility conducting a live race meet.

(2) Subject to local zoning and other land use ordinances, the commission shall be the sole judge of whether approval to conduct wagering at a satellite location shall be granted.

(3) The licensee shall combine the parimutuel pools of the satellite location with those of the racing facility for the purpose of determining odds and computing payoffs. The amount wagered at the satellite location shall be combined with the amount wagered at the racing facility for the application of take out formulas and distribution as provided in RCW 67.16.102, 67.16.105, 67.16.170, and 67.16.175. A satellite extension of the licensee's racing facility shall be subject to the same application of the rules of racing as the licensee's racing facility.

(4) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to locations outside of the state of Washington approved by the commission and in accordance with the interstate horse racing act of 1978 (15 U.S.C. Sec. 3001 to 3007) or any other applicable laws. The commission may permit parimutuel pools on the simulcast races to be combined in a common pool. A racing association that transmits simulcasts of its races to locations outside this state shall pay at least fifty percent of the fee that it receives for sale of the simulcast signal to the horsemen's purse account for its live races after first deducting the actual cost of sending the signal out of state.

(5) Upon written application to the commission, a class 1 racing association may be authorized to transmit simulcasts of live horse races conducted at its racetrack to licensed racing associations located within the state of Washington and approved by the commission for the receipt of the simulcasts. The commission shall permit parimutuel pools on the simulcast races to be combined in a common pool. The fee for in-state, track-to-track simulcasts shall be five and one-half percent of the gross parimutuel receipts generated at the receiving location and payable to the sending racing association. A racing association that transmits simulcasts of its races to other licensed racing associations shall pay at least fifty percent of the fee that it receives for the simulcast signal to the horsemen's purse account for its live race meet after first deducting the actual cost of sending the simulcast signal. A racing association that receives races simulcast from class 1 racing associations within the state shall pay at least fifty percent of its share of the parimutuel receipts to the horsemen's purse account for its live race meet after first deducting the purchase price and the actual direct costs of importing the race.

(6) A class 1 racing association may be allowed to import simulcasts of horse races from out-of-state racing facilities. With the prior approval of the commission, the class 1 racing association may participate in a multijurisdictional common pool and may change its commission and breakage rates to achieve a common rate with other participants in the common pool.

(a) The class 1 racing association shall make written application with the commission for permission to import simulcast horse races for the purpose of parimutuel wagering. Subject to the terms of this section, the commission is the sole authority in determining whether to grant approval for an imported simulcast race.

(b) When open for parimutuel wagering, a class 1 racing association which imports simulcast races shall also conduct simulcast parimutuel wagering within its licensed racing enclosure on all races simulcast from other class 1 racing associations within the state of Washington.

(c) On any imported simulcast race, the class 1 racing association shall pay fifty percent of its share of the parimutuel receipts to the horsemen's purse account for its live race meet after first deducting the purchase price of the imported race and the actual costs of importing and offering the race.

(7) For purposes of this section, a class 1 racing association is defined as a licensee approved by the commission to conduct during each twelve-month period at least forty days of live racing. If a live race day is canceled due to reasons

directly attributable to acts of God, labor disruptions affecting live race days but not directly involving the licensee or its employees, or other circumstances that the commission decides are beyond the control of the class 1 racing association, then the canceled day counts toward the forty-day requirement. The commission may by rule increase the number of live racing days required to maintain class 1 racing association status or make other rules necessary to implement this section.

(8) This section does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this section does not allow gaming of any nature or scope that was prohibited before April 19, 1997. This section is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of this section is to protect these industries from adverse economic impacts and to promote fan attendance at class 1 racing facilities. Therefore, a licensed class 1 racing association may be approved to disseminate imported simulcast race card programs to satellite locations approved under this section, provided that the class 1 racing association has conducted at least forty live racing days with an average on-track handle on the live racing product of a minimum of one hundred fifty thousand dollars per day during the twelve months immediately preceding the application date. However, to promote the development of a new class 1 racing association facility and to meet the best interests of the Washington equine breeding and racing industries, the commission may by rule reduce the required minimum average on-track handle on the live racing product from one hundred fifty thousand dollars per day to thirty thousand dollars per day.

(9) A licensee conducting simulcasting under this section shall place signs in the licensee's gambling establishment under RCW 9.46.071. The informational signs concerning problem and compulsive gambling must include a toll-free telephone number for problem and compulsive gamblers and be developed under RCW 9.46.071.

(10) Chapter 10, Laws of 2001 1st sp. sess. does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before August 23, 2001. Therefore, this section does not allow gaming of any nature or scope that was prohibited before August 23, 2001. Chapter 10, Laws of 2001 1st sp. sess. is necessary to protect the Washington equine breeding and racing industries, and in particular those sectors of these industries that are dependent upon live horse racing. The purpose of chapter 10, Laws of 2001 1st sp. sess. is to protect these industries from adverse economic impacts and to promote fan attendance at class 1 racing facilities. [2004 c 274 § 2; 2001 1st sp.s. c 10 § 2; 2000 c 223 § 1; 1997 c 87 § 4; 1991 c 270 § 10; 1987 c 347 § 1.]

Effective date—2004 c 274: See note following RCW 67.16.260.

Finding—Purpose—2001 1st sp.s. c 10: "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the

gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before August 23, 2001. Therefore, this act does not allow gaming of any nature or scope that was prohibited before August 23, 2001." [2001 1st sp.s. c 10 § 1.]

Findings—Purpose—1997 c 87: "The legislature finds that Washington's equine racing industry creates economic, environmental, and recreational impacts across the state affecting agriculture, horse breeding, the horse training industry, agricultural fairs and youth programs, and tourism and employment opportunities. The Washington equine industry has incurred a financial decline coinciding with increased competition from the gaming industry in the state and from the lack of a class 1 racing facility in western Washington from 1993 through 1995. This act is necessary to preserve, restore, and revitalize the equine breeding and racing industries and to preserve in Washington the economic and social impacts associated with these industries. Preserving Washington's equine breeding and racing industries, and in particular those sectors of the industries that are dependent upon live horse racing, is in the public interest of the state. The purpose of this act is to preserve Washington's equine breeding and racing industries and to protect these industries from adverse economic impacts. This act does not establish a new form of gaming in Washington or allow expanded gaming within the state beyond what has been previously authorized. Simulcast wagering has been allowed in Washington before April 19, 1997. Therefore, this act does not allow gaming of any nature or scope that was prohibited before April 19, 1997." [1997 c 87 § 1.]

Report by joint legislative audit and review committee—1997 c 87: "(1) The joint legislative audit and review committee shall conduct an evaluation to determine the extent to which this act has achieved the following outcomes:

- (a) The extent to which purses at Emerald Downs, Playfair, and Yakima Meadows have increased as a result of the provisions of this act;
- (b) The extent to which attendance at Emerald Downs, Playfair, and Yakima Meadows has increased specifically as a result of the provisions of this act;
- (c) The extent to which the breeding of horses in this state has increased specifically related to the provisions of this act;
- (d) The extent to which the number of horses running at Emerald Downs, Playfair, and Yakima Meadows has increased specifically as a result of the provisions of this act;
- (e) The extent to which nonprofit racetracks in this state have benefited from this act including the removal of the cap on the nonprofit race meet purse fund; and
- (f) The extent to which Emerald Downs, Playfair, and Yakima Meadows are capable of remaining economically viable given the provisions of this act and the increase in competition for gambling or entertainment dollars.

(2) The joint legislative audit and review committee may provide recommendations to the legislature concerning modifications that could be made to existing state laws to improve the ability of this act to meet the above intended goals.

(3) The joint legislative audit and review committee shall complete a report on its finding by June 30, 2000. The report shall be provided to the appropriate committees of the legislature by December 1, 2000." [1997 c 87 § 5.]

Severability—1997 c 87: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 87 § 7.]

Effective date—1997 c 87: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 19, 1997]." [1997 c 87 § 8.]

67.16.230 Satellite locations—Fees. The commission is authorized to establish and collect an annual fee for each

(2004 Ed.)

separate satellite location. The fee to be collected from the licensee shall be set to reflect the commission's expected costs of approving, regulating, and monitoring each satellite location, provided commission revenues generated under RCW 67.16.105 from the licensee shall be credited annually towards the licensee's fee assessment under this section. [1991 c 270 § 11; 1987 c 347 § 7.]

67.16.260 Advance deposit wagering. (Expires October 1, 2007.) (1) The horse racing commission may authorize advance deposit wagering to be conducted by:

(a) A licensed class 1 racing association operating a live horse racing facility; or

(b) The operator of an advance deposit wagering system accepting wagers pursuant to an agreement with a licensed class 1 racing association. The agreement between the operator and the class 1 racing association must be approved by the commission.

(2) An entity authorized to conduct advance deposit wagering under subsection (1) of this section:

(a) May accept advance deposit wagering for races conducted in this state under a class 1 license or races not conducted within this state on a schedule approved by the class 1 licensee. A system of advance deposit wagering located outside or within this state may not accept wagers from residents or other individuals located within this state, and residents or other individuals located within this state are prohibited from placing wagers through advance deposit wagering systems, except with an entity authorized to conduct advance deposit wagering under subsection (1) of this section;

(b) May not accept an account wager in an amount in excess of the funds on deposit in the advance deposit wagering account of the individual placing the wager;

(c) May not allow individuals under the age of twenty-one to open, own, or have access to an advance deposit wagering account;

(d) Must include a statement in all forms of advertising for advance deposit wagering that individuals under the age of twenty-one are not allowed to open, own, or have access to an advance deposit wagering account; and

(e) Must verify the identification, residence, and age of the advance deposit wagering account holder using methods and technologies approved by the commission.

(3) As used in this section, "advance deposit wagering" means a form of parimutuel wagering in which an individual deposits money in an account with an entity authorized by the commission to conduct advance deposit wagering and then the account funds are used to pay for parimutuel wagers made in person, by telephone, or through communication by other electronic means.

(4) In order to participate in advance deposit wagering, the holder of a class 1 racing association license must have conducted at least one full live racing season. All class 1 racing associations must complete a live race meet within each succeeding twelve-month period to maintain eligibility to continue participating in advance deposit wagering.

(5) When more than one class 1 racing association is participating in advance deposit wagering the moneys paid to the racing associations shall be allocated proportionate to the gross amount of all sources of parimutuel wagering during each twelve-month period derived from the associations' live

race meets. This percentage must be calculated annually. Revenue derived from advance deposit wagers placed on races conducted by the class 1 racing association shall all be allocated to that association.

(6) The commission shall adopt rules regulating advance deposit wagering.

(7) This section expires October 1, 2007. [2004 c 274 § 1.]

Effective date—2004 c 274: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 1, 2004]." [2004 c 274 § 4.]

67.16.270 Violation of commission rules—Penalties.

Upon making a determination that an individual or licensee has violated a commission rule, the board of stewards may assess a fine, suspend or revoke a person's license, or any combination of these penalties. The commission must adopt by rule standard penalties for a rules violation. All fines collected must be deposited in the Washington horse racing commission class C purse fund account, created in RCW 67.16.285, and used as authorized in RCW 67.16.105(3). [2004 c 246 § 1.]

Effective date—2004 c 246: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 246 § 9.]

67.16.275 Washington horse racing commission Washington bred owners' bonus fund account. The Washington horse racing commission Washington bred owners' bonus fund account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.102(1) must be deposited into the account. Expenditures from the account may be used only as authorized in RCW 67.16.102. Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2004 c 246 § 2.]

Effective date—2004 c 246: See note following RCW 67.16.270.

67.16.280 Washington horse racing commission operating account. The Washington horse racing commission operating account is created in the custody of the state treasurer. All receipts collected by the commission under RCW 67.16.105(2) must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for operating expenses of the commission. Investment earnings from the account must be distributed to the Washington horse racing commission class C purse fund account, created in RCW 67.16.285, pursuant to RCW 43.79A.040. [2004 c 246 § 3.]

Effective date—2004 c 246: See note following RCW 67.16.270.

67.16.285 Washington horse racing commission class C purse fund account. The Washington horse racing commission class C purse fund account is created in the custody of the state treasurer. All receipts from RCW 67.16.105(3) must be deposited into the account. Expenditures from the account may be used only for the purposes provided in RCW

67.16.105(3). Only the secretary of the commission or the secretary's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2004 c 246 § 4.]

Effective date—2004 c 246: See note following RCW 67.16.270.

67.16.300 Industrial insurance premium assessments. In addition to the license fees authorized by this chapter, the commission shall collect the industrial insurance premium assessments required under RCW 51.16.210 from trainers, grooms, and owners. The industrial insurance premium assessments required under RCW 51.16.210 shall be retroactive to January 1, 1989, and shall be collected from all licensees whose licenses were issued after that date. The commission shall deposit the industrial insurance premium assessments in the industrial insurance trust fund as required by rules adopted by the department of labor and industries. [1989 c 385 § 2.]

67.16.900 Severability—General repealer—1933 c 55. In case any part or portion of this chapter shall be held unconstitutional, such holding shall not affect the validity of this chapter as a whole or any other part or portion of this chapter not adjudged unconstitutional. All acts in conflict herewith are hereby repealed. [1933 c 55 § 10; RRS § 8312-10.]

Chapter 67.17 RCW

LIVE HORSE RACING COMPACT

Sections

| | |
|-----------|--|
| 67.17.005 | Purpose. |
| 67.17.010 | Definitions. |
| 67.17.020 | Compact effective date. |
| 67.17.030 | Eligibility to enter compact. |
| 67.17.040 | Withdrawal from compact. |
| 67.17.050 | Creation of compact committee. |
| 67.17.060 | Compact committee powers and duties. |
| 67.17.070 | Compact committee voting requirements. |
| 67.17.080 | Compact committee governance. |
| 67.17.090 | Liability of compact committee employees or officials. |
| 67.17.100 | Conditions and terms for participating states. |
| 67.17.110 | Cooperation by governmental entities with compact committee. |
| 67.17.120 | Impact on horse racing commission. |
| 67.17.130 | Construction and severability of language. |
| 67.17.900 | Short title—2001 c 18. |

67.17.005 Purpose. The purposes of the live horse racing compact are to:

(1) Establish uniform requirements among the party states for the licensing of participants in live horse racing with pari-mutuel wagering, and ensure that all such participants who are licensed pursuant to the compact meet a uniform minimum standard of honesty and integrity;

(2) Facilitate the growth of the horse racing industry in each party state and nationwide by simplifying the process for licensing participants in live racing, and reduce the duplicative and costly process of separate licensing by the regulatory agency in each state that conducts live horse racing with pari-mutuel wagering;

(3) Authorize the Washington horse racing commission to participate in the live horse racing compact;

(4) Provide for participation in the live horse racing compact by officials of the party states, and permit those officials, through the compact committee established by this chapter, to enter into contracts with governmental agencies and non-governmental persons to carry out the purposes of the live horse racing compact; and

(5) Establish the compact committee created by this chapter as an interstate governmental entity duly authorized to request and receive criminal history record information from the federal bureau of investigation and other state and local law enforcement agencies. [2001 c 18 § 1.]

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

(1) "Compact committee" means the organization of officials from the party states that is authorized and empowered by the live horse racing compact to carry out the purposes of the compact.

(2) "Official" means the appointed, elected, designated, or otherwise duly selected member of a racing commission or the equivalent thereof in a party state who represents that party state as a member of the compact committee.

(3) "Participants in live racing" means participants in live horse racing with pari-mutuel wagering in the party states.

(4) "Party state" means each state that has enacted the live horse racing compact.

(5) "State" means each of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and each territory or possession of the United States. [2001 c 18 § 2.]

67.17.020 Compact effective date. The live horse racing compact shall come into force when enacted by any four states. Thereafter, the compact shall become effective as to any other state upon: (1) That state's enactment of the compact; and (2) the affirmative vote of a majority of the officials on the compact committee as provided in RCW 67.17.070. [2001 c 18 § 3.]

67.17.030 Eligibility to enter compact. Any state that has adopted or authorized horse racing with pari-mutuel wagering is eligible to become party to the live horse racing compact. [2001 c 18 § 4.]

67.17.040 Withdrawal from compact. Any party state may withdraw from the live horse racing compact by enacting a statute repealing the compact, but no such withdrawal is effective until the head of the executive branch of the withdrawing state has given notice in writing of such withdrawal to the head of the executive branch of all other party states. If, as a result of withdrawals, participation in the compact decreases to less than three party states, the compact no longer shall be in force and effect unless and until there are at least three or more party states again participating in the compact. [2001 c 18 § 5.]

67.17.050 Creation of compact committee. (1) There is created an interstate governmental entity to be known as

(2004 Ed.)

the "compact committee" which shall be comprised of one official from the racing commission or its equivalent in each party state who shall be appointed, serve, and be subject to removal in accordance with the laws of the party state he or she represents. Under the laws of his or her party state, each official shall have the assistance of his or her state's racing commission or the equivalent thereof in considering issues related to licensing of participants in live racing and in fulfilling his or her responsibilities as the representative from his or her state to the compact committee. If an official is unable to perform any duty in connection with the powers and duties of the compact committee, the racing commission or equivalent thereof from his or her state shall designate another of its members as an alternate who shall serve in his or her place and represent the party state as its official on the compact committee until that racing commission or equivalent thereof determines that the original representative official is able once again to perform his or her duties as that party state's representative official on the compact committee. The designation of an alternate shall be communicated by the affected state's racing commission or equivalent thereof to the compact committee as the committee's bylaws may provide.

(2) The governor shall appoint the official to represent the state of Washington on the compact committee for a term of four years. No official may serve more than three consecutive terms. A vacancy shall be filled by the governor for the unexpired term. [2001 c 18 § 6.]

67.17.060 Compact committee powers and duties. In order to carry out the live horse racing compact, the compact committee is granted the power and duty to:

(1) Determine which categories of participants in live racing, including but not limited to owners, trainers, jockeys, grooms, mutuel clerks, racing officials, veterinarians, and farriers, should be licensed by the compact committee, and establish the requirements for the initial licensure of applicants in each such category, the term of the license for each category, and the requirements for renewal of licenses in each category. However, with regard to requests for criminal history record information on each applicant for a license, and with regard to the effect of a criminal record on the issuance or renewal of a license, the compact committee shall determine for each category of participants in live racing which licensure requirements for that category are, in its judgment, the most restrictive licensure requirements of any party state for that category and shall adopt licensure requirements for that category that are, in its judgment, comparable to those most restrictive requirements;

(2) Investigate applicants for a license from the compact committee and, as permitted by federal and state law, gather information on such applicants, including criminal history record information from the federal bureau of investigation and relevant state and local law enforcement agencies, and, where appropriate, from the royal Canadian mounted police and law enforcement agencies of other countries, necessary to determine whether a license should be issued under the licensure requirements established by the compact committee under subsection (1) of this section. Only officials on, and employees of, the compact committee may receive and review such criminal history record information, and those officials and employees may use that information only for the

purposes of the compact. No such official or employee may disclose or disseminate such information to any person or entity other than another official or employee of the compact committee. The fingerprints of each applicant for a license from the compact committee shall be taken by the compact committee, its employees, or its designee and shall be forwarded to a state identification bureau, or to an association of state officials regulating pari-mutuel wagering designated by the attorney general of the United States, for submission to the federal bureau of investigation for a criminal history record check. Such fingerprints may be submitted on a fingerprint card or by electronic or other means authorized by the federal bureau of investigation or other receiving law enforcement agency;

(3) Issue licenses to, and renew the licenses of, participants in live racing listed in subsection (1) of this section who are found by the compact committee to have met the licensure and renewal requirements established by the compact committee. The compact committee shall not have the power or authority to deny a license. If it determines that an applicant will not be eligible for the issuance or renewal of a compact committee license, the compact committee shall notify the applicant that it will not be able to process his or her application further. Such notification does not constitute and shall not be considered to be the denial of a license. Any such applicant has the right to present additional evidence to, and to be heard by, the compact committee, but the final decision on issuance or renewal of the license shall be made by the compact committee using the requirements established under subsection (1) of this section;

(4) Enter into contracts or agreements with governmental agencies and with nongovernmental persons to provide personal services for its activities and such other services as may be necessary to carry out the compact;

(5) Create, appoint, and abolish those offices, employments, and positions, including an executive director, as it deems necessary for the purposes of the compact, prescribe their powers, duties, and qualifications, hire persons to fill those offices, employments, and positions, and provide for the removal, term, tenure, compensation, fringe benefits, retirement benefits, and other conditions of employment of its officers, employees, and other positions;

(6) Borrow, accept, or contract for the services of personnel from any state, the United States, or any other governmental agency, or from any person, firm, association, corporation, or other entity;

(7) Acquire, hold, and dispose of real and personal property by gift, purchase, lease, license, or in other similar manner, in furtherance of the compact;

(8) Charge a fee to each applicant for an initial license or renewal of a license; and

(9) Receive other funds through gifts, grants, and appropriations. [2001 c 18 § 7.]

67.17.070 Compact committee voting requirements.

(1) Each official is entitled to one vote on the compact committee.

(2) All action taken by the compact committee with regard to the addition of party states as provided in RCW 67.17.020, the licensure of participants in live racing, and the receipt and disbursement of funds require a majority vote of

the total number of officials, or their alternates, on the compact committee. All other action by the compact committee requires a majority vote of those officials, or their alternates, present and voting.

(3) No action of the compact committee may be taken unless a quorum is present. A majority of the officials, or their alternates, on the compact committee constitutes a quorum. [2001 c 18 § 8.]

67.17.080 Compact committee governance. (1) The compact committee shall elect annually from among its members a chair, a vice-chair, and a secretary/treasurer.

(2) The compact committee shall adopt bylaws for the conduct of its business by a two-thirds vote of the total number of officials, or their alternates, on the compact committee at that time and shall have the power by the same vote to amend and rescind such bylaws. The compact committee shall publish its bylaws in convenient form and shall file a copy thereof and a copy of any amendments thereto with the secretary of state or equivalent agency of each of the party states.

(3) The compact committee may delegate the day-to-day management and administration of its duties and responsibilities to an executive director and the executive director's support staff.

(4) Employees of the compact committee are considered governmental employees. [2001 c 18 § 9.]

67.17.090 Liability of compact committee employees or officials. No official of a party state or employee of the compact committee shall be held personally liable for any good faith act or omission that occurs during the performance and within the scope of his or her responsibilities and duties under the live horse racing compact. [2001 c 18 § 10.]

67.17.100 Conditions and terms for participating states. (1) By enacting the compact, each party state:

(a) Agrees: (i) To accept the decisions of the compact committee regarding the issuance of compact committee licenses to participants in live racing under the compact committee's licensure requirements; and (ii) to reimburse or otherwise pay the expenses of its official representative on the compact committee or his or her alternate;

(b) Agrees not to treat a notification to an applicant by the compact committee under RCW 67.17.060(3) that the compact committee will not be able to process the application further as the denial of a license, or to penalize such an applicant in any other way based solely on such a decision by the compact committee; and

(c) Reserves the right: (i) To charge a fee for the use of a compact committee license in that state; (ii) to apply its own standards in determining whether, on the facts of a particular case, a compact committee license should be suspended or revoked; (iii) to apply its own standards in determining licensure eligibility, under the laws of that party state, for categories of participants in live racing that the compact committee determines not to license and for individual participants in live racing who do not meet the licensure requirements of the compact committee; and (iv) to establish its own licensure standards for the licensure of nonracing employees at horse

racetracks and employees at separate satellite wagering facilities. Any party state that suspends or revokes a compact committee license shall, through its racing commission or the equivalent thereof or otherwise, promptly notify the compact committee of that suspension or revocation.

(2) No party state shall be held liable for the debts or other financial obligations incurred by the compact committee. [2001 c 18 § 11.]

67.17.110 Cooperation by governmental entities with compact committee. All departments, agencies, and officers of the state of Washington and its political subdivisions are authorized to cooperate with the compact committee in furtherance of any of its activities of the live horse racing compact. [2001 c 18 § 12.]

67.17.120 Impact on horse racing commission. Nothing in this chapter shall be construed to diminish or limit the powers and responsibilities of the Washington horse racing commission established in chapter 67.16 RCW or to invalidate any action of the Washington horse racing commission previously taken, including without limitation any regulation issued by the commission. [2001 c 18 § 13.]

67.17.130 Construction and severability of language. This chapter shall be liberally construed so as to effectuate its purposes. The provisions of this chapter are severable, and, if any phrase, clause, sentence, or provision of the compact is declared to be contrary to the Constitution of the United States or of any party state, or the applicability of the live horse racing compact to any government, agency, person, or circumstance is held invalid, the validity of the remainder of the compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If all or some portion of the live horse racing compact is held to be contrary to the constitution of any party state, the compact shall remain in full force and effect as to the remaining party states and in full force and effect as to the state affected as to all severable matters. [2001 c 18 § 14.]

67.17.900 Short title—2001 c 18. This act may be known and cited as the live horse racing compact. [2001 c 18 § 15.]

Chapter 67.20 RCW

PARKS, BATHING BEACHES, PUBLIC CAMPS

Sections

| | |
|-----------|--|
| 67.20.010 | Authority to acquire and operate certain recreational facilities—Charges—Eminent domain. |
| 67.20.015 | Authority to establish and operate public camps—Charges. |
| 67.20.020 | Contracts for cooperation. |
| 67.20.030 | Scope of chapter. |

County parks and recreational facilities: Chapter 36.68 RCW.

Eminent domain: Title 8 RCW.

Metropolitan park districts: Chapter 35.61 RCW.

Recreation districts act for counties: Chapter 36.69 RCW.

State parks and recreation commission: Chapter 79A.05 RCW.

67.20.010 Authority to acquire and operate certain recreational facilities—Charges—Eminent domain. Any

(2004 Ed.)

city in this state acting through its city council, or its board of park commissioners when authorized by charter or ordinance, any separately organized park district acting through its board of park commissioners or other governing officers, any school district acting through its board of school directors, any county acting through its board of county commissioners, any park and recreation service area acting through its governing body, and any town acting through its town council shall have power, acting independently or in conjunction with the United States, the state of Washington, any county, city, park district, school district or town or any number of such public organizations to acquire any land within this state for park, playground, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beach or public camp purposes and roads leading from said parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, or public camps to nearby highways by donation, purchase or condemnation, and to build, construct, care for, control, supervise, improve, operate and maintain parks, playgrounds, gymnasiums, swimming pools, field houses and other recreational facilities, bathing beaches, roads and public camps upon any such land, including the power to enact and enforce such police regulations not inconsistent with the constitution and laws of the state of Washington, as are deemed necessary for the government and control of the same. The power of eminent domain herein granted shall not extend to any land outside the territorial limits of the governmental unit or units exercising said power. [1988 c 82 § 7; 1949 c 97 § 1; 1921 c 107 § 1; Rem. Supp. 1949 § 9319. FORMER PART OF SECTION: 1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321 now codified as RCW 67.20.015.]

67.20.015 Authority to establish and operate public camps—Charges. Any city, town, county, separately organized park district, or school district shall have power to establish, care for, control, supervise, improve, operate and maintain a public camp, or camps anywhere within the state, and to that end may make, promulgate and enforce any reasonable rules and regulations in reference to such camps and make such charges for the use thereof as may be deemed expedient. [1949 c 97 § 3; 1921 c 107 § 3; Rem. Supp. 1949 § 9321. Formerly RCW 67.20.010, part.]

67.20.020 Contracts for cooperation. Any city, park district, school district, county or town shall have power to enter into any contract in writing with any organization or organizations referred to in this chapter for the purpose of conducting a recreation program or exercising any other power granted by this chapter. In the conduct of such recreation program property or facilities owned by any individual, group or organization, whether public or private, may be utilized by consent of the owner. [1949 c 97 § 2; 1921 c 107 § 2; Rem. Supp. 1949 § 9320.]

67.20.030 Scope of chapter. This chapter shall not be construed to repeal or limit any existing power of any city or park district, but to grant powers in addition thereto. [1949 c 97 § 4; 1921 c 107 § 4; Rem. Supp. 1949 § 9319 note.]

Chapter 67.24 RCW
FRAUD IN SPORTING CONTEST

Sections

- 67.24.010 Commission of—Felony.
67.24.020 Scope of 1945 c 107.

67.24.010 Commission of—Felony. Every person who shall give, offer, receive, or promise, directly or indirectly, any compensation, gratuity, or reward, or make any promise thereof, or who shall fraudulently commit any act by trick, device, or bunco, or any means whatsoever with intent to influence or change the outcome of any sporting contest between people or between animals, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not less than five years. [2003 c 53 § 302; 1992 c 7 § 43; 1945 c 107 § 1; 1941 c 181 § 1; Rem. Supp. 1945 § 2499-1.]

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

67.24.020 Scope of 1945 c 107. All of the acts and statutes in conflict herewith are hereby repealed except chapter 55, Laws of 1933 [chapters *43.50 and 67.16 RCW] and amendments thereto. [1945 c 107 § 2; Rem. Supp. 1945 § 2499-1 note.]

***Reviser's note:** Chapter 43.50 RCW is now codified as RCW 67.16.012 and 67.16.015.

Chapter 67.28 RCW
PUBLIC STADIUM, CONVENTION, ARTS, AND
TOURISM FACILITIES

Sections

- 67.28.080 Definitions.
67.28.120 Authorization to acquire and operate tourism-related facilities.
67.28.125 Selling convention center facilities—Smaller counties within national scenic areas.
67.28.130 Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities.
67.28.140 Declaration of public purpose—Right of eminent domain.
67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment.
67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions.
67.28.170 Power to lease all or part of facilities—Disposition of proceeds.
67.28.180 Lodging tax authorized—Conditions.
67.28.1801 Credit against sales tax due on same lodging.
67.28.181 Special excise taxes authorized—Rates—Credits for city or town tax by county—Limits.
67.28.1815 Revenue—Special fund—Uses for tourism promotion and tourism facility acquisition and operation.
67.28.1817 Lodging tax advisory committee in large municipalities—Submission of proposal for imposition of or change in tax or use—Comments.
67.28.183 Exemption from tax—Emergency lodging for homeless persons—Conditions.
67.28.184 Use of hotel-motel tax revenues by cities for professional sports franchise facilities limited.
67.28.200 Special excise tax authorized—Exemptions may be established—Collection.
67.28.220 Powers additional and supplemental to other laws.
67.28.8001 Reports by municipalities—Summary and analysis by department of community, trade, and economic development.
67.28.900 Severability—1965 c 15.
67.28.910 Severability—1967 c 236.
67.28.911 Severability—1973 2nd ex.s. c 34.
67.28.912 Severability—1975 1st ex.s. c 225.
67.28.913 Severability—1988 ex.s. c 1.

Multipurpose community centers: Chapter 35.59 RCW.

Stadiums, coliseums, powers of counties to build and operate: RCW 36.68.090.

Tax changes: RCW 82.14.055.

Tax rate calculation errors: RCW 82.32.430.

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

(1) "Acquisition" includes, but is not limited to, siting, acquisition, design, construction, refurbishing, expansion, repair, and improvement, including paying or securing the payment of all or any portion of general obligation bonds, leases, revenue bonds, or other obligations issued or incurred for such purpose or purposes under this chapter.

(2) "Municipality" means any county, city or town of the state of Washington.

(3) "Operation" includes, but is not limited to, operation, management, and marketing.

(4) "Person" means the federal government or any agency thereof, the state or any agency, subdivision, taxing district or municipal corporation thereof other than county, city or town, any private corporation, partnership, association, or individual.

(5) "Tourism" means economic activity resulting from tourists, which may include sales of overnight lodging, meals, tours, gifts, or souvenirs.

(6) "Tourism promotion" means activities and expenditures designed to increase tourism, including but not limited to advertising, publicizing, or otherwise distributing information for the purpose of attracting and welcoming tourists; developing strategies to expand tourism; operating tourism promotion agencies; and funding marketing of special events and festivals designed to attract tourists.

(7) "Tourism-related facility" means real or tangible personal property with a usable life of three or more years, or constructed with volunteer labor, and used to support tourism, performing arts, or to accommodate tourist activities.

(8) "Tourist" means a person who travels from a place of residence to a different town, city, county, state, or country, for purposes of business, pleasure, recreation, education, arts, heritage, or culture. [1997 c 452 § 2; 1991 c 357 § 1; 1967 c 236 § 1.]

Intent—1997 c 452: "The intent of this act is to provide uniform standards for local option excise taxation of lodging." [1997 c 452 § 1.]

Severability—1997 c 452: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 452 § 24.]

Savings—1997 c 452: See note following RCW 67.28.181.

Effective date, application—1991 c 357: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect after immediately [effect immediately (May 21, 1991)]. This act applies retroactively to all actions taken under chapter 67.28 RCW on or after January 1, 1990." [1991 c 357 § 5.]

Clarification of permitted use or purpose: 2000 c 256.

67.28.120 Authorization to acquire and operate tourism-related facilities. Any municipality is authorized either individually or jointly with any other municipality, or person, or any combination thereof, to acquire and to operate tourism-related facilities, whether located within or without such

municipality. [1997 c 452 § 7; 1979 ex.s. c 222 § 1; 1973 2nd ex.s. c 34 § 1; 1967 c 236 § 5.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.125 Selling convention center facilities—Smaller counties within national scenic areas. The provisions of this section shall apply to any municipality in any county located in whole or in part in a national scenic area when the population of the county is less than 20,000. The provisions of this section shall also apply to the county when the county contains in whole or in part a national scenic area and the population of the county is less than 20,000.

(1) The legislative body of any municipality or the county legislative authority is authorized to sell to any public or private person, including a corporation, partnership, joint venture, or any other business entity, any convention center facility it owns in whole or in part.

(2) The price and other terms and conditions shall be as the legislative body or authority shall determine. [1991 c 357 § 2.]

Effective date, application—1991 c 357: See note following RCW 67.28.080.

67.28.130 Conveyance or lease of lands, properties or facilities authorized—Joint participation, use of facilities. Any municipality, taxing district, or municipal corporation is authorized to convey or lease any lands, properties or facilities to any other municipality for the development by such other municipality of tourism-related facilities or to provide for the joint use of such lands, properties or facilities, or to participate in the financing of all or any part of the public facilities on such terms as may be fixed by agreement between the respective legislative bodies without submitting the matter to the voters of such municipalities, unless the provisions of general law applicable to the incurring of municipal indebtedness shall require such submission. [1997 c 452 § 8; 1979 ex.s. c 222 § 2; 1973 2nd ex.s. c 34 § 2; 1967 c 236 § 6.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.140 Declaration of public purpose—Right of eminent domain. The acts authorized herein are declared to be strictly for the public purposes of the municipalities authorized to perform same. Any municipality as defined in RCW 67.28.080 shall have the power to acquire by condemnation and purchase any lands and property rights, both within and without its boundaries, which are necessary to carry out the purposes of this chapter. Such right of eminent domain shall be exercised by the legislative body of each such municipality in the manner provided by applicable general law or under chapter 8.12 RCW. [1967 c 236 § 7.]

67.28.150 Issuance of general obligation bonds—Maturity—Methods of payment. To carry out the purposes of this chapter any municipality shall have the power to issue general obligation bonds within the limitations now or hereafter prescribed by the laws of this state. Such general obliga-

tion bonds shall be authorized, executed, issued and made payable as other general obligation bonds of such municipality: PROVIDED, That the governing body of such municipality may provide that such bonds mature in not to exceed forty years from the date of their issue, may provide that such bonds also be made payable from any special taxes provided for in this chapter, and may provide that such bonds also be made payable from any otherwise unpledged revenue which may be derived from the ownership or operation of any properties. [1997 c 452 § 9; 1984 c 186 § 56; 1967 c 236 § 8.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

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

67.28.160 Revenue bonds—Issuance, sale, form, term, payment, reserves, actions. (1) To carry out the purposes of this chapter the legislative body of any municipality shall have the power to issue revenue bonds without submitting the matter to the voters of the municipality: PROVIDED, That the legislative body shall create a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the legislative body may obligate the municipality to pay all or part of amounts collected from the special taxes provided for in this chapter, and/or to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, added to, repaired or replaced pursuant to this chapter, as the legislative body shall determine: PROVIDED, FURTHER, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue pledged to such fund.

Such revenue bonds and the interest thereon issued against such fund or funds shall constitute a claim of the owners thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality.

Each such revenue bond shall state upon its face that it is payable from such special fund or funds, and all revenue bonds issued under this chapter shall be negotiable securities within the provisions of the law of this state. Such revenue bonds may be registered either as to principal only or as to principal and interest as provided in RCW 39.46.030, or may be bearer bonds; shall be in such denominations as the legislative body shall deem proper; shall be payable at such time or times and at such places as shall be determined by the legislative body; shall be executed in such manner and bear interest at such rate or rates as shall be determined by the legislative body.

Such revenue bonds shall be sold in such manner as the legislative body shall deem to be for the best interests of the municipality, either at public or private sale.

The legislative body may at the time of the issuance of such revenue bonds make such covenants with the owners of said bonds as it may deem necessary to secure and guaranty the payment of the principal thereof and the interest thereon, including but not being limited to covenants to set aside adequate reserves to secure or guaranty the payment of such principal and interest, to pledge and apply thereto part or all

of any lawfully authorized special taxes provided for in this chapter, to maintain rates, charges or rentals sufficient with other available moneys to pay such principal and interest and to maintain adequate coverage over debt service, to appoint a trustee or trustees for the bond owners, to safeguard the expenditure of the proceeds of sale of such bonds and to fix the powers and duties of such trustee or trustees and to make such other covenants as the legislative body may deem necessary to accomplish the most advantageous sale of such bonds. The legislative body may also provide that revenue bonds payable out of the same source may later be issued on a parity with revenue bonds being issued and sold.

The legislative body may include in the principal amount of any such revenue bond issue an amount for engineering, architectural, planning, financial, legal, and other services and charges incident to the acquisition or construction of public stadium facilities, convention center facilities, performing arts center facilities, and/or visual arts center facilities, an amount to establish necessary reserves, an amount for working capital and an amount necessary for interest during the period of construction of any facilities to be financed from the proceeds of such issue plus six months. The legislative body may, if it deems it in the best interest of the municipality, provide in any contract for the construction or acquisition of any facilities or additions or improvements thereto or replacements or extensions thereof that payment therefor shall be made only in such revenue bonds.

If the municipality shall fail to carry out or perform any of its obligations or covenants made in the authorization, issuance and sale of such bonds, the owner of any such bond may bring action against the municipality and compel the performance of any or all of such covenants.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1997 c 452 § 10; 1983 c 167 § 168; 1979 ex.s. c 222 § 3; 1973 2nd ex.s. c 34 § 3; 1967 c 236 § 9.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

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

67.28.170 Power to lease all or part of facilities—Disposition of proceeds. The legislative body of any municipality owning or operating tourism-related facilities acquired under this chapter shall have power to lease to any municipality or person, or to contract for the use or operation by any municipality or person, of all or any part of the facilities authorized by this chapter, including but not limited to parking facilities, concession facilities of all kinds and any property or property rights appurtenant to such tourism-related facilities, for such period and under such terms and conditions and upon such rentals, fees and charges as such legislative body may determine, and may pledge all or any portion of such rentals, fees and charges and all other revenue derived from the ownership and/or operation of such facilities to pay and to secure the payment of general obligation bonds and/or revenue bonds of such municipality issued for authorized tourism-related facilities purposes. [1997 c 452 § 11; 1979 ex.s. c 222 § 4; 1973 2nd ex.s. c 34 § 4; 1967 c 236 § 10.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.180 Lodging tax authorized—Conditions. (1) Subject to the conditions set forth in subsections (2) and (3) of this section, the legislative body of any county or any city, is authorized to levy and collect a special excise tax of not to exceed two percent on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW.

(2) Any levy authorized by this section shall be subject to the following:

(a) Any county ordinance or resolution adopted pursuant to this section shall contain, in addition to all other provisions required to conform to this chapter, a provision allowing a credit against the county tax for the full amount of any city tax imposed pursuant to this section upon the same taxable event.

(b) In the event that any county has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such county shall be exempt from the provisions of (a) of this subsection, to the extent that the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160: PROVIDED, That so much of such pledged tax revenues, together with any investment earnings thereon, not immediately necessary for actual payment of principal and interest on such bonds may be used: (i) In any county with a population of one million or more, for repayment either of limited tax levy general obligation bonds or of any county fund or account from which a loan was made, the proceeds from the bonds or loan being used to pay for constructing, installing, improving, and equipping stadium capital improvement projects, and to pay for any engineering, planning, financial, legal and professional services incident to the development of such stadium capital improvement projects, regardless of the date the debt for such capital improvement projects was or may be incurred; (ii) in any county with a population of one million or more, for repayment or refinancing of bonded indebtedness incurred prior to January 1, 1997, for any purpose authorized by this section or relating to stadium repairs or rehabilitation, including but not limited to the cost of settling legal claims, reimbursing operating funds, interest payments on short-term loans, and any other purpose for which such debt has been incurred if the county has created a public stadium authority to develop a stadium and exhibition center under RCW 36.102.030; or (iii) in other counties, for county-owned facilities for agricultural promotion. A county is exempt under this subsection in respect to city revenue or general obligation bonds issued after April 1, 1991, only if such bonds mature before January 1, 2013.

As used in this subsection (2)(b), "capital improvement projects" may include, but not be limited to a stadium restaurant facility, restroom facilities, artificial turf system, seating

facilities, parking facilities and scoreboard and information system adjacent to or within a county owned stadium, together with equipment, utilities, accessories and appurtenances necessary thereto. The stadium restaurant authorized by this subsection (2)(b) shall be operated by a private concessionaire under a contract with the county.

(c)(i) No city within a county exempt under subsection (2)(b) of this section may levy the tax authorized by this section so long as said county is so exempt.

(ii) If bonds have been issued under RCW 43.99N.020 and any necessary property transfers have been made under RCW 36.102.100, no city within a county with a population of one million or more may levy the tax authorized by this section before January 1, 2021.

(iii) However, in the event that any city in a county described in (i) or (ii) of this subsection (2)(c) has levied the tax authorized by this section and has, prior to June 26, 1975, authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160, such city may levy the tax so long as the tax revenues are pledged for payment of principal and interest on bonds issued at any time pursuant to the provisions of RCW 67.28.150 through 67.28.160.

(3) Any levy authorized by this section by a county that has levied the tax authorized by this section and has, prior to June 26, 1975, either pledged the tax revenues for payment of principal and interest on city revenue or general obligation bonds authorized and issued pursuant to RCW 67.28.150 through 67.28.160 or has authorized and issued revenue or general obligation bonds pursuant to the provisions of RCW 67.28.150 through 67.28.160 shall be subject to the following:

(a) Taxes collected under this section in any calendar year before 2013 in excess of five million three hundred thousand dollars shall only be used as follows:

(i) Seventy-five percent from January 1, 1992, through December 31, 2000, and seventy percent from January 1, 2001, through December 31, 2012, for art museums, cultural museums, heritage museums, the arts, and the performing arts. Moneys spent under this subsection (3)(a)(i) shall be used for the purposes of this subsection (3)(a)(i) in all parts of the county.

(ii) Twenty-five percent from January 1, 1992, through December 31, 2000, and thirty percent from January 1, 2001, through December 31, 2012, for the following purposes and in a manner reflecting the following order of priority: Stadium purposes as authorized under subsection (2)(b) of this section; acquisition of open space lands; youth sports activities; and tourism promotion. If all or part of the debt on the stadium is refinanced, all revenues under this subsection (3)(a)(ii) shall be used to retire the debt.

(b) From January 1, 2013, through December 31, 2015, in a county with a population of one million or more, all revenues under this section shall be used to retire the debt on the stadium, or deposited in the stadium and exhibition center account under RCW 43.99N.060 after the debt on the stadium is retired.

(c) From January 1, 2016, through December 31, 2020, in a county with a population of one million or more, all revenues under this section shall be deposited in the stadium and exhibition center account under RCW 43.99N.060.

(d) At least seventy percent of moneys spent under (a)(i) of this subsection for the period January 1, 1992, through December 31, 2000, shall be used only for the purchase, design, construction, and remodeling of performing arts, visual arts, heritage, and cultural facilities, and for the purchase of fixed assets that will benefit art, heritage, and cultural organizations. For purposes of this subsection, fixed assets are tangible objects such as machinery and other equipment intended to be held or used for ten years or more. Moneys received under this subsection (3)(d) may be used for payment of principal and interest on bonds issued for capital projects. Qualifying organizations receiving moneys under this subsection (3)(d) must be financially stable and have at least the following:

(i) A legally constituted and working board of directors;

(ii) A record of artistic, heritage, or cultural accomplishments;

(iii) Been in existence and operating for at least two years;

(iv) Demonstrated ability to maintain net current liabilities at less than thirty percent of general operating expenses;

(v) Demonstrated ability to sustain operational capacity subsequent to completion of projects or purchase of machinery and equipment; and

(vi) Evidence that there has been independent financial review of the organization.

(e) At least forty percent of the revenues distributed pursuant to (a)(i) of this subsection for the period January 1, 2001, through December 31, 2012, shall be deposited in an account and shall be used to establish an endowment. Principal in the account shall remain permanent and irreducible. The earnings from investments of balances in the account may only be used for the purposes of (a)(i) of this subsection.

(f) School districts and schools shall not receive revenues distributed pursuant to (a)(i) of this subsection.

(g) Moneys distributed to art museums, cultural museums, heritage museums, the arts, and the performing arts, and moneys distributed for tourism promotion shall be in addition to and may not be used to replace or supplant any other funding by the legislative body of the county.

(h) As used in this section, "tourism promotion" includes activities intended to attract visitors for overnight stays, arts, heritage, and cultural events, and recreational, professional, and amateur sports events. Moneys allocated to tourism promotion in a class AA county shall be allocated to nonprofit organizations formed for the express purpose of tourism promotion in the county. Such organizations shall use moneys from the taxes to promote events in all parts of the class AA county.

(i) No taxes collected under this section may be used for the operation or maintenance of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged. Expenditures for operation or maintenance include all expenditures other than expenditures that directly result in new fixed assets or that directly increase the capacity, life span, or operating economy of existing fixed assets.

(j) No ad valorem property taxes may be used for debt service on bonds issued for a public stadium that is financed by bonds to which the tax is pledged, unless the taxes collected under this section are or are projected to be insufficient to meet debt service requirements on such bonds.

(k) If a substantial part of the operation and management of a public stadium that is financed directly or indirectly by bonds to which the tax is pledged is performed by a nonpublic entity or if a public stadium is sold that is financed directly or indirectly by bonds to which the tax is pledged, any bonds to which the tax is pledged shall be retired. This subsection (3)(k) does not apply in respect to a public stadium under chapter 36.102 RCW transferred to, owned by, or constructed by a public facilities district under chapter 36.100 RCW or a stadium and exhibition center.

(l) The county shall not lease a public stadium that is financed directly or indirectly by bonds to which the tax is pledged to, or authorize the use of the public stadium by, a professional major league sports franchise unless the sports franchise gives the right of first refusal to purchase the sports franchise, upon its sale, to local government. This subsection (3)(l) does not apply to contracts in existence on April 1, 1986.

If a court of competent jurisdiction declares any provision of this subsection (3) invalid, then that invalid provision shall be null and void and the remainder of this section is not affected. [2002 c 178 § 2; 1997 c 220 § 501 (Referendum Bill No. 48, approved June 17, 1997); 1995 1st sp.s. c 14 § 10; 1995 c 386 § 8. Prior: 1991 c 363 § 139; 1991 c 336 § 1; 1987 c 483 § 1; 1986 c 104 § 1; 1985 c 272 § 1; 1975 1st ex.s. c 225 § 1; 1973 2nd ex.s. c 34 § 5; 1970 ex.s. c 89 § 1; 1967 c 236 § 11.]

Retroactive application—2002 c 178: "This act applies retroactively to events occurring on and after September 1, 2001." [2002 c 178 § 6.]

Effective date—2002 c 178: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]." [2002 c 178 § 7.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Severability—Effective dates—1995 1st sp.s. c 14: See notes following RCW 36.100.010.

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Effective date—1991 c 336: "This act shall take effect January 1, 1992." [1991 c 336 § 3.]

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

Effective date—1986 c 104: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1986." [1986 c 104 § 2.]

Severability—1985 c 272: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 272 § 2.]

Contracts for marketing facility and services: RCW 67.40.120.

Lodging tax imposed in King county for state convention and trade center: RCW 67.40.090.

67.28.1801 Credit against sales tax due on same lodging. Tax collected under RCW 67.28.180 on a sale of lodging shall be credited against the amount of sales tax due to the state under chapter 82.08 RCW on the same sale of lodging. [1998 c 35 § 2.]

Validation of taxes imposed and collected and actions taken—Effective date—1998 c 35: See notes following RCW 67.28.181.

67.28.181 Special excise taxes authorized—Rates—Credits for city or town tax by county—Limits. (1) The legislative body of any municipality may impose an excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW. The rate of tax shall not exceed the lesser of two percent or a rate that, when combined with all other taxes imposed upon sales of lodging within the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals twelve percent. A tax under this chapter shall not be imposed in increments smaller than tenths of a percent.

(2) Notwithstanding subsection (1) of this section:

(a) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100 or both with a total rate exceeding four percent before July 27, 1997, such total authorization shall continue through January 31, 1999, and thereafter the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 31, 1999.

(b) If a city or town, other than a municipality imposing a tax under (a) of this subsection, is located in a county that imposed taxes under this chapter with a total rate of four percent or more on January 1, 1997, the city or town may not impose a tax under this section.

(c) If a city has a population of four hundred thousand or more and is located in a county with a population of one million or more, the rate of tax imposed under this chapter by the city shall not exceed the lesser of four percent or a rate that, when combined with all other taxes imposed upon sales of lodging in the municipality under this chapter and chapters 36.100, 67.40, 82.08, and 82.14 RCW, equals fifteen and two-tenths percent.

(d) If a municipality was authorized to impose taxes under this chapter or RCW 67.40.100, or both, at a rate equal to six percent before January 1, 1998, the municipality may impose a tax under this section at a rate not exceeding the rate actually imposed by the municipality on January 1, 1998.

(3) Any county ordinance or resolution adopted under this section shall contain a provision allowing a credit against the county tax for the full amount of any city or town tax imposed under this section upon the same taxable event. [2004 c 79 § 8; 1998 c 35 § 1; 1997 c 452 § 3.]

Validation of taxes imposed and collected and actions taken—1998 c 35: "If a municipality was authorized to impose taxes under chapter 67.28 RCW or RCW 67.40.100 or both with a total rate exceeding four percent before July 27, 1997, any taxes imposed and collected by the municipality on or after July 27, 1997, are validated by this act to the extent the taxes were imposed at rates that would be permitted under chapter 67.28 RCW as amended by this act. All actions taken in connection with the collection and administration of taxes validated under this section, including crediting the taxes against the amount of sales taxes due to the state under chapter 82.08 RCW, are also validated by this act to the extent the actions taken would be permitted under chapter 67.28 RCW as amended by this act." [1998 c 35 § 4.]

Effective date—1998 c 35: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 12, 1998]." [1998 c 35 § 5.]

Savings—1997 c 452: "This act does not affect any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections,

nor does it affect any proceeding instituted under those sections. As provided in RCW 1.12.020, the sections amended or repealed in this act are continued by section 3 of this act for purposes such as redemption payments on bonds issued in reliance on taxes imposed under those sections. Any moneys held in a fund created under a section repealed in this act shall be deposited in a fund created under section 4 of this act." [1997 c 452 § 23.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

67.28.1815 Revenue—Special fund—Uses for tourism promotion and tourism facility acquisition and operation. All revenue from taxes imposed under this chapter shall be credited to a special fund in the treasury of the municipality imposing such tax and used solely for the purpose of paying all or any part of the cost of tourism promotion, acquisition of tourism-related facilities, or operation of tourism-related facilities. Municipalities may, under chapter 39.34 RCW, agree to the utilization of revenue from taxes imposed under this chapter for the purposes of funding a multi-jurisdictional tourism-related facility. [1997 c 452 § 4.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.1817 Lodging tax advisory committee in large municipalities—Submission of proposal for imposition of or change in tax or use—Comments. (1) Before proposing imposition of a new tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter, a municipality with a population of five thousand or more shall establish a lodging tax advisory committee under this section. A lodging tax advisory committee shall consist of at least five members, appointed by the legislative body of the municipality, unless the municipality has a charter providing for a different appointment authority. The committee membership shall include: (a) At least two members who are representatives of businesses required to collect tax under this chapter; and (b) at least two members who are persons involved in activities authorized to be funded by revenue received under this chapter. Persons who are eligible for appointment under (a) of this subsection are not eligible for appointment under (b) of this subsection. Persons who are eligible for appointment under (b) of this subsection are not eligible for appointment under (a) of this subsection. Organizations representing businesses required to collect tax under this chapter, organizations involved in activities authorized to be funded by revenue received under this chapter, and local agencies involved in tourism promotion may submit recommendations for membership on the committee. The number of members who are representatives of businesses required to collect tax under this chapter shall equal the number of members who are involved in activities authorized to be funded by revenue received under this chapter. One member shall be an elected official of the municipality who shall serve as chair of the committee. An advisory committee for a county may include one nonvoting member who is an elected official of a city or town in the county. An advisory committee for a city or town may include one nonvoting member who is an elected official of the county in which the city or town is located. The appointing authority shall review the membership of the

(2004 Ed.)

advisory committee annually and make changes as appropriate.

(2) Any municipality that proposes imposition of a tax under this chapter, an increase in the rate of a tax imposed under this chapter, repeal of an exemption from a tax imposed under this chapter, or a change in the use of revenue received under this chapter shall submit the proposal to the lodging tax advisory committee for review and comment. The submission shall occur at least forty-five days before final action on or passage of the proposal by the municipality. The advisory committee shall submit comments on the proposal in a timely manner through generally applicable public comment procedures. The comments shall include an analysis of the extent to which the proposal will accommodate activities for tourists or increase tourism, and the extent to which the proposal will affect the long-term stability of the fund created under RCW 67.28.1815. Failure of the advisory committee to submit comments before final action on or passage of the proposal shall not prevent the municipality from acting on the proposal. A municipality is not required to submit an amended proposal to an advisory committee under this section. [1998 c 35 § 3; 1997 c 452 § 5.]

Validation of taxes imposed and collected and actions taken—Effective date—1998 c 35: See notes following RCW 67.28.181.

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.183 Exemption from tax—Emergency lodging for homeless persons—Conditions. (1) The taxes levied under this chapter shall not apply to emergency lodging provided for homeless persons for a period of less than thirty consecutive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1992 c 206 § 5; 1988 c 61 § 2.]

Effective date—1992 c 206: See note following RCW 82.04.170.

Effective date—1988 c 61: See note following RCW 82.08.0299.

67.28.184 Use of hotel-motel tax revenues by cities for professional sports franchise facilities limited. No city imposing the tax authorized under this chapter may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under this chapter to directly or indirectly acquire, construct, operate, or maintain a facility used by a professional sports franchise. [1997 c 452 § 13; 1987 1st ex.s. c 8 § 7.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.28.200 Special excise tax authorized—Exemptions may be established—Collection. The legislative body of any municipality may establish reasonable exemptions for taxes authorized under this chapter. The department of reve-

nue shall perform the collection of such taxes on behalf of such municipality at no cost to such municipality. Except as expressly provided in this chapter, all of the provisions contained in RCW 82.08.050 and 82.08.060 and chapter 82.32 RCW shall have full force and application with respect to taxes imposed under the provisions of this chapter. [2004 c 79 § 9; 1997 c 452 § 14; 1993 c 389 § 2; 1991 c 331 § 2; 1988 ex.s. c 1 § 23; 1987 c 483 § 3; 1970 ex.s. c 89 § 2; 1967 c 236 § 13.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.220 Powers additional and supplemental to other laws. The powers and authority conferred upon municipalities under the provisions of this chapter shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other powers or authority of such municipalities. [1967 c 236 § 15.]

67.28.8001 Reports by municipalities—Summary and analysis by department of community, trade, and economic development. (1) Each municipality imposing a tax under chapter 67.28 RCW shall submit a report to the department of community, trade, and economic development on October 1, 1998, and October 1, 2000. Each report shall include the following information:

- (a) The rate of tax imposed under chapter 67.28 RCW;
- (b) The total revenue received under chapter 67.28 RCW for each of the preceding six years;
- (c) A list of projects and activities funded with revenue received under chapter 67.28 RCW; and
- (d) The amount of revenue under chapter 67.28 RCW expended for each project and activity.

(2) The department of community, trade, and economic development shall summarize and analyze the data received under subsection (1) of this section in a report submitted to the legislature on January 1, 1999, and January 1, 2001. The report shall include, but not be limited to, analysis of factors contributing to growth in revenue received under chapter 67.28 RCW and the effects of projects and activities funded with revenue received under chapter 67.28 RCW on tourism growth. [1997 c 452 § 6.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.28.900 Severability—1965 c 15. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 15 § 8.]

67.28.910 Severability—1967 c 236. If any provision of this act, or its application to any municipality, person or circumstance is held invalid, the remainder of this act or the application of the provision to other municipalities, persons or circumstances is not affected. [1967 c 236 § 19.]

67.28.911 Severability—1973 2nd ex.s. c 34. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1973 2nd ex.s. c 34 § 7.]

67.28.912 Severability—1975 1st ex.s. c 225. If any provision of this 1975 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 225 § 3.]

67.28.913 Severability—1988 ex.s. c 1. See RCW 36.100.900.

Chapter 67.30 RCW

MULTIPURPOSE SPORTS STADIA

Sections

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| 67.30.010 | Declaration of public purpose and necessity. |
| 67.30.020 | Participation by cities and counties—Powers—Costs, how paid. |
| 67.30.030 | Issuance of revenue bonds—Limitations—Retirement. |
| 67.30.040 | Power to appropriate and raise moneys. |
| 67.30.050 | Powers additional and supplemental to other laws. |
| 67.30.900 | Severability—1967 c 166. |

Multipurpose community centers: Chapter 35.59 RCW.

Professional sports franchise, cities authorized to own and operate: RCW 35.21.695.

Stadia, coliseums, powers of counties to build and operate: RCW 36.68.090.

67.30.010 Declaration of public purpose and necessity. The participation of counties and cities in multipurpose sports stadia which may be used for football, baseball, soccer, conventions, home shows or any and all similar activities; the purchase, lease, condemnation, or other acquisition of necessary real property therefor; the acquisition by condemnation or otherwise, lease, construction, improvement, maintenance, and equipping of buildings or other structures upon such real property or other real property; the operation and maintenance necessary for such participation, and the exercise of any other powers herein granted to counties and cities, are hereby declared to be public, governmental, and municipal functions, exercised for a public purpose, and matters of public necessity, and such real property and other property acquired, constructed, improved, maintained, equipped, and used by counties and cities in the manner and for the purposes enumerated in this chapter shall and are hereby declared to be acquired, constructed, improved, maintained, equipped and used for public, governmental, and municipal purposes and as a matter of public necessity. [1967 c 166 § 2.]

67.30.020 Participation by cities and counties—Powers—Costs, how paid. The counties and cities are authorized, upon passage of an ordinance in the prescribed manner, to participate in the financing, construction, acquisition, operation, and maintenance of multipurpose sports stadia within their boundaries. Counties and cities are also authorized, through their governing authorities, to purchase, lease, condemn, or otherwise acquire property, real or personal; to construct, improve, maintain and equip buildings or other

structures; and expend moneys for investigations, planning, operations, and maintenance necessary for such participation.

The cost of any such acquisition, condemnation, construction, improvement, maintenance, equipping, investigations, planning, operation, or maintenance necessary for such participation may be paid for by appropriation of moneys available therefor, gifts, or wholly or partly from the proceeds of revenue bonds as the governing authority may determine. [1967 c 166 § 3.]

67.30.030 Issuance of revenue bonds—Limitations—Retirement. Any revenue bonds to be issued by any county or city pursuant to the provisions of this chapter, shall be authorized and issued in the manner prescribed by the laws of this state for the issuance and authorization of bonds thereof for public purposes generally: PROVIDED, That the bonds shall not be issued for a period beyond the life of the improvement to be acquired by the use of the bonds.

The bonding authority authorized for the purposes of this chapter shall be limited to the issuance of revenue bonds payable from a special fund or funds created solely from revenues derived from the facility. The owners and holders of such bonds shall have a lien and charge against the gross revenue of the facility. Such revenue bonds and the interest thereon against such fund or funds shall be a valid claim of the holders thereof only as against such fund or funds and the revenue pledged therefor, and shall not constitute a general indebtedness of the municipality. The governing authority of any county or city may by ordinance take such action as may be necessary and incidental to the issuance of such bonds and the retirement thereof. The provisions of chapter 36.67 RCW not inconsistent with this chapter shall apply to the issuance and retirement of any such revenue bonds. [1967 c 166 § 4.]

67.30.040 Power to appropriate and raise moneys. The governing body having power to appropriate moneys within any county or city for the purpose of purchasing, condemning, leasing or otherwise acquiring property, constructing, improving, maintaining, and equipping buildings or other structures, and the investigations, planning, operation or maintenance necessary to participation in any such all-purpose or multipurpose sports stadium, is hereby authorized to appropriate and cause to be raised by taxation or otherwise moneys sufficient to carry out such purpose. [1967 c 166 § 5.]

67.30.050 Powers additional and supplemental to other laws. The powers and authority conferred upon counties and cities under the provisions of this chapter, shall be construed as in addition and supplemental to powers or authority conferred by any other law, and nothing contained herein shall be construed as limiting any other such powers or authority. [1967 c 166 § 6.]

67.30.900 Severability—1967 c 166. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 c 166 § 7.]

(2004 Ed.)

Chapter 67.38 RCW CULTURAL ARTS, STADIUM AND CONVENTION DISTRICTS

Sections

| | |
|-----------|---|
| 67.38.010 | Purpose. |
| 67.38.020 | Definitions. |
| 67.38.030 | Cultural arts, stadium and convention district—Creation. |
| 67.38.040 | Multicounty district—Creation. |
| 67.38.050 | Governing body. |
| 67.38.060 | Comprehensive plan—Development—Elements. |
| 67.38.070 | Comprehensive plan—Review—Approval or disapproval—Resubmission. |
| 67.38.080 | Annexation election. |
| 67.38.090 | District as quasi municipal corporation—General powers. |
| 67.38.100 | Additional powers. |
| 67.38.110 | Issuance of general obligation bonds—Maturity—Excess levies. |
| 67.38.115 | Community revitalization financing—Public improvements. |
| 67.38.120 | Revenue bonds—Issuance, sale, term, payment. |
| 67.38.130 | Cultural arts, stadium and convention district tax levies. |
| 67.38.140 | Contribution of sums for limited purposes. |
| 67.38.150 | Treasurer and auditor—Bond—Duties—Funds—Depositaries. |
| 67.38.160 | Dissolution and liquidation. |
| 67.38.900 | Captions not law—1982 1st ex.s. c 22. |
| 67.38.905 | Severability—1982 1st ex.s. c 22. |

67.38.010 Purpose. The legislature finds that expansion of a cultural tourism would attract new visitors to our state and aid the development of a nonpolluting industry. The creation or renovation, and operation of cultural arts, stadium and convention facilities benefiting all the citizens of this state would enhance the recreational industry's ability to attract such new visitors. The additional income and employment resulting therefrom would strengthen the economic base of the state.

It is declared that the construction, modification, renovation, and operation of facilities for cultural arts, stadium and convention uses will enhance the progress and economic growth of this state. The continued growth and development of this recreational industry provides for the general welfare and is an appropriate matter of concern to the people of the state of Washington. [1982 1st ex.s. c 22 § 1.]

67.38.020 Definitions. Unless the context clearly indicates otherwise, for the purposes of this chapter the following definitions shall apply:

- (1) "Cultural arts, stadium and convention district," or "district," means a quasi municipal corporation of the state of Washington created pursuant to this chapter.
- (2) "Component city" means an incorporated city within a public cultural arts, stadium and convention benefit area.
- (3) "City" means any city or town.
- (4) "City council" means the legislative body of any city.
- (5) "Municipality" means a port district, public school district or community college district. [1982 1st ex.s. c 22 § 2.]

67.38.030 Cultural arts, stadium and convention district—Creation. (1) The process to create a cultural arts, stadium and convention district may be initiated by:

- (a) The adoption of a resolution by the county legislative authority calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of the district; or

(b) The governing bodies of two or more cities located within the same county adopting resolutions calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of such a district: PROVIDED, That this method may not be used more frequently than once in any twelve month period in the same county; or

(c) The filing of a petition with the county legislative authority, calling for a public hearing on the proposed creation of such a district and delineating proposed boundaries of the district, that is signed by at least ten percent of the registered voters residing in the proposed district at the last general election. Such signatures will be certified by the county auditor or the county elections department.

(2) Within sixty days of the adoption of such resolutions, or presentation of such a petition, the county legislative authority shall hold a public hearing on the proposed creation of such a district. Notice of the hearing shall be published at least once a week for three consecutive weeks in one or more newspapers of general circulation within the proposed boundaries of the district. The notice shall include a general description and map of the proposed boundaries. Additional notice shall also be mailed to the governing body of each city and municipality located all or partially within the proposed district. At such hearing, or any continuation thereof, any interested party may appear and be heard on the formation of the proposed district.

The county legislative authority shall delete the area included within the boundaries of a city from the proposed district if prior to the public hearing the city submits to the county legislative authority a copy of an adopted resolution requesting its deletion from the proposed district. The county legislative authority may delete any other areas from the proposed boundaries. Additional territory may be included within the proposed boundaries, but only if such inclusion is subject to a subsequent hearing, with notice provided in the same manner as for the original hearing.

(3) A proposition to create a cultural arts, stadium and convention district shall be submitted to the voters of the proposed district within two years of the adoption of a resolution providing for such submittal by the county legislative authority at the conclusion of such hearings. The resolution shall establish the boundaries of the district and include a finding that the creation of the district is in the public interest and that the area included within the district can reasonably be expected to benefit from its creation. No portion of a city may be included in such a district unless the entire city is included. The boundaries of such a district shall follow school district or community college boundaries in as far as practicable.

(4) The proposition to create a cultural arts, stadium and convention district shall be submitted to the voters of the proposed district at the next general election held sixty or more days after the adoption of the resolution. The district shall be created upon approval of the proposition by simple majority vote. The ballot proposition submitted to the voters shall be in substantially the following form:

FORMATION OF CULTURAL ARTS,
STADIUM AND CONVENTION
DISTRICT

Shall a cultural arts, stadium and convention district be established for the area described in a resolution of the legislative authority of county, adopted on the day of, 19. . . ?

[1982 1st ex.s. c 22 § 3.]

67.38.040 Multicounty district—Creation. A joint hearing by the legislative authorities of two or more counties on the proposed creation of a cultural arts, stadium and convention district including areas within such counties may be held as provided herein:

(1) The process to initiate such a hearing shall be identical with the process provided in RCW 67.38.030(1), except a resolution of all the legislative authorities of each county with territory proposed to be included shall be necessary.

(2) No territory may be added to or deleted from such a proposed district, except by action of the county legislative authority of the county within whose boundaries the territory lies pursuant to the process provided in RCW 67.38.030.

(3) The resolutions shall each contain identical provisions concerning the governing body, as delineated in RCW 67.38.050. [1982 1st ex.s. c 22 § 4.]

67.38.050 Governing body. The number of persons on the governing body of the district and how such persons shall be selected and replaced shall be included in the resolution of the county legislative authority providing for the submittal of the proposition to create the district to the voters. Members of the governing body may only consist of a combination of city council members or mayors of the city or cities included within the district, members of the county legislative authority, the county executive of a county operating under a home rule charter, elected members of the governing bodies of municipalities located within the district, and members of the board of regents of a community college district. No governing body may consist of more than nine members. The resolution may also provide for additional, ex officio, nonvoting members consisting of elected officials or appointed officials from the counties, cities, or municipalities which are located all or partially within the boundaries of such a district and who [which] do not have elected or appointed officials sitting on the governing body.

Any member of the governing body, or any ex officio member, who is not an elective official whose office is a full-time position may be reimbursed for reasonable expenses actually incurred in attending meetings or engaging in other district business as provided in RCW 42.24.090. [1982 1st ex.s. c 22 § 5.]

67.38.060 Comprehensive plan—Development—Elements. The cultural arts, stadium and convention district, as authorized in this chapter, shall develop a comprehensive cultural arts, stadium and convention plan for the district. Such plan shall include, but not be limited to the following elements:

(1) The levels of cultural arts, stadium and convention services that can be reasonably provided for various portions of the district.

(2) The funding requirements, including local tax sources or federal funds, necessary to provide various levels of service within the district.

(3) The impact of such a service on other cultural arts, stadium and convention systems operating within that county or adjacent counties. [1982 1st ex.s. c 22 § 6.]

67.38.070 Comprehensive plan—Review—Approval or disapproval—Resubmission. The comprehensive cultural arts, stadium and convention plan adopted by the district shall be reviewed by the department of community, trade, and economic development to determine:

(1) Whether the plan will enhance the progress of the state and provide for the general welfare of the population; and

(2) Whether such plan is eligible for matching federal funds.

After reviewing the comprehensive cultural arts, stadium and convention plan, the department of community, trade, and economic development shall have sixty days in which to approve such plan and to certify to the state treasurer that such district shall be eligible to receive funds. To be approved a plan shall provide for coordinated cultural arts, stadium and convention planning, and be consistent with the public cultural arts, stadium and convention coordination criteria in a manner prescribed by chapter 35.60 RCW. In the event such comprehensive plan is disapproved and ruled ineligible to receive funds, the department of community, trade, and economic development shall provide written notice to the district within thirty days as to the reasons for such plan's disapproval and such ineligibility. The district may resubmit such plan upon reconsideration and correction of such deficiencies cited in such notice of disapproval. [1995 c 399 § 167; 1985 c 6 § 22; 1982 1st ex.s. c 22 § 7.]

67.38.080 Annexation election. An election to authorize the annexation of contiguous territory to a cultural arts, stadium and convention district may be submitted to the voters of the area proposed to be annexed upon the passage of a resolution of the governing body of the district. Approval by simple majority vote shall authorize such annexation. [1982 1st ex.s. c 22 § 8.]

67.38.090 District as quasi municipal corporation—General powers. A cultural arts, stadium and convention district is a quasi municipal corporation, an independent taxing "authority" within the meaning of Article VII, section 1, of the state Constitution, and a "taxing district" within the meaning of Article VII, section 2, of the state Constitution. A district shall constitute a body corporate and shall possess all the usual powers of a corporation for public purpose. In addition to the powers specifically granted by this chapter, a district shall have all powers which are necessary to carry out the purposes of this chapter. A cultural arts, stadium and convention district may contract with the United States or any agency thereof, any state or agency thereof, any other cultural arts, stadium and convention district, any county, city, metro-

(2004 Ed.)

politan municipal corporation, special district, or governmental agency, within or without the state, and any private person, firm or corporation for the purpose of receiving gifts or grants or securing loans or advances for preliminary planning and feasibility studies, or for the design, construction or renovation or operation of cultural arts, stadium and convention facilities. In addition, a district may contract with any governmental agency or with any private person, firm or corporation for the use by either contracting party of all or any part of the facilities, structures, lands, interests in lands, air rights over lands and rights of way of all kinds which are owned, leased or held by the other party and for the purpose of planning, constructing or operating any facility or performing any service which the cultural arts, stadium and convention district may be authorized to operate or perform, on such terms as may be agreed upon by the contracting parties. Before any contract for the lease or operation of any cultural arts, stadium and convention district facilities shall be let to any private person, firm or corporation, competitive bids shall be called upon such notice, bidder qualifications and bid conditions as the district shall determine.

A district may sue and be sued in its corporate capacity in all courts and in all proceedings. [1982 1st ex.s. c 22 § 9.]

67.38.100 Additional powers. The governing body of a cultural arts, stadium and convention district shall have the following powers in addition to the general powers granted by this chapter:

(1) To prepare, adopt and carry out a general comprehensive plan for cultural arts, stadium and convention service which will best serve the residents of the district and to amend said plan from time to time to meet changed conditions and requirements.

(2) To acquire by purchase, gift or grant and to lease, convey, construct, add to, improve, replace, repair, maintain, and operate cultural arts, stadium and convention facilities and properties within the district, including portable and mobile facilities and parking facilities and properties and such other facilities and properties as may be necessary for passenger and vehicular access to and from such facilities and properties, together with all lands, rights of way, property, equipment and accessories necessary for such systems and facilities. Cultural arts, stadium and convention facilities and properties which are presently owned by any component city, county or municipality may be acquired or used by the district only with the consent of the legislative authority, council or governing body of the component city, county or municipality owning such facilities. A component city, county or municipality is hereby authorized to convey or lease such facilities to a district or to contract for their joint use on such terms as may be fixed by agreement between the component city, county or municipality and the district, without submitting the matter to the voters of such component city, county or municipality.

(3) To fix rates and charges for the use of such facilities. [1982 1st ex.s. c 22 § 10.]

67.38.110 Issuance of general obligation bonds—Maturity—Excess levies. To carry out the purpose of this chapter, any cultural arts, stadium and convention district

shall have the power to issue general obligation bonds for capital purposes only, not to exceed an amount, together with any outstanding nonvoter approved general obligation indebtedness equal to three-eighths of one percent of the value of taxable property within such district, as the term "value of taxable property" is defined in RCW 39.36.015. A cultural arts, stadium and convention district is additionally authorized to issue general obligation bonds for capital purposes only, together with any outstanding general obligation indebtedness, not to exceed an amount equal to three-fourths of one percent of the value of the taxable property within the district, as the term "value of taxable property" is defined in RCW 39.36.015, and to provide for the retirement thereof by excess levies when the voters approve a ballot proposition providing for both the bond issuance and imposition of such levies at a special election called for that purpose in the manner prescribed by section 6, Article VIII and section 2, Article VII of the Constitution and by RCW 84.52.056. Elections shall be held as provided in RCW 39.36.050. General obligation bonds may not be issued with maturities in excess of forty years. Such bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 57; 1983 c 167 § 169; 1982 1st ex.s. c 22 § 11.]

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

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

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

This section does not limit the authority of a cultural arts, stadium, and convention center district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 20.]

Severability—2001 c 212: See RCW 39.89.902.

67.38.120 Revenue bonds—Issuance, sale, term, payment. (1) To carry out the purposes of this chapter, the cultural arts, stadium and convention district shall have the power to issue revenue bonds: PROVIDED, That the district governing body shall create or have created a special fund or funds for the sole purpose of paying the principal of and interest on the bonds of each such issue, into which fund or funds the governing body may obligate the district to pay such amounts of the gross revenue of all or any part of the facilities constructed, acquired, improved, repaired or replaced pursuant to this chapter, as the governing body shall determine: PROVIDED FURTHER, That the principal of and interest on such bonds shall be payable only out of such special fund or funds, and the owners of such bonds shall have a lien and charge against the gross revenue pledged to such fund. Such bonds may be in any form, including bearer bonds or registered bonds as provided in RCW 39.46.030.

The governing body of a district shall have such further powers and duties in carrying out the purposes of this chapter as provided in RCW 67.28.160.

(2) Notwithstanding subsection (1) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 170; 1982 1st ex.s. c 22 § 12.]

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

67.38.130 Cultural arts, stadium and convention district tax levies. The governing body of a cultural arts, stadium and convention district may levy or cause to levy the following ad valorem taxes:

(1) Regular ad valorem property tax levies in an amount equal to twenty-five cents or less per thousand dollars of the assessed value of property in the district in each year for six consecutive years when specifically authorized so to do by a majority of at least three-fifths of the electors thereof approving a proposition authorizing the levies submitted at a general or special election, at which election the number of persons voting "yes" on the proposition shall constitute three-fifths of a number equal to forty percentum of the total votes cast in such taxing district at the last preceding general election; or by a majority of at least three-fifths of the electors thereof voting on the proposition when the number of electors voting yes on the proposition exceeds forty percentum of the total votes cast in such taxing district in the last preceding general election. Ballot propositions shall conform with *RCW 29.30.111.

In the event a cultural arts, stadium and convention district is levying property taxes, which in combination with property taxes levied by other taxing districts subject to the one percent limitation provided for in Article VII, section 2, of our state Constitution result in taxes in excess of the limitation provided for in RCW 84.52.043, the cultural arts, stadium and convention district property tax levy shall be reduced or eliminated before the property tax levies of other taxing districts are reduced: PROVIDED, That no cultural arts, stadium, and convention district may pledge anticipated revenues derived from the property tax herein authorized as security for payments of bonds issued pursuant to subsection (1) of this section: PROVIDED, FURTHER, That such limitation shall not apply to property taxes approved pursuant to subsections (2) and (3) of this section.

The limitation in RCW 84.55.010 shall apply to levies after the first levy authorized under this section following the approval of such levy by voters pursuant to this section.

(2) An annual excess ad valorem property tax for general district purposes when authorized by the district voters in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.052.

(3) Multi-year excess ad valorem property tax levies used to retire general obligation bond issues when authorized by the district voters in the manner prescribed by section 2, Article VII of the Constitution and by RCW 84.52.056.

The district shall include in its regular property tax levy for each year a sum sufficient to pay the interest and principal on all outstanding general obligation bonds issued without voter approval pursuant to RCW 67.38.110 and may include a sum sufficient to create a sinking fund for the redemption of

all outstanding bonds. [1984 c 131 § 4; 1982 1st ex.s. c 22 § 13.]

*Reviser's note: RCW 29.30.111 was recodified as RCW 29A.36.210 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Purpose—1984 c 131 §§ 3-9: See note following RCW 29A.36.210.

67.38.140 Contribution of sums for limited purposes.

The county or counties and each component city included in the district collecting or planning to collect the hotel/motel tax under chapter 67.28 RCW may contribute such revenue in such manner as shall be agreed upon between them, consistent with this chapter and chapter 67.28 RCW. [1997 c 452 § 18; 1982 1st ex.s. c 22 § 14.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

67.38.150 Treasurer and auditor—Bond—Duties—Funds—Depositaries. Unless the cultural arts, stadium and convention district governing body, by resolution, designates some other person having experience in financial or fiscal matters as treasurer of the district, the treasurer of the county in which a cultural arts, stadium and convention district is located shall be ex officio treasurer of the district: PROVIDED, That in the case of a multicounty cultural arts, stadium and convention district, the county treasurer of the county with the greatest amount of area within the district shall be the ex officio treasurer of the district. The district may, and if the treasurer is not a county treasurer shall, require a bond for such treasurer with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions as agreed to by the district, by resolution, in such amount from time to time which will protect the authority against loss. The premium on any such bond shall be paid by the authority.

All district funds shall be paid to the treasurer and shall be disbursed by the treasurer only on warrants issued by an auditor appointed by the district, upon orders or vouchers approved by the governing body. The treasurer shall establish a "cultural arts, stadium and convention fund," into which shall be paid district funds as provided in RCW 67.38.140 and the treasurer shall maintain such special funds as may be created by the governing body into which said treasurer shall place all moneys as the governing body may, by resolution, direct.

If the treasurer of the district is a treasurer of the county, all district funds shall be deposited with the county depository under the same restrictions, contracts, and security as provided for county depositories; the county auditor of such county shall keep the records of the receipts and disbursements, and shall draw, and such county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the district. [1982 1st ex.s. c 22 § 15.]

67.38.160 Dissolution and liquidation. A cultural arts, stadium and convention district established in accordance with this chapter shall be dissolved and its affairs liquidated by either of the following methods:

(1) When so directed by a majority of persons in the district voting on such question. An election placing such question before the voters may be called in the following manner:

(a) By resolution of the cultural arts, stadium and convention district governing authority;

(b) By resolution of the county legislative body or bodies with the concurrence therein by resolution of the city council of a component city; or

(c) By petition calling for such election signed by at least ten percent of the qualified voters residing within the district filed with the auditor of the county wherein the largest portion of the district is located. The auditor shall examine the same and certify to the sufficiency of the signatures thereon: PROVIDED, That to be validated, signatures must have been collected within a ninety-day period as designated by the petition sponsors.

With dissolution of the district, any outstanding obligations and bonded indebtedness of the district shall be satisfied or allocated by mutual agreement to the county or counties and component cities of the cultural arts, stadium and convention district.

(2) By submission of a petition signed by at least two-thirds of the legislative bodies who have representatives on the district governing body for an order of dissolution to the superior court of a county of the district. All of the signatures must have been collected within one hundred twenty days of the date of submission to the court. The procedures for dissolution provided in RCW 53.48.030 through 53.48.120 shall apply, except that the balance of any assets, after payment of all costs and expenses, shall be divided among the county or counties and component cities of the district on a per capita basis. Any duties to be performed by a county official pursuant to RCW 53.48.030 through 53.48.120 shall be performed by the relevant official of the county in which the petition for dissolution is filed. [1999 c 254 § 1; 1982 1st ex.s. c 22 § 16.]

67.38.900 Captions not law—1982 1st ex.s. c 22. Section captions as used in this amendatory act shall not be construed as and do not constitute any part of the law. [1982 1st ex.s. c 22 § 19.]

67.38.905 Severability—1982 1st ex.s. c 22. If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 1st ex.s. c 22 § 21.]

Chapter 67.40 RCW

CONVENTION AND TRADE FACILITIES

Sections

| | |
|-----------|--|
| 67.40.010 | Legislative finding. |
| 67.40.020 | State convention and trade center—Public nonprofit corporation authorized—Board of directors—Powers and duties. |
| 67.40.025 | State convention and trade center operations account—Operating revenues—Expenditures. |
| 67.40.027 | Compensation and travel expenses of board members. |
| 67.40.030 | General obligation bonds—Authorized—Appropriation required. |
| 67.40.040 | Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use. |

- 67.40.045 Authorization to borrow from state treasury for project completion costs—Limits—"Project completion" defined—Legislative intent—Application.
- 67.40.050 Administration of proceeds.
- 67.40.055 Transfer of funds to account—Repayment of borrowed funds with interest.
- 67.40.060 Retirement of bonds from nondebt-limit proprietary appropriated bond retirement account—Transfer from accounts—Pledge and promise—Remedies of bondholders.
- 67.40.070 Legislature may provide additional means for payment of bonds.
- 67.40.080 Bonds legal investment for public funds.
- 67.40.090 Lodging tax imposed in King county—Rates—Proceeds.
- 67.40.100 Limitation on license fees and taxes on hotels, motels, rooming houses, trailer camps, etc.
- 67.40.105 Exemption from tax—Emergency lodging for homeless persons—Conditions.
- 67.40.110 Use of revenues from convention and trade center facilities excise tax by cities for professional sports franchise facilities limited.
- 67.40.120 Contracts for marketing facility and services.
- 67.40.130 Convention and trade facilities—Tax on transient lodging authorized—Rates.
- 67.40.140 Convention and trade facilities—Remittance of tax—Credit.
- 67.40.150 Convention and trade facilities—Contract of administration and collection to department of revenue—Disposition of tax—Procedure.
- 67.40.160 Convention and trade facilities—Tax on construction—Disposition.
- 67.40.170 Convention and trade facilities—Use of collected taxes.
- 67.40.180 Convention and trade facilities—Use of funds—Acceptance by board of directors of funding commitment.
- 67.40.190 Convention and trade facilities—Use of funds—Encumbered revenue.
- 67.40.900 Severability—1982 c 34.
- 67.40.901 Severability—1988 ex.s. c 1.

Tax changes: RCW 82.14.055.

Tax rate calculation errors: RCW 82.32.430.

67.40.010 Legislative finding. The legislature finds and declares as the express purpose of this chapter:

(1) The convention and trade show business will provide both direct and indirect civic and economic benefits to the people of the state of Washington.

(2) The location of a state convention and trade center in the city of Seattle will particularly benefit and increase the occupancy of larger hotels and other lodging facilities in the city of Seattle and to a lesser extent in King county.

(3) Imposing a special excise tax on the price of lodging in Seattle, and at a lower rate elsewhere in King county, is an appropriate method of paying for a substantial part of the cost of constructing, maintaining, and operating a state convention and trade center. [1983 2nd ex.s. c 1 § 1; 1982 c 34 § 1.]

67.40.020 State convention and trade center—Public nonprofit corporation authorized—Board of directors—Powers and duties.

(1) The governor is authorized to form a public nonprofit corporation in the same manner as a private nonprofit corporation is formed under chapter 24.03 RCW. The public corporation shall be an instrumentality of the state and have all the powers and be subject to the same restrictions as are permitted or prescribed to private nonprofit corporations, but shall exercise those powers only for carrying out the purposes of this chapter and those purposes necessarily implied therefrom. The governor shall appoint a board of nine directors for the corporation who shall serve terms of six years, except that two of the original directors shall serve for two years and two of the original directors shall serve for four years. After January 1, 1991, at least one position on the board shall be filled by a member representing management

in the hotel or motel industry subject to taxation under RCW 67.40.090. The directors may provide for the payment of their expenses. The corporation may acquire, construct, expand, and improve the state convention and trade center within the city of Seattle. Notwithstanding the provisions of subsection (2) of this section, the corporation may acquire, lease, sell, or otherwise encumber property rights, including but not limited to development or condominium rights, deemed by the corporation as necessary for facility expansion.

(2) The corporation may acquire and transfer real and personal property by lease, sublease, purchase, or sale, and further acquire property by condemnation of privately owned property or rights to and interests in such property pursuant to the procedure in chapter 8.04 RCW. However, acquisitions and transfers of real property, other than by lease, may be made only if the acquisition or transfer is approved by the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the senate and house of representatives. The corporation may accept gifts or grants, request the financing provided for in RCW 67.40.030, cause the state convention and trade center facilities to be constructed, and do whatever is necessary or appropriate to carry out those purposes. Upon approval by the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the house of representatives and the senate, the corporation may enter into lease and sublease contracts for a term exceeding the fiscal period in which these lease and sublease contracts are made. The terms of sale or lease of properties acquired by the corporation on February 9, 1987, pursuant to the property purchase and settlement agreement entered into by the corporation on June 12, 1986, including the McKay parcel which the corporation is contractually obligated to sell under that agreement, shall also be subject to the approval of the director of financial management in consultation with the chairpersons of the appropriate fiscal committees of the house of representatives and the senate. No approval by the director of financial management is required for leases of individual retail space, meeting rooms, or convention-related facilities. In order to allow the corporation flexibility to secure appropriate insurance by negotiation, the corporation is exempt from RCW 48.30.270. The corporation shall maintain, operate, promote, and manage the state convention and trade center.

(3) In order to allow the corporation flexibility in its personnel policies, the corporation is exempt from chapter 41.06 RCW, chapter 41.05 RCW, RCW 43.01.040 through 43.01.044, chapter 41.04 RCW and chapter 41.40 RCW. [1995 c 386 § 12; 1993 c 500 § 9; 1988 ex.s. c 1 § 1; 1987 1st ex.s. c 8 § 2; 1984 c 210 § 1; 1983 2nd ex.s. c 1 § 2; 1982 c 34 § 2.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Finding—Severability—Effective date—1993 c 500: See notes following RCW 43.41.180.

Severability—1987 1st ex.s. c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 1st ex.s. c 8 § 17.]

Savings—1984 c 210: "This act shall not terminate or modify any right acquired under a contract of employment in existence prior to March 27, 1984." [1984 c 210 § 7.]

Severability—1984 c 210: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 210 § 8.]

67.40.025 State convention and trade center operations account—Operating revenues—Expenditures. All operating revenues received by the corporation formed under RCW 67.40.020 shall be deposited in the state convention and trade center operations account, hereby created in the state treasury. Moneys in the account, including unanticipated revenues under RCW 43.79.270, may be spent only after appropriation by statute, and may be used only for operation and promotion of the center.

Subject to approval by the office of financial management under RCW 43.88.260, the corporation may expend moneys for operational purposes in excess of the balance in the account, to the extent the corporation receives or will receive additional operating revenues.

As used in this section, "operating revenues" does not include any moneys required to be deposited in the state convention and trade center account. [1988 ex.s. c 1 § 2; 1987 1st ex.s. c 8 § 3; 1985 c 233 § 2.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.027 Compensation and travel expenses of board members. Members of the board shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for travel expenses under RCW 43.03.050 and 43.03.060. [1985 c 233 § 3.]

Reimbursement for out-of-state travel expenses incurred by employees of state convention and trade center: RCW 43.03.062.

67.40.030 General obligation bonds—Authorized—Appropriation required. For the purpose of providing funds for the state convention and trade center, the state finance committee is authorized to issue, upon request of the corporation formed under RCW 67.40.020 and in one or more offerings, general obligation bonds of the state of Washington in the sum of one hundred sixty million, seven hundred sixty-five thousand dollars, or so much thereof as may be required, to finance this project and all costs incidental thereto, to capitalize all or a portion of interest during construction, to provide for expansion, renovation, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, and contingency costs of the center, purchase of the McKay Parcel as defined in the property and purchase agreement entered into by the corporation on June 12, 1986, development of low-income housing and to reimburse the general fund for expenditures in support of the project. The state finance committee may make such bond covenants as it deems necessary to carry out the purposes of this section and this chapter. No bonds authorized in this section may be offered for sale without prior legislative appropriation. [1990 c 181 § 1; 1988 ex.s. c 1 § 3; 1987 1st ex.s. c 3 § 12; 1985 c 233 § 1; 1983 2nd ex.s. c 1 § 3; 1982 c 34 § 3.]

Severability—1987 1st ex.s. c 3: See RCW 43.99G.901.

(2004 Ed.)

67.40.040 Deposit of proceeds in state convention and trade center account and appropriate subaccounts—Credit against future borrowings—Use. (1) The proceeds from the sale of the bonds authorized in RCW 67.40.030, proceeds of the taxes imposed under RCW 67.40.090 and 67.40.130, and all other moneys received by the state convention and trade center from any public or private source which are intended to fund the acquisition, design, construction, expansion, exterior cleanup and repair of the Eagles building, conversion of various retail and other space to meeting rooms, purchase of the land and building known as the McKay Parcel, development of low-income housing, or renovation of the center, and those expenditures authorized under RCW 67.40.170 shall be deposited in the state convention and trade center account hereby created in the state treasury and in such subaccounts as are deemed appropriate by the directors of the corporation.

(2) Moneys in the account, including unanticipated revenues under RCW 43.79.270, shall be used exclusively for the following purposes in the following priority:

(a) For reimbursement of the state general fund under RCW 67.40.060;

(b) After appropriation by statute:

(i) For payment of expenses incurred in the issuance and sale of the bonds issued under RCW 67.40.030;

(ii) For expenditures authorized in RCW 67.40.170;

(iii) For acquisition, design, and construction of the state convention and trade center; and

(iv) For reimbursement of any expenditures from the state general fund in support of the state convention and trade center; and

(c) For transfer to the state convention and trade center operations account.

(3) The corporation shall identify with specificity those facilities of the state convention and trade center that are to be financed with proceeds of general obligation bonds, the interest on which is intended to be excluded from gross income for federal income tax purposes. The corporation shall not permit the extent or manner of private business use of those bond-financed facilities to be inconsistent with treatment of such bonds as governmental bonds under applicable provisions of the Internal Revenue Code of 1986, as amended.

(4) In order to ensure consistent treatment of bonds authorized under RCW 67.40.030 with applicable provisions of the Internal Revenue Code of 1986, as amended, and notwithstanding RCW 43.84.092, investment earnings on bond proceeds deposited in the state convention and trade center account in the state treasury shall be retained in the account, and shall be expended by the corporation for the purposes authorized under chapter 386, Laws of 1995 and in a manner consistent with applicable provisions of the Internal Revenue Code of 1986, as amended.

(5) During the 2003-2005 fiscal biennium, the legislature may transfer from the state convention and trade center account to the state general fund such amounts as reflect the excess fund balance of the account. [2003 1st sp.s. c 25 § 929; 1995 c 386 § 13; 1991 sp.s. c 13 § 11; 1990 c 181 § 2; 1988 ex.s. c 1 § 4; 1987 1st ex.s. c 8 § 4; 1985 c 57 § 66; 1983 2nd ex.s. c 1 § 4; 1982 c 34 § 4.]

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

[Title 67 RCW—page 37]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

Effective date—1985 c 57: See note following RCW 18.04.105.

67.40.045 Authorization to borrow from state treasury for project completion costs—Limits—"Project completion" defined—Legislative intent—Application.

(1) The director of financial management, in consultation with the chairpersons of the appropriate fiscal committees of the senate and house of representatives, may authorize temporary borrowing from the state treasury for the purpose of covering cash deficiencies in the state convention and trade center account resulting from project completion costs. Subject to the conditions and limitations provided in this section, lines of credit may be authorized at times and in amounts as the director of financial management determines are advisable to meet current and/or anticipated cash deficiencies. Each authorization shall distinctly specify the maximum amount of cash deficiency which may be incurred and the maximum time period during which the cash deficiency may continue. The total amount of borrowing outstanding at any time shall never exceed the lesser of:

(a) \$58,275,000; or

(b) An amount, as determined by the director of financial management from time to time, which is necessary to provide for payment of project completion costs.

(2) Unless the due date under this subsection is extended by statute, all amounts borrowed under the authority of this section shall be repaid to the state treasury by June 30, 1999, together with interest at a rate determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. Borrowing may be authorized from any excess balances in the state treasury, except the agricultural permanent fund, the Millersylvania park permanent fund, the state university permanent fund, the normal school permanent fund, the permanent common school fund, and the scientific permanent fund.

(3) As used in this section, "project completion" means:

(a) All remaining development, construction, and administrative costs related to completion of the convention center; and

(b) Costs of the McKay building demolition, Eagles building rehabilitation, development of low-income housing, and construction of rentable retail space and an operable parking garage.

(4) It is the intent of the legislature that project completion costs be paid ultimately from the following sources:

(a) \$29,250,000 to be received by the corporation under an agreement and settlement with Industrial Indemnity Co.;

(b) \$1,070,000 to be received by the corporation as a contribution from the city of Seattle;

(c) \$20,000,000 from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(d) \$4,765,000 for contingencies and project reserves from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(e) \$13,000,000 for conversion of various retail and other space to meeting rooms, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(f) \$13,300,000 for expansion at the 900 level of the facility, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090;

(g) \$10,400,000 for purchase of the land and building known as the McKay Parcel, for development of low-income housing, for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to construction litigation, and for partially refunding obligations under the parking garage revenue note issued by the corporation to Industrial Indemnity Company in connection with the agreement and settlement identified in (a) of this subsection, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090. All proceeds from any sale of the McKay parcel shall be deposited in the state convention and trade center account and shall not be expended without appropriation by law;

(h) \$300,000 for Eagles building exterior cleanup and repair, from additional general obligation bonds to be repaid from the special excise tax under RCW 67.40.090; and

(i) The proceeds of the sale of any properties owned by the state convention and trade center that are not planned for use for state convention and trade center operations, with the proceeds to be used for development, construction, and administrative costs related to completion of the state convention and trade center, including settlement costs related to construction litigation.

(5) The borrowing authority provided in this section is in addition to the authority to borrow from the general fund to meet the bond retirement and interest requirements set forth in RCW 67.40.060. To the extent the specific conditions and limitations provided in this section conflict with the general conditions and limitations provided for temporary cash deficiencies in RCW 43.88.260 (section 7, chapter 502, Laws of 1987), the specific conditions and limitations in this section shall govern.

(6) For expenditures authorized under RCW 67.40.170, the corporation may use the proceeds of the special excise tax authorized under RCW 67.40.090, the sales tax authorized under RCW 67.40.130, contributions to the corporation from public or private participants, and investment earnings on any of the funds listed in this subsection. [1995 c 386 § 14; 1993 sp.s. c 12 § 9; 1992 c 4 § 1; 1991 c 2 § 1; 1990 c 181 § 3; 1988 ex.s. c 1 § 9; 1987 1st ex.s. c 8 § 1.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Severability—1993 sp.s. c 12: See RCW 43.99J.900.

Severability—1991 c 2: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 2 § 5.]

67.40.050 Administration of proceeds. The moneys deposited pursuant to RCW 67.40.040 in the state convention and trade center account of the general fund shall be administered by the corporation formed under RCW 67.40.020, subject to legislative appropriation. [1982 c 34 § 5.]

67.40.055 Transfer of funds to account—Repayment of borrowed funds with interest. The state treasurer shall from time to time transfer from the state general fund, or such other funds as the state treasurer deems appropriate, to the state convention and trade center operations account such amounts as are necessary to fund appropriations from the account, other than, after August 31, 1988, for appropriations for the purpose of marketing the facilities or services of the state convention and trade center. All amounts borrowed under the authority of this section shall be repaid to the appropriate fund, together with interest at a rate determined by the state treasurer to be equivalent to the return on investments of the state treasury during the period the amounts are borrowed. [1988 ex.s. c 1 § 5; 1987 1st ex.s. c 8 § 11.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.060 Retirement of bonds from nondebt-limit proprietary appropriated bond retirement account—Transfer from accounts—Pledge and promise—Remedies of bondholders. The nondebt-limit proprietary appropriated bond retirement account shall be used for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet the bond retirement and interest requirements. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the nondebt-limit proprietary appropriated bond retirement account an amount equal to the amount certified by the state finance committee to be due on that payment date. On each date on which any interest or principal and interest is due, the state treasurer shall cause an identical amount to be paid out of the state convention and trade center account, or state convention and trade center operations account, from the proceeds of the special excise tax imposed under RCW 67.40.090, operating revenues of the state convention and trade center, and bond proceeds and earnings on the investment of bond proceeds, for deposit in the general fund of the state treasury. Any deficiency in such transfer shall be made up as soon as special excise taxes are available for transfer and shall constitute a continuing obligation of the state convention and trade center account until all deficiencies are fully paid.

Bonds issued under RCW 67.40.030 shall state that they are a general obligation of the state of Washington, shall pledge the full faith and credit of the state to the payment of the principal thereof and the interest thereon, and shall contain an unconditional promise to pay the principal and interest as the same shall become due.

The owner and holder of each of the bonds or the trustee for the owner and holder of any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1997 c 456 § 25; 1987 1st ex.s. c 8 § 5; 1983 2nd ex.s. c 1 § 5; 1982 c 34 § 6.]

Severability—1997 c 456: See RCW 43.99L.900.

Effective date—1997 c 456 §§ 9-43: See RCW 43.99M.901.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.070 Legislature may provide additional means for payment of bonds. The legislature may increase the rate of tax imposed in RCW 67.40.090 (1) and (2) or may provide additional means for raising moneys for the payment of the principal of and interest on the bonds authorized in RCW 67.40.030, and RCW 67.40.060 shall not be deemed to provide an exclusive method for the payment. [1982 c 34 § 7.]

67.40.080 Bonds legal investment for public funds. The bonds authorized in RCW 67.40.030 shall be a legal investment for all state funds or funds under state control and for all funds of any other public body. [1982 c 34 § 8.]

67.40.090 Lodging tax imposed in King county—Rates—Proceeds. (1) Commencing April 1, 1982, there is imposed, and the department of revenue shall collect, in King county a special excise tax on the sale of or charge made for the furnishing of lodging that is subject to tax under chapter 82.08 RCW, except that no such tax may be levied on any premises having fewer than sixty lodging units. The legislature on behalf of the state pledges to maintain and continue this tax until the bonds authorized by this chapter are fully redeemed, both principal and interest.

(2) The rate of the tax imposed under this section shall be as provided in this subsection.

(a) From April 1, 1982, through December 31, 1982, inclusive, the rate shall be three percent in the city of Seattle and two percent in King county outside the city of Seattle.

(b) From January 1, 1983, through June 30, 1988, inclusive, the rate shall be five percent in the city of Seattle and two percent in King county outside the city of Seattle.

(c) From July 1, 1988, through December 31, 1992, inclusive, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(d) From January 1, 1993, and until bonds and all other borrowings authorized under RCW 67.40.030 are retired, the rate shall be seven percent in the city of Seattle and two and eight-tenths percent in King county outside the city of Seattle.

(e) Except as otherwise provided in (d) of this subsection, on and after the change date, the rate shall be six percent in the city of Seattle and two and four-tenths percent in King county outside the city of Seattle.

(f) As used in this section, "change date" means the October 1st next occurring after certification occurs under (g) of this subsection.

(g) On August 1st of 1998 and of each year thereafter until certification occurs under this subsection, the state treasurer shall determine whether seventy-one and forty-three one-hundredths percent of the revenues actually collected and deposited with the state treasurer for the tax imposed under this section during the twelve months ending June 30th of that year, excluding penalties and interest, exceeds the amount actually paid in debt service during the same period for bonds issued under RCW 67.40.030 by at least two million dollars. If so, the state treasurer shall so certify to the department of revenue.

(3) The proceeds of the special excise tax shall be deposited as provided in this subsection.

(a) Through June 30, 1988, inclusive, all proceeds shall be deposited in the state convention and trade center account.

(b) From July 1, 1988, through December 31, 1992, inclusive, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(c) From January 1, 1993, until the change date, eighty-five and seventy-one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(d) On and after the change date, eighty-three and thirty-three one-hundredths percent of the proceeds shall be deposited in the state convention and trade center account. The remainder shall be deposited in the state convention and trade center operations account.

(4) Chapter 82.32 RCW applies to the tax imposed under this section. [2002 c 178 § 4; 1995 c 386 § 15; 1991 c 2 § 3; 1988 ex.s. c 1 § 6; 1987 1st ex.s. c 8 § 6; 1982 c 34 § 9.]

Retroactive application—Effective date—2002 c 178: See notes following RCW 67.28.180.

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

Severability—1991 c 2: See note following RCW 67.40.045.

Intent—1988 ex.s. c 1 § 6: "The legislature intends that the additional revenue generated by the increase in the special excise tax from five to six percent in the city of Seattle and from two percent to two and four-tenths percent in King county outside the city of Seattle be used for marketing the facilities and services of the convention center, for promoting the locale as a convention and visitor destination, and for related activities. Actual use of these funds shall be determined through biennial appropriation by the legislature." [1988 ex.s. c 1 § 7.]

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

Special excise taxes authorized for public stadium, convention, performing arts, visual arts, and tourism facilities: Chapter 67.28 RCW.

67.40.100 Limitation on license fees and taxes on hotels, motels, rooming houses, trailer camps, etc. Except as provided in chapters 67.28 and 82.14 RCW and RCW 67.28.181, after January 1, 1983, no city, town, or county in which the tax under RCW 67.40.090 is imposed may impose a license fee or tax on the act or privilege of engaging in business to furnish lodging by a hotel, rooming house, tourist court, motel, trailer camp, or similar facilities in excess of the rate imposed upon other persons engaged in the business of making sales at retail as that term is defined in chapter 82.04 RCW. [1997 c 452 § 15; 1990 c 242 § 1; 1988 ex.s. c 1 § 25; 1982 c 34 § 10.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Application—1990 c 242: "This 1990 amendment applies to all proceeds of the tax authorized under RCW 67.40.100(2), regardless of when levied or collected." [1990 c 242 § 2.]

67.40.105 Exemption from tax—Emergency lodging for homeless persons—Conditions. (1) The tax levied by RCW 67.40.090 and the tax authorized under *RCW 67.40.100(2) shall not apply to emergency lodging provided

for homeless persons for a period of less than thirty consecutive days under a shelter voucher program administered by an eligible organization.

(2) For the purposes of this exemption, an eligible organization includes only cities, towns, and counties, or their respective agencies, and groups providing emergency food and shelter services. [1988 c 61 § 3.]

***Reviser's note:** RCW 67.40.100 was amended by 1997 c 452 § 15, which deleted subsection (2).

Effective date—1988 c 61: See note following RCW 82.08.0299.

67.40.110 Use of revenues from convention and trade center facilities excise tax by cities for professional sports franchise facilities limited. No city imposing the tax authorized under chapter 67.28 RCW may use the tax proceeds directly or indirectly to acquire, construct, operate, or maintain facilities or land intended to be used by a professional sports franchise if the county within which the city is located uses the proceeds of its tax imposed under chapter 67.28 RCW to directly or indirectly acquire, construct, operate, or maintain a facility used by a professional sports franchise. [1997 c 452 § 19; 1987 1st ex.s. c 8 § 8.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Severability—1987 1st ex.s. c 8: See note following RCW 67.40.020.

67.40.120 Contracts for marketing facility and services. The state convention and trade center corporation may contract with the Seattle-King county convention and visitors bureau for marketing the convention and trade center facility and services. [2002 c 182 § 1; 1997 c 452 § 20; 1991 c 336 § 2; 1988 ex.s. c 1 § 8.]

Intent—Severability—1997 c 452: See notes following RCW 67.28.080.

Savings—1997 c 452: See note following RCW 67.28.181.

Effective date—1991 c 336: See note following RCW 67.28.180.

67.40.130 Convention and trade facilities—Tax on transient lodging authorized—Rates. (1) The governing body of a city, while not required by legislative mandate to do so, may, after July 1, 1995, by resolution or ordinance for the purposes authorized under RCW 67.40.170 and 67.40.190, fix and impose a sales tax on the charge for rooms to be used for lodging by transients in accordance with the terms of chapter 386, Laws of 1995. Such tax shall be collected from those persons who are taxable by the state under RCW 67.40.090, but only those taxable persons located within the boundaries of the city imposing the tax. The rate of such tax imposed by a city shall be two percent of the charge for rooms to be used for lodging by transients. Any such tax imposed under this section shall not be collected prior to January 1, 2000. The tax authorized under this section shall be levied and collected in the same manner as those taxes authorized under chapter 82.14 RCW. Penalties, receipts, abatements, refunds, and all other similar matters relating to the tax shall be as provided in chapter 82.08 RCW.

(2) The tax levied under this section shall remain in effect and not be modified for that period for which the principal and interest obligations of state bonds issued to finance

the expansion of the state convention and trade center under RCW 67.40.030 remain outstanding.

(3) As used in this section, the term "city" means a municipality that has within its boundaries a convention and trade facility as defined in RCW 67.40.020. [1995 c 386 § 1.]

Severability—1995 c 386: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 386 § 17.]

Effective date—1995 c 386: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 16, 1995]." [1995 c 386 § 18.]

67.40.140 Convention and trade facilities—Remittance of tax—Credit. When remitting sales tax receipts to the state under RCW 82.14.050, the city treasurer, or its designee, shall at the same time remit the sales taxes collected under RCW 67.40.130 for the municipality. The sum so collected and paid over on behalf of the municipality shall be credited against the amount of the tax otherwise due to the state from those same taxpayers under RCW 82.08.020(1). [1995 c 386 § 2.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.150 Convention and trade facilities—Contract of administration and collection to department of revenue—Disposition of tax—Procedure. (1) The cities shall contract, prior to the effective date of a resolution or ordinance imposing a sales tax under RCW 67.40.130, the administration and collection of the local option sales tax to the state department of revenue at no cost to the municipality. The tax authorized by chapter 386, Laws of 1995 which is collected by the department of revenue shall be deposited by the state into the account created under RCW 67.40.040 in the state treasury.

(2) The sales tax authorized under RCW 67.40.130 shall be due and payable in the same manner as those taxes authorized under RCW 82.14.030. [1995 c 386 § 3.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.160 Convention and trade facilities—Tax on construction—Disposition. The state sales tax on construction performed under RCW 67.40.170 collected by the department of revenue under chapter 82.08 RCW shall be deposited by the state into the account created under RCW 67.40.040 in the state treasury. [1995 c 386 § 4.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.170 Convention and trade facilities—Use of collected taxes. All taxes levied and collected under RCW 67.40.130 shall be credited to the state convention and trade center account in the state treasury and used solely by the corporation formed under RCW 67.40.020 for the purpose of paying all or any part of the cost associated with: The financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of convention center facilities related to the expansion recommended by the convention center expansion and city facilities task force created under

section 148, chapter 6, Laws of 1994 sp. sess.; the acquisition, construction, and relocation costs of replacement housing; and the repayment of loans and advances from the state, including loans authorized previously under this chapter, or to pay or secure the payment of all or part of the principal of or interest on any state bonds issued for purposes authorized under this chapter. [1995 c 386 § 5.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.180 Convention and trade facilities—Use of funds—Acceptance by board of directors of funding commitment. Upon May 16, 1995, the corporation may proceed with preliminary design and planning activities, environmental studies, and real estate appraisals for convention center improvements. No other expenditures may be made in support of the expansion project recommended by the convention center expansion and city facilities task force created under section 148, chapter 6, Laws of 1994 sp. sess. prior to acceptance by the board of directors of the corporation of an irrevocable commitment for funding from public or private participants consistent with the expansion development study task force recommendations report dated December 1994. [1995 c 386 § 6.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.190 Convention and trade facilities—Use of funds—Encumbered revenue. (1) Moneys received from any tax imposed under RCW 67.40.130 shall be used for the purpose of providing funds to the corporation for the costs associated with paying all or any part of the cost associated with: The financing, design, acquisition, construction, equipping, operating, maintaining, and reequipping of convention center facilities; the acquisition, construction, and relocation costs of replacement housing; and repayment of loans and advances from the state, including loans authorized previously under this chapter, or to pay or secure the payment of all or part of the principal of or interest on any state bonds issued for purposes authorized under this chapter.

(2) If any of the revenue from any local sales tax authorized under RCW 67.40.130 shall have been encumbered or pledged by the state to secure the payment of any state bonds as authorized under RCW 67.40.030, then as long as that agreement or pledge shall be in effect, the legislature shall not withdraw from the municipality the authority to levy and collect the tax or the tax credit authorized under RCW 67.40.130 and 67.40.140. [1995 c 386 § 7.]

Severability—Effective date—1995 c 386: See notes following RCW 67.40.130.

67.40.900 Severability—1982 c 34. If any provision of this act or its application to any municipality, person, or circumstance is held invalid, the remainder of the act or the application of the provision to other municipalities, persons, or circumstances is not affected. [1982 c 34 § 13.]

67.40.901 Severability—1988 ex.s. c 1. See RCW 36.100.900.

Chapter 67.42 RCW
AMUSEMENT RIDES

Sections

| | |
|-----------|---|
| 67.42.010 | Definitions. |
| 67.42.020 | Requirements—Operation of amusement ride or structure—Bungee jumping device inspection. |
| 67.42.025 | Inspections and inspectors—Comparable regulation and comparable qualification. |
| 67.42.030 | Permit—Application—Decal. |
| 67.42.040 | Permit—Duration—Material modification of ride or structure—Bungee jumping device replacement, movement, purchase. |
| 67.42.050 | Rules—Orders to cease operation—Administrative proceedings. |
| 67.42.060 | Fees. |
| 67.42.070 | Penalty. |
| 67.42.080 | Counties and municipalities—Supplemental ordinances. |
| 67.42.090 | Bungee jumping—Permission. |
| 67.42.900 | Severability—1985 c 262. |
| 67.42.901 | Effective date—1985 c 262. |

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

(1) "Amusement structure" means electrical or mechanical devices or combinations of devices operated for revenue and to provide amusement or entertainment to viewers or audiences at carnivals, fairs, or amusement parks. "Amusement structure" also means a bungee jumping device regardless of where located. "Amusement structure" does not include games in which a member of the public must perform an act, nor concessions at which customers may make purchases.

(2) "Amusement ride" means any vehicle, boat, bungee jumping device, or other mechanical device moving upon or within a structure, along cables or rails, through the air by centrifugal force or otherwise, or across water, that is used to convey one or more individuals for amusement, entertainment, diversion, or recreation. "Amusement ride" includes, but is not limited to, devices commonly known as skyrides, ferris wheels, carousels, parachute towers, tunnels of love, bungee jumping devices, and roller coasters. "Amusement ride" does not include: (a) Conveyances for persons in recreational winter sports activities such as ski lifts, ski tows, j-bars, t-bars, and similar devices subject to regulation under *chapter 70.88 RCW; (b) any single-passenger coin-operated ride that is manually, mechanically, or electrically operated and customarily placed in a public location and that does not normally require the supervision or services of an operator; (c) nonmechanized playground equipment, including but not limited to, swings, seesaws, stationary spring-mounted animal features, rider-propelled merry-go-rounds, climbers, slides, trampolines, and physical fitness devices; or (d) water slides.

(3) "Department" means the department of labor and industries.

(4) "Insurance policy" means an insurance policy written by an insurer authorized to do business in this state under Title 48 RCW. [1993 c 203 § 2; 1985 c 262 § 1.]

***Reviser's note:** Chapter 70.88 RCW was recodified as chapter 79A.40 RCW pursuant to 1999 c 249 § 1601.

Findings—Intent—1993 c 203: "(1) The legislature finds that: Bungee jumping is growing in popularity as a new source of entertainment for the citizens of this state;

Individuals have suffered serious injuries in states where the regulation

of this activity was minimal or nonexistent; and

The potential for harm to individuals participating in this activity likely increases in the absence of state regulation of these activities.

(2) It is the intent of the legislature to require bungee jumping operations to be regulated by the state to the extent necessary to protect the health and safety of individuals participating in this activity." [1993 c 203 § 1.]

67.42.020 Requirements—Operation of amusement ride or structure—Bungee jumping device inspection. Before operating any amusement ride or structure, the owner or operator shall:

(1) Obtain a permit pursuant to RCW 67.42.030;

(2) Have the amusement ride or structure inspected for safety at least once annually by an insurer, a person with whom the insurer has contracted, or a person who meets the qualifications set by the department and obtain from the insurer or person a written certificate that the inspection has been made and that the amusement ride or structure meets the standards for coverage and is covered by the insurer as required by subsection (3) of this section. A bungee jumping device, including, but not limited to, the crane, tower, balloon or bridge, person lift basket, platforms, bungee cords, end attachments, anchors, carabiners or locking devices, harnesses, landing devices, and additional ride operation hardware shall be inspected for safety prior to beginning operation and annually by an insurer, a person with whom the insurer has contracted, or a person authorized by the department to inspect bungee jumping devices. The operator of the bungee jumping device shall obtain a written certificate which states that the required inspection has been made and the bungee jumping device meets the standards for coverage and is covered by the insurer as required by subsection (3) of this section;

(3) Have and keep in effect an insurance policy in an amount not less than one million dollars per occurrence insuring: (a) The owner or operator; and (b) any municipality or county on whose property the amusement ride or structure stands, or any municipality or county which has contracted with the owner or operator against liability for injury to persons arising out of the use of the amusement ride or structure;

(4) File with the department the inspection certificate and insurance policy required by this section; and

(5) File with each sponsor, lessor, landowner, or other person responsible for an amusement structure or ride being offered for use by the public a certificate stating that the insurance required by subsection (3) of this section is in effect. [1993 c 203 § 3; 1986 c 86 § 1; 1985 c 262 § 2.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.025 Inspections and inspectors—Comparable regulation and comparable qualification. (1) An amusement ride that has been inspected in any state, territory, or possession of the United States that, in the discretion of the department, has a level of regulation comparable to this chapter, shall be deemed to meet the inspection requirement of this chapter.

(2) An amusement ride inspector who is authorized to inspect amusement rides in any state, territory, or possession of the United States, who, in the discretion of the department, has a level of qualifications comparable to those required under this chapter, shall be deemed qualified to inspect amusement rides under this chapter. [1986 c 86 § 2.]

67.42.030 Permit—Application—Decal. (1) Application for an operating permit to operate an amusement ride or structure shall be made on an annual basis by the owner or operator of the amusement ride or structure. The application shall be made on forms prescribed by the department and shall include the certificate required by RCW 67.42.020(2).

(2) The department shall issue a decal with each permit. The decal shall be affixed on or adjacent to the control panel of the amusement ride or structure in a location visible to the patrons of the ride or structure. [1985 c 262 § 3.]

67.42.040 Permit—Duration—Material modification of ride or structure—Bungee jumping device replacement, movement, purchase. (1) Except as provided in subsection (2) of this section or unless a shorter period is specified by the department, permits issued under RCW 67.42.030 are valid for a one-year period.

(2) If an amusement ride or structure is materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, the amusement ride or structure shall be subject to a new inspection under RCW 67.42.020 and the owner or operator shall apply for a new permit under RCW 67.42.030.

(3) If an amusement ride or structure for which a permit has been issued pursuant to RCW 67.42.030 is moved and installed in another place but is not materially rebuilt or materially modified so as to change the original action of the amusement ride or structure, no new permit is required prior to the expiration of the permit.

(4) A bungee jumping device or a part of a device, including, but not limited to, the crane, person lift basket, mobile crane, balloon or balloon basket, anchor or anchor attachment structure, or landing device, that is replaced shall be reinspected by an insurer, a person with whom the insurer has contracted, or by a person authorized by the department to inspect bungee jumping devices, and the owner or operator of the device shall apply for a new permit under RCW 67.42.030.

(5) A bungee jumping operator shall have any bungee jumping device or structure that is moved and installed in another location reinspected by an insurer, a person with whom the insurer has contracted, or a person authorized by the department to inspect bungee jumping devices before beginning operation.

(6) Any new operator who purchases an existing bungee jumping device or structure must have the bungee jumping device inspected and permitted as required under RCW 67.42.020 before beginning operation. [1993 c 203 § 4; 1985 c 262 § 4.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.050 Rules—Orders to cease operation—Administrative proceedings. (1) The department shall adopt rules under chapter 34.05 RCW to administer this chapter. Such rules may exempt amusement rides or structures otherwise subject to this chapter if the amusement rides or structures are located on lands owned by [the] United States government or its agencies and are required to comply with federal safety standards at least equal to those under this chapter.

(2004 Ed.)

(2) The department may order in writing the cessation of the operation of an amusement ride or structure for which no valid permit is in effect or for which the owner or operator does not have an insurance policy as required by RCW 67.42.020.

(3) All proceedings relating to permits or orders to cease operation under this chapter shall be conducted pursuant to chapter 34.05 RCW. [1985 c 262 § 5.]

67.42.060 Fees. (1) The department may charge a reasonable fee not to exceed ten dollars for each permit issued under RCW 67.42.030. All fees collected by the department under this chapter shall be deposited in the state general fund. This subsection does not apply to permits issued under RCW 67.42.030 to operate a bungee jumping device.

(2) The department may charge a reasonable fee not to exceed one hundred dollars for each permit issued under RCW 67.42.030 to operate a bungee jumping device. Fees collected under this subsection shall be deposited in the state general fund for appropriation for the permitting and inspection of bungee jumping devices under this chapter. [1993 c 203 § 5; 1985 c 262 § 6.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.070 Penalty. Any person who operates an amusement ride or structure without complying with the requirements of this chapter is guilty of a gross misdemeanor. [1985 c 262 § 7.]

67.42.080 Counties and municipalities—Supplemental ordinances. Nothing contained in this chapter prevents a county or municipality from adopting and enforcing ordinances which relate to the operation of amusement rides or structures and supplement the provisions of this chapter. [1985 c 262 § 8.]

67.42.090 Bungee jumping—Permission. (1) Bungee jumping from a publicly owned bridge or publicly owned land is allowed only if permission has been granted by the government body that has jurisdiction over the bridge or land.

(2) Bungee jumping into publicly owned waters is allowed only if permission has been granted by the government body that has jurisdiction over the body of water.

(3) Bungee jumping from a privately owned bridge is allowed only if permission has been granted by the owner of the bridge. [1993 c 203 § 6.]

Findings—Intent—1993 c 203: See note following RCW 67.42.010.

67.42.900 Severability—1985 c 262. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 262 § 10.]

67.42.901 Effective date—1985 c 262. This act shall take effect on January 1, 1986. [1985 c 262 § 11.]

Chapter 67.70 RCW

STATE LOTTERY

Sections

| | |
|-----------|--|
| 67.70.010 | Definitions. |
| 67.70.030 | State lottery commission created—Membership—Terms—Vacancies—Chairman—Quorum. |
| 67.70.040 | Powers and duties of commission. |
| 67.70.042 | Scratch games—Baseball stadium construction. |
| 67.70.043 | New games—Stadium and exhibition center bonds, operation, and development—Youth athletic facilities. |
| 67.70.044 | Shared game lottery. |
| 67.70.050 | Office of director created—Appointment—Salary—Duties. |
| 67.70.055 | Activities prohibited to officers, employees, and members. |
| 67.70.060 | Powers of director. |
| 67.70.070 | Licenses for lottery sales agents—Factors—"Person" defined. |
| 67.70.080 | License as authority to act. |
| 67.70.090 | Denial, suspension, and revocation of licenses. |
| 67.70.100 | Assignment of rights prohibited—Exceptions—Notices—Assignment of payment of remainder of an annuity—Intervention—Limitation on payment by director—Rules—Recovery of costs of commission—Federal ruling required—Discharge of liability. |
| 67.70.110 | Maximum price of ticket or share limited—Sale by other than licensed agent prohibited. |
| 67.70.120 | Sale to minor prohibited—Exception—Penalties. |
| 67.70.125 | Use of public assistance electronic benefit cards prohibited—Licensee to report violations. |
| 67.70.130 | Prohibited acts—Penalty. |
| 67.70.140 | Penalty for unlicensed activity. |
| 67.70.150 | Penalty for false or misleading statement or entry or failure to produce documents. |
| 67.70.160 | Penalty for violation of chapter—Exceptions. |
| 67.70.170 | Penalty for violation of rules—Exceptions. |
| 67.70.180 | Persons prohibited from purchasing tickets or shares or receiving prizes—Penalty. |
| 67.70.190 | Unclaimed prizes. |
| 67.70.200 | Deposit of moneys received by agents from sales—Power of director—Reports. |
| 67.70.210 | Other law inapplicable to sale of tickets or shares. |
| 67.70.220 | Payment of prizes to minor. |
| 67.70.230 | State lottery account created. |
| 67.70.240 | Use of moneys in state lottery account limited. |
| 67.70.241 | Promotion of lottery by person or entity responsible for operating stadium and exhibition center—Commission approval—Cessation of obligation. |
| 67.70.250 | Methods for payment of prizes by installments. |
| 67.70.255 | Debts owed to state agency or political subdivision—Debt information to lottery commission—Prize set off against debts. |
| 67.70.260 | Lottery administrative account created. |
| 67.70.270 | Members of commission—Compensation—Travel expenses. |
| 67.70.280 | Application of administrative procedure act. |
| 67.70.290 | Post-audits by state auditor. |
| 67.70.300 | Investigations by attorney general authorized. |
| 67.70.310 | Management review by director of financial management. |
| 67.70.320 | Verification by certified public accountant. |
| 67.70.330 | Enforcement powers of director—Office of the director designated law enforcement agency. |
| 67.70.340 | Transfer of shared game lottery proceeds. |
| 67.70.902 | Construction—1982 2nd ex.s. c 7. |
| 67.70.903 | Severability—1982 2nd ex.s. c 7. |
| 67.70.904 | Severability—1985 c 375. |
| 67.70.905 | Effective date—1985 c 375. |

Compulsive gamblers, information for: RCW 9.46.071.

Pathological gambling treatment: RCW 43.20A.890.

67.70.010 Definitions. For the purposes of this chapter:

- (1) "Commission" means the state lottery commission established by this chapter;
- (2) "Director" means the director of the state lottery established by this chapter;
- (3) "Lottery" or "state lottery" means the lottery established and operated pursuant to this chapter;
- (4) "On-line game" means a lottery game in which a player pays a fee to a lottery retailer and selects a combination of digits, numbers, or symbols, type and amount of play,

and receives a computer-generated ticket with those selections, and the lottery separately draws or selects the winning combination or combinations;

(5) "Shared game lottery" means any lottery activity in which the commission participates under written agreement between the commission, on behalf of the state, and any other state or states. [2002 c 349 § 1; 1994 c 218 § 3; 1987 c 511 § 1; 1982 2nd ex.s. c 7 § 1.]

Effective date—1994 c 218: See note following RCW 9.46.010.

67.70.030 State lottery commission created—Membership—Terms—Vacancies—Chairman—Quorum.

There is created the state lottery commission to consist of five members appointed by the governor with the consent of the senate. Of the initial members, one shall serve a term of two years, one shall serve a term of three years, one shall serve a term of four years, one shall serve a term of five years, and one shall serve a term of six years. Their successors, all of whom shall be citizen members appointed by the governor with the consent of the senate, upon being appointed and qualified, shall serve six-year terms. No member of the commission who has served a full six-year term is eligible for reappointment. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which the vacancy occurs.

The governor shall designate one member of the commission to serve as chairman at the governor's pleasure.

A majority of the members shall constitute a quorum for the transaction of business. [1982 2nd ex.s. c 7 § 3.]

67.70.040 Powers and duties of commission. The commission shall have the power, and it shall be its duty:

(1) To promulgate such rules governing the establishment and operation of a state lottery as it deems necessary and desirable in order that such a lottery be initiated at the earliest feasible and practicable time, and in order that such lottery produce the maximum amount of net revenues for the state consonant with the dignity of the state and the general welfare of the people. Such rules shall include, but shall not be limited to, the following:

(a) The type of lottery to be conducted which may include the selling of tickets or shares. The use of electronic or mechanical devices or video terminals which allow for individual play against such devices or terminals shall be prohibited. Approval of the legislature shall be required before entering any agreement with other state lotteries to conduct shared games;

(b) The price, or prices, of tickets or shares in the lottery;

(c) The numbers and sizes of the prizes on the winning tickets or shares;

(d) The manner of selecting the winning tickets or shares;

(e) The manner and time of payment of prizes to the holder of winning tickets or shares which, at the director's option, may be paid in lump sum amounts or installments over a period of years;

(f) The frequency of the drawings or selections of winning tickets or shares. Approval of the legislature is required before conducting any on-line game in which the drawing or

selection of winning tickets occurs more frequently than once every twenty-four hours;

(g) Without limit as to number, the type or types of locations at which tickets or shares may be sold;

(h) The method to be used in selling tickets or shares;

(i) The licensing of agents to sell or distribute tickets or shares, except that a person under the age of eighteen shall not be licensed as an agent;

(j) The manner and amount of compensation, if any, to be paid licensed sales agents necessary to provide for the adequate availability of tickets or shares to prospective buyers and for the convenience of the public;

(k) The apportionment of the total revenues accruing from the sale of lottery tickets or shares and from all other sources among: (i) The payment of prizes to the holders of winning tickets or shares, which shall not be less than forty-five percent of the gross annual revenue from such lottery, (ii) transfers to the lottery administrative account created by RCW 67.70.260, and (iii) transfer to the state's general fund. Transfers to the state general fund shall be made in compliance with RCW 43.01.050;

(l) Such other matters necessary or desirable for the efficient and economical operation and administration of the lottery and for the convenience of the purchasers of tickets or shares and the holders of winning tickets or shares.

(2) To ensure that in each place authorized to sell lottery tickets or shares, on the back of the ticket or share, and in any advertising or promotion there shall be conspicuously displayed an estimate of the probability of purchasing a winning ticket.

(3) To amend, repeal, or supplement any such rules from time to time as it deems necessary or desirable.

(4) To advise and make recommendations to the director for the operation and administration of the lottery. [1994 c 218 § 4; 1991 c 359 § 1; 1988 c 289 § 801; 1987 c 511 § 2; 1985 c 375 § 1; 1982 2nd ex.s. c 7 § 4.]

Effective date—1994 c 218: See note following RCW 9.46.010.

Severability—1988 c 289: See note following RCW 50.16.070.

67.70.042 Scratch games—Baseball stadium construction. The lottery commission shall conduct at least two but not more than four scratch games with sports themes per year. These games are intended to generate additional moneys sufficient to cover the distributions under RCW 67.70.240(4). [1997 c 220 § 207 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 104.]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

State contribution for baseball stadium limited: RCW 82.14.0486.

67.70.043 New games—Stadium and exhibition center bonds, operation, and development—Youth athletic facilities. The lottery commission shall conduct new games that are in addition to any games conducted under RCW 67.70.042 and are intended to generate additional moneys

(2004 Ed.)

sufficient to cover the distributions under RCW 67.70.240(5). No game may be conducted under this section before January 1, 1998. No game may be conducted under this section after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met, and no game is required to be conducted after the distributions cease under RCW 67.70.240(5).

For the purposes of this section, the lottery may accept and market prize promotions provided in conjunction with private-sector marketing efforts. [1997 c 220 § 205 (Referendum Bill No. 48, approved June 17, 1997).]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

67.70.044 Shared game lottery. (1) Pursuant to RCW 67.70.040(1)(a), the commission may enter into the multi-state agreement establishing a shared game lottery known as "The Big Game," that was entered into by party state lotteries in August 1996 and subsequently amended.

(2) The shared game lottery account is created as a separate account outside the state treasury. The account is managed, maintained, and controlled by the commission and consists of all revenues received from the sale of shared game lottery tickets or shares, and all other moneys credited or transferred to it from any other fund or source under law. The account is allotted according to chapter 43.88 RCW. [2002 c 349 § 2.]

67.70.050 Office of director created—Appointment—Salary—Duties. There is created the office of director of the state lottery. The director shall be appointed by the governor with the consent of the senate. The director shall serve at the pleasure of the governor and shall receive such salary as is determined by the governor, but in no case may the director's salary be more than ninety percent of the salary of the governor. The director shall:

(1) Supervise and administer the operation of the lottery in accordance with the provisions of this chapter and with the rules of the commission.

(2) Appoint such deputy and assistant directors as may be required to carry out the functions and duties of his office: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such deputy and assistant directors.

(3) Appoint such professional, technical, and clerical assistants and employees as may be necessary to perform the duties imposed by this chapter: PROVIDED, That the provisions of the state civil service law, chapter 41.06 RCW, shall not apply to such employees as are engaged in undercover audit or investigative work or security operations but shall apply to other employees appointed by the director, except as provided for in subsection (2) of this section.

(4) In accordance with the provisions of this chapter and the rules of the commission, license as agents to sell or distribute lottery tickets such persons as in his opinion will best serve the public convenience and promote the sale of tickets or shares. The director may require a bond from any licensed

agent, in such amount as provided in the rules of the commission. Every licensed agent shall prominently display his license, or a copy thereof, as provided in the rules of the commission. License fees may be established by the commission, and, if established, shall be deposited in the state lottery account created by RCW 67.70.230.

(5) Confer regularly as necessary or desirable with the commission on the operation and administration of the lottery; make available for inspection by the commission, upon request, all books, records, files, and other information and documents of the lottery; and advise the commission and recommend such matters as the director deems necessary and advisable to improve the operation and administration of the lottery.

(6) Subject to the applicable laws relating to public contracts, enter into contracts for the operation of the lottery, or any part thereof, and into contracts for the promotion of the lottery. No contract awarded or entered into by the director may be assigned by the holder thereof except by specific approval of the commission: PROVIDED, That nothing in this chapter authorizes the director to enter into public contracts for the regular and permanent administration of the lottery after the initial development and implementation.

(7) Certify quarterly to the state treasurer and the commission a full and complete statement of lottery revenues, prize disbursements, and other expenses for the preceding quarter.

(8) Carry on a continuous study and investigation of the lottery throughout the state: (a) For the purpose of ascertaining any defects in this chapter or in the rules issued thereunder by reason whereof any abuses in the administration and operation of the lottery or any evasion of this chapter or the rules may arise or be practiced, (b) for the purpose of formulating recommendations for changes in this chapter and the rules promulgated thereunder to prevent such abuses and evasions, (c) to guard against the use of this chapter and the rules issued thereunder as a cloak for the carrying on of professional gambling and crime, and (d) to ensure that this chapter and rules shall be in such form and be so administered as to serve the true purposes of this chapter.

(9) Make a continuous study and investigation of: (a) The operation and the administration of similar laws which may be in effect in other states or countries, (b) the operation of an additional game or games for the benefit of a particular program or purpose, (c) any literature on the subject which from time to time may be published or available, (d) any federal laws which may affect the operation of the lottery, and (e) the reaction of the citizens of this state to existing and potential features of the lottery with a view to recommending or effecting changes that will tend to serve the purposes of this chapter.

(10) Have all enforcement powers granted in chapter 9.46 RCW.

(11) Perform all other matters and things necessary to carry out the purposes and provisions of this chapter. [1998 c 245 § 106. Prior: 1987 c 511 § 3; 1987 c 505 § 57; 1986 c 158 § 21; 1985 c 375 § 2; 1982 2nd ex.s. c 7 § 5.]

67.70.055 Activities prohibited to officers, employees, and members. The director, deputy directors, any assis-

tant directors, and employees of the state lottery and members of the lottery commission shall not:

(1) Serve as an officer or manager of any corporation or organization which conducts a lottery or gambling activity;

(2) Receive or share in, directly or indirectly, the gross profits of any lottery or other gambling activity regulated by the gambling commission;

(3) Be beneficially interested in any contract for the manufacture or sale of gambling devices, the conduct of a lottery or other gambling activity, or the provision of independent consultant services in connection with a lottery or other gambling activity. [1987 c 511 § 4; 1986 c 4 § 2.]

67.70.060 Powers of director. (1) The director or the director's authorized representative may:

(a) Make necessary public or private investigations within or outside of this state to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder; and

(b) Inspect the books, documents, and records of any person lending money to or in any manner financing any license holder or applicant for a license or receiving any income or profits from the use of such license for the purpose of determining compliance or noncompliance with the provisions of this chapter or the rules and regulations adopted pursuant thereto.

(2) For the purpose of any investigation or proceeding under this chapter, the director or an administrative law judge appointed under chapter 34.12 RCW may conduct hearings, administer oaths or affirmations, or upon the director's or administrative law judge's motion or upon request of any party may subpoena witnesses, compel attendance, take depositions, take evidence, or require the production of any matter which is relevant to the investigation or proceeding, including but not limited to the existence, description, nature, custody, condition, or location of any books, documents, or other tangible things, or the identity or location of persons having knowledge or relevant facts, or any other matter reasonably calculated to lead to the discovery of material evidence.

(3) Upon failure to obey a subpoena or to answer questions propounded by the administrative law judge and upon reasonable notice to all persons affected thereby, the director may apply to the superior court for an order compelling compliance.

(4) The administrative law judges appointed under chapter 34.12 RCW may conduct hearings respecting the suspension, revocation, or denial of licenses, may administer oaths, admit or deny admission of evidence, compel the attendance of witnesses, issue subpoenas, issue orders, and exercise all other powers and perform all other functions set out in chapter 34.05 RCW.

(5) Except as otherwise provided in this chapter, all proceedings under this chapter shall be in accordance with the Administrative Procedure Act, chapter 34.05 RCW. [1989 c 175 § 123; 1982 2nd ex.s. c 7 § 6.]

Effective date—1989 c 175: See note following RCW 34.05.010.

67.70.070 Licenses for lottery sales agents—Factors—"Person" defined. No license as an agent to sell lottery tickets or shares may be issued to any person to engage in business exclusively as a lottery sales agent. Before issuing a license the director shall consider such factors as: (1) The financial responsibility and security of the person and his business or activity, (2) the accessibility of his place of business or activity to the public, (3) the sufficiency of existing licenses to serve the public convenience, and (4) the volume of expected sales.

For purposes of this section, the term "person" means an individual, association, corporation, club, trust, estate, society, company, joint stock company, receiver, trustee, assignee, referee, or any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination of individuals. "Person" does not mean any department, commission, agency, or instrumentality of the state, or any county or municipality or any agency or instrumentality thereof, except for retail outlets of the state liquor control board. [1982 2nd ex.s. c 7 § 7.]

67.70.080 License as authority to act. Any person licensed as provided in this chapter is hereby authorized and empowered to act as a lottery sales agent. [1982 2nd ex.s. c 7 § 8.]

67.70.090 Denial, suspension, and revocation of licenses. The director may deny an application for, or suspend or revoke, after notice and hearing, any license issued pursuant to this chapter. Such license may, however, be temporarily suspended by the director without prior notice, pending any prosecution, investigation, or hearing. A license may be suspended or revoked or an application may be denied by the director for one or more of the following reasons:

(1) Failure to account for lottery tickets received or the proceeds of the sale of lottery tickets or to file a bond if required by the director or to comply with the instructions of the director concerning the licensed activity;

(2) For any of the reasons or grounds stated in RCW 9.46.075 or violation of this chapter or the rules of the commission;

(3) Failure to file any return or report or to keep records or to pay any tax required by this chapter;

(4) Fraud, deceit, misrepresentation, or conduct prejudicial to public confidence in the state lottery;

(5) That the number of lottery tickets sold by the lottery sales agent is insufficient to meet administrative costs, or that public convenience is adequately served by other licensees;

(6) A material change, since issuance of the license with respect to any matters required to be considered by the director under RCW 67.70.070.

For the purpose of reviewing any application for a license and for considering the denial, suspension, or revocation of any license the director may consider any prior criminal conduct of the applicant or licensee and the provisions of RCW 9.95.240 and of chapter 9.96A RCW shall not apply to such cases. [1982 2nd ex.s. c 7 § 9.]

67.70.100 Assignment of rights prohibited—Exceptions—Notices—Assignment of payment of remainder of an annuity—Intervention—Limitation on payment by

director—Rules—Recovery of costs of commission—Federal ruling required—Discharge of liability. (1) Except under subsection (2) of this section, no right of any person to a prize drawn is assignable, except that payment of any prize drawn may be paid to the estate of a deceased prize winner, and except that any person pursuant to an appropriate judicial order may be paid the prize to which the winner is entitled.

(2)(a) The payment of all or part of the remainder of an annuity may be assigned to another person, pursuant to a voluntary assignment of the right to receive future annual prize payments, if the assignment is made pursuant to an appropriate judicial order of the Thurston county superior court or the superior court of the county in which the prize winner resides, if the winner is a resident of Washington state. If the prize winner is not a resident of Washington state, the winner must seek an appropriate order from the Thurston county superior court.

(b) If there is a voluntary assignment under (a) of this subsection, a copy of the petition for an order under (a) of this subsection and all notices of any hearing in the matter shall be served on the attorney general no later than ten days before any hearing or entry of any order.

(c) The court receiving the petition may issue an order approving the assignment and directing the director to pay to the assignee the remainder or portion of an annuity so assigned upon finding that all of the following conditions have been met:

(i) The assignment has been memorialized in writing and executed by the assignor and is subject to Washington law;

(ii) The assignor provides a sworn declaration to the court attesting to the facts that the assignor has had the opportunity to be represented by independent legal counsel in connection with the assignment, has received independent financial and tax advice concerning the effects of the assignment, and is of sound mind and not acting under duress, and the court makes findings determining so;

(iii) The assignee has provided a one-page written disclosure statement that sets forth in bold-face type, fourteen point or larger, the payments being assigned by amount and payment dates, the purchase price, or loan amount being paid; the interest rate or rate of discount to present value, assuming monthly compounding and funding on the contract date; and the amount, if any, of any origination or closing fees that will be charged to the lottery winner. The disclosure statement must also advise the winner that the winner should consult with and rely upon the advice of his or her own independent legal or financial advisors regarding the potential federal and state tax consequences of the transaction; and

(iv) The proposed assignment does not and will not include or cover payments or portions of payments subject to offsets pursuant to RCW 67.70.255 unless appropriate provision is made in the order to satisfy the obligations giving rise to the offset.

(d) The commission may intervene as of right in any proceeding under this section but shall not be deemed an indispensable or necessary party.

(3) The director will not pay the assignee an amount in excess of the annual payment entitled to the assignor.

(4) The commission may adopt rules pertaining to the assignment of prizes under this section, including recovery of actual costs incurred by the commission. The recovery of

actual costs shall be deducted from the initial annuity payment made to the assignee.

(5) No voluntary assignment under this section is effective unless and until the national office of the federal internal revenue service provides a ruling that declares that the voluntary assignment of prizes will not affect the federal income tax treatment of prize winners who do not assign their prizes. If at any time the federal internal revenue service or a court of competent jurisdiction provides a determination letter, revenue ruling, other public ruling of the internal revenue service or published decision to any state lottery or state lottery prize winner declaring that the voluntary assignment of prizes will effect the federal income tax treatment of prize winners who do not assign their prizes, the director shall immediately file a copy of that letter, ruling, or published decision with the secretary of state. No further voluntary assignments may be allowed after the date the ruling, letter, or published decision is filed.

(6) The occurrence of any event described in subsection (5) of this section does not render invalid or ineffective assignments validly made and approved pursuant to an appropriate judicial order before the occurrence of any such event.

(7) The requirement for a disclosure statement in subsection (2)(c)(iii) of this section does not apply to any assignment agreement executed before April 21, 1997.

(8) The commission and the director shall be discharged of all further liability upon payment of a prize pursuant to this section. [1997 c 111 § 1; 1996 c 228 § 2; 1982 2nd ex.s. c 7 § 10.]

Effective date—1997 c 111: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 1997]." [1997 c 111 § 2.]

Intent—1996 c 228: "The Washington state lottery act under chapter 7, Laws of 1982 2nd ex. sess., provides, among other things, that the right of any person to a prize shall not be assignable, except to the estate of a deceased prize winner, or to a person designated pursuant to an appropriate judicial order. Current law and practices provide that those who win lotto jackpots are paid in annual installments over a period of twenty years. The legislature recognizes that some prize winners, particularly elderly persons, those seeking to acquire a small business, and others with unique needs, may not want to wait to be paid over the course of up to twenty years. It is the intent of the legislature to provide a restrictive means to accommodate those prize winners who wish to enjoy more of their winnings currently, without impacting the current fiscal structure of the Washington state lottery commission." [1996 c 228 § 1.]

67.70.110 Maximum price of ticket or share limited—Sale by other than licensed agent prohibited. A person shall not sell a ticket or share at a price greater than that fixed by rule of the commission. No person other than a licensed lottery sales agent shall sell lottery tickets, except that nothing in this section prevents any person from giving lottery tickets or shares to another as a gift. [1982 2nd ex.s. c 7 § 11.]

67.70.120 Sale to minor prohibited—Exception—Penalties. (1) A ticket or share shall not be sold to any person under the age of eighteen, but this shall not be deemed to prohibit the purchase of a ticket or share for the purpose of making a gift by a person eighteen years of age or older to a person less than that age.

(2) Any licensee who knowingly sells or offers to sell a lottery ticket or share to any person under the age of eighteen is guilty of a misdemeanor.

(3) In the event that a person under the age of eighteen years directly purchases a ticket in violation of this section, that person is guilty of a misdemeanor. No prize will be paid to such person and the prize money otherwise payable on the ticket will be treated as unclaimed pursuant to RCW 67.70.190. [2003 c 53 § 303; 1987 c 511 § 6; 1982 2nd ex.s. c 7 § 12.]

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

67.70.125 Use of public assistance electronic benefit cards prohibited—Licensee to report violations. (1) Any licensee authorized under this chapter is prohibited from allowing the use of public assistance electronic benefit cards to purchase lottery tickets or shares authorized under this chapter.

(2) Any licensee authorized under this chapter shall report to the department of social and health services any known violations of RCW 74.08.580. [2002 c 252 § 5.]

67.70.130 Prohibited acts—Penalty. (1) A person shall not alter or forge a lottery ticket. A person shall not claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation. A person shall not conspire, aid, abet, or agree to aid another person or persons to claim a lottery prize or share of a lottery prize by means of fraud, deceit, or misrepresentation.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 304; 1982 2nd ex.s. c 7 § 13.]

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

67.70.140 Penalty for unlicensed activity. (1) Any person who conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, is guilty of a class B felony punishable according to chapter 9A.20 RCW.

(2) If any corporation conducts any activity for which a license is required by this chapter, or by rule of the commission, without the required license, it may be punished by forfeiture of its corporate charter, in addition to the other penalties set forth in this section. [2003 c 53 § 305; 1982 2nd ex.s. c 7 § 14.]

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

67.70.150 Penalty for false or misleading statement or entry or failure to produce documents. Whoever, in any application for a license or in any book or record required to be maintained or in any report required to be submitted, makes any false or misleading statement, or makes any false or misleading entry or wilfully fails to maintain or make any entry required to be maintained or made, or who wilfully refuses to produce for inspection any book, record, or document required to be maintained or made by federal or state law is guilty of a gross misdemeanor. [1982 2nd ex.s. c 7 § 15.]

67.70.160 Penalty for violation of chapter—Exceptions. Any person who violates any provision of this chapter for which no penalty is otherwise provided, or knowingly causes, aids, abets, or conspires with another to cause any person to violate any provision of this chapter is guilty of a class C felony, except where other penalties are specifically provided for in this chapter. [1982 2nd ex.s. c 7 § 16.]

67.70.170 Penalty for violation of rules—Exceptions. Any person who violates any rule adopted pursuant to this chapter for which no penalty is otherwise provided, or knowingly causes, aids, abets, or conspires with another to cause any person to violate any rule adopted pursuant to this chapter is guilty of a gross misdemeanor, except where other penalties are specifically provided for in this chapter. [1982 2nd ex.s. c 7 § 17.]

67.70.180 Persons prohibited from purchasing tickets or shares or receiving prizes—Penalty. A ticket or share shall not be purchased by, and a prize shall not be paid to any member of the commission, the director, or an employee of the lottery or to any spouse, child, brother, sister, or parent residing as a member of the same household in the principal place of abode of any member of the commission, the director or an employee of the lottery.

A violation of this section is a misdemeanor. [1987 c 511 § 7; 1982 2nd ex.s. c 7 § 18.]

67.70.190 Unclaimed prizes. Unclaimed prizes shall be retained in the state lottery account for the person entitled thereto for one hundred eighty days after the drawing in which the prize is won, or after the official end of the game for instant prizes. If no claim is made for the prize within this time, the prize shall be retained in the state lottery fund for further use as prizes, and all rights to the prize shall be extinguished. [1994 c 218 § 5; 1988 c 289 § 802; 1987 c 511 § 8; 1982 2nd ex.s. c 7 § 19.]

Effective date—1994 c 218: See note following RCW 9.46.010.

Severability—1988 c 289: See note following RCW 50.16.070.

67.70.200 Deposit of moneys received by agents from sales—Power of director—Reports. The director, in his discretion, may require any or all lottery sales agents to deposit to the credit of the state lottery account in banks designated by the state treasurer, all moneys received by such agents from the sale of lottery tickets or shares, less the amount, if any, retained as compensation for the sale of the tickets or shares, and to file with the director or his designated agents, reports of their receipts and transactions in the sale of lottery tickets in such form and containing such information as he may require. The director may make such arrangements for any person, including a bank, to perform such functions, activities, or services in connection with the operation of the lottery as he or she may deem advisable pursuant to this chapter and the rules of the commission, and such functions, activities, or services shall constitute lawful functions, activities, and services of such person. [1987 c 511 § 9; 1982 2nd ex.s. c 7 § 20.]

(2004 Ed.)

67.70.210 Other law inapplicable to sale of tickets or shares. No other law, including chapter 9.46 RCW, providing any penalty or disability for the sale of lottery tickets or any acts done in connection with a lottery applies to the sale of tickets or shares performed pursuant to this chapter. [1982 2nd ex.s. c 7 § 21.]

67.70.220 Payment of prizes to minor. If the person entitled to a prize is under the age of eighteen years, and such prize is less than five thousand dollars, the director may direct payment of the prize by delivery to an adult member of the minor's family or a guardian of the minor of a check or draft payable to the order of such minor. If the person entitled to a prize is under the age of eighteen years, and such prize is five thousand dollars or more, the director may direct payment to such minor by depositing the amount of the prize in any bank to the credit of an adult member of the minor's family or a guardian of the minor as custodian for such minor. The person so named as custodian shall have the same duties and powers as a person designated as a custodian in a manner prescribed by the Washington uniform transfers to minors act, chapter 11.114 RCW, and for the purposes of this section the terms "adult member of a minor's family," "guardian of a minor," and "bank" shall have the same meaning as in chapter 11.114 RCW. The commission and the director shall be discharged of all further liability upon payment of a prize to a minor pursuant to this section. [1991 c 193 § 30; 1985 c 7 § 128; 1982 2nd ex.s. c 7 § 22.]

Effective date—Severability—1991 c 193: See RCW 11.114.903 and 11.114.904.

67.70.230 State lottery account created. There is hereby created and established a separate account, to be known as the state lottery account. Such account shall be managed, maintained, and controlled by the commission and shall consist of all revenues received from the sale of lottery tickets or shares, and all other moneys credited or transferred thereto from any other fund or source pursuant to law. The account shall be a separate account outside the state treasury. No appropriation is required to permit expenditures and payment of obligations from the account. [1985 c 375 § 4; 1982 2nd ex.s. c 7 § 23.]

67.70.240 Use of moneys in state lottery account limited. The moneys in the state lottery account shall be used only:

(1) For the payment of prizes to the holders of winning lottery tickets or shares;

(2) For purposes of making deposits into the reserve account created by RCW 67.70.250 and into the lottery administrative account created by RCW 67.70.260;

(3) For purposes of making deposits into the education construction fund and student achievement fund created in RCW 43.135.045. For the transition period from July 1, 2001, until and including June 30, 2002, fifty percent of the moneys not otherwise obligated under this section shall be placed in the student achievement fund and fifty percent of these moneys shall be placed in the education construction fund. On and after July 1, 2002, until June 30, 2004, seventy-five percent of these moneys shall be placed in the student achievement fund and twenty-five percent shall be placed in

the education construction fund. On and after July 1, 2004, all deposits not otherwise obligated under this section shall be placed in the education construction fund. Moneys in the state lottery account deposited in the education construction fund and the student achievement fund are included in "general state revenues" under RCW 39.42.070;

(4) For distribution to a county for the purpose of paying the principal and interest payments on bonds issued by the county to construct a baseball stadium, as defined in RCW 82.14.0485, including reasonably necessary preconstruction costs. Three million dollars shall be distributed under this subsection during calendar year 1996. During subsequent years, such distributions shall equal the prior year's distributions increased by four percent. Distributions under this subsection shall cease when the bonds issued for the construction of the baseball stadium are retired, but not more than twenty years after the tax under RCW 82.14.0485 is first imposed;

(5) For distribution to the stadium and exhibition center account, created in RCW 43.99N.060. Subject to the conditions of RCW 43.99N.070, six million dollars shall be distributed under this subsection during the calendar year 1998. During subsequent years, such distribution shall equal the prior year's distributions increased by four percent. No distribution may be made under this subsection after December 31, 1999, unless the conditions for issuance of the bonds under RCW 43.99N.020(2) are met. Distributions under this subsection shall cease when the bonds are retired, but not later than December 31, 2020;

(6) For the purchase and promotion of lottery games and game-related services; and

(7) For the payment of agent compensation.

The office of financial management shall require the allotment of all expenses paid from the account and shall report to the ways and means committees of the senate and house of representatives any changes in the allotments. [2001 c 3 § 4 (Initiative Measure No. 728, approved November 7, 2000); 1997 c 220 § 206 (Referendum Bill No. 48, approved June 17, 1997); 1995 3rd sp.s. c 1 § 105; 1987 c 513 § 7; 1985 c 375 § 5; 1982 2nd ex.s. c 7 § 24.]

Short title—Purpose—Intent—Construction—Severability—Effective dates—2001 c 3 (Initiative Measure No. 728): See notes following RCW 28A.505.210.

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

Part headings not law—Effective date—1995 3rd sp.s. c 1: See notes following RCW 82.14.0485.

Effective date—Severability—1987 c 513: See notes following RCW 18.85.310.

State contribution for baseball stadium limited: RCW 82.14.0486.

67.70.241 Promotion of lottery by person or entity responsible for operating stadium and exhibition center—Commission approval—Cessation of obligation. The person or entity responsible for operating a stadium and exhibition center as defined in RCW 36.102.010 shall promote the lottery with any combination of in-kind advertising, sponsorship, or prize promotions, valued at one million dollars annually beginning January 1998 and increased by four

percent each year thereafter for the purpose of increasing lottery sales of games authorized under RCW 67.70.043. The content and value of the advertising sponsorship or prize promotions are subject to reasonable approval in advance by the lottery commission. The obligation of this section shall cease when the distributions under RCW 67.70.240(5) end, but not later than December 31, 2020. [1997 c 220 § 208 (Referendum Bill No. 48, approved June 17, 1997).]

Referendum—Other legislation limited—Legislators' personal intent not indicated—Reimbursements for election—Voters' pamphlet, election requirements—1997 c 220: See RCW 36.102.800 through 36.102.803.

Part headings not law—Severability—1997 c 220: See RCW 36.102.900 and 36.102.901.

67.70.250 Methods for payment of prizes by installments. If the director decides to pay any portion of or all of the prizes in the form of installments over a period of years, the director shall provide for the payment of all such installments for any specific lottery game by one, but not both, of the following methods:

(1) The director may enter into contracts with any financially responsible person or firm providing for the payment of such installments; or

(2) The director may establish and maintain a reserve account into which shall be placed sufficient moneys for the director to pay such installments as they become due. Such reserve account shall be maintained as a separate and independent fund outside the state treasury. [1987 c 511 § 11; 1982 2nd ex.s. c 7 § 25.]

67.70.255 Debts owed to state agency or political subdivision—Debt information to lottery commission—Prize set off against debts. (1) Any state agency or political subdivision that maintains records of debts owed to the state or political subdivision, or that the state is authorized to enforce or collect, may submit data processing tapes containing debt information to the lottery in a format specified by the lottery. State agencies or political subdivisions submitting debt information tapes shall provide updates on a regular basis at intervals not to exceed one month and shall be solely responsible for the accuracy of the information contained therein.

(2) The lottery shall include the debt information submitted by state agencies or political subdivisions in its validation and prize payment process. The lottery shall delay payment of a prize exceeding six hundred dollars for a period not to exceed two working days, to any person owing a debt to a state agency or political subdivision pursuant to the information submitted in subsection (1) of this section. The lottery shall contact the state agency or political subdivision that provided the information to verify the debt. The prize shall be paid to the claimant if the debt is not verified by the submitting state agency or political subdivision within two working days. If the debt is verified, the prize shall be disbursed pursuant to subsection (3) of this section.

(3) Prior to disbursement, any lottery prize exceeding six hundred dollars shall be set off against any debts owed by the prize winner to a state agency or political subdivision, or that the state is authorized to enforce or collect. [1986 c 83 § 2.]

Policy—1986 c 83: "The award of prizes by the state lottery is one of many functions of the state government. As such, the lottery prizes should be

subject to debts owed to the state or that the state is authorized to enforce or collect. This policy expedites collections of obligations through interagency cooperation." [1986 c 83 § 1.]

Effective date—1986 c 83: "This act shall take effect September 1, 1986." [1986 c 83 § 3.]

67.70.260 Lottery administrative account created.

There is hereby created the lottery administrative account in the state treasury. The account shall be managed, controlled, and maintained by the director. The legislature may appropriate from the account for the payment of costs incurred in the operation and administration of the lottery. During the 2001-2003 fiscal biennium, the legislature may transfer from the lottery administrative account to the state general fund such amounts as reflect the appropriations reductions made by the 2002 supplemental appropriations act for administrative efficiencies and savings. [2002 c 371 § 919; 1985 c 375 § 6; 1982 2nd ex.s. c 7 § 26.]

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

67.70.270 Members of commission—Compensation—Travel expenses. Each member of the commission shall be compensated in accordance with RCW 43.03.250 and shall be reimbursed for actual necessary traveling and other expenses in going to, attending, and returning from meetings of the commission and actual and necessary traveling and other expenses incurred in the discharge of such duties as may be requested by a majority vote of the commission or by the director. [1984 c 287 § 101; 1982 2nd ex.s. c 7 § 27.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

67.70.280 Application of administrative procedure act. The provisions of the administrative procedure act, chapter 34.05 RCW, shall apply to administrative actions taken by the commission or the director pursuant to this chapter. [1982 2nd ex.s. c 7 § 28.]

67.70.290 Post-audits by state auditor. The state auditor shall conduct an annual post-audit of all accounts and transactions of the lottery and such other special post-audits as he may be directed to conduct pursuant to chapter 43.09 RCW. [1982 2nd ex.s. c 7 § 29.]

67.70.300 Investigations by attorney general authorized. The attorney general may investigate violations of this chapter, and of the criminal laws within this state, by the commission, the director, or the director's employees, licensees, or agents, in the manner prescribed for criminal investigations in RCW 43.10.090. [1987 c 511 § 13; 1982 2nd ex.s. c 7 § 30.]

67.70.310 Management review by director of financial management. The director of financial management may conduct a management review of the commission's lottery operations to assure that:

(1) The manner and time of payment of prizes to the holder of winning tickets or shares is consistent with this chapter and the rules adopted under this chapter;

(2) The apportionment of total revenues accruing from the sale of lottery tickets or shares and from all other sources is consistent with this chapter;

(3) The manner and type of lottery being conducted, and the expenses incidental thereto, are the most efficient and cost-effective; and

(4) The commission is not unnecessarily incurring operating and administrative costs.

In conducting a management review, the director of financial management may inspect the books, documents, and records of the commission. Upon completion of a management review, all irregularities shall be reported to the attorney general, the joint legislative audit and review committee, and the state auditor. The director of financial management shall make such recommendations as may be necessary for the most efficient and cost-effective operation of the lottery. [1996 c 288 § 50; 1982 2nd ex.s. c 7 § 31.]

67.70.320 Verification by certified public accountant. The director of financial management shall select a certified public accountant to verify that:

(1) The manner of selecting the winning tickets or shares is consistent with this chapter; and

(2) The manner and time of payment of prizes to the holder of winning tickets or shares is consistent with this chapter. The cost of these services shall be paid from moneys placed within the lottery administrative account created in RCW 67.70.260. [1987 c 511 § 14; 1982 2nd ex.s. c 7 § 32.]

67.70.330 Enforcement powers of director—Office of the director designated law enforcement agency. The director shall have the power to enforce this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. The director, the deputy director, assistant directors, and each of the director's investigators, enforcement officers, and inspectors shall have the power to enforce this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power and authority to apply for and execute all warrants and serve process of law issued by the courts in enforcing the penal provisions of this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. They shall have the power to arrest without a warrant, any person or persons found in the act of violating any of the penal provisions of this chapter and the penal laws of this state relating to the conduct of or participation in lottery activities and the manufacturing, importation, transportation, distribution, possession, and sale of equipment or paraphernalia used or for use in connection therewith. To the extent set forth in this section, the office of the director shall be a law enforcement agency of this state with the power to investigate for violations of and to enforce the provisions of this

chapter and to obtain information from and provide information to all other law enforcement agencies. [1987 c 511 § 15; 1982 2nd ex.s. c 7 § 33.]

health, and safety, the support of the state government and its existing public institutions and shall take effect March 1, 1985. [1985 c 375 § 10.]

Reviser's note: 1985 c 375 was signed by the governor May 20, 1985.

67.70.340 Transfer of shared game lottery proceeds.

(1) The legislature recognizes that creating a shared game lottery could result in less revenue being raised by the existing state lottery ticket sales. The legislature further recognizes that the two funds most impacted by this potential event are the student achievement fund and the education construction account. Therefore, it is the intent of the legislature to use some of the proceeds from the shared game lottery to make up the difference that the potential state lottery revenue loss would have on the student achievement fund and the education construction account.

(2) The student achievement fund and the education construction account are expected to collectively receive one hundred two million dollars annually from state lottery games other than the shared game lottery. For fiscal year 2003 and thereafter, if the amount of lottery revenues earmarked for the student achievement fund and the education construction account are less than one hundred two million dollars, the commission must transfer sufficient moneys from revenues derived from the shared game lottery into the student achievement fund and the education construction account to bring the total revenue up to one hundred two million dollars. The funds transferred from the shared game lottery account under this subsection must be divided between the student achievement fund and the education construction account in a manner consistent with RCW 67.70.240(3).

(3) For fiscal year 2003, the commission shall transfer from revenues derived from the shared game lottery to the violence reduction and drug enforcement account under RCW 69.50.520 five hundred thousand dollars exclusively for the treatment of pathological gambling as prescribed by *RCW 67.70.350.

(4) The remaining net revenues, if any, in the shared game lottery account after the transfers shall be deposited into the general fund. [2002 c 349 § 3.]

***Reviser's note:** RCW 67.70.350 was recodified as RCW 43.20A.890, September 2003.

67.70.902 Construction—1982 2nd ex.s. c 7. This act shall be liberally construed to carry out the purposes and policies of the act. [1982 2nd ex.s. c 7 § 35.]

67.70.903 Severability—1982 2nd ex.s. c 7. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 2nd ex.s. c 7 § 40.]

67.70.904 Severability—1985 c 375. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 375 § 9.]

67.70.905 Effective date—1985 c 375. This act is necessary for the immediate preservation of the public peace,

Title 68

CEMETERIES, MORGUES, AND HUMAN REMAINS

Chapters

- 68.04** Definitions.
- 68.05** Cemetery board.
- 68.20** Private cemeteries.
- 68.24** Cemetery property.
- 68.28** Mausoleums and columbariums.
- 68.32** Title and rights to cemetery plots.
- 68.36** Abandoned lots.
- 68.40** Endowment and nonendowment care.
- 68.44** Endowment care fund.
- 68.46** Prearrangement contracts.
- 68.50** Human remains.
- 68.52** Public cemeteries and morgues.
- 68.54** Annexation and merger of cemetery districts.
- 68.56** Penal and miscellaneous provisions.
- 68.60** Abandoned and historic cemeteries and historic graves.

Burial and removal permits, death certificates, vital statistics: Chapter 70.58 RCW.

Burial insurance: RCW 18.39.240 through 18.39.360.

Cemetery districts, excess levies authorized: RCW 84.52.052.

Cemetery funds transferred to state treasury: RCW 43.79.330.

Conveyance of real property by public bodies—Recording: RCW 65.08.095.

Embalmers and funeral directors: Chapter 18.39 RCW.

Funeral service contracts: RCW 18.39.240 through 18.39.360.

Indian graves and records: Chapter 27.44 RCW.

Indigent persons: RCW 36.39.030.

Veterans, burial: Chapter 73.24 RCW.

Vital statistics: Chapter 70.58 RCW.

Washington veterans' home and soldiers' home, burial of deceased members: RCW 72.36.110.

Chapter 68.04 RCW

DEFINITIONS

Sections

- 68.04.020 "Human remains," "remains."
- 68.04.030 "Cremated remains."
- 68.04.040 "Cemetery."
- 68.04.050 "Burial park."
- 68.04.060 "Mausoleum."
- 68.04.070 "Crematory."
- 68.04.080 "Columbarium."
- 68.04.090 "Crematory and columbarium."
- 68.04.100 "Interment."
- 68.04.110 "Cremation."
- 68.04.120 "Inurnment."
- 68.04.130 "Entombment."
- 68.04.140 "Burial."
- 68.04.150 "Grave."
- 68.04.160 "Crypt."
- 68.04.165 "Vault", "lawn crypt", "liner."
- 68.04.170 "Niche."
- 68.04.180 "Temporary receiving vault."
- 68.04.190 "Cemetery authority."
- 68.04.200 "Cemetery corporation", "cemetery association", "cemetery corporation or association."
- 68.04.210 "Cemetery business", "cemetery businesses", "cemetery purposes."
- 68.04.220 "Directors," "governing body."
- 68.04.230 "Lot", "plot", "interment plot."

68.04.240 "Plot owner," "owner," "lot proprietor."

68.04.020 "Human remains," "remains." "Human remains" or "remains" means the body of a deceased person, and includes the body in any stage of decomposition except cremated remains. [1977 c 47 § 1; 1943 c 247 § 2; Rem. Supp. 1943 § 3778-2.]

Short title—1943 c 247: "This act shall be known as the 'General Cemetery Act.'" [1943 c 247 § 1.]

Severability—1943 c 247: "If any section, subdivision, sentence or clause of this act shall be held invalid or unconstitutional, such holding shall not affect the validity of the remaining portions of this act." [1943 c 247 § 147.]

The annotations apply to 1943 c 247, the general cemetery act, which was codified as RCW 68.04.020 through 68.04.240, 68.08.010 through 68.08.030, 68.08.120 through 68.08.220, 68.08.240, 68.20.010 through 68.20.100, 68.24.010 through 68.24.180, 68.28.010 through 68.28.070, 68.32.010 through 68.32.170, 68.36.010 through 68.36.100, 68.40.010 through 68.40.090, 68.44.010 through 68.44.170, and 68.48.040 through 68.48.090.

68.04.030 "Cremated remains." "Cremated remains" means a human body after cremation in a crematory. [1977 c 47 § 2; 1943 c 247 § 3; Rem. Supp. 1943 § 3778-3.]

68.04.040 "Cemetery." "Cemetery" means: (1) Any one, or a combination of more than one, of the following, in a place used, or intended to be used, and dedicated, for cemetery purposes:

- (a) A burial park, for earth interments.
- (b) A mausoleum, for crypt interments.
- (c) A columbarium, for permanent cinerary interments;

or

(2) For the purposes of chapter 68.60 RCW only, "cemetery" means any burial site, burial grounds, or place where five or more human remains are buried. Unless a cemetery is designated as a parcel of land identifiable and unique as a cemetery within the records of the county assessor, a cemetery's boundaries shall be a minimum of ten feet in any direction from any burials therein. [1990 c 92 § 7; 1979 c 21 § 1; 1943 c 247 § 4; Rem. Supp. §3778-4.]

68.04.050 "Burial park." "Burial park" means a tract of land for the burial of human remains in the ground, used or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 5; Rem. Supp. 1943 § 3778-5.]

68.04.060 "Mausoleum." "Mausoleum" means a structure or building for the entombment of human remains in crypts in a place used, or intended to be used, and dedicated, for cemetery purposes. [1979 c 21 § 2; 1943 c 247 § 6; Rem. Supp. 1943 § 3778-6.]

68.04.070 "Crematory." "Crematory" means a building or structure containing one or more retorts for the reduc-

tion of bodies of deceased persons to cremated remains. [1943 c 247 § 7; Rem. Supp. 1943 § 3778-7.]

68.04.080 "Columbarium." "Columbarium" means a structure, room, or other space in a building or structure containing niches for permanent inurnment of cremated remains in a place used, or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 8; Rem. Supp. 1943 § 3778-8.]

68.04.090 "Crematory and columbarium." "Crematory and columbarium" means a building or structure containing both a crematory and columbarium. [1943 c 247 § 9; Rem. Supp. 1943 § 3778-9.]

68.04.100 "Interment." "Interment" means the disposition of human remains by cremation and inurnment, entombment, or burial in a place used, or intended to be used, and dedicated, for cemetery purposes. [1943 c 247 § 10; Rem. Supp. 1943 § 3778-10.]

68.04.110 "Cremation." "Cremation" means the reduction of the body of a deceased person to cremated remains in a crematory in such a manner that the largest dimension of any remaining particle does not exceed five millimeters: PROVIDED, That if a person entitled to possession of such remains under the provisions of RCW 68.50.270 is going to place the cremated remains in a cemetery, mausoleum, columbarium, or building devoted exclusively to religious purposes, the five millimeter dimension requirement shall not apply. [1987 c 331 § 1; 1977 c 47 § 3; 1943 c 247 § 11; Rem. Supp. 1943 § 3778-11.]

Effective date—1987 c 331: See RCW 68.05.900.

68.04.120 "Inurnment." "Inurnment" means placing cremated remains in an urn or vault and placing it in a niche. [1943 c 247 § 12; Rem. Supp. 1943 § 3778-12.]

68.04.130 "Entombment." "Entombment" means the placement of human remains in a crypt or vault. [1943 c 247 § 13; Rem. Supp. 1943 § 3778-13.]

68.04.140 "Burial." "Burial" means the placement of human remains in a grave. [1943 c 247 § 14; Rem. Supp. 1943 § 3778-14.]

68.04.150 "Grave." "Grave" means a space of ground in a burial park, used or intended to be used, for burial. [1943 c 247 § 15; Rem. Supp. 1943 § 3778-15.]

68.04.160 "Crypt." "Crypt" means a space in a mausoleum of sufficient size, used or intended to be used, to entomb uncremated human remains. [1979 c 21 § 3; 1943 c 247 § 16; Rem. Supp. 1943 § 3778-16.]

68.04.165 "Vault", "lawn crypt", "liner." "Vault", "lawn crypt" or "liner" means any container which is buried in the ground and into which human remains are placed in the burial process. [1979 c 21 § 4.]

[Title 68 RCW—page 2]

68.04.170 "Niche." "Niche" means a space in a columbarium or urn garden used, or intended to be used, for inurnment of cremated human remains. [1943 c 247 § 17; Rem. Supp. 1943 § 3778-17.]

68.04.180 "Temporary receiving vault." "Temporary receiving vault" means a vault used or intended to be used for the temporary placement of human remains. [1943 c 247 § 18; Rem. Supp. 1943 § 3778-18.]

68.04.190 "Cemetery authority." "Cemetery authority" includes cemetery corporation, association, corporation sole, or other person owning or controlling cemetery lands or property. [1943 c 247 § 19; Rem. Supp. 1943 § 3778-19.]

68.04.200 "Cemetery corporation", "cemetery association", "cemetery corporation or association." "Cemetery corporation", "cemetery association", or "cemetery corporation or association" mean any corporation now or hereafter organized which is or may be authorized by its articles to conduct any one or more or all of the businesses of a cemetery, but do not mean or include a corporation sole. [1943 c 247 § 20; Rem. Supp. 1943 § 3778-20.]

68.04.210 "Cemetery business", "cemetery businesses", "cemetery purposes." "Cemetery business", "cemetery businesses", and "cemetery purposes" are used interchangeably and mean any and all business and purposes requisite to, necessary for, or incident to, establishing, maintaining, operating, improving, or conducting a cemetery, interring human remains, and the care, preservation, and embellishment of cemetery property. [1943 c 247 § 21; Rem. Supp. 1943 § 3778-21.]

68.04.220 "Directors," "governing body." "Directors" or "governing body" means the board of directors, board of trustees, or other governing body of a cemetery association. [1943 c 247 § 22; Rem. Supp. 1943 § 3778-22.]

68.04.230 "Lot", "plot", "interment plot." "Lot", "plot", or "interment plot" means space in a cemetery, used or intended to be used for the interment of human remains. Such terms include and apply to one or more than one adjoining graves, one or more than one adjoining crypts or vaults, or one or more than one adjoining niches. [1943 c 247 § 23; Rem. Supp. 1943 § 3778-23.]

68.04.240 "Plot owner", "owner", "lot proprietor." "Plot owner", "owner", or "lot proprietor" means any person in whose name an interment plot stands of record as owner, in the office of a cemetery authority. [1943 c 247 § 24; Rem. Supp. 1943 § 3778-24.]

Chapter 68.05 RCW CEMETERY BOARD

Sections

| | |
|-----------|-----------------------|
| 68.05.010 | Definitions. |
| 68.05.020 | "Board" defined. |
| 68.05.024 | "Department" defined. |
| 68.05.028 | "Director" defined. |

| | |
|-----------|--|
| 68.05.030 | "Endowment care," "endowed care" defined. |
| 68.05.040 | Cemetery board created—Appointments—Terms. |
| 68.05.050 | Qualifications of members. |
| 68.05.060 | Compensation and travel expenses. |
| 68.05.080 | Meetings. |
| 68.05.090 | Administration and enforcement of title. |
| 68.05.095 | Officers—Executive secretary. |
| 68.05.100 | Rules and regulations. |
| 68.05.105 | Authority of the board. |
| 68.05.115 | Sale or transfer of cemetery authority or creation of a new cemetery—Application for new certificate of authority—Compliance required—Penalty. |
| 68.05.120 | Actions to enforce law—Attorney general. |
| 68.05.150 | Examination of funds—Powers, duties. |
| 68.05.155 | Prearrangement sales license. |
| 68.05.160 | Action required when authority fails to deposit minimum endowment amount or comply with prearrangement contract provisions. |
| 68.05.170 | Order requiring reinvestment in compliance with title—Actions for preservation and protection. |
| 68.05.173 | Revocation, suspension of certificate or prearrangement sales license. |
| 68.05.175 | Permit or endorsement required for cremation—Regulation of affiliated and nonaffiliated crematories. |
| 68.05.180 | Annual report of authority—Contents—Verification. |
| 68.05.185 | Requirements as to crematories. |
| 68.05.190 | Examination of reports. |
| 68.05.195 | Burial or disposal of cremated remains—Permit or endorsement required. |
| 68.05.205 | Fees. |
| 68.05.210 | Proof of applicant's compliance with law, rules, etc., financial responsibility and reputation. |
| 68.05.215 | Certificates—Regulatory charges, when payable—Duration—Suspension, restoration—Transferability. |
| 68.05.225 | Sales licenses—Terms—Fees. |
| 68.05.235 | Financial statements—Failure to file. |
| 68.05.240 | Interment, certificate of authority required—Penalty. |
| 68.05.245 | Crematory permits or endorsements—Terms—Fees. |
| 68.05.254 | Examination of endowment funds and prearrangement trust funds—Expense—Location. |
| 68.05.259 | Examination expense—Effect of refusal to pay—Disposition. |
| 68.05.285 | "Cemetery fund." |
| 68.05.290 | Board members' immunity from suits. |
| 68.05.300 | Unprofessional conduct—Disciplinary action. |
| 68.05.310 | Prearrangement sales—Disciplinary action. |
| 68.05.320 | Board action against authorities—Administrative procedures. |
| 68.05.330 | Violation—Penalty—Unfair practice—Other laws applicable. |
| 68.05.340 | Board action against authorities—Cease and desist orders. |
| 68.05.350 | Delaying board action pending administrative proceedings. |
| 68.05.360 | Board action against authorities—Hearing location—Decision—Review. |
| 68.05.370 | Board action against authorities—Enforcement of orders. |
| 68.05.390 | Permit or endorsement required for cremation—Penalty. |
| 68.05.400 | Exemptions from chapter. |
| 68.05.430 | Uniform regulation of business and professions act. |
| 68.05.900 | Effective date—1987 c 331. |

68.05.010 Definitions. The definitions in chapter 68.04 RCW are applicable to this chapter and govern the meaning of terms used herein, except as otherwise provided expressly or by necessary implication. [1953 c 290 § 26.]

Short title—1953 c 290: "This act shall be known as "The Cemetery Act." [1953 c 290 § 55.]

68.05.020 "Board" defined. The term "board" used in this chapter means the cemetery board. [1953 c 290 § 27.]

68.05.024 "Department" defined. "Department" used in this chapter means the department of licensing. [1987 c 331 § 2.]

68.05.028 "Director" defined. "Director" used in this chapter means the director of licensing. [1987 c 331 § 3.]

68.05.030 "Endowment care," "endowed care" defined. The terms "endowment care" or "endowed care"

(2004 Ed.)

used in this chapter shall include special care, care, or maintenance and all funds held for or represented as maintenance funds. [1987 c 331 § 4; 1953 c 290 § 28.]

68.05.040 Cemetery board created—Appointments—Terms. A cemetery board is created to consist of six members to be appointed by the governor. Appointments shall be for four-year terms. Each member shall hold office until the expiration of the term for which the member is appointed or until a successor has been appointed and qualified. [1987 c 331 § 5; 1977 ex.s. c 351 § 1; 1953 c 290 § 31.]

Severability—1977 ex.s. c 351: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 351 § 7.]

68.05.050 Qualifications of members. Three members of the board shall be persons who have had experience in this state in the active administrative management of a cemetery authority or as a member of the board of directors thereof. Two members of the board shall be persons who have legal, accounting, or other professional experience which relates to the duties of the board. The sixth member of the board shall represent the general public and shall not have a financial interest in the cemetery business. [1979 c 21 § 5; 1977 ex.s. c 351 § 2; 1953 c 290 § 32.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.060 Compensation and travel expenses. Each member of the board shall be compensated in accordance with RCW 43.03.240 and shall receive travel expenses in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 102; 1975-'76 2nd ex.s. c 34 § 156; 1953 c 290 § 33.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

68.05.080 Meetings. The board shall meet at least twice a year in order to conduct its business and may meet at such other times as it may designate. The chair, the director, or a majority of board members may call a meeting. The board may meet at any place within this state. [1987 c 331 § 6; 1953 c 290 § 35.]

68.05.090 Administration and enforcement of title. The board shall enforce and administer the provisions of chapters 68.04 through 68.50 RCW, subject to provisions of *RCW 68.05.280. The board may adopt and amend bylaws establishing its organization and method of operation. In addition to enforcement of this chapter the board shall enforce chapters 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, 68.46, and 68.50 RCW. The board may refer such evidence as may be available concerning violations of chapters 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, 68.46, and 68.50 RCW to the attorney general or the proper prosecuting attorney, who may in his or her discretion, with or without such a reference, in addition to any other action the board might commence, bring an action in the name of the board against any person to restrain and prevent the doing of any act or practice prohibited or declared unlawful in chapters 68.20,

[Title 68 RCW—page 3]

68.24, 68.28, 68.32, 68.36, 68.40, 68.44, 68.46, or 68.50 RCW and shall have standing to seek enforcement of said provisions in the superior court of the state of Washington for the county in which the principal office of the cemetery authority is located. [1987 c 331 § 7; 1979 c 21 § 6; 1953 c 290 § 39.]

***Reviser's note:** RCW 68.05.280 was recodified as RCW 68.05.400 pursuant to 1987 c 331 § 89.

68.05.095 Officers—Executive secretary. The board shall elect annually a chairman and vice chairman and such other officers as it shall determine from among its members. The director, in consultation with the board, may employ and prescribe the duties of the executive secretary. The executive secretary shall have a minimum of five years' experience in cemetery management unless this requirement is waived by the board. [1987 c 331 § 8; 1953 c 290 § 34. Formerly RCW 68.05.070.]

68.05.100 Rules and regulations. The board may establish necessary rules and regulations for the enforcement of this title and the laws subject to its jurisdiction and prescribe the form of statements and reports provided for in this title. Rules regulating the cremation of human remains and establishing permit requirements shall be adopted in consultation with the state board of funeral directors and embalmers. [1993 c 43 § 3; 1987 c 331 § 9; 1985 c 402 § 8; 1953 c 290 § 36.]

Effective date of 1993 c 43—1993 sp.s. c 24: See note following RCW 18.39.290.

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.05.105 Authority of the board. In addition to the authority in RCW 18.235.030, the board has the following authority:

- (1) To adopt, amend, and rescind such rules as are deemed necessary to carry out this title; and
- (2) To adopt standards of professional conduct or practice. [2002 c 86 § 316; 1987 c 331 § 10.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.115 Sale or transfer of cemetery authority or creation of a new cemetery—Application for new certificate of authority—Compliance required—Penalty. Prior to the sale or transfer of ownership or control of any cemetery authority or the creation of a new cemetery, any person, corporation or other legal entity desiring to acquire such ownership or control or desiring to create a new cemetery shall apply in writing to the board for a new certificate of authority to operate a cemetery and shall comply with all provisions of Title 68 RCW relating to applications for, and the basis for granting, an original certificate of authority. The board shall, in addition, enter any order deemed necessary for the protection of all endowment care funds and/or prearrangement trust fund during such transfer. As a condition of applying for a new certificate of authority, the entity desiring to acquire such ownership or control must agree to be bound by all then existing prearrangement contracts and the board shall enter that agreement as a condition of the transfer. Persons and

business entities selling and persons and business entities purchasing ownership or control of a cemetery authority shall each verify and attest to an endowment care fund report and/or a prearrangement trust fund report showing the status of such funds on the date of the sale on a written report form prescribed by the board. Such reports shall be considered part of the application for authority to operate. Failure to comply with this section shall be a gross misdemeanor and any sale or transfer in violation of this section shall be void. [1987 c 331 § 11; 1979 c 21 § 11; 1973 1st ex.s. c 68 § 17; 1969 ex.s. c 99 § 5. Formerly RCW 68.05.255.]

68.05.120 Actions to enforce law—Attorney general. The board is authorized to bring actions to enforce the provisions of the law subject to its jurisdiction, in which actions it shall be represented by the attorney general. [1953 c 290 § 38.]

68.05.150 Examination of funds—Powers, duties. In making such examination the board:

- (1) Shall have free access to the books and records relating to the endowment care funds, their collection and investment, and the number of graves, crypts, and niches under endowment care;
- (2) Shall inspect and examine the endowment care funds to determine their condition and the existence of the investments;
- (3) Shall ascertain if the cemetery authority has complied with all the laws applicable to endowment care funds;
- (4) Shall have free access to all records required to be maintained pursuant to this chapter and to chapter 68.46 RCW with respect to prearrangement merchandise or services, unconstructed crypts or niches, or undeveloped graves; and
- (5) Shall ascertain if the cemetery authority has complied with the laws applicable to prearrangement trust funds. [1979 c 21 § 8; 1973 1st ex.s. c 68 § 14; 1953 c 290 § 44.]

68.05.155 Prearrangement sales license. To enter into prearrangement contracts as defined in RCW 68.46.010, a cemetery authority shall have a valid prearrangement sales license. To apply for a prearrangement sales license, a cemetery authority shall:

- (1) File with the board its request showing:
 - (a) Its name, location, and organization date;
 - (b) The kinds of cemetery business or merchandise it proposes to transact;
 - (c) A statement of its current financial condition, management, and affairs on a form satisfactory to or furnished by the board; and
 - (d) Such other documents, stipulations, or information as the board may reasonably require to evidence compliance with the provisions of this chapter; and
- (2) Deposit with the department the fees required by this chapter to be paid for filing the accompanying documents, and for the prearrangement sales license, if granted. [1987 c 331 § 12; 1979 c 21 § 28. Formerly RCW 68.46.140.]

68.05.160 Action required when authority fails to deposit minimum endowment amount or comply with

prearrangement contract provisions. If any examination made by the board, or any report filed with it, shows that there has not been collected and deposited in the endowment care funds the minimum amounts required by this title, or if the board finds that the cemetery authority has failed to comply with the requirements of this chapter and chapter 68.46 RCW with respect to prearrangement contracts, merchandise, or services, unconstructed crypts or niches or undeveloped graves, or prearrangement trust funds, the board shall require such cemetery authority to comply with this chapter or with chapter 68.40 or 68.46 RCW, as the case may be. [1979 c 21 § 9; 1973 1st ex.s. c 68 § 15; 1953 c 290 § 45.]

68.05.170 Order requiring reinvestment in compliance with title—Actions for preservation and protection.

(1) Whenever the board finds, after notice and hearing, that any endowment care funds have been invested in violation of this title, it may by written order mailed to the person or body in charge of the fund require the reinvestment of the funds in conformity with this title within the period specified by it which shall be not more than six months. Such period may be extended by the board in its discretion.

(2) The board may bring actions for the preservation and protection of endowment care funds in the superior court of the county in which the cemetery is located and the court shall appoint substitute trustees and make any other order which may be necessary for the preservation, protection, and recovery of endowment care funds, whenever a cemetery authority or the trustees of its fund have:

(a) Transferred or attempted to transfer any property to, or made any loan from, the endowment care funds for the benefit of the cemetery authority or any director, officer, agent or employee of the cemetery authority or trustee of any endowment care funds; or,

(b) Failed to reinvest endowment care funds in accordance with a board order issued under subsection (1) of this section; or,

(c) Invested endowment care funds in violation of this title; or,

(d) Taken action or failed to take action to preserve and protect the endowment care funds, evidencing a lack of concern therefor; or,

(e) Become financially irresponsible or transferred control of the cemetery authority to any person who, or business entity which, is financially irresponsible; or,

(f) Is in danger of becoming insolvent or has gone into bankruptcy or receivership; or,

(g) Taken any action in violation of Title 68 RCW or failed to take action required by Title 68 RCW or has failed to comply with lawful rules and orders of the board.

(3) Whenever the board or its representative has reason to believe that endowment care funds or prearrangement trust funds are in danger of being lost or dissipated during the time required for notice and hearing, it may immediately impound or seize documents, financial instruments, or other trust fund assets, or take other actions deemed necessary under the circumstances for the preservation and protection of endowment care funds or prearrangement trust funds, including, but not limited to, immediate substitutions of trustees. [2002 c 86 § 317; 1987 c 331 § 23; 1969 ex.s. c 99 § 1; 1953 c 290 § 46.]

(2004 Ed.)

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.173 Revocation, suspension of certificate or prearrangement sales license. Upon violation of any of the provisions of this title, the board may revoke or suspend the certificate of authority and may revoke, suspend, or terminate the prearrangement sales license of any cemetery authority. [1987 c 331 § 24; 1953 c 290 § 49. Formerly RCW 68.05.250.]

68.05.175 Permit or endorsement required for cremation—Regulation of affiliated and nonaffiliated crematories. A permit or endorsement issued by the cemetery board or under chapter 18.39 RCW is required in order to operate a crematory or conduct a cremation. Crematories owned or operated by or located on property licensed as a funeral establishment shall be regulated by the board of funeral directors and embalmers. Crematories not affiliated with a funeral establishment shall be regulated by the cemetery board. [1987 c 331 § 13; 1985 c 402 § 4. Formerly RCW 68.05.257.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.05.180 Annual report of authority—Contents—Verification. Each cemetery authority in charge of cemetery endowment care funds shall annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, file with the board a written report in form and content prescribed by the board.

These reports shall be verified by the president or vice president, one other officer of the cemetery authority, the accountant or auditor preparing the same, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. [1979 c 21 § 10; 1977 ex.s. c 351 § 3; 1973 1st ex.s. c 68 § 16; 1953 c 290 § 40.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.185 Requirements as to crematories. No crematory shall hereafter be constructed or established unless the crematory is of fireproof construction and there is in connection therewith a fireproof columbarium, a fireproof mausoleum, a fireproof room for temporary care of cremated remains or a burial park amply equipped at all times for the interment of remains of bodies cremated at the crematory. No crematorium may be operated without a valid permit or endorsement issued in accordance with RCW 68.05.175 or chapter 18.39 RCW. Nothing herein contained shall prevent existing crematories from being repaired, altered, or reconstructed. Nothing in this title shall prohibit the cremation of human remains in existing crematories, nor the temporary storage of cremated remains. [1987 c 331 § 14; 1943 c 247 § 56; Rem. Supp. 1943 § 3778-56. Formerly RCW 68.48.050.]

68.05.190 Examination of reports. The board shall examine the reports filed with it as to their compliance with the requirements of the law. [1953 c 290 § 41.]

68.05.195 Burial or disposal of cremated remains—Permit or endorsement required. Any person other than persons defined in RCW 68.50.160 who buries or otherwise disposes of cremated remains by land, by air, or by sea shall have a permit or endorsement issued in accordance with RCW 68.05.100 and shall be subject to that section. [1987 c 331 § 15.]

68.05.205 Fees. The director with the consent of the cemetery board shall set all fees for chapters 68.05, 68.20, 68.24, 68.28, 68.32, 68.36, 68.40, 68.44, and 68.46 RCW in accordance with RCW 43.24.086, including fees for licenses, certificates, regulatory charges, permits, or endorsements, and the department shall collect the fees. [1993 c 43 § 4; 1987 c 331 § 16; 1983 1st ex.s. c 5 § 1; 1977 ex.s. c 351 § 4; 1969 ex.s. c 99 § 4; 1953 c 290 § 51. Formerly RCW 68.05.230.]

Effective date of 1993 c 43—1993 sp.s. c 24: See note following RCW 18.39.290.

Severability—1983 1st ex.s. c 5: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 1st ex.s. c 5 § 3.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.05.210 Proof of applicant's compliance with law, rules, etc., financial responsibility and reputation. The board may require such proof as it deems advisable concerning the compliance by such applicant to all the laws, rules, regulations, ordinances and orders applicable to it. The board shall also require proof that the applicant and its officers and directors are financially responsible, trustworthy and have good personal and business reputations, in order that only cemeteries of permanent benefit to the community in which they are located will be established in this state. [1969 ex.s. c 99 § 2; 1953 c 290 § 48.]

68.05.215 Certificates—Regulatory charges, when payable—Duration—Suspension, restoration—Transferability. The regulatory charges for cemetery certificates at all periods of the year are the same as provided in this chapter. All regulatory charges are payable at the time of the filing of the application and in advance of the issuance of the certificates. All certificates shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold. Cemetery certificates shall not be transferable. Failure to pay the regulatory charge fixed by the director prior to the first day of February for any year automatically shall suspend the certificate of authority. Such certificate may be restored upon payment to the department of the prescribed charges. [1987 c 331 § 17; 1969 ex.s. c 99 § 3; 1953 c 290 § 50. Formerly RCW 68.05.220.]

68.05.225 Sales licenses—Terms—Fees. All prearrangement sales licenses issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority is transferred or sold.

The director, in accordance with RCW 43.24.086, shall set and the department shall collect in advance the fees required for licensing.

Failure to pay the regulatory charge fixed by the director before the first day of February for any year shall automatically suspend the license. Such license may be restored upon payment to the department of the prescribed charges. [1987 c 331 § 18; 1979 c 21 § 29. Formerly RCW 68.46.180.]

68.05.235 Financial statements—Failure to file. (1) Each authorized cemetery authority shall within ninety days after the close of its accounting year file with the board upon the board's request a true and accurate statement of its financial condition, transactions, and affairs for the preceding year. The statement shall be on such forms and shall contain such information as required by this chapter and by the board.

(2) The failure to file a statement as required under subsection (1) of this section constitutes unprofessional conduct for which the board may take disciplinary action against the prearrangement sales license of the cemetery authority. In addition, the board may take disciplinary action against any other license held by the cemetery authority. [2002 c 86 § 318; 1987 c 331 § 19; 1979 c 21 § 37. Formerly RCW 68.46.095.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.240 Interment, certificate of authority required—Penalty. It shall be a misdemeanor for any cemetery authority to make any interment without a valid, subsisting, and unsuspended certificate of authority. Each interment shall be a separate violation. [1953 c 290 § 52.]

68.05.245 Crematory permits or endorsements—Terms—Fees. All crematory permits or endorsements issued under this chapter shall be issued for the year and shall expire at midnight, the thirty-first day of January of each year, or at whatever time during any year that ownership or control of any cemetery authority which operates such crematory is transferred or sold.

The director shall set and the department shall collect in advance the fees required for licensing.

Failure to pay the regulatory charge fixed by the director before the first day of February for any year shall automatically suspend the permit or endorsement. Such permit or endorsement may be restored upon payment to the department of the prescribed charges. [1987 c 331 § 20.]

68.05.254 Examination of endowment funds and prearrangement trust funds—Expense—Location. (1) The board shall examine the endowment care and prearrangement trust fund or funds of a cemetery authority:

(a) Whenever it deems necessary, but at least once every three years after the original examination except where the cemetery authority is either required by the board to, or voluntarily files an annual financial report for the fund certified by a certified public accountant or a licensed public accountant in accordance with generally accepted auditing standards;

(b) One year following the issuance of a new certificate of authority;

(c) Whenever the cemetery authority in charge of endowment care or prearrangement trust fund or funds fails after reasonable notice from the board to file the reports required by this chapter; or

(d) Whenever it is requested by verified petition signed by twenty-five lot owners alleging that the endowment care funds are not in compliance with this title, or whenever it is requested by verified petition signed by twenty-five purchasers or beneficiaries of prearrangement merchandise or services alleging that the prearrangement trust funds are not in compliance with this title, in either of which cases, the examination shall be at the expense of the petitioners.

(2) The expense of the endowment care and prearrangement trust fund examination as provided in subsection (1)(a) and (b) of this section shall be paid by the cemetery authority. Such examination shall be privately conducted in the principal office of the cemetery authority.

(3) The requirements that examinations be conducted once every three years and that they be conducted in the principal office of the cemetery authority do not apply to any endowment care or prearrangement fund that is less than twenty-five thousand dollars. The board shall, at its discretion, decide when and where the examinations shall take place. [1987 c 331 § 21; 1979 c 21 § 7; 1973 1st ex.s. c 68 § 12; 1953 c 290 § 42. Formerly RCW 68.05.130.]

68.05.259 Examination expense—Effect of refusal to pay—Disposition. If any cemetery authority refuses to pay any examination expenses within thirty days of completion of the examination or refuses to pay certain examination expenses in advance as required by the department for cause, the board may take disciplinary action against any existing certificate of authority. Examination expenses incurred in conjunction with a transfer of ownership of a cemetery shall be paid by the selling entity. All examination expense moneys collected by the department shall be paid to the program account. [2002 c 86 § 319; 1987 c 331 § 22; 1973 1st ex.s. c 68 § 13; 1953 c 290 § 43. Formerly RCW 68.05.140.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.285 "Cemetery fund." There shall be, in the office of the state treasurer, a fund to be known and designated as the "cemetery fund." All regulatory fees or other moneys to be paid under this chapter, unless provision be made otherwise, shall be paid at least once a month to the state treasurer to be credited to the cemetery fund. All moneys credited to the cemetery fund shall be used, when appropriated by the legislature, by the cemetery board to carry out the provisions of this chapter. [1953 c 290 § 29. Formerly RCW 68.05.270.]

Cemetery fund abolished and moneys transferred to cemetery account in state treasury: RCW 43.79.330 through 43.79.334.

68.05.290 Board members' immunity from suits. Members of the board shall be immune from suit in any action, civil or criminal, based upon any official acts performed in good faith as members of such board, and the state

(2004 Ed.)

shall defend, indemnify, and hold the members of the board harmless from all claims or suits arising in any manner from such acts. Expenses incurred by the state under this section shall be paid from the general fund. [1979 c 21 § 12.]

68.05.300 Unprofessional conduct—Disciplinary action. In addition to the unprofessional conduct described in RCW 18.235.130, the board may take disciplinary action if the cemetery authority:

(1) Fails to comply with any provision of this chapter or any proper order or regulation of the board;

(2) Is found by the board to be in such condition that further execution of prearrangement contracts would be hazardous to purchasers or beneficiaries and the people of this state; or

(3) Is found by the board after investigation or receipt of reliable information to be managed by persons who are incompetent or untrustworthy or so lacking in managerial experience as to make the proposed or continued operation hazardous to purchasers, beneficiaries, or the public. [2002 c 86 § 320; 1987 c 331 § 25; 1979 c 21 § 30. Formerly RCW 68.46.190.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.310 Prearrangement sales—Disciplinary action. No cemetery authority whose prearrangement sales license has been the subject of disciplinary action shall be authorized to enter into prearrangement contracts unless specifically authorized by the board and only upon full compliance with the conditions required by the board. Any prearrangement sale by an unlicensed cemetery authority shall be voidable by the purchaser who shall be entitled to a full refund. [2002 c 86 § 321; 1989 c 175 § 124; 1987 c 331 § 26; 1979 c 21 § 31. Formerly RCW 68.46.200.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

Effective date—1989 c 175: See note following RCW 34.05.010.

68.05.320 Board action against authorities—Administrative procedures. (1) The board or its authorized representative may issue and serve upon a cemetery authority a notice of charges if in the opinion of the board or its authorized representative the cemetery authority:

(a) Is engaging in or has engaged in practices likely to endanger the future delivery of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves;

(b) Is violating or has violated any statute of the state of Washington or any rule of the board; or

(c) Is about to do an act prohibited in (a) or (b) of this subsection when the opinion is based upon reasonable cause.

(2) The notice shall contain a statement of the facts constituting the alleged violation or practice and shall fix a time and place at which a hearing will be held to determine whether an order to cease and desist should issue against the cemetery authority. The hearing shall be set not earlier than ten nor later than thirty days after service of the notice unless

a later date is set by the board or its authorized representative at the request of the cemetery authority.

Unless the cemetery authority appears at the hearing by a duly authorized representative it shall be deemed to have consented to the issuance of a cease and desist order. In the event of this consent or if upon the record made at the hearing the board finds that any violation or practice specified in the notice of charges has been established, the board may issue and serve upon the cemetery authority an order to cease and desist from the violation or practice. The order may require the cemetery authority and its directors, officers, employees, and agents to cease and desist from the violation or practice and may require the cemetery authority to take affirmative action to correct the conditions resulting from the violation or practice.

(3) A cease and desist order shall become effective at the expiration of ten days after service of the order upon the cemetery authority except that a cease and desist order issued upon consent shall become effective as provided in the order unless it is stayed, modified, terminated, or set aside by action of the board or a reviewing court.

(4) The powers of the board under this section are in addition to the power of the board to take disciplinary action against a cemetery authority's prearrangement sales license. [2002 c 86 § 322; 1979 c 21 § 32. Formerly RCW 68.46.220.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.330 Violation—Penalty—Unfair practice—Other laws applicable. Unless specified otherwise in this title, any person who violates or aids or abets any person in the violation of any of the provisions of this title shall be guilty of a class C felony punishable under chapter 9A.20 RCW. A violation shall constitute an unfair practice under chapter 19.86 RCW and shall be grounds for disciplinary action against the certificate of authority under this chapter and chapter 18.235 RCW or disciplinary action against the prearrangement sales license under this chapter and chapter 18.235 RCW. Retail installment transactions under this chapter shall be governed by chapter 63.14 RCW. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy available at law. [2002 c 86 § 323; 1987 c 331 § 27; 1984 c 53 § 6; 1979 c 21 § 39. Formerly RCW 68.46.210.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.340 Board action against authorities—Cease and desist orders. Whenever the board or its authorized representative determines that a cemetery authority is in violation of this title, other than engaging in unlicensed activity, or that the continuation of acts or practices of the cemetery authority is likely to cause insolvency or substantial dissipation of assets or earnings of the cemetery authority's endowment care or prearrangement trust fund or to otherwise seriously prejudice the interests of the purchasers or beneficiaries of prearrangement contracts, the board, or its authorized representative, may issue a temporary order requiring the cemetery authority to cease and desist from the violation or prac-

tice. The order shall become effective upon service on the cemetery authority and shall remain effective unless set aside, limited, or suspended by a court in proceedings under RCW 68.05.350 or until the board dismisses the charges specified in the notice under RCW 68.05.320 or until the effective date of a cease and desist order issued against the cemetery authority under RCW 68.05.320. Actions for unlicensed activity must be conducted under RCW 18.235.150. [2002 c 86 § 324; 1987 c 331 § 28; 1979 c 21 § 33. Formerly RCW 68.46.230.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.350 Delaying board action pending administrative proceedings. Within ten days after a cemetery authority has been served with a temporary cease and desist order issued under RCW 68.05.320, the cemetery authority may apply to the superior court in the county of its principal place of business for an injunction setting aside, limiting, or suspending the order pending completion of the administrative proceedings under RCW 68.05.320. [2002 c 86 § 325; 1987 c 331 § 29; 1979 c 21 § 34. Formerly RCW 68.46.240.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.360 Board action against authorities—Hearing location—Decision—Review. Any administrative hearing under RCW 68.05.320 may be held at such place as is designated by the board and shall be conducted in accordance with chapter 34.05 RCW.

Within sixty days after the hearing the board shall render a decision which shall include findings of fact upon which the decision is based and shall issue and serve upon each party to the proceeding an order or orders consistent with RCW 68.05.320.

Review of the decision shall be as provided in chapter 34.05 RCW. [1987 c 331 § 30; 1979 c 21 § 35. Formerly RCW 68.46.250.]

68.05.370 Board action against authorities—Enforcement of orders. The board may apply to the superior court of the county of the principal place of business of the cemetery authority affected for enforcement of any effective and outstanding order issued under RCW 68.05.320 or 68.05.340, and the court shall have jurisdiction to order compliance with the order. [1987 c 331 § 31; 1979 c 21 § 36. Formerly RCW 68.46.260.]

68.05.390 Permit or endorsement required for cremation—Penalty. Conducting a cremation without a permit or endorsement is a misdemeanor. Each such cremation is a violation. [1987 c 331 § 32.]

68.05.400 Exemptions from chapter. The provisions of this chapter do not apply to any of the following:

(1) Nonprofit cemeteries which are owned or operated by any recognized religious denomination which qualifies for an exemption from real estate taxation under RCW 84.36.020

on any of its churches or the ground upon which any of its churches are or will be built; or

(2) Any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1979 c 21 § 13; 1961 c 133 § 1; 1953 c 290 § 30. Formerly RCW 68.05.280.]

68.05.430 Uniform regulation of business and professions act. The uniform regulation of business and professions act, chapter 18.235 RCW, governs unlicensed practice, the issuance and denial of licenses, and the discipline of licensees under this chapter. [2002 c 86 § 326.]

Effective dates—2002 c 86: See note following RCW 18.08.340.

Part headings not law—Severability—2002 c 86: See RCW 18.235.902 and 18.235.903.

68.05.900 Effective date—1987 c 331. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 331 § 91.]

Chapter 68.20 RCW

PRIVATE CEMETERIES

Sections

| | |
|-----------|---|
| 68.20.010 | Incorporation required. |
| 68.20.020 | Corporations, how organized. |
| 68.20.030 | Powers of existing corporations enlarged. |
| 68.20.040 | Prior corporations not affected. |
| 68.20.050 | General powers of cemetery corporations. |
| 68.20.060 | Specific powers—Rule making and enforcement. |
| 68.20.061 | Specific powers—Control of property. |
| 68.20.062 | Specific powers—Regulation as to type of markers, monuments, etc. |
| 68.20.063 | Specific powers—Regulation or prohibition as to the erection of monuments, effigies, etc. |
| 68.20.064 | Specific powers—Regulation of plants and shrubs. |
| 68.20.065 | Specific powers—Prevention of interment. |
| 68.20.066 | Specific powers—Prevention of improper assemblages. |
| 68.20.067 | Specific powers—Rules and regulations for general purposes. |
| 68.20.070 | Rules and regulations—Posting. |
| 68.20.080 | Cities and counties may regulate cemeteries. |
| 68.20.090 | Permit required, when. |
| 68.20.110 | Nonprofit cemetery association—Tax exempt land—Irreducible fund—Bonds. |
| 68.20.120 | Sold lots exempt from taxes, etc.—Nonprofit associations. |
| 68.20.130 | Ground plans. |
| 68.20.140 | Certain cemeteries exempt from chapter. |

68.20.010 Incorporation required. It is unlawful for any corporation, copartnership, firm, trust, association, or individual to engage in or transact any of the businesses of a cemetery within this state except by means of a corporation duly organized for that purpose. [1943 c 247 § 42; Rem. Supp. 1943 § 3778-42.]

68.20.020 Corporations, how organized. Any private corporation authorized by its articles so to do, may establish, maintain, manage, improve, or operate a cemetery, and conduct any or all of the businesses of a cemetery, either for or without profit to its members or stockholders. A nonprofit cemetery corporation may be organized in the manner provided in chapter 24.03 RCW. A profit corporation may be organized in the manner provided in the general corporation laws of the state of Washington. [1983 c 3 § 167; 1943 c 247

(2004 Ed.)

§ 43; Rem. Supp. 1943 § 3778-43. Prior: 1899 c 33 § 1; 1856-7 p 28 § 1.]

68.20.030 Powers of existing corporations enlarged. The powers, privileges and duties conferred and imposed upon any corporation, firm, copartnership, association, trust, or individual, existing and doing business under the laws of this state, are hereby enlarged as each particular case may require to conform to the provisions of *this act. [1943 c 247 § 45; Rem. Supp. 1943 § 3778-45.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.20.040 Prior corporations not affected. The provisions of *this act do not affect the corporate existence or rights or powers of any cemetery organized under any law then existing prior to June 9, 1943, and as to such cemeteries and their rights, powers specified in their charters or articles of incorporation, the laws under which the corporation was organized and existed and under which such rights and powers become fixed or vested are applicable. [1943 c 247 § 44; Rem. Supp. 1943 § 3778-44.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.20.050 General powers of cemetery corporations. Unless otherwise limited by the law under which created[,] cemetery authorities shall in the conduct of their business have the same powers granted by law to corporations in general, including the right to contract such pecuniary obligations within the limitation of general law as may be required, and may secure them by mortgage, deed of trust, or otherwise upon their property. [1943 c 247 § 59; Rem. Supp. 1943 § 3778-59.]

68.20.060 Specific powers—Rule making and enforcement. A cemetery authority may make, adopt, amend, add to, revise, or modify, and enforce rules and regulations for the use, care, control, management, restriction and protection of all or any part of its cemetery and for the other purposes specified in RCW 68.20.061 through 68.20.067, 68.20.070 and *68.48.080. [1943 c 247 § 46; Rem. Supp. 1943 § 3778-46. Formerly RCW 68.20.070, part. FORMER PART OF SECTION: 1943 c 247 §§ 47 through 52 now codified as RCW 68.20.061 through 68.20.066.]

***Reviser's note:** RCW 68.48.080 was recodified as RCW 68.56.050 pursuant to 1987 c 331 § 89.

68.20.061 Specific powers—Control of property. It may restrict and limit the use of all property within its cemetery. [1943 c 247 § 47; Rem. Supp. 1943 § 3778-47. Formerly RCW 68.20.060, part.]

68.20.062 Specific powers—Regulation as to type of markers, monuments, etc. It may regulate the uniformity, class, and kind of all markers, monuments, and other structures within the cemetery and its subdivisions. [1943 c 247 § 48; Rem. Supp. 1943 § 3778-48. Formerly RCW 68.20.060, part.]

68.20.063 Specific powers—Regulation or prohibition as to the erection of monuments, effigies, etc. It may

regulate or prohibit the erection of monuments, markers, effigies, and structures within any portion of the cemetery. [1943 c 247 § 49; Rem. Supp. 1943 § 3778-49. Formerly RCW 68.20.060, part.]

68.20.064 Specific powers—Regulation of plants and shrubs. It may regulate or prevent the introduction or care of plants or shrubs within the cemetery. [1943 c 247 § 50; Rem. Supp. 1943 § 3778-50. Formerly RCW 68.20.060, part.]

68.20.065 Specific powers—Prevention of interment. It may prevent interment in any part of the cemetery of human remains not entitled to interment and prevent the use of interment plots for purposes violative of its restrictions or rules and regulations. [1943 c 247 § 51; Rem. Supp. 1943 § 3778-51. Formerly RCW 68.20.060, part.]

68.20.066 Specific powers—Prevention of improper assemblages. It may regulate the conduct of persons and prevent improper assemblages in the cemetery. [1943 c 247 § 52; Rem. Supp. 1943 § 3778-52. Formerly RCW 68.20.060, part.]

68.20.067 Specific powers—Rules and regulations for general purposes. It may make and enforce rules and regulations for all other purposes deemed necessary by the cemetery authority for the proper conduct of the business of the cemetery, for the transfer of any plot or the right of interment, and the protection and safeguarding of the premises, and the principles, plans, and ideals on which the cemetery is conducted. [1943 c 247 § 53; Rem. Supp. 1943 § 3778-53. Formerly RCW 68.20.070, part.]

68.20.070 Rules and regulations—Posting. The rules and regulations made pursuant to RCW 68.20.060 shall be plainly printed or typewritten and maintained subject to inspection in the office of the cemetery authority or in such place or places within the cemetery as the cemetery authority may prescribe. [1943 c 247 § 54; Rem. Supp. 1943 § 3778-54. FORMER PART OF SECTION: 1943 c 247 §§ 46 and 53 now codified as RCW 68.20.060 and 68.20.067.]

68.20.080 Cities and counties may regulate cemeteries. Cities and counties are authorized to enact ordinances regulating or prohibiting the establishment of new cemeteries or the extension of existing ones and to give power to local planning commissions to pass upon and make recommendations to local legislative bodies concerning the establishment or extension of cemeteries. [1943 c 247 § 143; Rem. Supp. 1943 § 3778-143.]

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.20.090 Permit required, when. It shall be unlawful for any person, firm, or corporation to establish or maintain any cemetery or to extend the boundaries of any existing cemetery in this state without a permit first having been applied for and permission obtained in accordance with the city and county ordinance and other zoning or statutory pro-

visions governing the same. [1943 c 247 § 144; Rem. Supp. 1943 § 3778-144.]

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.20.110 Nonprofit cemetery association—Tax exempt land—Irreducible fund—Bonds. *Such association shall be authorized to purchase or take by gift or devise, and hold land exempt from execution and from any appropriation to public purposes for the sole purpose of a cemetery not exceeding eighty acres, which shall be exempt from taxation if intended to be used exclusively for burial purposes without discrimination as to race, color, national origin or ancestry, and in nowise with a view to profit of the members of such association: PROVIDED, That when the land already held by the association is all practically used then the amount thereof may be increased by adding thereto not exceeding twenty acres at a time. Such association may by its bylaws provide that a stated percentage of the moneys realized from the sale of lots, donations or other sources of revenue, shall constitute an irreducible fund, which fund may be invested in such manner or loaned upon such securities as the association or the trustees thereof may deem proper. The interest or income arising from the irreducible fund, provided for in any bylaws, or so much thereof as may be necessary, shall be devoted exclusively to the preservation and embellishment of the lots sold to the members of such association, and where any bylaws has been enacted for the creation of an irreducible fund as herein provided for it cannot thereafter be amended in any manner whatever except for the purpose of increasing such fund. After paying for the land all the future receipts and income of such association subject to the provisions herein for the creation of an irreducible fund, whether from the sale of lots, from donations, rents or otherwise, shall be applied exclusively to laying out, preserving, protecting and embellishing the cemetery and the avenues leading thereto, and in the erection of such buildings as may be necessary or convenient for the cemetery purposes, and to paying the necessary expenses of the association. No debts shall be contracted in anticipation of any future receipts except for originally purchasing, laying out and embellishing the grounds and avenues, for which debts so contracted such association may issue bonds or notes and secure the same by way of mortgage upon any of its lands, excepting such lots as shall have been conveyed to the members thereof; and such association shall have power to adopt such rules and regulations as they shall deem expedient for disposing of and for conveying burial lots. [1961 c 103 § 2; 1899 c 33 § 3; RRS § 3766. Formerly RCW 68.20.110 and 68.24.200.]

*Reviser's note: The term "Such association" appears in 1899 c 33, which provided for the creation of cemetery associations under 1895 c 158 which was codified in chapter 24.16 RCW. Chapter 24.16 RCW was repealed by the Washington Nonprofit Corporation Act, 1967 c 235, chapter 24.03 RCW.

Construction—1961 c 103: See note following RCW 49.60.040.

Property taxes, exemptions: RCW 84.36.020.

68.20.120 Sold lots exempt from taxes, etc.—Nonprofit associations. Burial lots, sold by *such association shall be for the sole purpose of interment, and shall be exempt from taxation, execution, attachment or other claims, lien or

process whatsoever, if used as intended, exclusively for burial purposes and in nowise with a view to profit. [1899 c 33 § 5; RRS § 3768. Formerly RCW 68.24.210.]

***Reviser's note:** For "such association," see note following RCW 68.20.110.

*Cemetery property exempt from execution: RCW 68.24.220.
taxation: RCW 84.36.020.*

68.20.130 Ground plans. All *such associations shall cause a plan of their grounds and of the blocks and lots by them laid out, to be made and recorded, such blocks and lots to be numbered by regular consecutive numbers, and shall have power to enclose, improve and adorn the grounds and avenues, to erect buildings for the use of the association and to prescribe rules for the designation and adorning of lots and for erecting monuments in the cemetery, and to prohibit any use, division, improvement or adornment of a lot which they may deem improper. An annual exhibit shall be made of the affairs of the association. The plan, or plat, hereinbefore required, shall be recorded by the proper county auditor for a fee not to exceed ten cents a lot, and if the actual cost of recording the same shall be less than ten cents a lot, then said auditor shall record the same at the actual cost thereof. [1905 c 64 § 1; 1899 c 33 § 6; RRS § 3769. Formerly RCW 68.24.230.]

***Reviser's note:** For "such associations," see note following RCW 68.20.110.

County auditor's fees, generally: RCW 36.18.010.

68.20.140 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 33.]

Effective date—1987 c 331: See RCW 68.05.900.

Chapter 68.24 RCW CEMETERY PROPERTY

Sections

| | |
|-----------|--|
| 68.24.010 | Right to acquire property. |
| 68.24.020 | Surveys and maps. |
| 68.24.030 | Declaration of dedication and maps—Filing. |
| 68.24.040 | Dedication, when complete. |
| 68.24.050 | Constructive notice. |
| 68.24.060 | Maps and plats—Amendment. |
| 68.24.070 | Permanency of dedication. |
| 68.24.080 | Rule against perpetuities, etc., inapplicable. |
| 68.24.090 | Removal of dedication—Procedure. |
| 68.24.100 | Notice of hearing. |
| 68.24.110 | Sale of plots. |
| 68.24.115 | Execution of conveyances. |
| 68.24.120 | Plots indivisible. |
| 68.24.130 | Sale for resale prohibited—Penalty. |
| 68.24.140 | Commission on sales prohibited—Penalty. |
| 68.24.150 | Employment of "runners" prohibited—Penalty. |
| 68.24.160 | Liens subordinate to dedication. |
| 68.24.170 | Record of ownership and transfers. |
| 68.24.175 | Inspection of records. |
| 68.24.180 | Opening of roads, railroads through cemetery—Consent required—Exception. |
| 68.24.190 | Opening road through cemetery—Penalty. |
| 68.24.220 | Burying place exempt from execution. |
| 68.24.240 | Certain cemetery lands exempt from taxes, etc.—1901 c 147. |

68.24.010 Right to acquire property. Cemetery authorities may take by purchase, donation or devise, prop-
(2004 Ed.)

erty consisting of lands, mausoleums, crematories, and columbariums, or other property within which the interment of the dead may be authorized by law. [1943 c 247 § 61; Rem. Supp. 1943 § 3778-61.]

68.24.020 Surveys and maps. Every cemetery authority, from time to time as its property may be required for cemetery purposes, shall:

(1) In case of land, survey and subdivide it into sections, blocks, plots, avenues, walks, or other subdivisions; make a good and substantial map or plat showing the sections, plots, avenues, walks or other subdivisions, with descriptive names or numbers.

(2) In case of a mausoleum, or columbarium, it shall make a good and substantial map or plat on which shall be delineated the sections, halls, rooms, corridors, elevation, and other divisions, with descriptive names or numbers. [1943 c 247 § 62; Rem. Supp. 1943 § 3778-62.]

68.24.030 Declaration of dedication and maps—Filing. The cemetery authority shall file the map or plat in the office of the recorder of the county in which all or a portion of the property is situated. The cemetery authority shall also file for record in the county recorder's office a written declaration of dedication of the property delineated on the plat or map, dedicating the property exclusively to cemetery purposes. [1943 c 247 § 63; Rem. Supp. 1943 § 3778-63.]

County auditor: Chapter 36.22 RCW.

County auditor fees, generally: RCW 36.18.010.

68.24.040 Dedication, when complete. Upon the filing of the map or plat and the filing of the declaration for record, the dedication is complete for all purposes and thereafter the property shall be held, occupied, and used exclusively for a cemetery and for cemetery purposes. [1943 c 247 § 64; Rem. Supp. 1943 § 3778-64.]

68.24.050 Constructive notice. The filed map or plat and the recorded declaration are constructive notice to all persons of the dedication of the property to cemetery purposes. [1943 c 247 § 66; Rem. Supp. 1943 § 3778-66.]

68.24.060 Maps and plats—Amendment. Any part or subdivision of the property so mapped and plotted may, by order of the directors, be resurveyed and altered in shape and size and an amended map or plat filed, so long as such change does not disturb the interred remains of any deceased person. [1943 c 247 § 65; Rem. Supp. 1943 § 3778-65.]

68.24.070 Permanency of dedication. After property is dedicated to cemetery purposes pursuant to RCW 68.24.010 through 68.24.060, neither the dedication, nor the title of a plot owner, shall be affected by the dissolution of the cemetery authority, by nonuser on its part, by alienation of the property, by any incumbrances, by sale under execution, or otherwise except as provided in *this act. [1943 c 247 § 67; Rem. Supp. 1943 § 3778-67.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.24.080 Rule against perpetuities, etc., inapplicable. Dedication to cemetery purposes pursuant to *this act is not invalid as violating any laws against perpetuities or the suspension of the power of alienation of title to or use of property, but is expressly permitted and shall be deemed to be in respect for the dead, a provision for the interment of human remains, and a duty to, and for the benefit of, the general public. [1943 c 247 § 68; Rem. Supp. 1943 § 3778-68.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

68.24.090 Removal of dedication—Procedure. Property dedicated to cemetery purposes shall be held and used exclusively for cemetery purposes, unless and until the dedication is removed from all or any part of it by an order and decree of the superior court of the county in which the property is situated, in a proceeding brought by the cemetery authority for that purpose and upon notice of hearing and proof satisfactory to the court:

(1) That no interments were made in or that all interments have been removed from that portion of the property from which dedication is sought to be removed.

(2) That the portion of the property from which dedication is sought to be removed is not being used for interment of human remains.

(3) That notice of the proposed removal of dedication has been given in writing to both the cemetery board and the office of archaeology and historic preservation. This notice must be given at least sixty days before filing the proceedings in superior court. The notice of the proposed removal of dedication shall be recorded with the auditor or recording officer of the county where the cemetery is located at least sixty days before filing the proceedings in superior court. [1999 c 367 § 2; 1987 c 331 § 34; 1943 c 247 § 76; Rem. Supp. 1943 § 3778-76.]

Effective date—1987 c 331: See RCW 68.05.900.

68.24.100 Notice of hearing. The notice of hearing provided in RCW 68.24.090 shall be given by publication once a week for at least three consecutive weeks in a newspaper of general circulation in the county where said cemetery is located, and the posting of copies of the notice in three conspicuous places on that portion of the property from which the dedication is to be removed. Said notice shall:

(1) Describe the portion of the cemetery property sought to be removed from dedication.

(2) State that all remains have been removed or that no interments have been made in the portion of the cemetery property sought to be removed from dedication.

(3) Specify the time and place of the hearing. [1943 c 247 § 77; Rem. Supp. 1943 § 3778-77.]

68.24.110 Sale of plots. After filing the map or plat and recording the declaration of dedication, a cemetery authority may sell and convey plots subject to such rules and regulations as may be then in effect or thereafter adopted by the cemetery authority, and subject to such other and further limitations, conditions and restrictions as may be inserted in or made a part of the declaration of dedication by reference, or included in the instrument of conveyance of such plot. [1943 c 247 § 70; Rem. Supp. 1943 § 3778-70. FORMER PART

OF SECTION: 1943 c 247 § 72 now codified as RCW 68.24.115.]

68.24.115 Execution of conveyances. All conveyances made by a cemetery authority shall be signed by such officer or officers as are authorized by the cemetery authority. [1943 c 247 § 72; Rem. Supp. 1943 § 3778-72. Formerly RCW 68.24.110, part.]

68.24.120 Plots indivisible. All plots, the use of which has been conveyed by deed or certificate of ownership as a separate plot, are indivisible except with the consent of the cemetery authority, or as provided by law. [1943 c 247 § 71; Rem. Supp. 1943 § 3778-71.]

68.24.130 Sale for resale prohibited—Penalty. It shall be unlawful for any person, firm or corporation to sell or offer to sell a cemetery plot upon the promise, representation or inducement of resale at a financial profit. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 73; Rem. Supp. 1943 § 3778-73.]

68.24.140 Commission on sales prohibited—Penalty. It shall be unlawful for a cemetery authority to pay or offer to pay to any person, firm or corporation, directly or indirectly, a commission or bonus or rebate or other thing of value for the sale of a plot or services. This shall not apply to a person regularly employed by the cemetery authority for such purpose. Each person violating this section shall be guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 74; Rem. Supp. 1943 § 3778-74.]

68.24.150 Employment of "runners" prohibited—Penalty. Every person who pays or causes to be paid or offers to pay to any other person, firm, or corporation, directly or indirectly, except as provided in RCW 68.24.140, any commission or bonus or rebate, or other thing of value in consideration of recommending or causing a dead human body to be disposed of in any crematory or cemetery, is guilty of a misdemeanor and each violation shall constitute a separate offense. [1943 c 247 § 75; Rem. Supp. 1943 § 3778-75.]

68.24.160 Liens subordinate to dedication. All mortgages, deeds of trust and other liens of any nature, hereafter contracted, placed or incurred upon property which has been and was at the time of the creation or placing of the lien, dedicated as a cemetery pursuant to this part, or upon property which is afterwards, with the consent of the owner of any mortgage, trust deed or lien, dedicated to cemetery purposes pursuant to this part, shall not affect or defeat the dedication, but the mortgage, deed of trust, or other lien is subject and subordinate to such dedication and any and all sales made upon foreclosure are subject and subordinate to the dedication for cemetery purposes. [1943 c 247 § 60; Rem. Supp. 1943 § 3778-60.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.24.170 Record of ownership and transfers. A record shall be kept of the ownership of all plots in the ceme-

tery which have been conveyed by the cemetery authority and of all transfers of plots in the cemetery. No transfer of any plot, heretofore or hereafter made, or any right of interment, shall be complete or effective until recorded on the books of the cemetery authority. [1943 c 247 § 40; Rem. Supp. 1943 § 3778-40. FORMER PART OF SECTION: 1943 c 247 § 41 now codified as RCW 68.24.175.]

68.24.175 Inspection of records. The records shall be open to inspection during the customary office hours of the cemetery. [1943 c 247 § 41; Rem. Supp. 1943 § 3778-41. Formerly RCW 68.24.170, part.]

68.24.180 Opening of roads, railroads through cemetery—Consent required—Exception. After dedication under this title, and as long as the property remains dedicated to cemetery purposes, a railroad, street, road, alley, pipe line, pole line, or other public thoroughfare or utility shall not be laid out, through, over, or across any part of it without the consent of the cemetery authority owning and operating it, or of not less than two-thirds of the owners of interment plots: PROVIDED HOWEVER, That a city of under twenty thousand may initiate, prior to January 1, 1995, an action to condemn cemetery property if the purpose is to further improve an existing street, or other public improvement and the proposed improvement does not interfere with existing interment plots containing human remains. [1994 c 273 § 20; 1984 c 7 § 369; 1959 c 217 § 1; 1947 c 69 § 1; 1943 c 247 § 69; Rem. Supp. 1947 § 3778-69.]

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

68.24.190 Opening road through cemetery—Penalty. Every person who shall make or open any road, or construct any railway, turnpike, canal, or other public easement over, through, in, or upon, such part of any inclosure as may be used for the burial of the dead, without authority of law or the consent of the owner thereof, shall be guilty of a misdemeanor. [1909 c 249 § 241; RRS § 2493.]

68.24.220 Burying place exempt from execution. Whenever any part of *such burying ground shall have been designated and appropriated by the proprietors thereof as the burying place of any particular person or family, the same shall not be liable to be taken or disposed of by any warrant or execution, for any tax or debt whatever; nor shall the same be liable to be sold to satisfy the demands of creditors whenever the estate of such owner shall be insolvent. [1857 p 28 § 2; RRS § 3760.]

***Reviser's note:** The phrase "such burying ground" appears in 1856-57 p 28, which provided for the creation of corporations for the purpose of establishing a burying ground or place of sepulture.

Cemetery property exempt from taxation: RCW 84.36.020.

68.24.240 Certain cemetery lands exempt from taxes, etc.—1901 c 147. Upon compliance with the requirements of *this act said lands shall forever be exempt from taxation, judgment and other liens and executions. [1901 c 147 § 4; RRS § 3763.]

***Reviser's note:** "this act" appears in 1901 c 147, the remaining sections of which were repealed by 1943 c 247 § 148. These sections read as follows:

(2004 Ed.)

"Section 1. Any person owning any land, exclusive of encumbrances of any kind, situate two miles outside of the corporate limits of any incorporated city or town, may have the same reserved exclusively for burial and cemetery purposes by complying with the terms of this act, provided said lands so sought to be reserved shall not exceed in area one acre.

Sec. 2. Such person or persons shall cause such land to be surveyed and platted.

Sec. 3. A deed of dedication of said tract for burial and cemetery purposes with a copy of said plat shall be filed with the county auditor of the county in which said lands are situated and the title thereto shall be and remain in the owner, his heirs and assigns, subject to the trust aforesaid."

Property taxes, exemptions: RCW 84.36.020.

Chapter 68.28 RCW

MAUSOLEUMS AND COLUMBARIUMS

Sections

| | |
|-----------|---|
| 68.28.010 | Sections applicable to mausoleums, columbariums, etc. |
| 68.28.020 | Building converted to use as a place of interment. |
| 68.28.030 | Standards of construction. |
| 68.28.040 | Fireproof construction. |
| 68.28.050 | Ordinances and specifications to be complied with. |
| 68.28.060 | Improper construction a nuisance—Penalty. |
| 68.28.065 | Court to fix costs. |
| 68.28.070 | Construction in compliance with existing laws. |

68.28.010 Sections applicable to mausoleums, columbariums, etc. RCW 68.28.020 through 68.28.070, 68.20.080, 68.20.090, *68.48.040 and 68.48.060, apply to all buildings, mausoleums and columbariums used or intended to be used for the interment of the remains of fifteen or more persons whether erected under or above the surface of the earth where any portion of the building is exposed to view or, when interment is completed, is less than three feet below the surface of the earth and covered by earth. [1943 c 247 § 134; Rem. Supp. 1943 § 3778-134.]

***Reviser's note:** RCW 68.48.040 and 68.48.060 have been recodified as RCW 68.56.040 and 68.56.050, respectively, pursuant to 1987 c 331 § 89.

68.28.020 Building converted to use as a place of interment. A building not erected for, or which is not used as, a place of interment of human remains which is converted or altered for such use is subject to *this act. [1943 c 247 § 135; Rem. Supp. 1943 § 3778-135.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.28.030 Standards of construction. No building or structure intended to be used for the interment of human remains shall be constructed, and a building not used for the interment of human remains shall not be altered for use or used for interment purposes, unless constructed of such material and workmanship as will insure its durability and permanence as dictated and determined at the time by modern mausoleum construction and engineering science. [1943 c 247 § 136; Rem. Supp. 1943 § 3778-136.]

68.28.040 Fireproof construction. All mausoleums or columbariums hereafter constructed shall be of class A fireproof construction. [1943 c 247 § 137; Rem. Supp. 1943 § 3778-137.]

Effective date—1943 c 247: See note following RCW 68.20.040.

68.28.050 Ordinances and specifications to be complied with. If the proposed site is within the jurisdiction of a

city having ordinances and specifications governing class A construction, the provisions of the local ordinances and specifications shall not be violated. [1943 c 247 § 138; Rem. Supp. 1943 § 3778-138.]

68.28.060 Improper construction a nuisance—Penalty. Every owner or operator of a mausoleum or columbarium erected in violation of *this act is guilty of maintaining a public nuisance, a gross misdemeanor, and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case. [2003 c 53 § 306; 1943 c 247 § 140; Rem. Supp. 1943 § 3778-140.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

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

68.28.065 Court to fix costs. The costs, expenses and disbursements shall be fixed by the court having jurisdiction of the case. [1943 c 247 § 141; Rem. Supp. 1943 § 3778-141.]

68.28.070 Construction in compliance with existing laws. The penalties of *this act shall not apply as to any building which, at the time of construction was constructed in compliance with the laws then existing, if its use is not in violation of the laws for the protection of public health. [1943 c 247 § 142; Rem. Supp. 1943 § 3778-142.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

Chapter 68.32 RCW

TITLE AND RIGHTS TO CEMETERY PLOTS

Sections

| | |
|-----------|---|
| 68.32.010 | Presumption as to title. |
| 68.32.020 | Vested right of spouse. |
| 68.32.030 | Vested right—Termination. |
| 68.32.040 | Descent of title to plot. |
| 68.32.050 | Affidavit as authorization. |
| 68.32.060 | Family plot—Alienability. |
| 68.32.070 | Joint tenants—Vested rights. |
| 68.32.080 | Joint tenants—Survivorship. |
| 68.32.090 | Joint tenants—Identification. |
| 68.32.100 | Co-owners may designate representative. |
| 68.32.110 | Order of interment—General. |
| 68.32.120 | Order of interment, when no parent or child survives. |
| 68.32.130 | Waiver of right of interment. |
| 68.32.140 | Termination of vested right by waiver. |
| 68.32.150 | Limitations on vested rights. |
| 68.32.160 | Conveyance of plot to cemetery authority, effect. |
| 68.32.170 | Exemption from inheritance tax. |

68.32.010 Presumption as to title. All plots conveyed to individuals are presumed to be the sole and separate property of the owner named in the instrument of conveyance. [1943 c 247 § 88; Rem. Supp. 1943 § 3778-88.]

68.32.020 Vested right of spouse. The spouse of an owner of any plot containing more than one interment space has a vested right of interment of his remains in the plot and any person thereafter becoming the spouse of the owner has a

vested right of interment of his remains in the plot if more than one interment space is unoccupied at the time the person becomes the spouse of the owner. [1943 c 247 § 89; Rem. Supp. 1943 § 3778-89.]

68.32.030 Vested right—Termination. No conveyance or other action of the owner without the written consent or joinder of the spouse of the owner divests the spouse of a vested right of interment, except that a final decree of divorce between them terminates the vested right of interment unless otherwise provided in the decree. [1943 c 247 § 90; Rem. Supp. 1943 § 3778-90.]

68.32.040 Descent of title to plot. If no interment is made in an interment plot which has been transferred by deed or certificate of ownership to an individual owner, or if all remains previously interred are lawfully removed, upon the death of the owner, unless the owner has disposed of the plot either by specific devise or by a written declaration filed and recorded in the office of the cemetery authority, the plot descends to the surviving spouse or, if there is no surviving spouse, to the heirs at law of the owner subject to the rights of interment of the decedent. [1979 c 21 § 15; 1943 c 247 § 91; Rem. Supp. 1943 § 3778-91.]

68.32.050 Affidavit as authorization. An affidavit by a person having knowledge of the facts setting forth the fact of the death of the owner and the name of the person or persons entitled to the use of the plot pursuant to RCW 68.32.010 through 68.32.040, is complete authorization to the cemetery authority to permit the use of the unoccupied portions of the plot by the person entitled to the use of it. [1943 c 247 § 93; Rem. Supp. 1943 § 3778-93.]

68.32.060 Family plot—Alienability. Whenever an interment of the remains of a member or of a relative of a member of the family of the record owner or of the remains of the record owner is made in a plot transferred by deed or certificate of ownership to an individual owner and both the owner and the surviving spouse, if any, die with children then living without making disposition of the plot either by a specific devise, or by a written declaration filed and recorded in the office of the cemetery authority, the plot shall thereafter be held as a family plot and shall be subject to alienation only upon agreement of the children of the owner living at the time of said alienation. [1979 c 21 § 16; 1943 c 247 § 98; Rem. Supp. 1943 § 3778-98.]

68.32.070 Joint tenants—Vested rights. In a conveyance to two or more persons as joint tenants each joint tenant has a vested right of interment in the plot conveyed. [1943 c 247 § 94; Rem. Supp. 1943 § 3778-94.]

68.32.080 Joint tenants—Survivorship. Upon the death of a joint tenant, the title to the plot held in joint tenancy immediately vests in the survivors, subject to the vested right of interment of the remains of the deceased joint tenant. [1943 c 247 § 95; Rem. Supp. 1943 § 3778-95.]

Joint tenants, simultaneous death: RCW 11.05.030.

68.32.090 Joint tenants—Identification. An affidavit by any person having knowledge of the facts setting forth the fact of the death of one joint tenant and establishing the identity of the surviving joint tenants named in the deed to any plot, when filed with the cemetery authority operating the cemetery in which the plot is located, is complete authorization to the cemetery authority to permit the use of the unoccupied portion of the plot in accordance with the directions of the surviving joint tenants or their successors in interest. [1943 c 247 § 96; Rem. Supp. 1943 § 3778-96.]

68.32.100 Co-owners may designate representative. When there are several owners of a plot, or of rights of interment in it, they may designate one or more persons to represent the plot and file written notice of designation with the cemetery authority. In the absence of such notice or of written objection to its so doing, the cemetery authority is not liable to any owner for interring or permitting an interment in the plot upon the request or direction of any co-owner of the plot. [1943 c 247 § 97; Rem. Supp. 1943 § 3778-97.]

68.32.110 Order of interment—General. In a family plot one grave, niche or crypt may be used for the owner's interment; one for the owner's surviving spouse, if any, who by law has a vested right of interment in it; and in those remaining, if any, the parents and children of the deceased owner in order of death may be interred without the consent of any person claiming any interest in the plot. [1943 c 247 § 99; Rem. Supp. 1943 § 3778-99.]

68.32.120 Order of interment, when no parent or child survives. If no parents or child survives, the right of interment goes in the order of death first, to the spouse of any child of the record owner, and second, in the order of death to the next heirs at law of the owner or the spouse of any heir at law. [1943 c 247 § 100; Rem. Supp. 1943 § 3778-100.]

68.32.130 Waiver of right of interment. Any surviving spouse, parent, child, or heir having a right of interment in a family plot may waive such right in favor of any other relative or spouse of a relative of the deceased owner; and upon such waiver the remains of the person in whose favor the waiver is made may be interred in the plot. [1943 c 247 § 101; Rem. Supp. 1943 § 3778-101.]

68.32.140 Termination of vested right by waiver. A vested right of interment may be waived and is terminated upon the interment elsewhere of the remains of the person in whom vested. [1943 c 247 § 102; Rem. Supp. 1943 § 3778-102.]

68.32.150 Limitations on vested rights. No vested right of interment gives to any person the right to have his remains interred in any interment space in which the remains of any deceased person having a prior vested right of interment have been interred, nor does it give any person the right to have the remains of more than one deceased person interred in a single interment space in violation of the rules and regulations of the cemetery in which the interment space is located. [1943 c 247 § 103; Rem. Supp. 1943 § 3778-103.]

(2004 Ed.)

68.32.160 Conveyance of plot to cemetery authority, effect. A cemetery authority may take and hold any plot conveyed or devised to it by the plot owner so that it will be inalienable, and interments shall be restricted to the persons designated in the conveyance or devise. [1943 c 247 § 104; Rem. Supp. 1943 § 3778-104.]

68.32.170 Exemption from inheritance tax. Cemetery property passing to an individual by reason of the death of the owner is exempt from all inheritance taxes. [1943 c 247 § 92; Rem. Supp. 1943 § 3778-92.]

Reviser's note: The inheritance tax was repealed by 1981 2nd ex.s. c 7 § 83.100.160 (Initiative Measure No. 402). See RCW 83.100.900. For later enactment, see chapter 83.100 RCW.

Chapter 68.36 RCW ABANDONED LOTS

Sections

| | |
|-----------|---|
| 68.36.010 | Sale of abandoned space—Presumption of abandonment. |
| 68.36.020 | Notice—Requisites—Limitation on placing. |
| 68.36.030 | Petition for order of abandonment—Notice and hearing. |
| 68.36.040 | Service of notice. |
| 68.36.050 | Hearing—Order—Attorney's fee. |
| 68.36.060 | Contract for care before adjudication. |
| 68.36.070 | Contract for care within one year after adjudication. |
| 68.36.080 | Sale after one year. |
| 68.36.090 | Disposition of proceeds. |
| 68.36.100 | Petition may cover several lots. |

68.36.010 Sale of abandoned space—Presumption of abandonment. The ownership of or right in or to unoccupied cemetery space in this state shall, upon abandonment, be subject to forfeiture and sale by the person, association, corporation or municipality having ownership or management of the cemetery containing such unoccupied cemetery space, for the purpose of providing for *perpetual care. The continued failure by an owner to maintain or care for an unoccupied cemetery lot, unoccupied part of lot, unoccupied lots or parts of lots for a period of five years shall create and establish a presumption that the same has been abandoned. [1943 c 247 § 78; Rem. Supp. 1943 § 3778-78.]

***Reviser's note:** The term "perpetual care" referred to herein originally appeared throughout this chapter and chapters 68.40 and 68.44 RCW. The legislature in 1953 c 290 amended most sections in these chapters to read "endowment care." 1953 c 290 § 24 provides that it is a misdemeanor for any cemetery authority, cemetery broker, etc., to represent that any fund set up for maintaining care is perpetual. See RCW 68.40.085.

68.36.020 Notice—Requisites—Limitation on placing. Before such five year period shall commence to run, the owner or manager of the cemetery shall place upon and during such five year period shall maintain upon such unoccupied cemetery space a suitable notice, setting forth the date the notice is placed thereon and stating that such unoccupied space is subject to forfeiture and sale by the owner or manager of the cemetery to provide for *perpetual care, if the owner of such unoccupied space fails during the next five years following the date of the notice to maintain or care for the same or unless the owner of such unoccupied space contracts for the *perpetual care of the same: PROVIDED, HOWEVER, That such a notice cannot be placed on the unoccupied space in any cemetery lot until twenty years have elapsed since the last interment in any such lot of a member

of the immediate family of the record owner. Members of the immediate family shall be construed to include surviving spouse, children, parents, and brothers and sisters. [1943 c 247 § 79; Rem. Supp. 1943 § 3778-79.]

***Reviser's note:** For "perpetual care," see note following RCW 68.36.010.

68.36.030 Petition for order of abandonment—Notice and hearing. After such five year period, the owner or manager of the cemetery may file in the office of the county clerk for the county in which the cemetery is located a verified petition, setting forth its ownership or management of the cemetery, the facts relating to the continued failure by the owner for a period of five consecutive years to maintain or care for such cemetery lot, part of lot, lots or parts of lots and such facts relating to the ownership thereof as petitioner may have, and asking for an order of the superior court for such county, adjudging the lot, part of lot, lots or parts of lots to have been abandoned.

At the time of filing such petition, the owner or manager of the cemetery shall apply for and the superior court for such county shall fix a time for the hearing of the petition not less than sixty days nor more than ninety days from the time of the application. Not less than sixty days before the time fixed for the hearing of the petition, notice of the hearing and the nature and object of the same shall be given to the owner of such unoccupied space, as herein provided. [1943 c 247 § 80; Rem. Supp. 1943 § 3778-80.]

68.36.040 Service of notice. The notice may be served personally upon the owner, or may be given by the mailing of the notice by registered mail to the owner to his last known address and by publishing the notice three times in a legal newspaper published in the county in which the cemetery is located, and if there be no legal newspaper in the county, then in a legal newspaper published in an adjoining county, and if there be no legal newspaper in an adjoining county, then in a legal newspaper published at the capital of the state. In the event that the whereabouts of the owner is unknown, or if the owner be unknown, then the notice may be given to such owner, unknown owner or unknown claimant, and all other persons or parties claiming any right, title or interest therein, by publishing the notice three times in a legal newspaper as aforesaid. The affidavit of the owner or manager of the cemetery involved to the effect that such owner or claimant is unknown to him and that he exercised diligence in attempting to locate such unknown parties shall, if filed in the proceeding, be conclusive to that effect. [1943 c 247 § 81; Rem. Supp. 1943 § 3778-81.]

68.36.050 Hearing—Order—Attorney's fee. Thereupon, such owner or claimant may appear and make answer to the allegations of said petition, and in case of his failure so to do prior to the day fixed for hearing, his default shall be entered and it shall then be the duty of the superior court for such county to immediately enter an order adjudging such unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation or municipality having ownership or management of the cemetery containing the same. In the event the owner or

claimant shall appear and file his answer prior to the day fixed for the hearing, the presumption of abandonment shall no longer exist, and on the day fixed for the hearing of said petition or on any subsequent day to which the hearing of the cause is adjourned, the allegations and proof of the parties shall be presented to the court and if the court shall determine therefrom that there has been a continued failure to maintain or care for such unoccupied space for a period of five consecutive years preceding the filing of said petition, an order shall be entered accordingly adjudging such unoccupied space to have been abandoned and subject to sale at the expiration of one year by the person, association, corporation or municipality having ownership of the cemetery containing the same. Upon any adjudication of abandonment, the court shall fix such sum as it shall deem reasonable as an attorney's fee for petitioner's attorney for each lot, part of lot, lots or parts of lots adjudged to have been abandoned in such proceedings. [1943 c 247 § 82; Rem. Supp. 1943 § 3778-82.]

68.36.060 Contract for care before adjudication. If at any time before the adjudication of abandonment the owner of an unoccupied space contracts with the owner or manager of the cemetery for the endowment care of the space, the court shall dismiss the proceedings as to such unoccupied space. [1953 c 290 § 1; 1943 c 247 § 83; Rem. Supp. 1943 § 3778-83.]

68.36.070 Contract for care within one year after adjudication. If at any time within one year after the adjudication of abandonment, the former owner of the unoccupied space shall contract for its endowment care, and reimburse the owner or manager of the cemetery for the expense of the proceedings, including attorney's fees, the space shall not be sold and the order adjudging it to have been abandoned shall be vacated upon petition of the former owner. [1953 c 290 § 2; 1943 c 247 § 84; Rem. Supp. 1943 § 3778-84.]

68.36.080 Sale after one year. One year after the entry of the order adjudging such lot, part of lot, lots or parts of lots to have been abandoned, the owner or manager of the cemetery in which the same is located shall have the power to sell the same, in whole or in part, at public or private sale, and convey by deed good, clear and sufficient title thereto. [1943 c 247 § 85; Rem. Supp. 1943 § 3778-85.]

68.36.090 Disposition of proceeds. Not more than twenty percent of the funds realized from the sale of abandoned space shall be used to defray the expenses of the proceedings to abandon, and the improving of it in such manner as to place it in condition for care, and the balance shall be placed immediately in a trust fund or shall be immediately transferred to a nonprofit organization to be used exclusively for the endowment care and maintenance of the cemetery. [1953 c 290 § 3; 1943 c 247 § 86; Rem. Supp. 1943 § 3778-86.]

68.36.100 Petition may cover several lots. In any one petition for abandonment, a petitioner may, irrespective of diversity of ownership, include in any such petition as many lots or parts of lots as come within the provisions of *this act.

The petition for abandonment shall be entitled: "In the Matter of the Abandonment, Forfeiture and Sale of Unoccupied and Uncared for Space located in Cemetery." [1943 c 247 § 87; Rem. Supp. 1943 § 3778-87.]

*Reviser's note: For "this act," see note following RCW 68.04.020.

Chapter 68.40 RCW

ENDOWMENT AND NONENDOWMENT CARE

Sections

- 68.40.010 Cemetery authorities—Deposit in endowment care fund required.
- 68.40.025 Nonendowed sections—Identification.
- 68.40.040 Endowment care fiscal reports—Review by plot owners.
- 68.40.060 May accept property in trust—Application of income.
- 68.40.085 Representing fund as perpetual—Penalty.
- 68.40.090 Penalty.
- 68.40.095 Certain cemeteries exempt from chapter.
- 68.40.100 Only nonendowment care cemeteries now in existence are authorized.
- 68.40.900 Effective date—1987 c 331.

68.40.010 Cemetery authorities—Deposit in endowment care fund required. After July 1, 1987, a cemetery authority not exempt under this chapter shall deposit in an endowment care fund not less than the following amounts for plots sold: Ten percent of the gross sales price, with a minimum of ten dollars for each adult grave; ten percent of the gross sales price, with a minimum of five dollars for each niche; and ten percent of the gross sales price, with a minimum of thirty dollars for each crypt.

In the event that a cemetery authority sells a lot, crypt, or niche at a price that is less than its current list price, or gives away, bequeaths, or otherwise gives title to a lot, crypt, or niche, such lot, crypt, or niche shall be endowed at the rate at which it would normally be endowed: A minimum of ten percent of normal sales price or ten dollars per lot, whichever is greater; ten percent of normal sales price or five dollars per niche, whichever is greater; and ten percent of normal sales price or thirty dollars per crypt, whichever is greater.

The deposits shall be made not later than the twentieth day of the month following the final payment on the sale price. If a contract for crypts, niches, or graves is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the endowment care fund ten percent of the gross sales price with a minimum of ten dollars for each adult grave, five dollars for each niche, and thirty dollars for each crypt within twenty days of receipt of payment of the proceeds from such sale or loan.

Any cemetery hereafter established shall have deposited in an endowment care fund the sum of twenty-five thousand dollars before disposing of any plot or making any sale thereof. [1987 c 331 § 35; 1984 c 53 § 1; 1961 c 133 § 2; 1953 c 290 § 4; 1943 c 247 § 118; Rem. Supp. 1943 § 3778-118.]

68.40.025 Nonendowed sections—Identification. Cemeteries with nonendowed sections opened before July 1, 1987, shall only be required to endow sections opened after July 1, 1987. On the face of any contract, receipt, or deed used for sales of nonendowed lots shall be prominently displayed the words "Nonendowment section." All nonen-

dowed sections shall be identified as such by posting of a legible sign containing the following phrase: "Nonendowment section." [1987 c 331 § 36.]

68.40.040 Endowment care fiscal reports—Review by plot owners. A cemetery authority not exempt under this chapter shall file in its principal office for review by plot owners the previous seven fiscal years' endowment care reports as filed with the cemetery board in accordance with RCW 68.44.150. [1987 c 331 § 37; 1953 c 290 § 7; 1943 c 247 § 122; Rem. Supp. 1943 § 3778-122.]

68.40.060 May accept property in trust—Application of income. The cemetery authority of an endowment care cemetery may accept any property bequeathed, granted, or given to it in trust and may apply the income from such property bequeathed, granted, or given to in trust to any or all of the following purposes:

- (1) Improvement or embellishment of all or any part of the cemetery or any lot in it;
- (2) Erection, renewal, repair, or preservation of any monument, fence, building, or other structure in the cemetery;
- (3) Planting or cultivation of trees, shrubs, or plants in or around any part of the cemetery;
- (4) Special care or ornamenting of any part of any plot, section, or building in the cemetery; and
- (5) Any purpose or use consistent with the purpose for which the cemetery was established or is maintained. [1987 c 331 § 38; 1953 c 290 § 8; 1943 c 247 § 129; Rem. Supp. 1943 § 3778-129.]

68.40.085 Representing fund as perpetual—Penalty. It is a misdemeanor for any cemetery authority, its officers, employees, or agents, or a cemetery broker or salesman to represent that an endowment care fund, or any other fund set up for maintaining care, is perpetual. [1953 c 290 § 24.]

68.40.090 Penalty. Any person, partnership, corporation, association, or his or its agents or representatives who shall violate any of the provisions of this chapter or make any false statement appearing on any sign, contract, agreement, receipt, statement, literature or other publication shall be guilty of a misdemeanor. [1987 c 331 § 39; 1943 c 247 § 125; Rem. Supp. 1943 § 3778-125.]

68.40.095 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 40.]

68.40.100 Only nonendowment care cemeteries now in existence are authorized. After June 7, 1979, no nonendowment care cemetery may be established. However, any nonendowment care cemetery in existence on June 7, 1979, may continue to operate as a nonendowment care cemetery. [1979 c 21 § 18.]

68.40.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.44 RCW
ENDOWMENT CARE FUND

Sections

| | |
|-----------|--|
| 68.44.010 | Funds authorized—Investments. |
| 68.44.020 | Use and care of funds. |
| 68.44.030 | Authorized investments. |
| 68.44.060 | Unauthorized loans—Penalty. |
| 68.44.070 | Purpose of endowment care—Validity. |
| 68.44.080 | Plans for care—Source of fund. |
| 68.44.090 | Covenant to care for cemetery. |
| 68.44.100 | Agreement by owner to care for plot. |
| 68.44.110 | Trustees of fund. |
| 68.44.115 | Trustee to file statement with board—Resignation of trusteeship. |
| 68.44.120 | Directors as trustees—Secretary. |
| 68.44.130 | Bank or trust company as trustee. |
| 68.44.140 | Compensation of trustees. |
| 68.44.150 | Annual report of condition of fund. |
| 68.44.160 | Contributions. |
| 68.44.170 | Use of income from fund. |
| 68.44.180 | Certain cemeteries exempt from chapter. |
| 68.44.900 | Effective date—1987 c 331. |

68.44.010 Funds authorized—Investments. Any cemetery authority not exempt under chapter 68.40 RCW shall establish, maintain, and operate an inviolable endowment care fund. Endowment care, special care, and other cemetery authorities' endowment care funds may be commingled for investment and the income therefrom shall be divided between the funds in the proportion that each contributed to the sum invested. The funds shall be held in the name of the trustees appointed by the cemetery authority with the words "endowment care fund" being a part of the name. [1987 c 331 § 41; 1953 c 290 § 11; 1943 c 247 § 105; Rem. Supp. 1943 § 3778-105.]

68.44.020 Use and care of funds. Endowment care funds shall not be used for any purpose other than to provide, through income only, for the endowment care stipulated in the instrument by which the fund was established, and shall be kept separate and distinct from all assets of the cemetery authority. The principal shall forever remain inviolable and may not be reduced in any way not found within RCW 11.100.020. [1987 c 331 § 42; 1953 c 290 § 12. Prior: (i) 1943 c 247 § 106; Rem. Supp. 1943 § 3778-106. (ii) 1943 c 247 § 126; Rem. Supp. 1943 § 3778-126.]

68.44.030 Authorized investments. Endowment care funds shall be kept invested in accordance with the provisions of RCW 11.100.020 subject to the following restrictions:

(1) No officer or director of the cemetery authority, trustee of the endowment care or special care funds, or spouse, sibling, parent, grandparent, or issue of such officer, director, or trustee, shall borrow any of such funds for himself, directly or indirectly.

(2) No funds shall be loaned to the cemetery authority, its agents, or employees, or to any corporation, partnership, or other business entity in which the cemetery authority has any ownership interest.

(3) No funds shall be invested with persons or business entities operating in a business field directly related to cemeteries, including, but not limited to, mortuaries, monument production and sales, florists, and rental of funeral facilities.

(4) Notwithstanding any other provisions contained in this section, funds may be invested in any commercial bank, mutual savings bank, or savings and loan association duly chartered and operating under the laws of the United States or statutes of the state of Washington. [1985 c 30 § 138. Prior: 1984 c 149 § 175; 1979 c 21 § 19; 1953 c 290 § 13; 1943 c 247 § 127; Rem. Supp. 1943 § 3778-127.]

Short title—Application—Purpose—Severability—1985 c 30: See RCW 11.02.900 through 11.02.903.

Severability—Effective dates—1984 c 149: See notes following RCW 11.02.005.

68.44.060 Unauthorized loans—Penalty. Every director or officer authorizing or consenting to a loan, and the person who receives a loan, in violation of RCW 68.44.030 are severally guilty of a class C felony punishable under chapter 9A.20 RCW. [1984 c 53 § 2; 1943 c 247 § 133; Rem. Supp. 1943 § 3778-133.]

68.44.070 Purpose of endowment care—Validity. The endowment care and special care funds and all payments or contributions thereto are hereby expressly permitted for charitable and eleemosynary purposes. Endowment care and such contributions are provisions for the discharge of a duty from the persons contributing to the persons interred and to be interred in the cemetery and provisions for the benefit and protection of the public by preserving and keeping cemeteries from becoming unkempt and places of reproach and desolation in the communities in which they are situated. No payment, or contribution for general endowment care, is invalid by reason of any indefiniteness or uncertainty of the persons designated as beneficiaries in the instruments creating the trust, nor is the fund or any contribution to it invalid as violating any law against perpetuities, or the suspension of the power of alienation of title to property. [1953 c 290 § 16. Prior: (i) 1943 c 247 § 130; Rem. Supp. 1943 § 3778-130. (ii) 1943 c 247 § 117; Rem. Supp. 1943 § 3778-117.]

68.44.080 Plans for care—Source of fund. The cemetery authority may from time to time adopt plans for the general care, maintenance, and embellishment of its cemetery, and charge and collect from all purchasers of plots such reasonable sum as it deems will aggregate a fund, the reasonable income from which will provide care, maintenance, and embellishment on an endowment basis. [1953 c 290 § 17; 1943 c 247 § 108; Rem. Supp. 1943 § 3778-108.]

68.44.090 Covenant to care for cemetery. Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or by separate instrument, an agreement to care, in accordance with the plan adopted, for the cemetery and its appurtenances on an endowment basis to the proportionate extent the income received by the cemetery authority from the contribution will permit. [1953 c 290 § 18; 1943 c 247 § 109; Rem. Supp. 1943 § 3778-109.]

68.44.100 Agreement by owner to care for plot. Upon the application of an owner of a plot, and upon the payment by him of the amount fixed as a reasonable and proportionate

contribution for endowment care, a cemetery authority may enter into an agreement with him for the care of his plot and its appurtenances. [1953 c 290 § 19; 1943 c 247 § 110; Rem. Supp. 1943 § 3778-110.]

68.44.110 Trustees of fund. Unless an association of lot owners has been created for the purpose of appointing trustees, the cemetery authority shall appoint a board of not less than three members as trustees for its endowment care fund, who shall hold office subject to the direction of the cemetery authority. [1987 c 331 § 43; 1953 c 290 § 20; 1943 c 247 § 111; Rem. Supp. 1943 § 3778-111.]

68.44.115 Trustee to file statement with board—Resignation of trusteeship. To be considered qualified as a trustee, each trustee of an endowment care fund appointed in accordance with this chapter shall file with the board a statement of acceptance of fiduciary responsibility, on a form approved by the board, before assuming the duties of trustee. The trustee shall remain in the trustee's fiduciary capacity until such time as the trustee advises the cemetery board in writing of the trustee's resignation of trusteeship. [1987 c 331 § 44.]

68.44.120 Directors as trustees—Secretary. The directors of a cemetery authority may be the trustees of its endowment care fund. When the fund is in the care of the directors as a board of trustees the secretary of the cemetery authority shall act as its secretary and keep a true record of all of its proceedings. [1987 c 331 § 45; 1953 c 290 § 21; 1943 c 247 § 112; Rem. Supp. 1943 § 3778-112.]

68.44.130 Bank or trust company as trustee. In lieu of the appointment of a board of trustees of its endowment care fund, any cemetery authority may appoint as sole trustee of its endowment care fund any bank or trust company qualified to engage in the trust business, and said bank or trust company shall be authorized to receive and accept said fund, including any accumulated endowment care fund in existence at the time of its appointment. [1987 c 331 § 46; 1943 c 247 § 113; Rem. Supp. 1943 § 3778-113.]

68.44.140 Compensation of trustees. Compensation to the board of trustees or trustee for services as trustee and other compensation for administration of trust funds shall not exceed in the aggregate the customary fees charged by banks and trust companies for like services. Such fees may not be paid from the fund principal. [1987 c 331 § 47; 1979 c 21 § 20; 1943 c 247 § 114; Rem. Supp. 1943 § 3778-114.]

68.44.150 Annual report of condition of fund. The cemetery authority or the trustees in whose names the funds are held shall, annually, and within ninety days after the end of the calendar or fiscal year of the cemetery authority, make and keep on file for seven years a true and correct written report, verified on oath by an officer of the cemetery authority or by the oath of one or more of the trustees, showing the actual financial condition of the funds. [1987 c 331 § 48; 1979 c 21 § 21; 1943 c 247 § 115; Rem. Supp. 1943 § 3778-115.]

(2004 Ed.)

68.44.160 Contributions. A cemetery authority which has established an endowment care fund may take and hold, as a part of or incident to the fund, any property, real, personal, or mixed, bequeathed, devised, granted, given, or otherwise contributed to it for its endowment care fund. [1953 c 290 § 22; 1943 c 247 § 116; Rem. Supp. 1943 § 3778-116.]

68.44.170 Use of income from fund. The income from the endowment care fund shall be used solely for the general care, maintenance, and embellishment of the cemetery, and shall be applied in such manner as the cemetery authority may from time to time determine to be for the best interest of the cemetery. [1953 c 290 § 23; 1943 c 247 § 107; Rem. Supp. 1943 § 3778-107.]

68.44.180 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 49.]

68.44.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.46 RCW

PREARRANGEMENT CONTRACTS

Sections

| | |
|-----------|---|
| 68.46.010 | Definitions. |
| 68.46.020 | Prearrangement trust funds—Required. |
| 68.46.030 | Prearrangement trust funds—Deposits—Bond requirements. |
| 68.46.040 | Prearrangement trust funds—Deposit with qualified public depository or certain insured instruments. |
| 68.46.050 | Withdrawals from trust funds—Notice of department of social and health services' claim. |
| 68.46.055 | Cemetery authority may not enter into certain retail contracts which require or permit authority to furnish merchandise, services, etc., at future date—Exclusion of transactions under chapter 63.14 RCW—Prearrangement contracts—Duty of cemetery authority upon death of purchaser or owner. |
| 68.46.060 | Termination of contract by purchaser or beneficiary. |
| 68.46.070 | Involuntary termination of contract—Refund. |
| 68.46.075 | Inactive contracts—Funds transfer—Obligations. |
| 68.46.080 | Other use of trust funds prohibited. |
| 68.46.090 | Financial reports—Filing—Verification. |
| 68.46.100 | Information to be furnished purchaser in contract—Information to be furnished purchaser of unconstructed crypts or niches or undeveloped graves. |
| 68.46.110 | Compliance required. |
| 68.46.125 | Certain cemeteries exempt from chapter. |
| 68.46.130 | Exemptions from chapter granted by board. |
| 68.46.150 | Sales licenses—Qualifications. |
| 68.46.160 | Contract forms—Filing. |
| 68.46.170 | Sales licenses—Requirement. |
| 68.46.900 | Effective date—1987 c 331. |

Prearrangement funeral service contracts: RCW 18.39.240 through 18.39.360.

68.46.010 Definitions. Unless the context clearly indicates otherwise, the following terms as used only in this chapter have the meaning given in this section:

(1) "Prearrangement contract" means a contract for purchase of cemetery merchandise or services, unconstructed crypts or niches, or undeveloped graves to be furnished at a future date for a specific consideration which is paid in advance by one or more payments in one sum or by installment payments.

(2) "Cemetery authority" shall have the same meaning as in RCW 68.04.190, and shall also include any individual, partnership, firm, joint venture, corporation, company, association, or joint [joint] stock company, any of which sells cemetery services or merchandise, unconstructed crypts or niches, or undeveloped graves through a prearrangement contract, but shall not include insurance companies licensed under chapter 48.05 RCW.

(3) "Cemetery merchandise or services" and "merchandise or services" mean those services normally performed by cemetery authorities, including the sale of monuments, markers, memorials, nameplates, liners, vaults, boxes, urns, vases, interment services, or any one or more of them.

(4) "Prearrangement trust fund" means all funds required to be maintained in one or more funds for the benefit of beneficiaries by either this chapter or by the terms of a prearrangement contract, as herein defined.

(5) "Depository" means a qualified public depository as defined by *RCW 39.58.010, a credit union as governed by chapter 31.12 RCW, a mutual savings bank as governed by Title 32 RCW, a savings and loan association as governed by Title 33 RCW, and a federal credit union or a federal savings and loan association organized, operated, and governed by any act of congress, in which prearrangement funds are deposited by any cemetery authority.

(6) "Board" means the cemetery board established under chapter 68.05 RCW or its authorized representative.

(7) "Undeveloped grave" means any grave in an area which a cemetery authority has not landscaped and groomed to the extent customary in the cemetery industry in that community. [1979 c 21 § 22; 1975 1st ex.s. c 55 § 1; 1973 1st ex.s. c 68 § 1.]

*Reviser's note: RCW 39.58.010 was amended by 1996 c 256 § 1 and now defines the term "public depository."

68.46.020 Prearrangement trust funds—Required.

Any cemetery authority selling by prearrangement contracts any merchandise or services shall establish and maintain one or more prearrangement funds for the benefit of beneficiaries of prearrangement contracts. [1973 1st ex.s. c 68 § 2.]

68.46.030 Prearrangement trust funds—Deposits—

Bond requirements. (1) A cemetery authority shall deposit in its prearrangement trust account a percentage of all funds collected in payment of each prearrangement contract equal to the greater of:

(a) Fifty percent of the contract price; or

(b) The percentage which the total of the wholesale cost of merchandise and the direct cost of services to be provided pursuant to the contract is of the total contract price.

(2) Any cemetery authority which does not file and maintain with the board a bond as provided in subsection (4) of this section shall deposit in its prearrangement trust fund fifty percent, or greater percentage as determined under subsection (1) of this section, of all moneys received in payment of each prearrangement contract, excluding sales tax and endowment care if such charge is made.

(3) Any cemetery authority which files and maintains with the board a bond as provided in subsection (4) of this section shall deposit in its prearrangement trust fund each payment as made on the last fifty percent, or greater percent-

age as determined under subsection (1) of this section, of each prearrangement contract, excluding sales tax and endowment care, if such charge is made.

(4) Each cemetery authority electing to make payments to its prearrangement trust fund pursuant to subsection (3) of this section shall file and maintain with the board a bond, issued by a surety company authorized to do business in the state, in the amount by which the cemetery authority's contingent liability for refunds pursuant to RCW 68.46.060 exceeds the amount deposited in its prearrangement trust fund. The bond shall run to the state and shall be conditioned that it is for the use and benefit of any person requesting a refund pursuant to RCW 68.46.060 if the cemetery authority does not promptly pay to said person the refund due pursuant to RCW 68.46.060. In addition to any other remedy, every person not promptly receiving the refund due pursuant to RCW 68.46.060 may sue the surety for the refund. The liability of the surety shall not exceed the amount of the bond. Termination or cancellation shall not be effective unless notice is delivered by the surety to the board at least thirty days prior to the date of termination or cancellation. The board shall immediately notify the cemetery authority affected by the termination or cancellation by certified mail, return receipt requested. The cemetery authority shall thereupon obtain another bond or make such other arrangement as may be satisfactory to the board to assure its ability to make refunds pursuant to RCW 68.46.060.

(5) Deposits to the prearrangement trust fund shall be made not later than the twentieth day of each month following receipt of each payment required to be deposited. If a prearrangement contract is sold, pledged, or otherwise encumbered as security for a loan by the cemetery authority, the cemetery authority shall pay into the prearrangement trust fund fifty percent of the total sale price of the prearrangement contract within twenty days of receipt of payment of the proceeds from the sale or loan.

(6) Any failure to fund a prearrangement contract as required by this section shall be grounds for revocation of the cemetery authority's prearrangement sales license. [1984 c 53 § 3; 1979 c 21 § 24; 1973 1st ex.s. c 68 § 3.]

68.46.040 Prearrangement trust funds—Deposit with qualified public depository or certain insured instruments.

All prearrangement trust funds shall be deposited in a qualified public depository as defined by RCW 68.46.010 or in instruments insured by any agency of the federal government, if these securities are held in public depository. Such savings accounts shall be designated as the "prearrangement trust fund" by name and the particular cemetery authority for the benefit of the beneficiaries named in any prearrangement contract. [1987 c 331 § 50; 1973 1st ex.s. c 68 § 4.]

68.46.050 Withdrawals from trust funds—Notice of department of social and health services' claim.

(1) A bank, trust company, or savings and loan association designated as the depository of prearrangement funds shall permit withdrawal by a cemetery authority of all funds deposited under any specific prearrangement contract plus interest

accrued thereon, under the following circumstances and conditions:

(a) If the cemetery authority files a verified statement with the depository that the prearrangement merchandise and services covered by a contract have been furnished and delivered in accordance therewith; or

(b) If the cemetery authority files a verified statement that a specific prearrangement contract has been canceled in accordance with its terms.

(2) The department of social and health services shall notify the cemetery authority maintaining a prearrangement trust fund regulated by this chapter that the department has a claim on the estate of a beneficiary for long-term care services. Such notice shall be renewed at least every three years. The cemetery authority upon becoming aware of the death of a beneficiary shall give notice to the department of social and health services, office of financial recovery, who shall file any claim there may be within thirty days of the notice. [1995 1st sp.s. c 18 § 65; 1973 1st ex.s. c 68 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

68.46.055 Cemetery authority may not enter into certain retail contracts which require or permit authority to furnish merchandise, services, etc., at future date—Exclusion of transactions under chapter 63.14 RCW—Prearrangement contracts—Duty of cemetery authority upon death of purchaser or owner. (1) No cemetery authority may enter into a retail contract for the purchase of debentures, shares, scrip, bonds, notes, or any instrument or evidence of indebtedness, excluding retail installment sales transactions governed by chapter 63.14 RCW, which directly or indirectly requires or permits the cemetery authority to furnish to the holder at a future date cemetery merchandise or services, or crypts, niches, or graves.

(2) A cemetery authority which enters into prearrangement contracts for the sale of unconstructed crypts or niches or undeveloped graves or which conveys undeveloped graves by gift shall maintain an adequate inventory of constructed crypts or niches and developed graves which in quality are equal to or better than the unconstructed crypts or niches, or undeveloped graves if they were constructed or developed. In the event of the death of a purchaser or owner of an unconstructed crypt or niche or undeveloped grave before the unconstructed crypt or niche or undeveloped grave is constructed or developed the cemetery authority shall provide a constructed crypt or niche or developed grave of equal or better quality without additional cost or charge. If two or more unconstructed crypts or niches or undeveloped graves are conveyed with the intention that the crypts or niches or graves shall be contiguous to each other or maintained together as a group and the death of any one purchaser or owner in such group occurs before the unconstructed crypts or niches or undeveloped graves are developed, the cemetery authority shall provide additional constructed crypts or niches or developed graves of equal or better quality contiguous to each other or together as a group as originally intended to other purchasers or owners in the group without additional cost or charge. [1984 c 53 § 8.]

(2004 Ed.)

68.46.060 Termination of contract by purchaser or beneficiary. Any purchaser or beneficiary or beneficiaries may, upon written demand of any cemetery authority, demand that any prearrangement contract with such cemetery authority be terminated. In such event, the cemetery authority shall within thirty days refund to such purchaser or beneficiary or beneficiaries fifty percent of the moneys received less the contractual price of any merchandise delivered or services performed before the termination plus interest earned. In any case, where, under a prearrangement contract there is more than one beneficiary, no written demand as provided in this section shall be honored by any cemetery authority unless the written demand provided for in this section shall bear the signatures of all of such beneficiaries. [1987 c 331 § 51; 1984 c 53 § 4; 1979 c 21 § 25; 1973 1st ex.s. c 68 § 6.]

68.46.070 Involuntary termination of contract—Refund. Prearrangement contracts shall terminate upon demand of the purchaser of the contract if the cemetery authority shall go out of business, become insolvent or bankrupt, make an assignment for the benefit of creditors, or for any other reason be unable to fulfill the obligations under the contract. Upon demand by the purchaser or beneficiary or beneficiaries of any prearrangement contract, the cemetery authority shall refund one hundred percent of the original contract, less delivered services and merchandise, including funds held in deposit and interest earned thereon, unless otherwise ordered by a court of competent jurisdiction. [1987 c 331 § 52; 1979 c 21 § 26; 1973 1st ex.s. c 68 § 7.]

68.46.075 Inactive contracts—Funds transfer—Obligations. In the event the beneficiary or beneficiaries of a prearrangement contract make no claim within fifty years of the date of the contract for the merchandise and services provided in the prearrangement contract, the funds deposited in the prearrangement trust funds attributable to that contract and the interest on said funds shall be transferred to the cemetery authority's endowment fund to be used for the uses and purposes for which the endowment fund was established. However, the cemetery authority shall remain obligated for merchandise and services, unconstructed crypts or niches, and undeveloped graves under the terms of the prearrangement contract. Claims may be made for merchandise and services, unconstructed crypts or niches, and undeveloped graves on a prearrangement contract after the funds have been transferred to the endowment fund and shall be paid for from the endowment fund income to the extent of the funds attributable to the prearrangement contract. [1979 c 21 § 27.]

68.46.080 Other use of trust funds prohibited. Prearrangement trust funds shall not be used in any way, directly or indirectly, for the benefit of the cemetery authority or any director, officer, agent or employee of any cemetery authority, including, but not limited to any encumbrance, pledge, or other utilization or prearrangement trust funds as collateral or other security. [1973 1st ex.s. c 68 § 8.]

68.46.090 Financial reports—Filing—Verification. Any cemetery authority selling prearrangement merchandise or other prearrangement services shall file in its office or

offices and with the cemetery board a written report upon forms prepared by the cemetery board which shall state the amount of the principle of the prearrangement trust fund or funds, the depository of such fund or funds, and cash on hand which is or may be due to such fund as well as such other information the board may deem appropriate. All information appearing on such written reports shall be revised at least annually. These reports shall be verified by the president, or the vice president, and one other officer of the cemetery authority, the accountant or auditor who prepared the report, and, if required by the board for good cause, a certified public accountant in accordance with generally accepted auditing standards. Verification of these reports by a certified public accountant in accordance with generally accepted auditing standards shall be required on reports from cemetery authorities which manage prearrangement trust funds totaling in excess of five hundred thousand dollars. [1983 c 190 § 1; 1977 ex.s. c 351 § 5; 1973 1st ex.s. c 68 § 9.]

Severability—1977 ex.s. c 351: See note following RCW 68.05.040.

68.46.100 Information to be furnished purchaser in contract—Information to be furnished purchaser of unconstructed crypts or niches or undeveloped graves. Every prearrangement contract shall contain language which informs the purchaser of the prearrangement trust fund and the amount to be deposited in the prearrangement trust fund, which shall not be less than fifty percent of the cash purchase price of the merchandise and services in the contract and shall not include charges for endowment care when included in the purchase price.

Every prearrangement contract shall contain language prominently featured on the face of the contract disclosing to the purchaser what items will be delivered before need, either stored or installed, and thus not subject to funding or refund.

Every prearrangement contract for the sale of unconstructed crypts or niches or undeveloped graves and every conveyance instrument shall contain language which informs the purchaser that if the purchaser dies before the unconstructed crypt or niche or undeveloped grave is constructed or developed the cemetery authority must provide, without additional cost or charge, a constructed crypt or niche or developed grave of equal or better quality than the unconstructed crypt or niche or undeveloped grave would have been if it were constructed or developed. [1987 c 331 § 53; 1984 c 53 § 5; 1973 1st ex.s. c 68 § 10.]

68.46.110 Compliance required. No cemetery authority shall sell, offer to sell or authorize the sale of cemetery merchandise or services or accept funds in payment of any prearrangement contract, either directly or indirectly, unless such acts are performed in compliance with chapter 68, Laws of 1973 1st ex. sess., and under the authority of a valid, subsisting and unsuspended certificate of authority to operate a cemetery in this state by the Washington state cemetery board. [1973 1st ex.s. c 68 § 11.]

68.46.125 Certain cemeteries exempt from chapter. This chapter does not apply to any cemetery controlled and operated by a coroner, county, city, town, or cemetery district. [1987 c 331 § 54.]

68.46.130 Exemptions from chapter granted by board. The cemetery board may grant an exemption from any or all of the requirements of this chapter relating to prearrangement contracts to any cemetery authority which:

(1) Sells less than twenty prearrangement contracts per year; and

(2) Deposits one hundred percent of all funds received into a trust fund under RCW 68.46.030, as now or hereafter amended. [1979 c 21 § 43.]

68.46.150 Sales licenses—Qualifications. To qualify for and hold a prearrangement sales license a cemetery authority must comply with and qualify according to the provisions of this chapter. [1979 c 21 § 40.]

68.46.160 Contract forms—Filing. No cemetery authority shall use a prearrangement contract without first filing the form of such contract with the board: PROVIDED, That the board may order the cemetery authority to cease using any prearrangement contract form which:

(1) Is in violation of any provision of this chapter;

(2) Is misleading or deceptive; or

(3) Is being used in connection with solicitation by false, misleading or deceptive advertising or sales practices.

Use of a prearrangement contract form which is not on file with the board or which the board has ordered the cemetery authority not to use shall be a violation of this chapter. [1979 c 21 § 38.]

68.46.170 Sales licenses—Requirement. No cemetery authority shall enter into prearrangement contracts in this state unless the cemetery authority has obtained a prearrangement sales license issued by the board or its authorized representative and such license is then current and valid. [1979 c 21 § 23.]

68.46.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.50 RCW HUMAN REMAINS

Sections

| | |
|-----------|--|
| 68.50.010 | Coroner's jurisdiction over remains. |
| 68.50.015 | Immunity for determining cause and manner of death—Judicial review of determination. |
| 68.50.020 | Notice to coroner—Penalty. |
| 68.50.032 | Transportation of remains directed by coroner or medical examiner—Costs. |
| 68.50.035 | Unlawful to refuse burial to non-Caucasian. |
| 68.50.040 | Deceased's effects to be listed. |
| 68.50.050 | Removal or concealment of body—Penalty. |
| 68.50.060 | Bodies for instruction purposes. |
| 68.50.070 | Bodies, when may be used for dissection. |
| 68.50.080 | Certificate and bond before receiving bodies. |
| 68.50.090 | Penalty. |
| 68.50.100 | Dissection, when permitted—Autopsy of person under the age of three years. |
| 68.50.101 | Autopsy, post mortem—Who may authorize. |
| 68.50.102 | Court petition for autopsy—Cost. |
| 68.50.103 | Autopsies in industrial deaths. |
| 68.50.104 | Cost of autopsy. |
| 68.50.105 | Autopsies, post mortems—Reports and records confidential—Exceptions. |
| 68.50.106 | Autopsies, post mortems—Analyses—Opinions—Evidence—Costs. |

- 68.50.107 State toxicological laboratory established—State toxicologist.
68.50.108 Autopsies, post mortems—Consent to embalm or cremate body—Time limitation.
- 68.50.110 Burial or cremating.
68.50.120 Holding body for debt—Penalty.
68.50.130 Unlawful disposal of remains.
68.50.135 Individual's remains—Burial on island solely owned by individual, immediate family, or estate.
- 68.50.140 Opening graves—Stealing body—Receiving same.
68.50.145 Removing remains—Penalty.
68.50.150 Mutilating, disinterring human remains—Penalty.
68.50.160 Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost.
- 68.50.165 Embalming services—When provided without charge.
68.50.170 Effect of authorization.
68.50.180 Right to rely on authorization—State agency funding for cremation.
- 68.50.185 Individual cremation—Exception—Penalty.
68.50.190 Liability for damages—Limitation.
68.50.200 Permission to remove remains.
68.50.210 Notice for order to remove remains.
68.50.220 Exceptions.
68.50.230 Undisposed remains—Rules.
68.50.232 Undisposed remains—Entrusting to funeral homes or mortuaries.
- 68.50.240 Record of remains to be kept.
68.50.250 Crematory record of caskets—Penalty.
68.50.270 Possession of cremated remains.
68.50.290 Corneal tissue for transplantation—Presumption of good faith.
68.50.300 Release of information concerning a death.
68.50.310 Dental identification system established—Powers and duties.
68.50.320 Persons missing thirty days or more—Request for consent to obtain dental records—Submission of dental records to dental identification system—Availability of files.
- 68.50.330 Identification of body or human remains by dental examination—Comparison of dental examination records with dental records of dental identification system.
- 68.50.500 Identification of potential donors—Hospital procedures.
68.50.510 Good faith compliance with RCW 68.50.500—Hospital liability.
- 68.50.520 Anatomical gifts—Findings—Declaration.
68.50.530 Anatomical gifts—Definitions.
68.50.540 Anatomical gifts—Authorized—Procedures—Changes—Refusal.
68.50.550 Anatomical gifts—By person other than decedent.
68.50.560 Anatomical gifts—Hospital procedure—Records—Liability.
68.50.570 Anatomical gifts—Donees.
68.50.580 Anatomical gifts—Document of gift—Delivery.
68.50.590 Anatomical gifts—Rights of donee—Time of death—Actions by technician, enucleator.
68.50.600 Anatomical gifts—Hospitals—Procurement and use coordination.
- 68.50.610 Anatomical gifts—Illegal purchase or sale—Penalty.
68.50.620 Anatomical gifts—Examination for medical acceptability—Jurisdiction of coroner, medical examiner—Liability limited.
- 68.50.635 Organ and tissue donor registry.
68.50.640 Organ and tissue donation awareness account.
68.50.900 Effective date—1987 c 331.
68.50.901 Application—1993 c 228.
68.50.902 Application—Construction—1993 c 228.
68.50.903 Severability—1993 c 228.
68.50.904 Short title—1993 c 228.

Burial and removal permits: RCW 70.58.230.

Coroners to submit blood samples to state toxicologist—Analysis—Utilization of reports: RCW 46.52.065.

County commissioners to dispose of remains of indigents: RCW 36.39.030.

Disposal of remains prohibited unless accompanied by proper permit: RCW 70.58.260.

Fellowship program in forensic pathology: RCW 28B.20.426.

Fetal deaths: Chapter 70.58 RCW.

Undertaker must file death certificate: RCW 70.58.240.

Veterans and relatives: Chapter 73.24 RCW.

68.50.010 Coroner's jurisdiction over remains. The jurisdiction of bodies of all deceased persons who come to their death suddenly when in apparent good health without medical attendance within the thirty-six hours preceding

death; or where the circumstances of death indicate death was caused by unnatural or unlawful means; or where death occurs under suspicious circumstances; or where a coroner's autopsy or post mortem or coroner's inquest is to be held; or where death results from unknown or obscure causes, or where death occurs within one year following an accident; or where the death is caused by any violence whatsoever, or where death results from a known or suspected abortion; whether self-induced or otherwise; where death apparently results from drowning, hanging, burns, electrocution, gunshot wounds, stabs or cuts, lightning, starvation, radiation, exposure, alcoholism, narcotics or other addictions, tetanus, strangulations, suffocation or smothering; or where death is due to premature birth or still birth; or where death is due to a violent contagious disease or suspected contagious disease which may be a public health hazard; or where death results from alleged rape, carnal knowledge or sodomy, where death occurs in a jail or prison; where a body is found dead or is not claimed by relatives or friends, is hereby vested in the county coroner, which bodies may be removed and placed in the morgue under such rules as are adopted by the coroner with the approval of the county commissioners, having jurisdiction, providing therein how the bodies shall be brought to and cared for at the morgue and held for the proper identification where necessary. [1963 c 178 § 1; 1953 c 188 § 1; 1917 c 90 § 3; RRS § 6042. Formerly RCW 68.08.010.]

68.50.015 Immunity for determining cause and manner of death—Judicial review of determination. A county coroner or county medical examiner or persons acting in that capacity shall be immune from civil liability for determining the cause and manner of death. The accuracy of the determinations is subject to judicial review. [1987 c 263 § 1.]

68.50.020 Notice to coroner—Penalty. It shall be the duty of every person who knows of the existence and location of a dead body coming under the jurisdiction of the coroner as set forth in RCW 68.50.010, to notify the coroner thereof in the most expeditious manner possible, unless such person shall have good reason to believe that such notice has already been given. Any person knowing of the existence of such dead body and not having good reason to believe that the coroner has notice thereof and who shall fail to give notice to the coroner as aforesaid, shall be guilty of a misdemeanor. [1987 c 331 § 55; 1917 c 90 § 4; RRS § 6043. Formerly RCW 68.08.020.]

68.50.032 Transportation of remains directed by coroner or medical examiner—Costs. Whenever a coroner or medical examiner assumes jurisdiction over human remains and directs transportation of those remains by a funeral establishment, as defined in RCW 18.39.010, the reasonable costs of transporting shall be borne by the county if: (1) The funeral establishment transporting the remains is not providing the funeral or disposition services; or (2) the funeral establishment providing the funeral or disposition services is required to transport the remains to a facility other than its own.

Except as provided in RCW 36.39.030, 68.52.030, and 73.08.070, any transportation costs or other costs incurred

after the coroner or medical examiner has released jurisdiction over the human remains shall not be borne by the county. [1991 c 176 § 1.]

68.50.035 Unlawful to refuse burial to non-Caucasian. It shall be unlawful for any cemetery under this chapter to refuse burial to any person because such person may not be of the Caucasian race. [1953 c 290 § 53. Formerly RCW 68.05.260.]

Reviser's note: RCW 68.50.035 (formerly RCW 68.05.260) was declared unconstitutional in *Price v. Evergreen Cemetery Co. of Seattle* (1960) 157 Wash. Dec. 249.

68.50.040 Deceased's effects to be listed. Duplicate lists of all jewelry, moneys, papers, and other personal property of the deceased shall be made immediately upon finding the same by the coroner or his assistants. The original of such lists shall be kept as a public record at the morgue and the duplicate thereof shall be forthwith duly certified to by the coroner and filed with the county auditor. [1917 c 90 § 6; RRS § 6045. Formerly RCW 68.08.040.]

68.50.050 Removal or concealment of body—Penalty. Any person, not authorized by the coroner or his deputies, who removes the body of a deceased person not claimed by a relative or friend, or who came to their death by reason of violence or from unnatural causes or where there exist reasonable grounds for the belief that such death has been caused by unlawful means at the hands of another, to any undertaking rooms or elsewhere, or any person who directs, aids or abets such taking, and any person who in any way conceals the body of a deceased person for the purpose of taking the same to any undertaking rooms or elsewhere, shall in each of said cases be guilty of a gross misdemeanor and upon conviction thereof shall be punished by fine of not more than one thousand dollars, or by imprisonment in the county jail for not more than one year or by both fine and imprisonment in the discretion of the court. [1917 c 90 § 7; RRS § 6046. Formerly RCW 68.08.050.]

68.50.060 Bodies for instruction purposes. Any physician or surgeon of this state, or any medical student under the authority of any such physician or surgeon, may obtain, as hereinafter provided, and have in his possession human dead bodies, or the parts thereof, for the purposes of anatomical inquiry or instruction. [1891 c 123 § 1; RRS § 10026. Formerly RCW 68.08.060.]

68.50.070 Bodies, when may be used for dissection. Any sheriff, coroner, keeper or superintendent of a county poorhouse, public hospital, county jail, or state institution shall surrender the dead bodies of persons required to be buried at the public expense, to any physician or surgeon, to be by him used for the advancement of anatomical science, preference being given to medical schools in this state, for their use in the instruction of medical students. If the deceased person during his last sickness requested to be buried, or if within thirty days after his death some person claiming to be a relative or a responsible officer of a church organization with which the deceased at the time of his death was affiliated

requires the body to be buried, his body shall be buried. [1959 c 23 § 1; 1953 c 224 § 2; 1891 c 123 § 2; RRS § 10027. Formerly RCW 68.08.070.]

68.50.080 Certificate and bond before receiving bodies. Every physician or surgeon before receiving the dead body must give to the board or officer surrendering the same to him a certificate from the medical society of the county in which he resides, or if there is none, from the board of supervisors of the same, that he is a fit person to receive such dead body. He must also give a bond with two sureties, that each body so by him received will be used only for the promotion of anatomical science, and that it will be used for such purpose in this state only, and so as in no event to outrage the public feeling. [1891 c 123 § 3; RRS § 10028. Formerly RCW 68.08.080.]

68.50.090 Penalty. Any person violating any provision of RCW 68.50.060 through 68.50.080 shall upon conviction thereof be fined in any sum not exceeding five hundred dollars. [1987 c 331 § 56; 1891 c 123 § 4; RRS § 10029. Formerly RCW 68.08.090.]

68.50.100 Dissection, when permitted—Autopsy of person under the age of three years. (1) The right to dissect a dead body shall be limited to cases specially provided by statute or by the direction or will of the deceased; cases where a coroner is authorized to hold an inquest upon the body, and then only as he or she may authorize dissection; and cases where the spouse or next of kin charged by law with the duty of burial shall authorize dissection for the purpose of ascertaining the cause of death, and then only to the extent so authorized: PROVIDED, That the coroner, in his or her discretion, may make or cause to be made by a competent pathologist, toxicologist, or physician, an autopsy or post-mortem in any case in which the coroner has jurisdiction of a body: PROVIDED, FURTHER, That the coroner may with the approval of the University of Washington and with the consent of a parent or guardian deliver any body of a deceased person under the age of three years over which he or she has jurisdiction to the University of Washington medical school for the purpose of having an autopsy made to determine the cause of death.

(2) Every person who shall make, cause, or procure to be made any dissection of a body, except as provided in this section, is guilty of a gross misdemeanor. [2003 c 53 § 307; 1963 c 178 § 2; 1953 c 188 § 2; 1909 c 249 § 237; RRS § 2489. Formerly RCW 68.08.100.]

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

68.50.101 Autopsy, post mortem—Who may authorize. Autopsy or post mortem may be performed in any case where authorization has been given by a member of one of the following classes of persons in the following order of priority:

- (1) The surviving spouse;
- (2) Any child of the decedent who is eighteen years of age or older;
- (3) One of the parents of the decedent;

- (4) Any adult brother or sister of the decedent;
- (5) A person who was guardian of the decedent at the time of death;
- (6) Any other person or agency authorized or under an obligation to dispose of the remains of the decedent. The chief official of any such agency shall designate one or more persons to execute authorizations pursuant to the provisions of this section.

If the person seeking authority to perform an autopsy or post mortem makes reasonable efforts to locate and secure authorization from a competent person in the first or succeeding class and finds no such person available, authorization may be given by any person in the next class, in the order of descending priority. However, no person under this section shall have the power to authorize an autopsy or post mortem if a person of higher priority under this section has refused such authorization: PROVIDED, That this section shall not affect autopsies performed pursuant to RCW 68.50.010 or 68.50.103. [1987 c 331 § 57; 1977 c 79 § 1; 1953 c 188 § 11. Formerly RCW 68.08.101.]

68.50.102 Court petition for autopsy—Cost. Any party by showing just cause may petition the court to have autopsy made and results thereof made known to said party at his own expense. [1953 c 188 § 12. Formerly RCW 68.08.102.]

68.50.103 Autopsies in industrial deaths. In an industrial death where the cause of death is unknown, and where the department of labor and industries is concerned, said department in its discretion, may request the coroner in writing to perform an autopsy to determine the cause of death. The coroner shall be required to promptly perform such autopsy upon receipt of the written request from the department of labor and industries. [1953 c 188 § 6. Formerly RCW 68.08.103.]

68.50.104 Cost of autopsy. (1) The cost of autopsy shall be borne by the county in which the autopsy is performed, except when requested by the department of labor and industries, in which case, the department shall bear the cost of such autopsy.

(2) Except as provided in (c) of this subsection, when the county bears the cost of an autopsy, it shall be reimbursed from the death investigations account, established by RCW 43.79.445, as follows:

(a) Up to forty percent of the cost of contracting for the services of a pathologist to perform an autopsy;

(b) Up to twenty-five percent of the salary of pathologists who are primarily engaged in performing autopsies and are (i) county coroners or county medical examiners, or (ii) employees of a county coroner or county medical examiner; and

(c) When the county bears the cost of an autopsy of a child under the age of three whose death was sudden and unexplained, the county shall be reimbursed for the expenses of the autopsy when the death scene investigation and the autopsy have been conducted under RCW 43.103.100 (4) and (5), and the autopsy has been done at a facility designed for the performance of autopsies.

(2004 Ed.)

Payments from the account shall be made pursuant to biennial appropriation: PROVIDED, That no county may reduce funds appropriated for this purpose below 1983 budgeted levels. [2001 c 82 § 2; 1983 1st ex.s. c 16 § 14; 1963 c 178 § 3; 1953 c 188 § 7. Formerly RCW 68.08.104.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.50.105 Autopsies, post mortems—Reports and records confidential—Exceptions. Reports and records of autopsies or post mortems shall be confidential, except that the following persons may examine and obtain copies of any such report or record: The personal representative of the decedent as defined in RCW 11.02.005, any family member, the attending physician, the prosecuting attorney or law enforcement agencies having jurisdiction, public health officials, or to the department of labor and industries in cases in which it has an interest under RCW 68.50.103.

The coroner, the medical examiner, or the attending physician shall, upon request, meet with the family of the decedent to discuss the findings of the autopsy or post mortem. For the purposes of this section, the term "family" means the surviving spouse, or any child, parent, grandparent, grandchild, brother, or sister of the decedent, or any person who was guardian of the decedent at the time of death. [1987 c 331 § 58; 1985 c 300 § 1; 1977 c 79 § 2; 1953 c 188 § 9. Formerly RCW 68.08.105.]

68.50.106 Autopsies, post mortems—Analyses—Opinions—Evidence—Costs. In any case in which an autopsy or post mortem is performed, the coroner or medical examiner, upon his or her own authority or upon the request of the prosecuting attorney or other law enforcement agency having jurisdiction, may make or cause to be made an analysis of the stomach contents, blood, or organs, or tissues of a deceased person and secure professional opinions thereon and retain or dispose of any specimens or organs of the deceased which in his or her discretion are desirable or needful for anatomic, bacteriological, chemical, or toxicological examination or upon lawful request are needed or desired for evidence to be presented in court. Costs shall be borne by the county. [1993 c 228 § 19; 1987 c 331 § 59; 1975-'76 2nd ex.s. c 28 § 1; 1953 c 188 § 10. Formerly RCW 68.08.106.]

68.50.107 State toxicological laboratory established—State toxicologist. There shall be established in conjunction with the chief of the Washington state patrol and under the authority of the state forensic investigations council a state toxicological laboratory under the direction of the state toxicologist whose duty it will be to perform all necessary toxicologic procedures requested by all coroners, medical examiners, and prosecuting attorneys. The state forensic investigations council, after consulting with the chief of the Washington state patrol and director of the bureau of forensic laboratory services, shall appoint a toxicologist as state toxicologist, who shall report to the director of the bureau of forensic laboratory services and the office of the chief of the Washington state patrol. Toxicological services shall be funded by disbursement from the spirits, beer, and wine restaurant; spirits, beer, and wine private club; and sports enter-

tainment facility license fees as provided in RCW 66.08.180 and by appropriation from the death investigations account as provided in RCW 43.79.445. [1999 c 281 § 13; 1999 c 40 § 8; 1995 c 398 § 10; 1986 c 87 § 2; 1983 1st ex.s. c 16 § 10; 1975-'76 2nd ex.s. c 84 § 1; 1970 ex.s. c 24 § 1; 1953 c 188 § 13. Formerly RCW 68.08.107.]

Reviser's note: This section was amended by 1999 c 40 § 8 and by 1999 c 281 § 13, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1999 c 40: See note following RCW 43.103.010.

Effective date—1986 c 87: See note following RCW 66.08.180.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

State forensic investigations council: Chapter 43.103 RCW.

68.50.108 Autopsies, post mortems—Consent to embalm or cremate body—Time limitation. No dead body upon which the coroner, or prosecuting attorney, if there be no coroner in the county, may perform an autopsy or post mortem, shall be embalmed or cremated without the consent of the coroner having jurisdiction, and failure to obtain such consent shall be a misdemeanor: PROVIDED, That such autopsy or post mortem must be performed within five days, unless the coroner shall obtain an order from the superior court extending such time. [1953 c 188 § 8. Formerly RCW 68.08.108.]

68.50.110 Burial or cremating. Except in cases of dissection provided for in RCW 68.50.100, and where a dead body shall rightfully be carried through or removed from the state for the purpose of burial elsewhere, every dead body of a human being lying within this state, and the remains of any dissected body, after dissection, shall be decently buried, or cremated within a reasonable time after death. [1987 c 331 § 60; 1909 c 249 § 238; RRS § 2490. Formerly RCW 68.08.110.]

68.50.120 Holding body for debt—Penalty. Every person who arrests, attaches, detains, or claims to detain any human remains for any debt or demand, or upon any pretended lien or charge, is guilty of a gross misdemeanor. [1943 c 247 § 27; Rem. Supp. 1943 § 3778-27. Formerly RCW 68.08.120.]

68.50.130 Unlawful disposal of remains. Every person who permanently deposits or disposes of any human remains, except as otherwise provided by law, in any place, except in a cemetery or a building dedicated exclusively for religious purposes, is guilty of a misdemeanor. [1943 c 247 § 28; Rem. Supp. 1943 § 3778-28. Formerly RCW 68.08.130.]

68.50.135 Individual's remains—Burial on island solely owned by individual, immediate family, or estate. The human remains of an individual may be buried on the property of the individual or the individual's immediate family or estate if such property is an island in the sole ownership of the individual, or the individual's immediate family or estate, without obtaining a permit or a variance from any zon-

ing ordinance if in compliance with other applicable state laws. [1984 c 53 § 7. Formerly RCW 68.08.135.]

68.50.140 Opening graves—Stealing body—Receiving same. (1) Every person who shall remove the dead body of a human being, or any part thereof, from a grave, vault, or other place where the same has been buried or deposited awaiting burial or cremation, without authority of law, with intent to sell the same, or for the purpose of securing a reward for its return, or for dissection, or from malice or wantonness, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both.

(2) Every person who shall purchase or receive, except for burial or cremation, any such dead body, or any part thereof, knowing that the same has been removed contrary to the foregoing provisions, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both.

(3) Every person who shall open a grave or other place of interment, temporary or otherwise, or a building where such dead body is deposited while awaiting burial or cremation, with intent to remove the body or any part thereof, for the purpose of selling or demanding money for the same, for dissection, from malice or wantonness, or with intent to sell or remove the coffin or of any part thereof, or anything attached thereto, or any vestment, or other article interred, or intended to be interred with the body, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both. [2003 c 53 § 308; 1992 c 7 § 44; 1909 c 249 § 239; RRS § 2491. FORMER PART OF SECTION: 1943 c 247 § 25 now codified as RCW 68.50.145. Formerly RCW 68.08.140.]

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

68.50.145 Removing remains—Penalty. Every person who removes any part of any human remains from any place where it has been interred, or from any place where it is deposited while awaiting interment, with intent to sell it, or to dissect it, without authority of law, or from malice or wantonness, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than five years, or by a fine of not more than one thousand dollars, or by both. [2003 c 53 § 309; 1992 c 7 § 45; 1943 c 247 § 25; Rem. Supp. 1943 c 3778-25. Formerly RCW 68.08.140, part, and 68.08.145.]

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

68.50.150 Mutilating, disinterring human remains—Penalty. Every person who mutilates, disinters, or removes from the place of interment any human remains without authority of law, is guilty of a class C felony and shall be punished by imprisonment in a state correctional facility for not more than three years, or by a fine of not more than one thousand dollars, or by both. [2003 c 53 § 310; 1992 c 7 § 46;

1943 c 247 § 26; Rem. Supp. 1943 § 3778-26. Formerly RCW 68.08.150.]

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

68.50.160 Right to control disposition of remains—Liability of funeral establishment or cemetery authority—Liability for cost. (1) A person has the right to control the disposition of his or her own remains without the predeath or postdeath consent of another person. A valid written document expressing the decedent's wishes regarding the place or method of disposition of his or her remains, signed by the decedent in the presence of a witness, is sufficient legal authorization for the procedures to be accomplished.

(2) Prearrangements that are prepaid, or filed with a licensed funeral establishment or cemetery authority, under RCW 18.39.280 through 18.39.345 and chapter 68.46 RCW are not subject to cancellation or substantial revision by survivors. Absent actual knowledge of contrary legal authorization under this section, a licensed funeral establishment or cemetery authority shall not be held criminally nor civilly liable for acting upon such prearrangements.

(3) If the decedent has not made a prearrangement as set forth in subsection (2) of this section or the costs of executing the decedent's wishes regarding the disposition of the decedent's remains exceeds a reasonable amount or directions have not been given by the decedent, the right to control the disposition of the remains of a deceased person vests in, and the duty of disposition and the liability for the reasonable cost of preparation, care, and disposition of such remains devolves upon the following in the order named:

- (a) The surviving spouse.
- (b) The surviving adult children of the decedent.
- (c) The surviving parents of the decedent.
- (d) The surviving siblings of the decedent.
- (e) A person acting as a representative of the decedent under the signed authorization of the decedent.

(4) The liability for the reasonable cost of preparation, care, and disposition devolves jointly and severally upon all kin of the decedent in the same degree of kindred, in the order listed in subsection (3) of this section, and upon the estate of the decedent. [1993 c 297 § 1; 1992 c 108 § 1; 1943 c 247 § 29; Rem. Supp. 1943 § 3778-29. Formerly RCW 68.08.160.]

County burial of indigent deceased veterans: RCW 73.08.070.

Disposal of remains of indigent persons: RCW 36.39.030.

Order of payment of debts of estate: RCW 11.76.110.

68.50.165 Embalming services—When provided without charge. If embalming services are not desired nor required for the type of arrangements chosen by the authorized family member or representative and a refrigeration unit is unavailable for use, embalming services shall be provided without charge in instances where the body is to be held more than twenty-four hours. [1985 c 402 § 2. Formerly RCW 68.08.165.]

Legislative finding—1985 c 402: "The legislature finds that certain practices in storing human remains and in performing cremations violate common notions of decency and generally held expectations. In enacting this legislation, the legislature is reaffirming that certain practices, which have never been acceptable, violate principles of human dignity." [1985 c 402 § 1.]

(2004 Ed.)

68.50.170 Effect of authorization. Any person signing any authorization for the interment or cremation of any remains warrants the truthfulness of any fact set forth in the authorization, the identity of the person whose remains are sought to be interred or cremated, and his authority to order interments or cremation. He is personally liable for all damage occasioned by or resulting from breach of such warranty. [1943 c 247 § 30; Rem. Supp. 1943 § 3778-30. Formerly RCW 68.08.170.]

68.50.180 Right to rely on authorization—State agency funding for cremation. The cemetery authority may inter or cremate any remains upon the receipt of a written authorization of a person representing himself to be a person who has acquired the right to control the disposition of the remains. A cemetery authority is not liable for interring or cremating pursuant to such authorization, unless it has actual notice that such representation is untrue.

In the event the state of Washington or any of its agencies provide the funds for the disposition of any remains and the state or its agency elects to provide the funds for cremation only, the cemetery authority or licensed funeral establishment shall not be criminally or civilly liable for cremating the remains.

If a cemetery authority with a permit issued under RCW 68.05.175 or a funeral establishment licensed under chapter 18.39 RCW has made a good faith effort to locate the persons cited in RCW 68.50.160 or the legal representative of the decedent's estate, the cemetery authority or funeral establishment shall have the right to rely on an authority to cremate executed by the most responsible party available, and the cemetery authority or funeral establishment shall not be criminally or civilly liable for cremating the remains. [1993 c 43 § 5; 1979 c 21 § 14; 1943 c 247 § 31; Rem. Supp. 1943 § 3778-31. Formerly RCW 68.08.180.]

Effective date of 1993 c 43—1993 sp.s. c 24: See note following RCW 18.39.290.

68.50.185 Individual cremation—Exception—Penalty. (1) A person authorized to dispose of human remains shall not cremate or cause to be cremated more than one body at a time unless written permission, after full and adequate disclosure regarding the manner of cremation, has been received from the person or persons under RCW 68.50.160 having the authority to order cremation. This restriction shall not apply when equipment, techniques, or devices are employed that keep human remains separate and distinct before, during, and after the cremation process.

(2) Violation of this section is a gross misdemeanor. [1987 c 331 § 61; 1985 c 402 § 3. Formerly RCW 68.08.185.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.50.190 Liability for damages—Limitation. No action shall lie against any cemetery authority relating to the remains of any person which have been left in its possession for a period of two years, unless a written contract has been entered into with the cemetery authority for their care or unless permanent interment has been made. Nothing in this section shall be construed as an extension of the existing statute prescribing the period within which an action based upon a tort must be commenced. No licensed funeral director shall

[Title 68 RCW—page 27]

be liable in damages for any cremated human remains after the remains have been deposited with a cemetery in the state of Washington. [1943 c 247 § 32; Rem. Supp. 1943 § 3778-32. Formerly RCW 68.08.190.]

Limitation of actions: Chapter 4.16 RCW.

68.50.200 Permission to remove remains. The remains of a deceased person may be removed from a plot in a cemetery with the consent of the cemetery authority and the written consent of one of the following in the order named:

- (1) The surviving spouse.
- (2) The surviving children of the decedent.
- (3) The surviving parents of the decedent.
- (4) The surviving brothers or sisters of the decedent.

If the required consent cannot be obtained, permission by the superior court of the county where the cemetery is situated is sufficient: PROVIDED, That the permission shall not violate the terms of a written contract or the rules and regulations of the cemetery authority. [1943 c 247 § 33; Rem. Supp. 1943 § 3778-33. Formerly RCW 68.08.200.]

68.50.210 Notice for order to remove remains. Notice of application to the court for such permission shall be given, at least ten days prior thereto, personally, or at least fifteen days prior thereto if by mail, to the cemetery authority and to the persons not consenting, and to every other person on whom service of notice may be required by the court. [1943 c 247 § 34; Rem. Supp. 1943 § 3778-34. Formerly RCW 68.08.210.]

68.50.220 Exceptions. RCW 68.50.200 and 68.50.210 do not apply to or prohibit the removal of any remains from one plot to another in the same cemetery or the removal of remains by a cemetery authority from a plot for which the purchase price is past due and unpaid, to some other suitable place; nor do they apply to the disinterment of remains upon order of court or coroner. [1987 c 331 § 62; 1943 c 247 § 35; Rem. Supp. 1943 § 3778-35. Formerly RCW 68.08.220.]

68.50.230 Undisposed remains—Rules. Whenever any dead human body shall have been in the lawful possession of any person, firm, corporation or association for a period of one year or more, or whenever the incinerated remains of any dead human body have been in the lawful possession of any person, firm, corporation or association for a period of two years or more, and the relatives of, or persons interested in, the deceased person shall fail, neglect or refuse for such periods of time, respectively, to direct the disposition to be made of such body or remains, such body or remains may be disposed of by the person, firm, corporation or association having such lawful possession thereof, under and in accordance with rules adopted by the cemetery board and the board of funeral directors and embalmers, not inconsistent with any statute of the state of Washington or rule or regulation prescribed by the state board of health. [1985 c 402 § 9; 1979 c 158 § 218; 1937 c 108 § 14; RRS § 8323-3. Formerly RCW 68.08.230.]

Legislative finding—1985 c 402: See note following RCW 68.50.165.

68.50.232 Undisposed remains—Entrusting to funeral homes or mortuaries. See RCW 36.24.155.

68.50.240 Record of remains to be kept. The person in charge of any premises on which interments or cremations are made shall keep a record of all remains interred or cremated on the premises under his charge, in each case stating the name of each deceased person, date of cremation or interment, and name and address of the funeral director. [1943 c 247 § 39; Rem. Supp. 1943 § 3778-39. Formerly RCW 68.08.240.]

68.50.250 Crematory record of caskets—Penalty. (1) No crematory shall hereafter cremate the remains of any human body without making a permanent signed record of the color, shape, and outside covering of the casket consumed with such body, the record to be open to inspection of any person lawfully entitled thereto.

(2) A person violating this section is guilty of a misdemeanor, and each violation shall constitute a separate offense. [2003 c 53 § 311; 1943 c 247 § 57; Rem. Supp. 1943 § 3778-57. FORMER PART OF SECTION: 1943 c 247 § 58 now codified as RCW 68.50.260. Formerly RCW 68.20.100.]

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

68.50.270 Possession of cremated remains. The person or persons determined under RCW 68.50.160 as having authority to order cremation shall be entitled to possession of the cremated remains without further intervention by the state or its political subdivisions. [1987 c 331 § 63; 1977 c 47 § 4. Formerly RCW 68.08.245.]

68.50.290 Corneal tissue for transplantation—Presumption of good faith. In any subsequent civil action in which the next of kin of a decedent contends that he/she affirmatively informed the county coroner or medical examiner or designee of his/her objection to removal of corneal tissue from the decedent, it shall be presumed that the county coroner or medical examiner acted in good faith and without knowledge of the objection. [1975-'76 2nd ex.s. c 60 § 2. Formerly RCW 68.08.305.]

68.50.300 Release of information concerning a death.

(1) The county coroner, medical examiner, or prosecuting attorney having jurisdiction may in such official's discretion release information concerning a person's death to the media and general public, in order to aid in identifying the deceased, when the identity of the deceased is unknown to the official and when he does not know the information to be readily available through other sources.

(2) The county coroner, medical examiner, or prosecuting attorney may withhold any information which directly or indirectly identifies a decedent until either:

(a) A notification period of forty-eight hours has elapsed after identification of the decedent by such official; or

(b) The next of kin of the decedent has been notified.

During the forty-eight hour notification period, such official shall make a good faith attempt to locate and notify

the next of kin of the decedent. [1981 c 176 § 2. Formerly RCW 68.08.320.]

68.50.310 Dental identification system established—Powers and duties. A dental identification system is established in the identification section of the Washington state patrol. The dental identification system shall act as a repository or computer center or both for dental examination records and it shall be responsible for comparing such records with dental records filed under RCW 68.50.330. It shall also determine which scoring probabilities are the highest for purposes of identification and shall submit such information to the coroner or medical examiner who prepared and forwarded the dental examination records. Once the dental identification system is established, operating funds shall come from the state general fund. [1987 c 331 § 65; 1983 1st ex.s. c 16 § 15. Formerly RCW 68.08.350.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.50.320 Persons missing thirty days or more—Request for consent to obtain dental records—Submission of dental records to dental identification system—Availability of files. When a person reported missing has not been found within thirty days of the report, the sheriff, chief of police, county coroner or county medical examiner, or other law enforcement authority initiating and conducting the investigation for the missing person shall ask the missing person's family or next of kin to give written consent to contact the dentist or dentists of the missing person and request the person's dental records.

When a person reported missing has not been found within thirty days, the sheriff, chief of police, or other law enforcement authority initiating and conducting the investigation for the missing person shall confer with the county coroner or medical examiner prior to the preparation of a missing person's report. After conferring with the coroner or medical examiner, the sheriff, chief of police, or other law enforcement authority shall submit a missing person's report and the dental records received under this section to the dental identification system of the state patrol *identification and criminal history section on forms supplied by the state patrol for such purpose.

When a person reported missing has been found, the sheriff, chief of police, coroner or medical examiner, or other law enforcement authority shall report such information to the state patrol.

The dental identification system shall maintain a file of information regarding persons reported to it as missing. The file shall contain the information referred to in this section and such other information as the state patrol finds relevant to assist in the location of a missing person.

The files of the dental identification system shall, upon request, be made available to law enforcement agencies attempting to locate missing persons. [2001 c 223 § 1; 1984 c 17 § 18; 1983 1st ex.s. c 16 § 16. Formerly RCW 68.08.355.]

***Reviser's note:** The "identification and criminal history section" has been redesignated the "identification, child abuse, vulnerable adult abuse, and criminal history section." See RCW 43.43.700.

(2004 Ed.)

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

Missing children clearinghouse and hot line: Chapter 13.60 RCW.

68.50.330 Identification of body or human remains by dental examination—Comparison of dental examination records with dental records of dental identification system. If the county coroner or county medical examiner investigating a death is unable to establish the identity of a body or human remains by visual means, fingerprints, or other identifying data, he or she shall have a qualified dentist, as determined by the county coroner or county medical examiner, carry out a dental examination of the body or human remains. If the county coroner or county medical examiner with the aid of the dental examination and other identifying findings is still unable to establish the identity of the body or human remains, he or she shall prepare and forward such dental examination records within thirty days of the date the body or human remains were found to the dental identification system of the state patrol *identification and criminal history section on forms supplied by the state patrol for such purposes.

The dental identification system shall act as a repository or computer center or both with respect to such dental examination records. It shall compare such dental examination records with dental records filed with it and shall determine which scoring probabilities are the highest for the purposes of identification. It shall then submit such information to the county coroner or county medical examiner who prepared and forwarded the dental examination records. [2001 c 172 § 1; 1984 c 17 § 19; 1983 1st ex.s. c 16 § 17. Formerly RCW 68.08.360.]

***Reviser's note:** The "identification and criminal history section" has been redesignated the "identification, child abuse, vulnerable adult abuse, and criminal history section." See RCW 43.43.700.

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.50.500 Identification of potential donors—Hospital procedures. Each hospital shall develop procedures for identifying potential anatomical parts donors. The procedures shall require that any deceased individual's next of kin or other individual, as set forth in RCW 68.50.550, and the medical record does not specify the deceased as a donor, at or near the time of notification of death be asked whether the deceased was a part donor. If not, the family shall be informed of the option to donate parts pursuant to the uniform anatomical gift act. With the approval of the designated next of kin or other individual, as set forth in RCW 68.50.550, the hospital shall then notify an established procurement organization including those organ procurement agencies associated with a national organ procurement transportation network or other eligible donee, as specified in RCW 68.50.570, and cooperate in the procurement of the anatomical gift or gifts. The procedures shall encourage reasonable discretion and sensitivity to the family circumstances in all discussions regarding donations of parts. The procedures may take into account the deceased individual's religious beliefs or obvious unsuitability for an anatomical parts donation. Laws pertaining to the jurisdiction of the coroner shall be complied with in all cases of reportable deaths pursuant to RCW

68.50.010. [1993 c 228 § 20; 1987 c 331 § 71; 1986 c 129 § 1. Formerly RCW 68.08.650.]

68.50.510 Good faith compliance with RCW 68.50.500—Hospital liability. No act or omission of a hospital in developing or implementing the provisions of RCW 68.50.500, when performed in good faith, shall be a basis for the imposition of any liability upon the hospital.

This section shall not apply to any act or omission of the hospital that constitutes gross negligence or wilful and wanton conduct. [1987 c 331 § 72; 1986 c 129 § 2. Formerly RCW 68.08.660.]

68.50.520 Anatomical gifts—Findings—Declaration. The legislature finds that:

(1) The demand for donor organs and body parts exceeds the available supply for transplant.

(2) The discussion regarding advance directives including anatomical gifts is most appropriate with the primary care provider during an office visit.

(3) Federal law requires hospitals, skilled nursing facilities, home health agencies, and hospice programs to provide information regarding advance directives.

(4) Discretion and sensitivity must be used in discussion and requests for anatomical gifts.

The legislature declares that it is in the best interest of the citizens of Washington to provide a program that will increase the number of anatomical gifts available for donation, and the legislature further declares that wherever possible policies and procedures required in this chapter shall be consistent with the federal requirements. [1993 c 228 § 1.]

68.50.530 Anatomical gifts—Definitions. Unless the context requires otherwise, the definitions in this section apply throughout RCW 68.50.520 through 68.50.620, 68.50.635, 68.50.640, and 68.50.901 through 68.50.904.

(1) "Anatomical gift" means a donation of all or part of a human body to take effect upon or after death.

(2) "Decedent" means a deceased individual.

(3) "Document of gift" means a card, a statement attached to or imprinted on a motor vehicle operator's license, a will, or other writing used to make an anatomical gift.

(4) "Donor" means an individual who makes an anatomical gift of all or part of the individual's body.

(5) "Enucleator" means an individual who is qualified to remove or process eyes or parts of eyes.

(6) "Hospital" means a facility licensed under chapter 70.41 RCW, or as a hospital under the law of any state or a facility operated as a hospital by the United States government, a state, or a subdivision of a state.

(7) "Part" means an organ, tissue, eye, bone, artery, blood, fluid, or other portion of a human body.

(8) "Person" means an individual, corporation, business trust, estate, trust, partnership, joint venture, association, government, governmental subdivision or agency, or any other legal or commercial entity.

(9) "Physician" or "surgeon" means an individual licensed or otherwise authorized to practice medicine and surgery or osteopathic medicine and surgery under chapters 18.71 and 18.57 RCW.

(10) "Procurement organization" means a person licensed, accredited, or approved under the laws of any state for procurement, distribution, or storage of human bodies or parts.

(11) "Reasonable costs" include: (a) Programming and software installation and upgrades; (b) employee training that is specific to the organ and tissue donor registry or the donation program created in RCW 46.12.510; (c) literature that is specific to the organ and tissue donor registry or the donation program created in RCW 46.12.510; and (d) hardware upgrades or other issues important to the organ and tissue donor registry or the donation program created in RCW 46.12.510 that have been mutually agreed upon in advance by the department of licensing and the Washington state organ procurement organizations.

(12) "State" means a state, territory, or possession of the United States, the District of Columbia, or the Commonwealth of Puerto Rico.

(13) "Technician" means an individual who is qualified to remove or process a part.

(14) "Washington state organ procurement organization" means an organ procurement organization that has been designated by the United States department of health and human services to coordinate organ procurement activities for any portion of Washington state. [2003 c 94 § 2; 1996 c 178 § 15; 1993 c 228 § 2.]

Findings—2003 c 94: "The legislature finds that the use of anatomical gifts, including the donation of organ[s] or tissue, for the purpose of transplantation is of great interest to the citizens of Washington state and may save or prolong the life or improve the health of extremely ill and dying persons.

The legislature further finds that more than eighty thousand people are currently waiting for life-saving organ transplants on the national transplant waiting list. More than one thousand two hundred of these people are listed at Washington state transplant centers. Nationally, seventeen people die each day as a result of the shortage of donated organs.

The creation of a statewide organ and tissue donor registry is crucial to facilitate timely and successful organ and tissue procurement. The legislature further finds that continuing education as to the existence and maintenance of a statewide organ and tissue donor registry is in the best interest of the people of the state of Washington." [2003 c 94 § 1.]

Effective date—1996 c 178: See note following RCW 18.35.110.

68.50.540 Anatomical gifts—Authorized—Procedures—Changes—Refusal. (1) An individual who is at least eighteen years of age, or an individual who is at least sixteen years of age as provided in subsection (12) of this section, may (a) make an anatomical gift for any of the purposes stated in RCW 68.50.570(1), (b) limit an anatomical gift to one or more of those purposes, or (c) refuse to make an anatomical gift.

(2) An anatomical gift may be made by a document of gift signed by the donor. If the donor cannot sign, the document of gift must be signed by another individual and by two witnesses, all of whom have signed at the direction and in the presence of the donor and of each other and state that it has been so signed.

(3) If a document of gift is attached to or imprinted on a donor's motor vehicle operator's license, the document of gift must comply with subsection (2) of this section. Revocation, suspension, expiration, or cancellation of the license does not invalidate the anatomical gift.

(4) The donee or other person authorized to accept the anatomical gift may employ or authorize a physician, surgeon, technician, or enucleator to carry out the appropriate procedures.

(5) An anatomical gift by will takes effect upon death of the testator, whether or not the will is probated. If, after death, the will is declared invalid for testamentary purposes, the validity of the anatomical gift is unaffected.

(6)(a) A donor may amend or revoke an anatomical gift, not made by will, by:

(i) A signed statement;

(ii) An oral statement made in the presence of two individuals;

(iii) Any form of communication during a terminal illness or injury; or

(iv) The delivery of a signed statement to a specified donee to whom a document of gift had been delivered.

(b) A donor shall notify a Washington state organ procurement organization of the destruction, cancellation, or mutilation of the document of gift for the purpose of removing the person's name from the organ and tissue donor registry created in RCW 68.50.635. If the Washington state organ procurement organization that is notified does not maintain a registry for Washington residents, it shall notify all Washington state organ procurement organizations that do maintain such a registry.

(7) The donor of an anatomical gift made by will may amend or revoke the gift in the manner provided for amendment or revocation of wills, or as provided in subsection (6) of this section.

(8) An anatomical gift that is not revoked by the donor before death is irrevocable and does not require the consent or concurrence of a person after the donor's death.

(9) An individual may refuse to make an anatomical gift of the individual's body or part by (a) a writing signed in the same manner as a document of gift, (b) a statement attached to or imprinted on a donor's motor vehicle operator's license, or (c) another writing used to identify the individual as refusing to make an anatomical gift. During a terminal illness or injury, the refusal may be an oral statement or other form of communication.

(10) In the absence of contrary indications by the donor, an anatomical gift of a part is neither a refusal to give other parts nor a limitation on an anatomical gift under RCW 68.50.550.

(11) In the absence of contrary indications by the donor, a revocation or amendment of an anatomical gift is not a refusal to make another anatomical gift. If the donor intends a revocation to be a refusal to make an anatomical gift, the donor shall make the refusal pursuant to subsection (9) of this section.

(12) An individual who is under the age of eighteen, but is at least sixteen years of age, may make an anatomical gift as provided by subsection (2) of this section, if the document of gift is also signed by either parent or a guardian of the donor. A document of gift signed by a donor under the age of eighteen that is not signed by either parent or a guardian shall not be considered valid until the person reaches the age of eighteen, but may be considered as evidence that the donor has not refused permission to make an anatomical gift under

the provisions of RCW 68.50.550. [2003 c 94 § 4; 1995 c 132 § 1; 1993 c 228 § 3.]

Findings—2003 c 94: See note following RCW 68.50.530.

68.50.550 Anatomical gifts—By person other than decedent. (1) A member of the following classes of persons, in the order of priority listed, absent contrary instructions by the decedent, may make an anatomical gift of all or a part of the decedent's body for an authorized purpose, unless the decedent, at the time of death, had made an unrevoked refusal to make that anatomical gift:

(a) The appointed guardian of the person of the decedent at the time of death;

(b) The individual, if any, to whom the decedent had given a durable power of attorney that encompassed the authority to make health care decisions;

(c) The spouse of the decedent;

(d) A son or daughter of the decedent who is at least eighteen years of age;

(e) Either parent of the decedent;

(f) A brother or sister of the decedent who is at least eighteen years of age;

(g) A grandparent of the decedent.

(2) An anatomical gift may not be made by a person listed in subsection (1) of this section if:

(a) A person in a prior class is available at the time of death to make an anatomical gift;

(b) The person proposing to make an anatomical gift knows of a refusal or contrary indications by the decedent; or

(c) The person proposing to make an anatomical gift knows of an objection to making an anatomical gift by a member of the person's class or a prior class.

(3) An anatomical gift by a person authorized under subsection (1) of this section must be made by (a) a document of gift signed by the person or (b) the person's telegraphic, recorded telephonic, or other recorded message, or other form of communication from the person that is contemporaneously reduced to writing and signed by the recipient of the communication.

(4) An anatomical gift by a person authorized under subsection (1) of this section may be revoked by a member of the same or a prior class if, before procedures have begun for the removal of a part from the body of the decedent, the physician, surgeon, technician, or enucleator removing the part knows of the revocation.

(5) A failure to make an anatomical gift under subsection (1) of this section is not an objection to the making of an anatomical gift. [1993 c 228 § 4.]

68.50.560 Anatomical gifts—Hospital procedure—Records—Liability. (1) On or before admission to a hospital, or as soon as possible thereafter, a person designated by the hospital shall ask each patient who is at least eighteen years of age: "Are you an organ or tissue donor?" If the answer is affirmative the person shall request a copy of the document of gift. If the answer is negative or there is no answer, the person designated shall provide the patient information about the right to make a gift and shall ask the patient if he or she wishes to become an anatomical parts donor. If the answer is affirmative, the person designated shall provide

a document of gift to the patient. The answer to the questions, an available copy of any document of gift or refusal to make an anatomical gift, and any other relevant information shall be placed in the patient's medical record.

(2) If, at or near the time of death of a patient, there is no medical record that the patient has made or refused to make an anatomical gift, the hospital administrator or a representative designated by the administrator shall discuss the option to make or refuse to make an anatomical gift and request the making of an anatomical gift under RCW 68.50.550(1). The request shall be made with reasonable discretion and sensitivity to the circumstances of the family. A request is not required if the gift is not suitable, based upon accepted medical standards, for a purpose specified in RCW 68.50.570. An entry shall be made in the medical record of the patient, stating the name and affiliation of the individual making the request, and of the name, response, and relationship to the patient of the person to whom the request was made. The secretary of the department of health shall adopt rules to implement this subsection.

(3) The following persons shall make a reasonable search of the individual and his or her personal effects for a document of gift or other information identifying the bearer as a donor or as an individual who has refused to make an anatomical gift:

(a) The agency assuming jurisdiction over the decedent, such as the coroner or medical examiner; or

(b) A hospital, upon the admission of an individual at or near the time of death, if there is not immediately available another source of that information.

(4) If a document of gift or evidence of refusal to make an anatomical gift is located by the search required by subsection (3)(a) of this section, and the individual or body to whom it relates is taken to a hospital, the hospital shall be notified of the contents and the document or other evidence shall be sent to the hospital.

(5) If, at or near the time of death of a patient, a hospital knows that an anatomical gift has been made under RCW 68.50.550(1), or that a patient or an individual identified as in transit to the hospital is a donor, the hospital shall notify the donee if one is named and known to the hospital; if not, it shall notify an appropriate procurement organization. The hospital shall cooperate in the procurement of the anatomical gift or release and removal of a part.

(6) A person who fails to discharge the duties imposed by this section is not subject to criminal or civil liability.

(7) Hospitals shall develop policies and procedures to implement this section. [1993 c 228 § 5.]

68.50.570 Anatomical gifts—Donees. (1) The following persons may become donees of anatomical gifts for the purposes stated:

(a) A hospital, physician, surgeon, or procurement organization for transplantation, therapy, medical or dental education, research, or advancement of medical or dental science;

(b) An accredited medical or dental school, college, or university for education, research, or advancement of medical or dental science; or

(c) A designated individual for transplantation or therapy needed by that individual.

(2) An anatomical gift may be made to a designated donee or without designating a donee. If a donee is not designated or if the donee is not available or rejects the anatomical gift, the anatomical gift may be accepted by any hospital.

(3) If the donee knows of the decedent's refusal or contrary indications to make an anatomical gift or that an anatomical gift made by a member of a class having priority to act is opposed by a member of the same class or a prior class under RCW 68.50.550(1), the donee may not accept the anatomical gift. [1993 c 228 § 6.]

68.50.580 Anatomical gifts—Document of gift—Delivery. (1) Delivery of a document of gift during the donor's lifetime is not required for the validity of an anatomical gift.

(2) If an anatomical gift is made to a designated donee, the document of gift, or a copy, may be delivered to the donee to expedite the appropriate procedures after death. The document of gift, or a copy, may be deposited in a hospital, procurement organization, or registry office that accepts it for safekeeping or for facilitation of procedures after death. On request of an interested person, upon or after the donor's death, the person in possession shall allow the interested person to examine or copy the document of gift. [1993 c 228 § 7.]

68.50.590 Anatomical gifts—Rights of donee—Time of death—Actions by technician, enucleator. (1) Rights of a donee created by an anatomical gift are superior to rights of others except when under the jurisdiction of the coroner or medical examiner. A donee may accept or reject an anatomical gift. If a donee accepts an anatomical gift of an entire body, the donee, subject to the terms of the gift, may allow embalming and use of the body in funeral services. If the gift is of a part of a body, the donee, upon the death of the donor and before embalming, shall cause the part to be removed without unnecessary mutilation. After removal of the part, custody of the remainder of the body vests in the person under obligation to dispose of the body.

(2) The time of death must be determined by a physician or surgeon who attends the donor at death or, if none, the physician or surgeon who certifies the death. Neither the physician or surgeon who attends the donor at death nor the physician or surgeon who determines the time of death may participate in the procedures for removing or transplanting a part.

(3) If there has been an anatomical gift, a technician may remove any donated parts and an enucleator may remove any donated eyes or parts of eyes, after determination of death by a physician or surgeon. [1993 c 228 § 8.]

68.50.600 Anatomical gifts—Hospitals—Procurement and use coordination. Each hospital in this state, after consultation with other hospitals and procurement organizations, shall establish agreements or affiliations for coordination of procurement and use of human bodies and parts. [1993 c 228 § 9.]

68.50.610 Anatomical gifts—Illegal purchase or sale—Penalty. (1) A person may not knowingly, for valuable consideration, purchase or sell a part for transplantation

or therapy, if removal of the part is intended to occur after the death of the decedent.

(2) Valuable consideration does not include reasonable payment for the removal, processing, disposal, preservation, quality control, storage, transportation, or implantation of a part.

(3) A person who violates this section is guilty of a class C felony and upon conviction is subject to a fine not exceeding fifty thousand dollars or imprisonment not exceeding five years, or both. [2003 c 53 § 312; 1993 c 228 § 10.]

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

68.50.620 Anatomical gifts—Examination for medical acceptability—Jurisdiction of coroner, medical examiner—Liability limited. (1) An anatomical gift authorizes reasonable examination necessary to assure medical acceptability of the gift for the purposes intended.

(2) The provisions of RCW 68.50.520 through *68.50.630 and 68.50.901 through 68.50.904 are subject to the laws of this state governing the jurisdiction of the coroner or medical examiner.

(3) A hospital, physician, surgeon, coroner, medical examiner, local public health officer, enucleator, technician, or other person, who acts in accordance with RCW 68.50.520 through *68.50.630 and 68.50.901 through 68.50.904 or with the applicable anatomical gift law of another state or a foreign country or attempts in good faith to do so, is not liable for that act in a civil action or criminal proceeding.

(4) An individual who makes an anatomical gift under RCW 68.50.540 or 68.50.550 and the individual's estate are not liable for injury or damage that may result from the making or the use of the anatomical gift. [1993 c 228 § 11.]

***Reviser's note:** RCW 68.50.630 was repealed by 2002 c 45 § 1.

68.50.635 Organ and tissue donor registry. (1) The department of licensing shall electronically transfer all information that appears on the front of a driver's license or identicard including the name, gender, date of birth, and most recent address of any person who obtains a driver's license or identicard and volunteers to donate organs or tissue upon death to any Washington state organ procurement organization that intends to establish a statewide organ and tissue donor registry as provided under subsection (2) of this section. All subsequent electronic transfers of donor information shall be at no charge to this Washington state organ procurement organization.

(2) Information obtained by a Washington state organ procurement organization under subsection (1) of this section shall be used for the purpose of establishing a statewide organ and tissue donor registry accessible to in-state recognized cadaveric organ and cadaveric tissue agencies for the recovery or placement of organs and tissue and to procurement agencies in another state when a Washington state resident is a donor of an anatomical gift and is not located in this state at the time of death or immediately before the death of the donor. Any registry created using information acquired under subsection (1) of this section must include all residents of Washington state regardless of their residence within the service area designated by the federal government.

(3) No organ or tissue donation organization may obtain information from the organ and tissue donor registry for the purposes of fund raising. Organ and tissue donor registry information may not be further disseminated unless authorized in this section or by federal law. Dissemination of organ and tissue donor registry information may be made by a Washington state organ procurement organization to another Washington state organ procurement organization, a recognized in-state procurement agency for other tissue recovery, or an out-of-state federally designated organ procurement organization that has been designated by the United States department of health and human services to serve an area outside Washington.

(4) A Washington state organ procurement organization may acquire donor information from sources other than the department of licensing.

(5) All reasonable costs associated with the creation of an organ and tissue donor registry shall be paid by the Washington state organ procurement organization that has requested the information. The reasonable costs associated with the initial installation and setup for electronic transfer of the donor information at the department of licensing shall be paid by the Washington state organ procurement organization that requested the information.

(6) An individual does not need to participate in the organ and tissue donor registry to be a donor of organs or tissue. The registry is to facilitate organ and tissue donations and not inhibit persons from being donors upon death. [2003 c 94 § 3.]

Findings—2003 c 94: See note following RCW 68.50.530.

68.50.640 Organ and tissue donation awareness account. (1) The organ and tissue donation awareness account is created in the custody of the state treasurer. All receipts from donations made under RCW 46.12.510, and other contributions and appropriations specifically made for the purposes of organ and tissue donor awareness, shall be deposited into the account. Except as provided in subsection (2) of this section, expenditures from the account may be authorized by the director of the department of licensing or the director's designee and do not require an appropriation.

(2) The department of licensing shall submit a funding request to the legislature covering the reasonable costs associated with the ongoing maintenance associated with the electronic transfer of the donor information to the organ and tissue donor registry and the donation program established in RCW 46.12.510. The legislature shall appropriate to the department of licensing an amount it deems reasonable from the organ and tissue donation awareness account to the department of licensing for these purposes.

(3) At least quarterly, the department of licensing shall transmit any remaining moneys in the organ and tissue donation awareness account to the foundation established in RCW 46.12.510 for the costs associated with educating the public about the organ and tissue donor registry and related organ and tissue donation education programs.

(4) Funding for donation awareness programs must be proportional across the state regardless of which Washington state organ procurement organization may be designated by the United States department of health and human services to

serve a particular geographic area. No funds from the account may be used to fund activities outside Washington state. [2003 c 94 § 7.]

Findings—2003 c 94: See note following RCW 68.50.530.

68.50.900 Effective date—1987 c 331. See RCW 68.05.900.

68.50.901 Application—1993 c 228. RCW 68.50.520 through *68.50.630 and 68.50.901 through 68.50.904 apply to a document of gift, revocation, or refusal to make an anatomical gift signed by the donor or a person authorized to make or object to making an anatomical gift before, on, or after July 25, 1993. [1993 c 228 § 12.]

***Reviser's note:** RCW 68.50.630 was repealed by 2002 c 45 § 1.

68.50.902 Application—Construction—1993 c 228. This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [1993 c 228 § 13.]

68.50.903 Severability—1993 c 228. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 228 § 14.]

68.50.904 Short title—1993 c 228. RCW 68.50.520 through *68.50.630 and 68.50.901 through 68.50.903 may be cited as the "uniform anatomical gift act." [1993 c 228 § 16.]

***Reviser's note:** RCW 68.50.630 was repealed by 2002 c 45 § 1.

Chapter 68.52 RCW

PUBLIC CEMETERIES AND MORGUES

Sections

| | |
|-----------|---|
| 68.52.010 | Morgues authorized in counties. |
| 68.52.020 | Coroner to control morgue—Expense. |
| 68.52.030 | Counties and cities may provide for burial, acquire cemeteries, etc. |
| 68.52.040 | Cities and towns may own, improve, etc., cemeteries. |
| 68.52.045 | Cities and towns may provide for a cemetery board. |
| 68.52.050 | Cemetery improvement fund. |
| 68.52.060 | Care and investment of fund. |
| 68.52.065 | Approval of investments. |
| 68.52.070 | Cemetery fund—Management. |
| 68.52.080 | Books of account—Audit. |
| 68.52.090 | Establishment authorized. |
| 68.52.100 | Petition—Requisites—Examination. |
| 68.52.110 | Hearing—Place and date. |
| 68.52.120 | Publication and posting of petition and notice of hearing. |
| 68.52.130 | Hearing—Inclusion and exclusion of lands. |
| 68.52.140 | Election on formation of district and first commissioners. |
| 68.52.150 | Election, how conducted—Notice. |
| 68.52.155 | Conformity with election laws—Exception—Vacancies. |
| 68.52.160 | Election ballot. |
| 68.52.170 | Canvass of returns—Resolution of organization. |
| 68.52.180 | Review—Organization complete. |
| 68.52.190 | General powers of district. |
| 68.52.192 | Public cemetery facilities or services—Cooperation with public or private agencies—Joint purchasing. |
| 68.52.193 | Public cemetery facilities or services—"Public agency" defined. |
| 68.52.195 | Community revitalization financing—Public improvements. |
| 68.52.200 | Right of eminent domain. |
| 68.52.210 | Power to do cemetery business—District may embrace certain cities and towns—Eminent domain exception. |
| 68.52.220 | District commissioners—Compensation—Election. |

| | |
|-----------|---|
| 68.52.250 | Special elections. |
| 68.52.260 | Oath of commissioners. |
| 68.52.270 | Organization of board—Secretary—Office—Meetings—Powers. |
| 68.52.280 | Duty of county treasurer—Cemetery district fund. |
| 68.52.290 | Tax levy authorized for fund. |
| 68.52.300 | Disbursement of fund. |
| 68.52.310 | Limitation of indebtedness—Limitation of tax levy. |
| 68.52.320 | Dissolution of districts. |
| 68.52.330 | Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. |
| 68.52.900 | Severability—1947 c 6. |
| 68.52.901 | Effective date—1987 c 331. |

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Taxation, exemptions: RCW 84.36.020.

68.52.010 Morgues authorized in counties. The county legislative authority of each county may at its discretion provide and equip a public morgue together with suitable morgue wagon for the conveyance, receipt and proper disposition of the bodies of all deceased persons not claimed by relatives, and of all dead bodies which are by law subject to a post mortem or coroner's inquest: PROVIDED, HOWEVER, That only one public morgue may be established in any county: PROVIDED FURTHER, That counties may agree to establish joint morgue facilities pursuant to chapter 39.34 RCW. [1983 1st ex.s. c 16 § 19; 1917 c 90 § 1; RRS § 6040. Formerly RCW 68.12.010.]

Severability—Effective date—1983 1st ex.s. c 16: See RCW 43.103.900 and 43.103.901.

68.52.020 Coroner to control morgue—Expense. Such morgue shall be under the control and management of the coroner who shall have power with the advice and consent of the county commissioners, to employ the necessary deputies and employees; and, with the advice and consent of the county commissioners, to fix their salaries and compensation, which, together with the expenses of operating such morgue, shall be paid monthly out of the county treasury. [1917 c 90 § 2; RRS § 6041. Formerly RCW 68.12.020.]

68.52.030 Counties and cities may provide for burial, acquire cemeteries, etc. Each and every county, town or city, shall have power to provide a hearse and pall for burial of the dead, and to procure and hold lands for burying grounds, and to make regulations and fence the same, and to preserve the monuments erected therein, and to levy and collect the necessary taxes for that purpose, in the same manner as other taxes are levied and collected. [1857 p 28 § 3; RRS § 3772. Formerly RCW 68.12.030.]

68.52.040 Cities and towns may own, improve, etc., cemeteries. Any city or town may acquire, hold, or improve land for cemetery purposes, and may sell lots therein, and may provide by ordinance that a specified percentage of the proceeds therefrom be set aside and invested, and the income from the investment be used in the care of the lots, and may take and hold any property devised, bequeathed or given upon trust, and apply the income thereof for the improvement or embellishment of the cemeteries or the erection or preservation of structures, fences, or walks therein, or for the repair, preservation, erection, or renewal of any tomb, monument,

gravestone, fence, railing, or other erection at or around a cemetery, lot, or plat, or for planting and cultivating trees, shrubs, flowers, or plants in or around the lot or plot, or for improving or embellishing the cemetery in any other manner or form consistent with the design and purpose of the city, according to the terms of the grant, devise, or bequest. [1955 c 378 § 1; 1909 c 156 § 1; RRS § 3773. Formerly RCW 68.12.040.]

68.52.045 Cities and towns may provide for a cemetery board. The legislative body of any city or town may provide by ordinance for a cemetery board to be appointed by the mayor in cities and towns operating under the mayor-council form of government, by the city commission in cities operating under the commission form of government, and by the city manager in cities and towns operating under the council-manager form of government: PROVIDED FURTHER, That no ordinance shall be enacted, pursuant to this section, in conflict with provisions contained in charters of cities of the first class. [1955 c 378 § 2. Formerly RCW 68.12.045.]

68.52.050 Cemetery improvement fund. All moneys received in the manner above provided shall be deposited with the city treasurer, and shall be kept apart in a fund known as the cemetery improvement fund, and shall be paid out only upon warrants drawn by the order of the cemetery board, if such a board exists, or by order of the body, department, commission, or committee duly authorized by ordinance to issue such an order, or by the legislative body of a city or town, which order shall be approved by such legislative body if such order is not issued by the legislative body, and shall be indorsed by the mayor and attested by the city comptroller or other authorized officer. [1955 c 378 § 3; 1909 c 156 § 4; RRS § 3776. Formerly RCW 68.12.050.]

68.52.060 Care and investment of fund. It shall be the duty of the cemetery board and other body or commission having in charge the care and operation of cemeteries to invest all sums set aside from the sale of lots, and all sums of money received, and to care for the income of all money and property held in trust for the purposes designated herein: PROVIDED, HOWEVER, That all investments shall be made in municipal, county, school or state bonds, general obligation warrants of the city owning such cemetery, or in first mortgages on good and improved real estate. [1933 c 91 § 1; 1909 c 156 § 2; RRS § 3774. FORMER PART OF SECTION: 1909 c 156 § 3 now codified as RCW 68.52.065. Formerly RCW 68.12.060.]

68.52.065 Approval of investments. All investments shall be approved by the council or legislative body of the city. [1909 c 156 § 3; RRS § 3775. Formerly RCW 68.12.060, part, and 68.12.065.]

68.52.070 Cemetery fund—Management. The said city shall, by ordinance, make all necessary rules and regulations concerning the control and management of said fund to properly safeguard the same, but shall in no wise be liable for any of said funds except a misappropriation thereof, and shall

not have power to bind the city or said fund for any further liability than whatever net interest may be actually realized from such investments, and shall not be liable to any particular person for more than the proportionate part of such net earnings. [1909 c 156 § 6; RRS § 3778. Formerly RCW 68.12.070.]

68.52.080 Books of account—Audit. Accurate books of account shall be kept of all transactions pertaining to said fund, which books shall be open to the public for inspection and shall be audited by the auditing committee of said city. [1909 c 156 § 5; RRS § 3777. Formerly RCW 68.12.080.]

68.52.090 Establishment authorized. Cemetery districts may be established in all counties and on any island in any county, as in this chapter provided. [1971 c 19 § 1; 1957 c 99 § 1; 1953 c 41 § 1; 1947 c 27 § 1; 1947 c 6 § 1; Rem. Supp. 1947 § 3778-150. Formerly RCW 68.16.010.]

68.52.100 Petition—Requisites—Examination. For the purpose of forming a cemetery district, a petition designating the boundaries of the proposed district by metes and bounds or describing the lands to be included in the proposed district by government townships, ranges and legal subdivisions, signed by not less than fifteen percent of the registered voters who reside within the boundaries of the proposed district, setting forth the object of the formation of such district and stating that the establishment thereof will be conducive to the public welfare and convenience, shall be filed with the county auditor of the county within which the proposed district is located, accompanied by an obligation signed by two or more petitioners agreeing to pay the cost of publishing the notice hereinafter provided for. The county auditor shall, within thirty days from the date of filing of such petition, examine the signatures and certify to the sufficiency or insufficiency thereof. The name of any person who signed a petition shall not be withdrawn from the petition after it has been filed with the county auditor. If the petition is found to contain a sufficient number of valid signatures, the county auditor shall transmit it, with a certificate of sufficiency attached, to the county legislative authority, which shall thereupon, by resolution entered upon its minutes, receive the same and fix a day and hour when it will publicly hear the petition. [1994 c 223 § 74; 1947 c 6 § 2; Rem. Supp. 1947 § 3778-151. Formerly RCW 68.16.020.]

68.52.110 Hearing—Place and date. The hearing on such petition shall be at the office of the board of county commissioners and shall be held not less than twenty nor more than forty days from the date of receipt thereof from the county auditor. The hearing may be completed on the day set therefor or it may be adjourned from time to time as may be necessary, but such adjournment or adjournments shall not extend the time for determining said petition more than sixty days in all from the date of receipt by the board. [1947 c 6 § 3; Rem. Supp. 1947 § 3778-152. Formerly RCW 68.16.030.]

68.52.120 Publication and posting of petition and notice of hearing. A copy of the petition with the names of petitioners omitted, together with a notice signed by the clerk

certified copy shall be entitled to record without payment of a recording fee. If the certificate of the canvassing officials shows that the proposition to organize the proposed cemetery district failed to receive two-thirds of the votes cast at said election, the board of county commissioners shall enter a minute to that effect and all proceedings theretofore had shall become null and void. [1947 c 6 § 9; Rem. Supp. 1947 § 3778-158. Formerly RCW 68.16.090.]

68.52.180 Review—Organization complete. Any person, firm or corporation having a substantial interest involved, and feeling aggrieved by any finding, determination or resolution of the board of county commissioners under the provisions of this chapter, may appeal within five days after such finding, determination or resolution was made to the superior court of the county in the same manner as provided by law for appeals from orders of said board. After the expiration of five days from the date of the resolution declaring the district organized, and upon filing of certified copies thereof in the offices of the county auditor and county assessor, the formation of the district shall be complete and its legal existence shall not thereafter be questioned by any person by reason of any defect in the proceedings had for the creation thereof. [1947 c 6 § 10; Rem. Supp. 1947 § 3778-159. Formerly RCW 68.16.100.]

Appeals from action of board of county commissioners: RCW 36.32.330.

68.52.190 General powers of district. Cemetery districts created under this chapter shall be deemed to be municipal corporations within the purview of the Constitution and laws of the state of Washington. They shall constitute bodies corporate and possess all the usual powers of corporations for public purposes. They shall have full authority to carry out the objects of their creation, and to that end are empowered to acquire, hold, lease, manage, occupy and sell real and personal property or any interest therein; to enter into and perform any and all necessary contracts; to appoint and employ necessary officers, agents and employees; to contract indebtedness, to borrow money, and to issue general obligation bonds in accordance with chapter 39.46 RCW; to levy and enforce the collection of taxes against the lands within the district, and to do any and all lawful acts to effectuate the purposes of this chapter. [1984 c 186 § 58; 1967 c 164 § 6; 1947 c 6 § 11; Rem. Supp. 1947 § 3778-160. Formerly RCW 68.16.110.]

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

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Tortious conduct of local governmental entities: RCW 4.96.010.

68.52.192 Public cemetery facilities or services—Cooperation with public or private agencies—Joint purchasing. A cemetery district may jointly operate or provide, cooperate to operate and provide and/or contract for a term of not to exceed five years to provide or have provided public cemetery facilities or services, with any other public or private agency, including out of state public agencies, which each is separately authorized to operate or provide, under terms mutually agreed upon by such public or private agencies. The governing body of a cemetery district may join with

(2004 Ed.)

any other public or private agency in buying supplies, equipment, and services collectively. [1963 c 112 § 3. Formerly RCW 68.16.112.]

68.52.193 Public cemetery facilities or services—"Public agency" defined. As used in RCW 68.52.192, "public agency" means counties, cities and towns, special districts, or quasi municipal corporations. [1987 c 331 § 73; 1963 c 112 § 2. Formerly RCW 68.16.113.]

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

This section does not limit the authority of a cemetery district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 21.]

Severability—2001 c 212: See RCW 39.89.020.

68.52.200 Right of eminent domain. The taking and damaging of property or rights therein by any cemetery district to carry out the purposes of its creation, are hereby declared to be for a public use, and any such district shall have and exercise the power of eminent domain to acquire any property or rights therein, either inside or outside the district for the use of such district. In exercising the power of eminent domain, a district shall proceed in the manner provided by law for the appropriation of real property or rights therein by private corporations. It may at its option unite in a single action proceedings to condemn property held by separate owners. Two or more condemnation suits instituted separately may also in the discretion of the court be consolidated upon motion of any interested party into a single action. In such cases the jury shall render separate verdicts for each tract of land in different ownership. No finding of the jury or decree of the court as to damages in any condemnation suit instituted by the district shall be held or construed to destroy the right of the district to levy and collect taxes for any and all district purposes against the uncondemned land situated within the district. [1947 c 6 § 12; Rem. Supp. 1947 § 3778-161. Formerly RCW 68.16.120.]

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

Eminent domain by corporations: Chapter 8.20 RCW.

68.52.210 Power to do cemetery business—District may embrace certain cities and towns—Eminent domain exception. (1) A cemetery district organized under this chapter shall have power to acquire, establish, maintain, manage, improve and operate cemeteries and conduct any and all of the businesses of a cemetery as defined in this title. A cemetery district shall constitute a cemetery authority as defined in this title and shall have and exercise all powers conferred thereby upon a cemetery authority and be subject to the provisions thereof.

(2) A cemetery district may include within its boundaries the lands embraced within the corporate limits of any incorporated city or town with a population of less than ten thou-

sand and in any such cases the district may acquire any cemetery or cemeteries theretofore maintained and operated by any such city or town and proceed to maintain, manage, improve and operate the same under the provisions hereof. In such event the governing body of the city or town, after the transfer takes place, shall levy no cemetery tax. The power of eminent domain heretofore conferred shall not extend to the condemnation of existing cemeteries within the district: PROVIDED, That no cemetery district shall operate a cemetery within the corporate limits of any city or town where there is a private cemetery operated for profit. [1994 c 81 § 82; 1971 c 19 § 2; 1959 c 23 § 2; 1957 c 39 § 1; 1947 c 6 § 13; Rem. Supp. 1947 § 3778-162. Formerly RCW 68.16.130.]

68.52.220 District commissioners—Compensation—Election. The affairs of the district shall be managed by a board of cemetery district commissioners composed of three members. Members of the board shall receive expenses necessarily incurred in attending meetings of the board or when otherwise engaged in district business. The board may provide, by resolution passed by the commissioners, for the payment of compensation to each of its commissioners at a rate of up to seventy dollars for each day or portion of a day devoted to the business of the district. However, the compensation for each commissioner must not exceed six thousand seven hundred twenty dollars per year.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the clerk of the board. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made. The board shall fix the compensation to be paid the secretary and other employees of the district. Cemetery district commissioners and candidates for cemetery district commissioner are exempt from the requirements of chapter 42.17 RCW.

The initial cemetery district commissioners shall assume office immediately upon their election and qualification. Staggering of terms of office shall be accomplished as follows: (1) The person elected receiving the greatest number of votes shall be elected to a six-year term of office if the election is held in an odd-numbered year or a five-year term of office if the election is held in an even-numbered year; (2) the person who is elected receiving the next greatest number of votes shall be elected to a four-year term of office if the election is held in an odd-numbered year or a three-year term of office if the election is held in an even-numbered year; and (3) the other person who is elected shall be elected to a two-year term of office if the election is held in an odd-numbered year or a one-year term of office if the election is held in an even-numbered year. The initial commissioners shall assume office immediately after they are elected and qualified but their terms of office shall be calculated from the first day of January after the election.

Thereafter, commissioners shall be elected to six-year terms of office. Commissioners shall serve until their successors are elected and qualified and assume office as provided in *RCW 29.04.170.

The polling places for a cemetery district election may be located inside or outside the boundaries of the district, as determined by the auditor of the county in which the cemetery district is located, and no such election shall be held irregular or void on that account. [1998 c 121 § 6; 1994 c 223 § 77; 1990 c 259 § 33; 1982 c 60 § 3; 1979 ex.s. c 126 § 40; 1947 c 6 § 14; Rem. Supp. 1947 § 3778-163. Formerly RCW 68.16.140.]

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

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

68.52.250 Special elections. Special elections submitting propositions to the registered voters of the district may be called at any time by resolution of the cemetery commissioners in accordance with *RCW 29.13.010 and 29.13.020, and shall be called, noticed, held, conducted and canvassed in the same manner and by the same officials as provided for the election to determine whether the district shall be created. [1990 c 259 § 34; 1947 c 6 § 17; Rem. Supp. 1947 § 3778-166. Formerly RCW 68.16.170.]

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

Qualifications of electors: RCW 29A.08.210.

68.52.260 Oath of commissioners. Each cemetery commissioner, before assuming the duties of his office, shall take and subscribe an official oath to faithfully discharge the duties of his office, which oath shall be filed in the office of the county auditor. [1986 c 167 § 24; 1947 c 6 § 18; Rem. Supp. 1947 § 3778-167. Formerly RCW 68.16.180.]

Severability—1986 c 167: See note following RCW 29A.04.049.

68.52.270 Organization of board—Secretary—Office—Meetings—Powers. The board of cemetery district commissioners shall organize and elect a chairman from their number and shall appoint a secretary for such term as they may determine. The secretary shall keep a record of proceedings of the board and perform such other duties as may be prescribed by law or by the board, and shall also take and subscribe an oath for the faithful discharge of his duties, which shall be filed with the county clerk. The office of the board of cemetery commissioners and principal place of business of the district shall be at some place in the district designated by the board. The board shall hold regular monthly meetings at its office on such day as it may by resolution determine and may adjourn such meetings as may be required for the transaction of business. Special meetings of the board may be called at any time by a majority of the commissioners or by the secretary and the chairman of the board. Any commissioner not joining in the call of a special meeting shall be entitled to three days written notice by mail of such meeting, specifying generally the business to be transacted. All meetings of the board of cemetery commissioners shall be public and a majority shall constitute a quorum. All records of the board shall be open to the inspection of any elector of the district at any meeting of the board. The board shall adopt a seal for the district; manage and conduct the affairs of the district; make and execute all necessary contracts; employ any neces-

sary service, and promulgate reasonable rules and regulations for the government of the district and the performance of its functions and generally perform all acts which may be necessary to carry out the purposes for which the district was formed. [1947 c 6 § 19; Rem. Supp. 1947 § 3778-168. Formerly RCW 68.16.190.]

68.52.280 Duty of county treasurer—Cemetery district fund. It shall be the duty of the county treasurer of the county in which any cemetery district is situated to receive and disburse all district revenues and collect all taxes authorized and levied under this chapter. There is hereby created in the office of county treasurer of each county in which a cemetery district shall be organized for the use of the district, a cemetery district fund. All taxes levied for district purposes when collected shall be placed by the county treasurer in the cemetery district fund. [1947 c 6 § 20; Rem. Supp. 1947 § 3778-169. Formerly RCW 68.16.200.]

68.52.290 Tax levy authorized for fund. Annually, after the county board of equalization has equalized assessments for general tax purposes, the secretary of the district shall prepare a budget of the requirements of the cemetery district fund, certify the same and deliver it to the board of county commissioners in ample time for such board to levy district taxes. At the time of making general tax levies in each year, the board of county commissioners shall levy taxes required for cemetery district purposes against the real and personal property in the district in accordance with the equalized valuation thereof for general tax purposes, and as a part of said general taxes. Such levies shall be part of the general tax roll and be collected as a part of general taxes against the property in the district. [1947 c 6 § 21; Rem. Supp. 1947 § 3778-170. Formerly RCW 68.16.210.]

68.52.300 Disbursement of fund. The county treasurer shall disburse the cemetery district fund upon warrants issued by the county auditor on vouchers approved and signed by a majority of the board of cemetery commissioners and the secretary thereof. [1947 c 6 § 22; Rem. Supp. 1947 § 3778-171. Formerly RCW 68.16.220.]

68.52.310 Limitation of indebtedness—Limitation of tax levy. The board of cemetery commissioners shall have no authority to contract indebtedness in any year in excess of the aggregate amount of the currently levied taxes, which annual tax levy for cemetery district purposes shall not exceed eleven and one-quarter cents per thousand dollars of assessed valuation. [1973 1st ex.s. c 195 § 77; 1947 c 6 § 23; Rem. Supp. 1947 § 3778-172. Formerly RCW 68.16.230.]

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

68.52.320 Dissolution of districts. Cemetery districts may be dissolved by a majority vote of the electors at an election called for that purpose, which shall be conducted in the same manner as provided for special elections, and no further district obligations shall thereafter be incurred, but such dissolution shall not abridge or cancel any of the outstanding obligations of the district, and the board of county commis-

sioners shall have authority to make annual levies against the lands included within the district until the obligations of the district are fully paid. When the obligations are fully paid, any moneys remaining in the cemetery district fund and all collections of unpaid district taxes shall be transferred to the current expense fund of the county. [1947 c 6 § 24; Rem. Supp. 1947 § 3778-173. Formerly RCW 68.16.240.]

Dissolution of districts: Chapter 53.48 RCW.

Dissolution of inactive special purpose districts: Chapter 36.96 RCW.

68.52.330 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

68.52.900 Severability—1947 c 6. If any portion of this act shall be adjudged invalid or unconstitutional for any reason, such adjudication shall not affect, impair or invalidate the remaining portions of the act. [1947 c 6 § 25; no RRS. Formerly RCW 68.16.900.]

68.52.901 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.54 RCW

ANNEXATION AND MERGER OF CEMETERY DISTRICTS

Sections

| | |
|-----------|--|
| 68.54.010 | Annexation—Petition—Procedure. |
| 68.54.020 | Merger—Authorized. |
| 68.54.030 | Merger—Petition—Procedure—Contents. |
| 68.54.040 | Merger—Petition—Rejection, concurrence or modification—Signatures. |
| 68.54.050 | Merger—Petition—Special election. |
| 68.54.060 | Merger—Petition—Election—Vote required—Merger effected. |
| 68.54.070 | Merger—Petition—When election dispensed with. |
| 68.54.080 | Merger—Preexisting obligations. |
| 68.54.090 | Merger—Transfer of all property, funds, assessments. |
| 68.54.100 | Merger and transfer of part of one district to adjacent district—Petition—Election—Vote. |
| 68.54.110 | Merger and transfer of part of one district to adjacent district—When election dispensed with. |
| 68.54.120 | Merger and transfer of part of one district to adjacent district—Preexisting indebtedness. |
| 68.54.900 | Effective date—1987 c 331. |

68.54.010 Annexation—Petition—Procedure. Any territory contiguous to a cemetery district and not within the boundaries of a city or town other than as set forth in RCW 68.52.210 or other cemetery district may be annexed to such cemetery district by petition of ten percent of the registered voters residing within the territory proposed to be annexed who voted in the last general municipal election. Such petition shall be filed with the cemetery commissioners of the cemetery district and if the cemetery commissioners shall concur in the petition they shall then file such petition with the county auditor who shall within thirty days from the date of filing such petition examine the signatures thereof and certify to the sufficiency or insufficiency thereof. After the county auditor shall have certified to the sufficiency of the petition, the proceedings thereafter by the county legislative authority, and the rights and powers and duties of the county legislative authority, petitioners and objectors to the election and canvass thereof shall be the same as in the original

proceedings to form a cemetery district: PROVIDED, That the county legislative authority shall have authority and it shall be its duty to determine on an equitable basis, the amount of obligation which the territory to be annexed to the district shall assume, if any, to place the taxpayers of the existing district on a fair and equitable relationship with the taxpayers of the territory to be annexed by reason of the benefits of coming into a going district previously supported by the taxpayers of the existing district, and such obligation may be paid to the district in yearly installments to be fixed by the county legislative authority if within the limits as outlined in RCW 68.52.310 and included in the annual tax levies against the property in such annexed territory until fully paid. The amount of the obligation and the plan of payment thereof filed by the county legislative authority shall be set out in general terms in the notice of election for annexation: PROVIDED, That the special election shall be held only within the boundaries of the territory proposed to be annexed to the cemetery district. Upon the entry of the order of the county legislative authority incorporating such contiguous territory within such existing cemetery district, the territory shall become subject to the indebtedness, bonded or otherwise, of the existing district in like manner as the territory of the district. Should such petition be signed by sixty percent of the registered voters residing within the territory proposed to be annexed, and should the cemetery commissioners concur therein, an election in such territory and a hearing on such petition shall be dispensed with and the county legislative authority shall enter its order incorporating such territory within the existing cemetery district. [1990 c 259 § 35; 1987 c 331 § 74; 1969 ex.s. c 78 § 1. Formerly RCW 68.18.010.]

68.54.020 Merger—Authorized. A cemetery district organized under chapter 68.52 RCW may merge with another such district lying adjacent thereto, upon such terms and conditions as they agree upon, in the manner hereinafter provided. The district desiring to merge with another district shall hereinafter be called the "merging district", and the district into which the merger is to be made shall be called the "merger district". [1990 c 259 § 36; 1969 ex.s. c 78 § 2. Formerly RCW 68.18.020.]

68.54.030 Merger—Petition—Procedure—Contents. To effect such a merger, a petition therefor shall be filed with the board of the merger district by the commissioners of the merging district. The commissioners of the merging district may sign and file the petition upon their own initiative, and they shall file such a petition when it is signed by ten percent of the registered voters resident in the merging district who voted in the last general municipal election and presented to them. The petition shall state the reasons for the merger; give a detailed statement of the district's finances, listing its assets and liabilities; state the terms and conditions under which the merger is proposed; and pray for the merger. [1990 c 259 § 37; 1969 ex.s. c 78 § 3. Formerly RCW 68.18.030.]

68.54.040 Merger—Petition—Rejection, concurrence or modification—Signatures. The board of the merger district may, by resolution, reject the petition, or it may concur therein as presented, or it may modify the terms

and conditions of the proposed merger, and shall transmit the petition, together with a copy of its resolution thereon to the merging district. If the petition is concurred in as presented or as modified, the board of the merging district shall forthwith present the petition to the auditor of the county in which the merging district is situated, who shall within thirty days examine the signatures thereon and certify to the sufficiency or insufficiency thereof, and for that purpose he shall have access to all registration books and records in the possession of the registration officers of the election precincts included, in whole or in part, within the merging district. Such books and records shall be prima facie evidence of truth of the certificate. No signatures may be withdrawn from the petition after the filing. [1969 ex.s. c 78 § 4. Formerly RCW 68.18.040.]

68.54.050 Merger—Petition—Special election. If the auditor finds that the petition contains the signatures of a sufficient number of qualified electors, he shall return it, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon such board shall adopt a resolution, calling a special election in the merging district, at which shall be submitted to the electors thereof, the question of the merger. [1969 ex.s. c 78 § 5. Formerly RCW 68.18.050.]

68.54.060 Merger—Petition—Election—Vote required—Merger effected. The board of [the] merging district shall notify the board of the merger district of the results of the election. If three-fifths of the votes cast at the election favor the merger, the respective district boards shall adopt concurrent resolutions, declaring the districts merged, under the name of the merger district. Thereupon the districts are merged into one district, under the name of the merger district; the merging district is dissolved without further proceedings; and the boundaries of the merger district are thereby extended to include all the area of the merging district. Thereafter the legal existence cannot be questioned by any person by reason of any defect in the proceedings had for the merger. [1969 ex.s. c 78 § 6. Formerly RCW 68.18.060.]

68.54.070 Merger—Petition—When election dispensed with. If three-fifths of all the qualified electors in the merging district sign the petition to merge, no election on the question of the merger is necessary. In such case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the board of the merging district. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of merger in the same manner and to the same effect as if the merger had been authorized by an election. [1969 ex.s. c 78 § 7. Formerly RCW 68.18.070.]

68.54.080 Merger—Preexisting obligations. None of the obligations of the merged districts or of a local improvement district therein shall be affected by the merger and dissolution, and all land liable to be assessed to pay any of such indebtedness shall remain liable to the same extent as if the merger had not been made, and any assessments theretofore levied against the land shall remain unimpaired and shall be collected in the same manner as if no merger had been made.

The commissioners of the merged district shall have all the powers possessed at the time of the merger by the commissioners of the two districts, to levy, assess and cause to be collected all assessments against any land in both districts which may be necessary to provide for the payment of the indebtedness thereof, and until the assessments are collected and all indebtedness of the districts paid, separate funds shall be maintained for each district as were maintained before the merger: PROVIDED, That the board of the merged district may, with the consent of the creditors of the districts merged, cancel any or all assessments theretofore levied, in accordance with the terms and conditions of the merger, to the end that the lands in the respective districts shall bear their fair and proportionate share of such indebtedness. [1969 ex.s. c 78 § 8. Formerly RCW 68.18.080.]

68.54.090 Merger—Transfer of all property, funds, assessments. The commissioners of the merging district shall, forthwith upon completion of the merger, transfer, convey, and deliver to the merged district all property and funds of the merging district, together with all interest in and right to collect any assessments theretofore levied. [1969 ex.s. c 78 § 9. Formerly RCW 68.18.090.]

68.54.100 Merger and transfer of part of one district to adjacent district—Petition—Election—Vote. A part of one district may be transferred and merged with an adjacent district whenever such area can be better served by the merged district. To effect such a merger a petition, signed by not less than fifteen percent of the qualified electors residing in the area to be merged, shall be filed with the commissioners of the merging district. Such petition shall be promoted by one or more qualified electors within the area to be transferred. If the commissioners of the merging district act favorably upon the petition, then the petition shall be presented to the commissioners of the merger district. If the commissioners of the merger district act favorably upon the petition, an election shall be called in the area merged.

In the event that either board of cemetery commissioners should not concur with the petition, the petition may then be presented to a county review board established for such purposes, if there be no county review board for such purposes then to the state review board and if there be no state review board, then to the county commissioners of the county in which the area to be merged is situated, who shall decide if the area can be better served by such a merger; upon an affirmative decision an election shall be called in the area merged.

A majority of the votes cast shall be necessary to approve the transfer. [1969 ex.s. c 78 § 10. Formerly RCW 68.18.100.]

68.54.110 Merger and transfer of part of one district to adjacent district—When election dispensed with. If three-fifths of all the qualified electors in the area to be merged sign a petition to merge the districts, no election on the question of the merger is necessary, in which case the auditor shall return the petition, together with his certificate of sufficiency attached thereto, to the boards of the merging districts. Thereupon the boards of the respective districts shall adopt their concurrent resolutions of transfer in the

same manner and to the same effect as if the same had been authorized by an election. [1969 ex.s. c 78 § 11. Formerly RCW 68.18.110.]

68.54.120 Merger and transfer of part of one district to adjacent district—Preexisting indebtedness. When a part of one cemetery district is transferred to another as provided by RCW 68.54.100 and 68.54.110, said part shall be relieved of all liability for any indebtedness of the district from which it is withdrawn. However, the acquiring district shall pay to the losing district that portion of the latter's indebtedness for which the transferred part was liable. This amount shall not exceed the proportion that the assessed valuation of the transferred part bears to the assessed valuation of the whole district from which said part is withdrawn. The adjustment of such indebtedness shall be based on the assessment for the year in which the transfer is made. The boards of commissioners of the districts involved in the said transfer and merger shall enter into a contract for the payment by the acquiring district of the above-referred to indebtedness under such terms as they deem proper, provided such contract shall not impair the security of existing creditors. [1987 c 331 § 75; 1969 ex.s. c 78 § 12. Formerly RCW 68.18.120.]

68.54.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.56 RCW

PENAL AND MISCELLANEOUS PROVISIONS

Sections

- 68.56.010 Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral.
- 68.56.020 Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage.
- 68.56.030 Unlawful damage to graves, markers, shrubs, etc.—Exceptions.
- 68.56.040 Nonconforming cemetery a nuisance—Penalty—Costs of prosecution.
- 68.56.050 Defendant liable for costs.
- 68.56.060 Police authority—Who may exercise.
- 68.56.070 Forfeiture of office for inattention to duty.
- 68.56.900 Effective date—1987 c 331.

Burial, removal permits required: RCW 70.58.230.

Care of veterans' plot at Olympia: RCW 73.24.020.

68.56.010 Unlawful damage to graves, markers, shrubs, etc.—Interfering with funeral. Every person is guilty of a gross misdemeanor who unlawfully or without right wilfully does any of the following:

- (1) Destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial or marker in a cemetery, or any gate, door, fence, wall, post or railing, or any enclosure for the protection of a cemetery or any property in a cemetery.
- (2) Destroys, cuts, breaks, removes or injures any building, statuary, ornamentation, tree, shrub, flower or plant within the limits of a cemetery.
- (3) Disturbs, obstructs, detains or interferes with any person carrying or accompanying human remains to a cemetery or funeral establishment, or engaged in a funeral service, or an interment. [1943 c 247 § 36; Rem. Supp. 1943 § 3778-36.

Cf. 1909 c 249 § 240 and 1856-57 p 28 §§ 4, 5. Formerly RCW 68.48.010.]

68.56.020 Unlawful damage to graves, markers, shrubs, etc.—Civil liability for damage. Any person violating any provision of *RCW 68.48.010 is liable, in a civil action by and in the name of the cemetery authority, to pay all damages occasioned by his unlawful acts. The sum recovered shall be applied in payment for the repair and restoration of the property injured or destroyed. [1943 c 247 § 37; Rem. Supp. 1943 § 3778-37. Formerly RCW 68.48.020.]

***Reviser's note:** RCW 68.48.010 was recodified as RCW 68.56.010 pursuant to 1987 c 331 § 89.

68.56.030 Unlawful damage to graves, markers, shrubs, etc.—Exceptions. The provisions of *RCW 68.48.010 do not apply to the removal or unavoidable breakage or injury, by a cemetery authority, of any thing placed in or upon any portion of its cemetery in violation of any of the rules or regulations of the cemetery authority, nor to the removal of anything placed in the cemetery by or with the consent of the cemetery authority which has become in a wrecked, unsightly or dilapidated condition. [1943 c 247 § 37; Rem. Supp. 1943 § 3778-37. Formerly RCW 68.48.030.]

***Reviser's note:** RCW 68.48.010 was recodified as RCW 68.56.010 pursuant to 1987 c 331 § 89.

68.56.040 Nonconforming cemetery a nuisance—Penalty—Costs of prosecution. Every person, firm, or corporation who is the owner or operator of a cemetery established in violation of *this act is guilty of maintaining a public nuisance, a gross misdemeanor, and upon conviction is punishable by a fine of not less than five hundred dollars nor more than five thousand dollars or by imprisonment in a county jail for not less than one month nor more than six months, or by both; and, in addition is liable for all costs, expenses, and disbursements paid or incurred in prosecuting the case. [2003 c 53 § 313; 1943 c 247 § 145; Rem. Supp. 1943 § 3778-145. Formerly RCW 68.48.040.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

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

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.56.050 Defendant liable for costs. Every person who violates any provision of *this act is guilty of a misdemeanor, and in addition is liable for all costs, expenses, and disbursements paid or incurred by a person prosecuting the case. [1943 c 247 § 139; Rem. Supp. 1943 § 3778-139. Formerly RCW 68.48.060.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

Costs, etc., to be fixed by court having jurisdiction: RCW 68.28.065.

Section applies to certain mausoleums, columbariums, etc.: RCW 68.28.010.

68.56.060 Police authority—Who may exercise. The sexton, superintendent or other person in charge of a cemetery, and such other persons as the cemetery authority designates have the authority of a police officer for the purpose of maintaining order, enforcing the rules and regulations of the

cemetery association, the laws of the state, and the ordinances of the city or county, within the cemetery over which he has charge, and within such radius as may be necessary to protect the cemetery property. [1943 c 247 § 55; Rem. Supp. 1943 § 3778-55. Formerly RCW 68.48.080.]

68.56.070 Forfeiture of office for inattention to duty. The office of any director or officer who acts or permits action contrary to *this act immediately thereupon becomes vacant. [1943 c 247 § 132; Rem. Supp. 1943 § 3778-132. Formerly RCW 68.48.090.]

***Reviser's note:** For "this act," see note following RCW 68.04.020.

68.56.900 Effective date—1987 c 331. See RCW 68.05.900.

Chapter 68.60 RCW

ABANDONED AND HISTORIC CEMETERIES AND HISTORIC GRAVES

Sections

| | |
|-----------|---|
| 68.60.010 | Definitions. |
| 68.60.020 | Dedication. |
| 68.60.030 | Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries. |
| 68.60.040 | Protection of cemeteries—Penalties. |
| 68.60.050 | Protection of historic graves—Penalty. |
| 68.60.060 | Violations—Civil liability. |

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

(1) "Abandoned cemetery" means a burial ground of the human dead in [for] which the county assessor can find no record of an owner; or where the last known owner is deceased and lawful conveyance of the title has not been made; or in which a cemetery company, cemetery association, corporation, or other organization formed for the purposes of burying the human dead has either disbanded, been administratively dissolved by the secretary of state, or otherwise ceased to exist, and for which title has not been conveyed.

(2) "Historical cemetery" means any burial site or grounds which contain within them human remains buried prior to November 11, 1889; except that (a) cemeteries holding a valid certificate of authority to operate granted under RCW 68.05.115 and 68.05.215, (b) cemeteries owned or operated by any recognized religious denomination that qualifies for an exemption from real estate taxation under RCW 84.36.020 on any of its churches or the ground upon which any of its churches are or will be built, and (c) cemeteries controlled or operated by a coroner, county, city, town, or cemetery district shall not be considered historical cemeteries.

(3) "Historic grave" means a grave or graves that were placed outside a cemetery dedicated pursuant to this chapter and to chapter 68.24 RCW, prior to June 7, 1990, except Indian graves and burial cairns protected under chapter 27.44 RCW.

(4) "Cemetery" has the meaning provided in RCW 68.04.040(2). [1990 c 92 § 1.]

68.60.020 Dedication. Any cemetery, abandoned cemetery, historical cemetery, or historic grave that has not been dedicated pursuant to RCW 68.24.030 and 68.24.040 shall be considered permanently dedicated and subject to RCW 68.24.070. Removal of dedication may only be made pursuant to RCW 68.24.090 and 68.24.100. [1999 c 367 § 3; 1990 c 92 § 2.]

68.60.030 Preservation and maintenance corporations—Authorization of other corporations to restore, maintain, and protect abandoned cemeteries. (1)(a) The archaeological and historical division of the department of community, trade, and economic development may grant by nontransferable certificate authority to maintain and protect an abandoned cemetery upon application made by a preservation organization which has been incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery. Such authority shall be limited to the care, maintenance, restoration, protection, and historical preservation of the abandoned cemetery, and shall not include authority to make burials, unless specifically granted by the cemetery board.

(b) Those preservation and maintenance corporations that are granted authority to maintain and protect an abandoned cemetery shall be entitled to hold and possess burial records, maps, and other historical documents as may exist. Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery shall not be liable to those claiming burial rights, ancestral ownership, or to any other person or organization alleging to have control by any form of conveyance not previously recorded at the county auditor's office within the county in which the abandoned cemetery exists. Such organizations shall not be liable for any reasonable alterations made during restoration work on memorials, roadways, walkways, features, plantings, or any other detail of the abandoned cemetery.

(c) Should the maintenance and preservation corporation be dissolved, the archaeological and historical division of the department of community, trade, and economic development shall revoke the certificate of authority.

(d) Maintenance and preservation corporations that are granted authority to maintain and protect an abandoned cemetery may establish care funds pursuant to chapter 68.44 RCW, and shall report in accordance with chapter 68.44 RCW to the state cemetery board.

(2) Except as provided in subsection (1) of this section, the department of community, trade, and economic development may, in its sole discretion, authorize any Washington nonprofit corporation that is not expressly incorporated for the purpose of restoring, maintaining, and protecting an abandoned cemetery, to restore, maintain, and protect one or more abandoned cemeteries. The authorization may include the right of access to any burial records, maps, and other historical documents, but shall not include the right to be the permanent custodian of original records, maps, or documents. This authorization shall be granted by a nontransferable certificate of authority. Any nonprofit corporation authorized and acting under this subsection is immune from liability to the same extent as if it were a preservation organization holding a certificate of authority under subsection (1) of this section.

(2004 Ed.)

(3) The department of community, trade, and economic development shall establish standards and guidelines for granting certificates of authority under subsections (1) and (2) of this section to assure that any restoration, maintenance, and protection activities authorized under this subsection are conducted and supervised in an appropriate manner. [1995 c 399 § 168; 1993 c 67 § 1; 1990 c 92 § 3.]

68.60.040 Protection of cemeteries—Penalties. (1) Every person who in a cemetery unlawfully or without right willfully destroys, cuts, mutilates, effaces, or otherwise injures, tears down or removes, any tomb, plot, monument, memorial, or marker in a cemetery, or any gate, door, fence, wall, post, or railing, or any enclosure for the protection of a cemetery or any property in a cemetery is guilty of a class C felony punishable under chapter 9A.20 RCW.

(2) Every person who in a cemetery unlawfully or without right willfully destroys, cuts, breaks, removes, or injures any building, statuary, ornamentation, tree, shrub, flower, or plant within the limits of a cemetery is guilty of a gross misdemeanor punishable under chapter 9A.20 RCW.

(3) Every person who in a cemetery unlawfully or without right willfully opens a grave; removes personal effects of the decedent; removes all or portions of human remains; removes or damages caskets, surrounds, outer burial containers, or any other device used in making the original burial; transports unlawfully removed human remains from the cemetery; or knowingly receives unlawfully removed human remains from the cemetery is guilty of a class C felony punishable under chapter 9A.20 RCW. [1990 c 92 § 4.]

68.60.050 Protection of historic graves—Penalty. (1) Any person who knowingly removes, mutilates, defaces, injures, or destroys any historic grave shall be guilty of a class C felony punishable under chapter 9A.20 RCW. Persons disturbing historic graves through inadvertence, including disturbance through construction, shall reinter the human remains under the supervision of the office of archaeology and historic preservation. Expenses to reinter such human remains are to be provided by the office of archaeology and historic preservation to the extent that funds for this purpose are appropriated by the legislature.

(2) This section does not apply to actions taken in the performance of official law enforcement duties.

(3) It shall be a complete defense in a prosecution under subsection (1) of this section if the defendant can prove by a preponderance of evidence that the alleged acts were accidental or inadvertent and that reasonable efforts were made to preserve the remains accidentally disturbed or discovered, and that the accidental discovery or disturbance was properly reported. [1999 c 67 § 1; 1989 c 44 § 5. Formerly RCW 68.05.420.]

Intent—1989 c 44: See RCW 27.44.030.

Captions not law—Liberal construction—1989 c 44: See RCW 27.44.900 and 27.44.901.

68.60.060 Violations—Civil liability. Any person who violates any provision of this chapter is liable in a civil action by and in the name of the state cemetery board to pay all damages occasioned by their unlawful acts. The sum recovered

shall be applied in payment for the repair and restoration of the property injured or destroyed and to the care fund if one is established. [1990 c 92 § 5.]

Title 69

FOOD, DRUGS, COSMETICS, AND POISONS

Chapters

- 69.04** Intrastate commerce in food, drugs, and cosmetics.
- 69.06** Food and beverage establishment workers' permits.
- 69.07** Washington food processing act.
- 69.10** Food storage warehouses.
- 69.25** Washington wholesome eggs and egg products act.
- 69.28** Honey.
- 69.30** Sanitary control of shellfish.
- 69.36** Washington caustic poison act of 1929.
- 69.38** Poisons—Sales and manufacturing.
- 69.40** Poisons and dangerous drugs.
- 69.41** Legend drugs—Prescription drugs.
- 69.43** Precursor drugs.
- 69.45** Drug samples.
- 69.50** Uniform controlled substances act.
- 69.51** Controlled substances therapeutic research act.
- 69.51A** Medical marijuana.
- 69.52** Imitation controlled substances.
- 69.53** Use of buildings for unlawful drugs.
- 69.55** Ammonia.
- 69.60** Over-the-counter medications.
- 69.80** Food donation and distribution—Liability.
- 69.90** Kosher food products.

Board of health and bureau of vital statistics authorized: State Constitution Art. 20 § 1.

Board of pharmacy: Chapter 18.64 RCW.

Controlled atmosphere storage of fruits and vegetables: Chapter 15.30 RCW.

Food lockers: Chapter 19.32 RCW.

Hazardous substances (poison prevention): Chapter 70.106 RCW.

Horse meat: RCW 16.68.140.

Hotel and restaurant safety regulations: Chapter 70.62 RCW.

Inhaling toxic fumes: Chapter 9.47A RCW.

Milk and milk products for animal food: Chapter 15.37 RCW.

Poison information centers: Chapter 18.76 RCW.

Preparations, patent medicines containing alcohol: Chapter 66.12 RCW.

Regulation of sale of drugs and medicines authorized: State Constitution Art. 20 § 2.

Unlawful to refill trademarked containers: RCW 19.76.110.

Chapter 69.04 RCW

INTRASTATE COMMERCE IN FOOD, DRUGS, AND COSMETICS

(Formerly: Food, drug, and cosmetic act)

Sections

- 69.04.001 Statement of purpose.
- 69.04.002 Introductory.
- 69.04.003 "Federal act" defined.
- 69.04.004 "Intrastate commerce."
- 69.04.005 "Sale."
- 69.04.006 "Director."
- 69.04.007 "Person."

- 69.04.008 "Food."
- 69.04.009 "Drugs."
- 69.04.010 "Device."
- 69.04.011 "Cosmetic."
- 69.04.012 "Official compendium."
- 69.04.013 "Label."
- 69.04.014 "Immediate container."
- 69.04.015 "Labeling."
- 69.04.016 "Misleading labeling or advertisement," how determined.
- 69.04.017 "Antiseptic" as germicide.
- 69.04.018 "New drug" defined.
- 69.04.019 "Advertisement."
- 69.04.020 "Contaminated with filth."
- 69.04.021 "Package."
- 69.04.022 "Pesticide chemical."
- 69.04.023 "Raw agricultural commodity."
- 69.04.024 "Food additive," "safe."
- 69.04.025 "Color additive," "color."
- 69.04.040 Prohibited acts.
- 69.04.050 Remedy by injunction.
- 69.04.060 Criminal penalty for violations.
- 69.04.070 Additional penalty.
- 69.04.080 Avoidance of penalty.
- 69.04.090 Liability of disseminator of advertisement.
- 69.04.100 Condemnation of adulterated or misbranded article.
- 69.04.110 Embargo of articles.
- 69.04.120 Procedure on embargo.
- 69.04.123 Exception to petition requirement under RCW 69.04.120.
- 69.04.130 Petitions may be consolidated.
- 69.04.140 Claimant entitled to sample.
- 69.04.150 Damages not recoverable if probable cause existed.
- 69.04.160 Prosecutions.
- 69.04.170 Minor infractions.
- 69.04.180 Proceedings to be in name of state.
- 69.04.190 Standards may be prescribed by regulations.
- 69.04.200 Conformance with federal standards.
- 69.04.205 Bacon—Packaging at retail to reveal quality and leanness.
- 69.04.206 Bacon—Rules, regulations and standards—Withholding packaging use—Hearing—Final determination—Appeal.
- 69.04.207 Bacon—Effective date.
- 69.04.210 Food—Adulteration by poisonous or deleterious substance.
- 69.04.220 Food—Adulteration by abstraction, addition, substitution, etc.
- 69.04.231 Food—Adulteration by color additive.
- 69.04.240 Confectionery—Adulteration.
- 69.04.245 Poultry—Improper use of state's geographic outline.
- 69.04.250 Food—Misbranding by false label, etc.
- 69.04.260 Packaged food—Misbranding.
- 69.04.270 Food—Misbranding by lack of prominent label.
- 69.04.280 Food—Misbranding for nonconformity with standard of identity.
- 69.04.290 Food—Misbranding for nonconformity with standard of quality.
- 69.04.300 Food—Misbranding for nonconformity with standard of fill.
- 69.04.310 Food—Misbranding by failure to show usual name and ingredients.
- 69.04.315 Halibut—Misbranding by failure to show proper name.
- 69.04.320 Food—Misbranding by failure to show dietary properties.
- 69.04.330 Food—Misbranding by failure to show artificial flavoring, coloring, etc.
- 69.04.331 Popcorn sold by theaters or commercial food service establishments—Misbranded if the use of butter or ingredients of butter-like flavoring not disclosed.
- 69.04.333 Poultry and poultry products—Label to indicate if product frozen.
- 69.04.334 Turkeys—Label requirement as to grading.
- 69.04.335 RCW 69.04.333 and 69.04.334 subject to enforcement and penalty provisions of chapter.
- 69.04.340 Natural vitamin, mineral, or dietary properties need not be shown.
- 69.04.350 Permits to manufacture or process certain foods.
- 69.04.360 Suspension of permit.
- 69.04.370 Right of access for inspection.
- 69.04.380 Food exempt if in transit for completion purposes.
- 69.04.390 Regulations permitting tolerance of harmful matter.

69.04.392 Regulations permitting tolerance of harmful matter—Pesticide chemicals in or on raw agricultural commodities.

69.04.394 Regulations permitting tolerance of harmful matter—Food additives.

69.04.396 Regulations permitting tolerance of harmful matter—Color additives.

69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and regulations—Application to production of kosher food products—Adoption of rules.

69.04.399 Civil penalty for violations of standards for component parts of fluid dairy products adopted under RCW 69.04.398.

69.04.400 Conformance with federal regulations.

69.04.410 Drugs—Adulteration by harmful substances.

69.04.420 Drugs—Adulteration for failure to comply with compendium standard.

69.04.430 Drugs—Adulteration for lack of represented purity or quality.

69.04.440 Drugs—Adulteration by admixture or substitution of ingredients.

69.04.450 Drugs—Misbranding by false labeling.

69.04.460 Packaged drugs—Misbranding.

69.04.470 Drugs—Misbranding by lack of prominent label.

69.04.480 Drugs—Misbranding for failure to state content of habit forming drug.

69.04.490 Drugs—Misbranding by failure to show usual name and ingredients.

69.04.500 Drugs—Misbranding by failure to give directions for use and warnings.

69.04.510 Drugs—Misbranding for improper packaging and labeling.

69.04.520 Drugs—Misbranding for failure to show possibility of deterioration.

69.04.530 Drugs—Misbranding by misleading representation.

69.04.540 Drugs—Misbranding by sale without prescription of drug requiring it.

69.04.550 Drugs exempt if in transit for completion purposes.

69.04.560 Dispensing of certain drugs exempt.

69.04.565 DMSO (dimethyl sulfoxide) authorized.

69.04.570 Introduction of new drug.

69.04.580 Application for introduction.

69.04.590 Effective date of application.

69.04.600 Denial of application.

69.04.610 Revocation of denial.

69.04.620 Service of order of denial.

69.04.630 Drug for investigational use exempt.

69.04.640 Court review of denial.

69.04.650 Dispensing of certain drugs exempt.

69.04.660 Federally licensed drugs exempt.

69.04.670 Cosmetics—Adulteration by injurious substances.

69.04.680 Cosmetics—Misbranding by false label, etc.

69.04.690 Cosmetics—Misbranding by lack of prominent label.

69.04.700 Cosmetics exempt if in transit for completion purposes.

69.04.710 Advertisement, when deemed false.

69.04.720 Advertising of cure of certain diseases deemed false.

69.04.730 Enforcement, where vested—Regulations.

69.04.740 Regulations to conform with federal regulations.

69.04.750 Hearings.

69.04.761 Hearing on proposed regulation—Procedure.

69.04.770 Review on petition prior to effective date.

69.04.780 Investigations—Samples—Right of entry—Verified statements.

69.04.790 Owner may obtain part of sample.

69.04.800 Access to records of other agencies.

69.04.810 Access to records of intrastate carriers.

69.04.820 Right of entry to factories, warehouses, vehicles, etc.

69.04.830 Publication of reports of judgments, orders and decrees.

69.04.840 Dissemination of information.

69.04.845 Severability—1945 c 257.

69.04.850 Construction—1945 c 257.

69.04.860 Effective date of chapter—1945 c 257.

69.04.870 Short title.

69.04.880 Civil penalty.

69.04.900 Perishable packaged food—Pull date labeling—Definitions.

69.04.905 Perishable packaged food—Pull date labeling—Required.

69.04.910 Perishable packaged food—Pull date labeling—Selling or trading goods beyond pull date—Repackaging to substitute for original date—Exception.

69.04.915 Perishable packaged food—Pull date labeling—Storage—Rules and regulations.

69.04.920 Perishable packaged food—Pull date labeling—Penalties.

69.04.928 Seafood labeling requirements—Pamphlet—Direct retail endorsement.

69.04.930 Frozen fish and meat—Labeling requirements—Exceptions.

69.04.932 Salmon labeling—Definitions.

69.04.933 Salmon labeling—Identification of species—Exceptions—Penalty.

69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty.

69.04.935 Salmon labeling—Rules for identification and enforcement.

69.04.940 Imported lamb products—Labeling requirements.

69.04.950 Transport of bulk foods—Definitions.

69.04.955 Transport of bulk foods—Prohibitions—Exemption.

69.04.960 Transport of bulk foods—Compatible substances—Cleaning vehicle or vessel—Vehicle or vessel marking.

69.04.965 Transport of bulk foods—Transports not constituting violations.

69.04.970 Transport of bulk foods—Substances rendering vehicle or vessel permanently unsuitable for bulk food transport—Procedures to rehabilitate vehicles and vessels.

69.04.975 Transport of bulk foods—Rehabilitation of vehicles and vessels—Inspection—Certification—Marking—Costs.

69.04.980 Transport of bulk foods—Penalties.

Chapter 69.07 RCW does not impair authority of director or department under this chapter: RCW 69.07.160.

Dairies and dairy products: Chapter 15.36 RCW.

Food processing inspection account: RCW 69.07.120.

Patent medicine peddlers: Chapter 18.64 RCW.

69.04.001 Statement of purpose. This chapter is intended to enact state legislation (1) which safeguards the public health and promotes the public welfare by protecting the consuming public from (a) potential injury by product use; (b) products that are adulterated; or (c) products that have been produced under unsanitary conditions, and the purchasing public from injury by merchandising deceit flowing from intrastate commerce in food, drugs, devices, and cosmetics; and (2) which is uniform, as provided in this chapter, with the federal food, drug, and cosmetic act; and with the federal trade commission act, to the extent it expressly outlaws the false advertisement of food, drugs, devices, and cosmetics; and (3) which thus promotes uniformity of such law and its administration and enforcement, in and throughout the United States. [1991 c 162 § 1; 1945 c 257 § 2; Rem. Supp. 1945 § 6163-51.]

Conformity with federal regulations: RCW 69.04.190 and 69.04.200.

69.04.002 Introductory. For the purposes of this chapter, terms shall apply as herein defined unless the context clearly indicates otherwise. [1945 c 257 § 3; Rem. Supp. 1945 § 6163-52.]

69.04.003 "Federal act" defined. The term "federal act" means the federal food, drug, and cosmetic act, approved on June 25, 1938. (Title 21 U.S.C. 301 et seq.; 52 Stat. 1040 et seq.) [1945 c 257 § 4; Rem. Supp. 1945 § 6163-53.]

69.04.004 "Intrastate commerce." The term "intrastate commerce" means any and all commerce within the state of Washington and subject to the jurisdiction thereof; and includes the operation of any business or service establishment. [1945 c 257 § 5; Rem. Supp. 1945 § 6163-54.]

69.04.005 "Sale." The term "sale" means any and every sale and includes (1) manufacture, processing, packing, canning, bottling, or any other production, preparation, or putting up; (2) exposure, offer, or any other proffer; (3) holding, storing, or any other possessing; (4) dispensing, giving, delivering, serving, or any other supplying; and (5) applying,

administering, or any other using. [1945 c 257 § 6; Rem. Supp. 1945 § 6163-55.]

69.04.006 "Director." The term "director" means the director of the department of agriculture of the state of Washington and his duly authorized representatives. [1945 c 257 § 7; Rem. Supp. 1945 § 6163-56.]

Director of agriculture, general duties: Chapter 43.23 RCW.

69.04.007 "Person." The term "person" includes individual, partnership, corporation, and association. [1945 c 257 § 8; Rem. Supp. 1945 § 6163-57.]

69.04.008 "Food." The term "food" means (1) articles used for food or drink for people or other animals, (2) bottled water, (3) chewing gum, and (4) articles used for components of any such article. [1992 c 34 § 2; 1945 c 257 § 9; Rem. Supp. 1945 § 6163-58.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.04.009 "Drugs." The term "drug" means (1) articles recognized in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them; and (2) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; and (3) articles (other than food) intended to affect the structure or any function of the body of man or other animals; and (4) articles intended for use as a component of any article specified in clause (1), (2), or (3); but does not include devices or their components, parts, or accessories. [1945 c 257 § 10; Rem. Supp. 1945 § 6163-59. Prior: 1907 c 211 § 2.]

69.04.010 "Device." The term "device" (except when used in RCW 69.04.016 and in RCW 69.04.040(10), 69.04.270, 69.04.690, and in RCW 69.04.470 as used in the sentence "(as compared with other words, statements, designs, or devices, in the labeling)") means instruments, apparatus, and contrivances, including their components, parts and accessories, intended (1) for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other animals; or (2) to affect the structure or any function of the body of man or other animals. [1945 c 257 § 11; Rem. Supp. 1945 § 6163-60.]

69.04.011 "Cosmetic." The term "cosmetic" means (1) articles intended to be rubbed, poured, sprinkled, or sprayed on, introduced into, or otherwise applied to the human body or any part thereof for cleansing, beautifying, promoting attractiveness, or altering the appearance, and (2) articles intended for use as a component of any such article; except that such term shall not include soap. [1945 c 257 § 12; Rem. Supp. 1945 § 6163-61.]

69.04.012 "Official compendium." The term "official compendium" mean the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, official national formulary, or any supplement to any of them. [1945 c 257 § 13; Rem. Supp. 1945 § 6163-62.]

69.04.013 "Label." The term "label" means a display of written, printed, or graphic matter upon the immediate container of any article; and a requirement made by or under authority of this chapter that any word, statement, or other information appear on the label shall not be considered to be complied with unless such word, statement, or other information also appears on the outside container or wrapper, if any there be, of the retail package of such article, or is easily legible through the outside container or wrapper. [1945 c 257 § 14; Rem. Supp. 1945 § 6163-63.]

69.04.014 "Immediate container." The term "immediate container" does not include package liners. [1945 c 257 § 15; Rem. Supp. 1945 § 6163-64.]

69.04.015 "Labeling." The term "labeling" means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article. [1945 c 257 § 16; Rem. Supp. 1945 § 6163-65.]

Crimes relating to labeling: Chapter 9.16 RCW, RCW 69.40.055.

69.04.016 "Misleading labeling or advertisement," how determined. If any article is alleged to be misbranded because the labeling is misleading, or if an advertisement is alleged to be false because it is misleading, then in determining whether the labeling or advertisement is misleading there shall be taken into account (among other things) not only representations made or suggested by statement, word, design, device, sound, or any combination thereof, but also the extent to which the labeling or advertisement fails to reveal facts material in the light of such representations or material with respect to consequences which may result from the use of the article to which the labeling or advertisement relates under the conditions of use prescribed in the labeling or advertisement thereof or under such conditions of use as are customary or usual. [1945 c 257 § 17; Rem. Supp. 1945 § 6163-66.]

Crimes relating to advertising: Chapter 9.04 RCW.

69.04.017 "Antiseptic" as germicide. The representation of a drug, in its labeling or advertisement, as an antiseptic shall be considered to be a representation that it is a germicide, except in the case of a drug purporting to be, or represented as, an antiseptic for inhibitory use as a wet dressing, ointment, dusting powder, or such other use as involves prolonged contact with the body. [1945 c 257 § 18; Rem. Supp. 1945 § 6163-67.]

69.04.018 "New drug" defined. The term "new drug" means (1) any drug the composition of which is such that such drug is not generally recognized, among experts qualified by scientific training and experience to evaluate the safety of drugs, as safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; or (2) any drug the composition of which is such that such drug, as a result of investigations to determine its safety for use under such conditions, has become so recognized, but which has not, otherwise than in such investigations, been used to a material extent or for a material time under such conditions: PROVIDED, That no drug in use on the *effec-

tive date of this chapter shall be regarded as a new drug. [1945 c 257 § 19; Rem. Supp. 1945 § 6163-68.]

*Effective date—1945 c 257: See RCW 69.04.860.

69.04.019 "Advertisement." The term "advertisement" means all representations, other than by labeling, for the purpose of inducing, or which are likely to induce, directly or indirectly, the purchase of food, drugs, devices, or cosmetics. [1945 c 257 § 20; Rem. Supp. 1945 § 6163-69.]

69.04.020 "Contaminated with filth." The term "contaminated with filth" applies to any food, drug, device, or cosmetic not securely protected from dust, dirt, and as far as may be necessary by all reasonable means, from all foreign or injurious contaminations. [1945 c 257 § 21; Rem. Supp. 1945 § 6163-70.]

69.04.021 "Package." The word "package" shall include, and be construed to include, wrapped meats enclosed in papers or other materials as prepared by the manufacturers thereof for sale. [1963 c 198 § 8.]

69.04.022 "Pesticide chemical." The term "pesticide chemical" means any substance defined as an economic poison and/or agricultural pesticide in Title 15 RCW as now enacted or hereafter amended. [1963 c 198 § 9.]

69.04.023 "Raw agricultural commodity." The term "raw agricultural commodity" means any food in its raw or natural state, including all fruits that are washed, colored or otherwise treated in their unpeeled natural form prior to marketing. [1963 c 198 § 10.]

69.04.024 "Food additive," "safe." (1) The term "food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component or otherwise affecting the characteristics of any food (including any substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food; and including any source of radiation intended for any such use), if such substance generally is recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958; through either scientific procedures or experience based on common use in food) to be unsafe under the conditions of its intended use; except that such term does not include; (a) a pesticide chemical in or on a raw agricultural commodity; or (b) a pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity; or (c) a color additive.

(2) The term "safe" as used in the food additive definition has reference to the health of man or animal. [1963 c 198 § 11.]

69.04.025 "Color additive," "color." (1) The term "color additive" means a material which (a) is a dye, pigment, or other substance made by a process of synthesis or similar

artifice, or extracted, isolated, or otherwise derived, with or without intermediate or final change of identity, from a vegetable, animal, mineral, or other source, and (b) when added or applied to a food is capable (alone or through reaction with other substance) of imparting color thereto; except that such term does not include any material which the director, by regulation, determines is used (or intended to be used) solely for a purpose or purposes other than coloring.

(2) The term "color" includes black, white, and intermediate grays.

(3) Nothing in subsection (1) hereof shall be construed to apply to any pesticide chemical, soil or plant nutrient, or other agricultural chemical solely because of its effect in aiding, retarding, or otherwise affecting, directly or indirectly, the growth or other natural physiological processes of produce of the soil and thereby affecting its color, whether before or after harvest. [1963 c 198 § 12.]

69.04.040 Prohibited acts. The following acts and the causing thereof are hereby prohibited:

(1) The sale in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded.

(2) The adulteration or misbranding of any food, drug, device, or cosmetic in intrastate commerce.

(3) The receipt in intrastate commerce of any food, drug, device, or cosmetic that is adulterated or misbranded, and the sale thereof in such commerce for pay or otherwise.

(4) The introduction or delivery for introduction into intrastate commerce of (a) any food in violation of RCW 69.04.350; or (b) any new drug in violation of RCW 69.04.570.

(5) The dissemination within this state, in any manner or by any means or through any medium, of any false advertisement.

(6) The refusal to permit (a) entry and the taking of a sample or specimen or the making of any investigation or examination as authorized by RCW 69.04.780; or (b) access to or copying of any record as authorized by RCW 69.04.810.

(7) The refusal to permit entry or inspection as authorized by RCW 69.04.820.

(8) The removal, mutilation, or violation of an embargo notice as authorized by RCW 69.04.110.

(9) The giving of a guaranty or undertaking in intrastate commerce, referred to in RCW 69.04.080, that is false.

(10) The forging, counterfeiting, simulating, or falsely representing, or without proper authority, using any mark, stamp, tag, label, or other identification device authorized or required by regulations promulgated under RCW 69.04.350.

(11) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of a food, drug, device, or cosmetic, or the doing of any other act with respect to a food, drug, device, or cosmetic, or the labeling or advertisement thereof, which results in a violation of this chapter.

(12) The using in intrastate commerce, in the labeling or advertisement of any drug, of any representation or suggestion that an application with respect to such drug is effective under section 505 of the federal act or under RCW 69.04.570, or that such drug complies with the provisions of either such section. [1945 c 257 § 22; Rem. Supp. 1945 § 6163-71. Prior: 1917 c 168 § 1; 1907 c 211 § 1; 1901 c 94 § 1.]

69.04.050 Remedy by injunction. (1) In addition to the remedies hereinafter provided the director is hereby authorized to apply to the superior court of Thurston county for, and such court shall have jurisdiction upon prompt hearing and for cause shown to grant, a temporary or permanent injunction restraining any person from violating any provision of RCW 69.04.040; without proof that an adequate remedy at law does not exist.

(2) Whenever it appears to the satisfaction of the court in the case of a newspaper, magazine, periodical, or other publication, published at regular intervals (a) that restraining the dissemination of a false advertisement in any particular issue of such publication would delay the delivery of such issue after the regular time therefor, and (b) that such delay would be due to the method by which the manufacture and distribution of such publication is customarily conducted by the publisher in accordance with sound business practice, and not to any method or device adopted for the evasion of this section or to prevent or delay the issuance of an injunction or restraining order with respect to such false advertisement or any other advertisement, the court shall exclude such issue from the operation of the restraining order or injunction. [1945 c 257 § 23; Rem. Supp. 1945 § 6163-72.]

Injunctions, generally: Chapter 7.40 RCW.

69.04.060 Criminal penalty for violations. Any person who violates any provision of RCW 69.04.040 is guilty of a misdemeanor and shall on conviction thereof be subject to the following penalties:

(1) A fine of not more than two hundred dollars; or

(2) If the violation is committed after a conviction of such person under this section has become final, imprisonment for not more than thirty days, or a fine of not more than five hundred dollars, or both such imprisonment and fine. [2003 c 53 § 314; 1945 c 257 § 24; Rem. Supp. 1945 § 6163-73. Prior: 1907 c 211 § 12; 1901 c 94 § 11.]

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

69.04.070 Additional penalty. Notwithstanding the provisions of RCW 69.04.060, a person who violates RCW 69.04.040 with intent to defraud or mislead is guilty of a misdemeanor and the penalty shall be imprisonment for not more than ninety days, or a fine of not more than one thousand dollars, or both such imprisonment and fine. [2003 c 53 § 315; 1945 c 257 § 25; Rem. Supp. 1945 § 6163-74.]

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

69.04.080 Avoidance of penalty. No person shall be subject to the penalties of RCW 69.04.060:

(1) For having violated RCW 69.04.040(3), if he establishes that he received and sold such article in good faith, unless he refuses on request of the director to furnish the name and address of the person in the state of Washington from whom he received such article and copies of all available documents pertaining to his receipt thereof; or

(2) For having violated RCW 69.04.040 (1), (3), or (4), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such article in good

faith, to the effect that such article complies with this chapter; or

(3) For having violated RCW 69.04.040(5), if he establishes a guaranty or undertaking signed by, and containing the name and address of, the person in the state of Washington from whom he received such advertisement in good faith, to the effect that such advertisement complies with this chapter; or

(4) For having violated RCW 69.04.040(9), if he establishes that he gave such guaranty or undertaking in good faith and in reliance on a guaranty or undertaking to him, which guaranty or undertaking was to the same effect and was signed by, and contained the name and address of, a person in the state of Washington. [1945 c 257 § 26; Rem. Supp. 1945 § 6163-75.]

69.04.090 Liability of disseminator of advertisement.

No publisher, radio broadcast licensee, advertising agency, or agency or medium for the dissemination of an advertisement, except the manufacturer, packer, distributor, or seller of the article to which the advertisement relates, shall be subject to the penalties of RCW 69.04.060 by reason of his dissemination of any false advertisement, unless he has refused on the request of the director to furnish the name and address of the manufacturer, packer, distributor, seller, or advertising agency in the state of Washington, who caused him to disseminate such false advertisement. [1945 c 257 § 27; Rem. Supp. 1945 § 6163-76.]

69.04.100 Condemnation of adulterated or misbranded article. Whenever the director shall find in intrastate commerce an article subject to this chapter which is so adulterated or misbranded that it is unfit or unsafe for human use and its immediate condemnation is required to protect the public health, such article is hereby declared to be a nuisance and the director is hereby authorized forthwith to destroy such article or to render it unsalable for human use. [1945 c 257 § 28; Rem. Supp. 1945 § 6163-77.]

69.04.110 Embargo of articles. Whenever the director shall find, or shall have probable cause to believe, that an article subject to this chapter is in intrastate commerce in violation of this chapter, and that its embargo under this section is required to protect the consuming or purchasing public, due to its being adulterated or misbranded, or to otherwise protect the public from injury, or possible injury, he or she is hereby authorized to affix to such article a notice of its embargo and against its sale in intrastate commerce, without permission given under this chapter. But if, after such article has been so embargoed, the director shall find that such article does not involve a violation of this chapter, such embargo shall be forthwith removed. [1991 c 162 § 3; 1975 1st ex.s. c 7 § 25; 1945 c 257 § 29; Rem. Supp. 1945 § 6163-78.]

Purpose of section: See RCW 69.04.398.

69.04.120 Procedure on embargo. When the director has embargoed an article, he or she shall, forthwith and without delay and in no event later than thirty days after the affixing of notice of its embargo, petition the superior court for an order affirming the embargo. The court then has jurisdiction,

for cause shown and after prompt hearing to any claimant of the embargoed article, to issue an order which directs the removal of the embargo or the destruction or the correction and release of the article. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for a bond as the court finds indicated in the circumstances. [1991 c 162 § 4; 1983 c 95 § 8; 1945 c 257 § 30; Rem. Supp. 1945 § 6163-79.]

69.04.123 Exception to petition requirement under RCW 69.04.120. The director need not petition the superior court as provided for in RCW 69.04.120 if the owner or claimant of such food or food products agrees in writing to the disposition of such food or food products as the director may order. [1995 c 374 § 20.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.04.130 Petitions may be consolidated. Two or more petitions under RCW 69.04.120, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1945 c 257 § 31; Rem. Supp. 1945 § 6163-80.]

69.04.140 Claimant entitled to sample. The claimant in any proceeding by petition under RCW 69.04.120 shall be entitled to receive a representative sample of the article subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1945 c 257 § 32; Rem. Supp. 1945 § 6163-81.]

69.04.150 Damages not recoverable if probable cause existed. No state court shall allow the recovery of damages from administrative action for condemnation under RCW 69.04.100 or for embargo under RCW 69.04.110, if the court finds that there was probable cause for such action. [1945 c 257 § 33; Rem. Supp. 1945 § 6163-82.]

69.04.160 Prosecutions. (1) It shall be the duty of each state attorney, county attorney, or city attorney to whom the director reports any violation of this chapter, or regulations promulgated under it, to cause appropriate proceedings to be instituted in the proper courts, without delay, and to be duly prosecuted as prescribed by law.

(2) Before any violation of this chapter is reported by the director to any such attorney for the institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given appropriate notice and an opportunity to present his views to the director, either orally or in writing, with regard to such contemplated proceeding. [1945 c 257 § 34; Rem. Supp. 1945 § 6163-83.]

69.04.170 Minor infractions. Nothing in this chapter shall be construed as requiring the director to report for the

institution of proceedings under this chapter, minor violations of this chapter, whenever he believes that the public interest will be adequately served in the circumstances by a suitable written notice or warning. [1945 c 257 § 35; Rem. Supp. 1945 § 6163-84.]

69.04.180 Proceedings to be in name of state. All such proceedings for the enforcement, or to restrain violations, of this chapter shall be by and in the name of the state of Washington. [1945 c 257 § 36; Rem. Supp. 1945 § 6163-85.]

69.04.190 Standards may be prescribed by regulations. Whenever in the judgment of the director such action will promote honesty and fair dealing in the interest of consumers, he shall promulgate regulations fixing and establishing for any food, under its common or usual name so far as practicable, a reasonable definition and standard of identity, a reasonable standard of quality, and/or reasonable standards of fill of container. In prescribing any standard of fill of container, consideration shall be given to and due allowance shall be made for product or volume shrinkage or expansion unavoidable in good commercial practice, and need for packing and protective material. In prescribing any standard of quality for any canned fruit or canned vegetable, consideration shall be given to and due allowance shall be made for the differing characteristics of the several varieties thereof. In prescribing a definition and standard of identity for any food or class of food in which optional ingredients are permitted, the director shall, for the purpose of promoting honesty and fair dealing in the interest of consumers, designate the optional ingredients which shall be named on the label. [1945 c 257 § 37; Rem. Supp. 1945 § 6163-86. Prior: 1917 c 168 § 2.]

69.04.200 Conformance with federal standards. The definitions and standards of identity, the standards of quality and fill of container, and the label requirements prescribed by regulations promulgated under *this section shall conform, insofar as practicable, with those prescribed by regulations promulgated under section 401 of the federal act and to the definitions and standards promulgated under the meat inspection act approved March 4, 1907, as amended. [1945 c 257 § 38; Rem. Supp. 1945 § 6163-87.]

***Reviser's note:** The language "this section" appears in 1945 c 257 § 38 but apparently refers to 1945 c 257 § 37 codified as RCW 69.04.190.

69.04.205 Bacon—Packaging at retail to reveal quality and leanness. All packaged bacon other than that packaged in cans shall be offered and exposed for sale and sold, within the state of Washington only at retail in packages which permit the buyer to readily view the quality and degree of leanness of the product. [1971 c 49 § 1.]

69.04.206 Bacon—Rules, regulations and standards—Withholding packaging use—Hearing—Final determination—Appeal. The director of the department of agriculture is hereby authorized to promulgate rules, regulations, and standards for the implementation of RCW 69.04.205 through 69.04.207. If the director has reason to

believe that any packaging method, package, or container in use or proposed for use with respect to the marketing of bacon is false or misleading in any particular, or does not meet the requirements of RCW 69.04.205, he may direct that such use be withheld unless the packaging method, package, or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person, firm, or corporation using or proposing to use the packaging method, package, or container does not accept the determination of the director such person, firm, or corporation may request a hearing, but the use of the packaging method, package, or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person, firm, or corporation adversely affected thereby appeals to a court of proper jurisdiction. [1971 c 49 § 2.]

69.04.207 Bacon—Effective date. RCW 69.04.205 through 69.04.207 shall take effect on January 1, 1972. [1971 c 49 § 3.]

69.04.210 Food—Adulteration by poisonous or deleterious substance. A food shall be deemed to be adulterated:

(1) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance such food shall not be considered adulterated under this clause if the quantity of such substance in such food does not ordinarily render it injurious to health; or

(2)(a) If it bears or contains any added poisonous or added deleterious substance (other than one which is (i) a pesticide chemical in or on a raw agricultural commodity; (ii) a food additive, or (iii) a color additive) which is unsafe within the meaning of RCW 69.04.390, or (b) if it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, or (c) if it is, or it bears or contains, any food additive which is unsafe within the meaning of RCW 69.04.394: PROVIDED, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under RCW 69.04.392 and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or on such processed food shall, notwithstanding the provisions of RCW 69.04.390 and 69.04.394, not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the raw agricultural commodity; or

(3) If it consists in whole or in part of any diseased, contaminated, filthy, putrid, or decomposed substance, or if it is otherwise unfit for food; or

(4) If it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become

(2004 Ed.)

contaminated with filth, or whereby it may have been rendered diseased, unwholesome, or injurious to health; or

(5) If it is in whole or in part the product of a diseased animal or of an animal which has died otherwise than by slaughter or which has been fed on the uncooked offal from a slaughterhouse; or

(6) If its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or

(7) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394. [1963 c 198 § 1; 1945 c 257 § 39; Rem. Supp. 1945 § 6163-88. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.220 Food—Adulteration by abstraction, addition, substitution, etc. A food shall be deemed to be adulterated (1) if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or (2) if any substance has been substituted wholly or in part therefor; or (3) if damage or inferiority has been concealed in any manner; or (4) if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is. [1945 c 257 § 40; Rem. Supp. 1945 § 6163-89.]

69.04.231 Food—Adulteration by color additive. A food shall be deemed to be adulterated if it is, or it bears or contains a color additive which is unsafe within the meaning of RCW 69.04.396. [1963 c 198 § 5.]

69.04.240 Confectionery—Adulteration. A food shall be deemed to be adulterated if it is confectionery and it bears or contains any alcohol from natural or artificial alcohol flavoring in excess of one percent of the weight of the confection or any nonnutritive article or substance except harmless coloring, harmless flavoring, harmless resinous glaze not in excess of four-tenths of one percent, natural gum, and pectin: PROVIDED, That this section shall not apply to any chewing gum by reason of its containing harmless nonnutritive masticatory substances. [1984 c 78 § 2; 1945 c 257 § 42; Rem. Supp. 1945 § 6163-91. Prior: 1923 c 36 § 1, part; 1907 c 211 § 3, part.]

Finding and declaration—Severability—1984 c 78: See notes following RCW 66.12.160.

69.04.245 Poultry—Improper use of state's geographic outline. Uncooked poultry is deemed to be misbranded if it is produced outside of this state but the label for the poultry contains the geographic outline of this state. [1989 c 257 § 2.]

Legislative findings—1989 c 257: "The legislature finds that: Poultry produced in this state is known throughout the state for its high quality; and one of the sources of that quality is the proximity of production centers to retail outlets in the state. The legislature also finds that labeling which misrepresents poultry produced elsewhere as being a product of this state may lead consumers to purchase products which they would not otherwise purchase. The legislature further finds that the presence of the geographic outline of this state on a label for poultry produced outside of the state misrepresents the product as having been produced in this state." [1989 c 257 § 1.]

69.04.250 Food—Misbranding by false label, etc. A food shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if it is offered for sale under the name of another food; or (3) if it is an imitation of another food, unless its label bears, in type of uniform size and prominence, the word "imitation" and, immediately thereafter, the name of the food imitated; or (4) if its container is so made, formed or filled as to be misleading. [1945 c 257 § 43; Rem. Supp. 1945 § 6163-92. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.260 Packaged food—Misbranding. If a food is in package form, it shall be deemed to be misbranded, unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 44; Rem. Supp. 1945 § 6163-93.]

69.04.270 Food—Misbranding by lack of prominent label. A food shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 45; Rem. Supp. 1945 § 6163-94.]

69.04.280 Food—Misbranding for nonconformity with standard of identity. If a food purports to be or is represented as a food for which a definition and standard of identity has been prescribed by regulations as provided by RCW 69.04.190, it shall be deemed to be misbranded unless (1) it conforms to such definition and standard, and (2) its label bears the name of the food specified in the definition and standard, and, insofar as may be required by such regulations, the common names of optional ingredients (other than spices, flavoring, and coloring) present in such food. [1945 c 257 § 46; Rem. Supp. 1945 § 6163-95.]

69.04.290 Food—Misbranding for nonconformity with standard of quality. If a food purports to be or is represented as a food for which a standard of quality has been prescribed by regulations as provided by RCW 69.04.190, and its quality falls below such standard, it shall be deemed to be misbranded unless its label bears in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 47; Rem. Supp. 1945 § 6163-96.]

69.04.300 Food—Misbranding for nonconformity with standard of fill. If a food purports to be or is represented as a food for which a standard or standards of fill of container have been prescribed by regulations as provided by RCW 69.04.190, and it falls below the standard of fill of con-

tainer applicable thereto, it shall be deemed to be misbranded unless its label bears, in such manner and form as such regulations specify, a statement that it falls below such standard. [1945 c 257 § 48; Rem. Supp. 1945 § 6163-97.]

69.04.310 Food—Misbranding by failure to show usual name and ingredients. If a food is not subject to the provisions of RCW 69.04.280, it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the food, if any there be, and (2) in case it is fabricated from two or more ingredients, the common or usual name of each such ingredient; except that spices, flavorings, and colorings, other than those sold as such, may be designated as spices, flavorings, and colorings without naming each: PROVIDED, That, to the extent that compliance with the requirements of clause (2) of this section is impracticable, or results in deception or unfair competition, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 49; Rem. Supp. 1945 § 6163-98.]

69.04.315 Halibut—Misbranding by failure to show proper name. No person shall label or offer for sale any food fish product designated as halibut, with or without additional descriptive words unless such food fish product is Hippoglossus Hippoglossus or Hippoglossus Stenolepsis. Any person violating the provisions of this section shall be guilty of misbranding under the provisions of this chapter. [1967 ex.s. c 79 § 1.]

69.04.320 Food—Misbranding by failure to show dietary properties. If a food purports to be or is represented for special dietary uses, it shall be deemed to be misbranded, unless its label bears such information concerning its vitamin, mineral and other dietary properties as is necessary in order to fully inform purchasers as to its value for such uses, as provided by regulations promulgated by the director, such regulations to conform insofar as practicable with regulations under section 403(j) of the federal act. [1945 c 257 § 50; Rem. Supp. 1945 § 6163-99.]

69.04.330 Food—Misbranding by failure to show artificial flavoring, coloring, etc. If a food bears or contains any artificial flavoring, artificial coloring, or chemical preservative, it shall be deemed to be misbranded unless it bears labeling stating that fact: PROVIDED, That to the extent that compliance with the requirements of this section is impracticable, exemptions shall be established by regulations promulgated by the director. The provisions of this section and of RCW 69.04.280 and 69.04.310, with respect to artificial coloring, shall not apply in the case of butter, cheese, or ice cream. [1945 c 257 § 51; Rem. Supp. 1945 § 6163-100.]

69.04.331 Popcorn sold by theaters or commercial food service establishments—Misbranded if the use of butter or ingredients of butter-like flavoring not disclosed. (1) If a theater or other commercial food service establishment prepares and sells popcorn for human consumption, the establishment, at the point of sale, shall disclose by posting a sign in a conspicuous manner to prospective consumers a statement as to whether the butter or butter-

like flavoring added to or attributed to the popcorn offered for sale is butter as defined in *RCW 15.32.010 or is some other product. If the flavoring is some other product, the establishment shall also disclose the ingredients of the product.

The director of agriculture shall adopt rules prescribing the size and content of the sign upon which the disclosure is to be made. Any popcorn sold by or offered for sale by such an establishment to a consumer in violation of this section or the rules of the director implementing this section shall be deemed to be misbranded for the purposes of this chapter.

(2) The provisions of subsection (1) of this section do not apply to packaged popcorn labeled so as to disclose ingredients as required by law for prepackaged foods. [1986 c 203 § 17.]

***Reviser's note:** RCW 15.32.010 was recodified as RCW 15.36.012 pursuant to 1994 c 143 § 514.

Severability—1986 c 203: See note following RCW 15.17.230.

69.04.333 Poultry and poultry products—Label to indicate if product frozen. It shall be unlawful for any person to sell at retail or display for sale at retail any poultry and poultry products, including turkey, which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such poultry or poultry product shall be sold unless in such a package or container bearing said label. [1969 ex.s. c 194 § 1.]

69.04.334 Turkeys—Label requirement as to grading. No person shall advertise for sale, sell, offer for sale or hold for sale in intrastate commerce any turkey that does not bear a label. Such label shall be properly displayed on the package if such turkey is prepackaged, or attached to the turkey if not prepackaged. Such label shall, if the turkey has been graded, state the name of the governmental agency, whether federal or state, and the grade. No turkey which has been graded may be labeled as being ungraded. Any advertisement in any media concerning the sale of turkeys shall state or set forth whether a turkey is ungraded or graded and the specific grade if graded. [1969 ex.s. c 194 § 2.]

69.04.335 RCW 69.04.333 and 69.04.334 subject to enforcement and penalty provisions of chapter. The provisions of this chapter shall be applicable to the enforcement of RCW 69.04.333 and 69.04.334 and any person violating the provisions of RCW 69.04.333 and 69.04.334 shall be subject to the applicable civil and criminal penalties for such violations as provided for in this chapter. [1969 ex.s. c 194 § 3.]

69.04.340 Natural vitamin, mineral, or dietary properties need not be shown. Nothing in this chapter shall be construed to require the labeling or advertising to indicate the natural vitamin, natural mineral, or other natural dietary properties of dairy products or other agricultural products when sold as food. [1945 c 257 § 52; Rem. Supp. 1945 § 6163-101.]

69.04.350 Permits to manufacture or process certain foods. Whenever the director finds after investigation that

the distribution in intrastate commerce of any class of food may, by reason of contamination with micro-organisms during the manufacture, processing, or packing thereof in any locality, be injurious to health, and that such injurious nature cannot be adequately determined after such articles have entered intrastate commerce, he then, and in such case only, shall promulgate regulations providing for the issuance, to manufacturers, processors, or packers of such class of food in such locality, of permits to which shall be attached such conditions governing the manufacture, processing, or packing of such class of food, for such temporary period of time, as may be necessary to protect the public health; and after the effective date of such regulations, and during such temporary period, no person shall introduce or deliver for introduction into intrastate commerce, any such food manufactured, processed, or packed by any such manufacturer, processor, or packer unless such manufacturer, processor, or packer holds a permit issued by the director as provided by such regulations. Insofar as practicable such regulations shall conform with, shall specify the conditions prescribed by, and shall remain in effect only so long as those promulgated under section 404(a) of the federal act. [1945 c 257 § 53; Rem. Supp. 1945 § 6163-102.]

69.04.360 Suspension of permit. The director is authorized to suspend immediately upon notice any permit issued under authority of *this section, if it is found that any of the conditions of the permit have been violated. The holder of a permit so suspended shall be privileged at any time to apply for the reinstatement of such permit, and the director shall, immediately after prompt hearing and an inspection of the factory or establishment, reinstate such permit, if it is found that adequate measures have been taken to comply with and maintain the conditions of the permit, as originally issued or as amended. [1945 c 257 § 54; Rem. Supp. 1945 § 6163-103.]

***Reviser's note:** The language "this section" appears in 1945 c 257 § 54 but apparently refers to 1945 c 257 § 53 codified as RCW 69.04.350.

69.04.370 Right of access for inspection. Any officer or employee duly designated by the director shall have access to any factory or establishment, the operator of which holds a permit from the director, for the purpose of ascertaining whether or not the conditions of the permit are being complied with, and denial of access for such inspection shall be ground for suspension of the permit until such access is freely given by the operator. [1945 c 257 § 55; Rem. Supp. 1945 § 6163-104.]

69.04.380 Food exempt if in transit for completion purposes. Food which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 56; Rem. Supp. 1945 § 6163-105.]

69.04.390 Regulations permitting tolerance of harmful matter. Any poisonous or deleterious substance added to any food, except where such substance is required in the production thereof or cannot be avoided by good manufacturing practice, shall be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210; but when such substance is so required or cannot be so avoided, the director shall promulgate regulations limiting the quantity therein or thereon to such extent as he finds necessary for the protection of public health, and any quantity exceeding the limits so fixed shall also be deemed unsafe for purposes of the application of clause (2)(a) of RCW 69.04.210. While such a regulation is in effect limiting the quantity of any such substance in the case of any food, such food shall not, by reason of bearing or containing any added amount of such substance, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210. In determining the quantity of such added substance to be tolerated in or on different articles of food, the director shall take into account the extent to which the use of such substance is required or cannot be avoided in the production of each such article, and the other ways in which the consumer may be affected by the same or other poisonous or deleterious substances. [1963 c 198 § 2; 1945 c 257 § 57; Rem. Supp. 1945 § 6163-106.]

69.04.392 Regulations permitting tolerance of harmful matter—Pesticide chemicals in or on raw agricultural commodities. (1) Any poisonous or deleterious pesticide chemical, or any pesticide chemical which generally is recognized among experts qualified by scientific training and experience to evaluate the safety of pesticide chemicals as unsafe for use, added to a raw agricultural commodity, shall be deemed unsafe for the purpose of the application of clause (2) of RCW 69.04.210 unless:

(a) A tolerance for such pesticide chemical in or on the raw agricultural commodity has been prescribed pursuant to subsection (2) hereof and the quantity of such pesticide chemical in or on the raw agricultural commodity is within the limits of the tolerance so prescribed; or

(b) With respect to use in or on such raw agricultural commodity, the pesticide chemical has been exempted from the requirement of a tolerance pursuant to subsection (2) hereof.

While a tolerance or exemption from tolerance is in effect for a pesticide chemical with respect to any raw agricultural commodity, such raw agricultural commodity shall not, by reason of bearing or containing any added amount of such pesticide chemical, be considered to be adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 408 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, setting forth the tolerances for pesticide chemicals in or on any raw agricultural commodity, are hereby adopted as the regulations for tolerances applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to such federal regulations for tolerances, including exemption from tolerance and zero tolerances, to the extent necessary to protect the public health. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein tolerances for pesticides, exemptions, and zero tolerances, upon

his own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such regulation.

(3) In adopting any new or amended tolerances by regulation issued pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the necessity for the production of an adequate, wholesome, and economical food supply; (c) the other ways in which the consumer may be affected by the same pesticide chemical or by other related substances that are poisonous or deleterious; and (d) the opinion of experts qualified by scientific training and experience to determine the proper tolerance to be allowed for any pesticide chemical. [1975 1st ex.s. c 7 § 26; 1963 c 198 § 3.]

Purpose of section: See RCW 69.04.398.

69.04.394 Regulations permitting tolerance of harmful matter—Food additives. (1) A food additive shall, with respect to any particular use or intended use of such additives, be deemed unsafe for the purpose of the application of clause (2)(c) of RCW 69.04.210, unless:

(a) It and its use or intended use conform to the terms of an exemption granted, pursuant to a regulation under subsection (2) hereof providing for the exemption from the requirements of this section for any food additive, and any food bearing or containing such additive, intended solely for investigational use by qualified experts when in the director's opinion such exemption is consistent with the public health; or

(b) There is in effect, and it and its use or intended use are in conformity with a regulation issued or effective under subsection (2) hereof prescribing the conditions under which such additive may be safely used.

While such a regulation relating to a food additive is in effect, a food shall not, by reason of bearing or containing such an additive in accordance with the regulation, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 409 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the conditions under which such food additive may be safely used, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe the conditions under which a food additive may be safely used and exemptions where such food additive is to be used solely for investigational purposes; either upon his own motion or upon the petition of any inter-

ested party requesting that such a regulation be established. It shall be incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect of such additive in the diet of man or animals, taking into account any chemically or pharmacologically related substance or substances in such diet; and (d) safety factors which in the opinion of experts qualified by scientific training and experience to evaluate the safety of food additives are generally recognized as appropriate for the use of animal experimentation data. [1975 1st ex.s. c 7 § 27; 1963 c 198 § 4.]

Purpose of section: See RCW 69.04.398.

69.04.396 Regulations permitting tolerance of harmful matter—Color additives. (1) A color additive shall, with respect to any particular use (for which it is being used or intended to be used or is represented as suitable) in or on food, be deemed unsafe for the purpose of the application of RCW 69.04.231, unless:

(a) There is in effect, and such color additive and such use are in conformity with, a regulation issued under this section listing such additive for such use, including any provision of such regulation prescribing the conditions under which such additive may be safely used;

(b) Such additive and such use thereof conform to the terms of an exemption for experimental use which is in effect pursuant to regulation under this section.

While there are in effect regulations under this section relating to a color additive or an exemption with respect to such additive a food shall not, by reason of bearing or containing such additive in all respects in accordance with such regulations or such exemption, be considered adulterated within the meaning of clause (1) of RCW 69.04.210.

(2) The regulations promulgated under section 706 of the Federal Food, Drug and Cosmetic Act, as of July 1, 1975, prescribing the use or limited use of such color additive, are hereby adopted as the regulations applicable to this chapter: PROVIDED, That the director is hereby authorized to adopt by regulation any new or future amendments to the federal regulations. The director is also authorized to issue regulations in the absence of federal regulations and to prescribe therein the conditions under which a color additive may be safely used including exemptions for experimental purposes. Such a regulation may be issued either upon the director's own motion or upon the petition of any interested party requesting that such a regulation be established. It shall be

incumbent upon such petitioner to establish, by data submitted to the director, that a necessity exists for such regulation and that the effect of such a regulation will not be detrimental to the public health. If the data furnished by the petitioner is not sufficient to allow the director to determine whether such a regulation should be promulgated, the director may require additional data to be submitted and failure to comply with this request shall be sufficient grounds to deny the request of the petitioner for the issuance of such a regulation.

(3) In adopting any new or amended regulations pursuant to this section, the director shall give appropriate consideration, among other relevant factors, to the following: (a) The purpose of this chapter being to promote uniformity of state legislation with the federal act; (b) the probable consumption of, or other relevant exposure from, the additive and of any substance formed in or on food because of the use of the additive; (c) the cumulative effect, if any, of such additive in the diet of man or animals, taking into account the same or any chemically or pharmacologically related substance or substances in such diet; (d) safety factors which, in the opinion of experts qualified by scientific training and experience to evaluate the safety of color additives for the use or uses for which the additive is proposed to be listed, are generally recognized as appropriate for the use of animal experimentation data; (e) the availability of any needed practicable methods of analysis for determining the identity and quantity of (i) the pure dye and all intermediates and other impurities contained in such color additives, (ii) such additive in or on any article of food, and (iii) any substance formed in or on such article because of the use of such additive; and (f) the conformity by the manufacturer with the established standards in the industry relating to the proper formation of such color additive so as to result in a finished product safe for use as a color additive. [1975 1st ex.s. c 7 § 28; 1963 c 198 § 6.]

Purpose of section: See RCW 69.04.398.

Food—Adulteration by color additive: RCW 69.04.231.

69.04.398 Purpose of RCW 69.04.110, 69.04.392, 69.04.394, 69.04.396—Uniformity with federal laws and regulations—Application to production of kosher food products—Adoption of rules. (1) The purpose of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 is to promote uniformity of state legislation and rules with the Federal Food, Drug and Cosmetic Act 21 USC 301 et seq. and regulations adopted thereunder. In accord with such declared purpose any regulation adopted under said federal food, drug and cosmetic act concerning food in effect on July 1, 1975, and not adopted under any other specific provision of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 are hereby deemed to have been adopted under the provision hereof. Further, to promote such uniformity any regulation adopted hereafter under the provisions of the federal food, drug and cosmetic act concerning food and published in the federal register shall be deemed to have been adopted under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396 in accord with chapter 34.05 RCW as enacted or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal food, drug and cosmetic act give public notice that a hearing will be held to determine if such regula-

tion shall not be applicable under the provisions of RCW 69.04.110, 69.04.392, 69.04.394, and 69.04.396. Such hearing shall be in accord with the requirements of chapter 34.05 RCW as enacted or hereafter amended.

(2) The provisions of subsection (1) of this section do not apply to rules adopted by the director as necessary to permit the production of kosher food products as defined in RCW 69.90.010.

(3) Notwithstanding the provisions of subsections (1) and (2) of this section the director may adopt rules necessary to carry out the provisions of this chapter. [1991 c 162 § 5; 1986 c 203 § 18; 1975 1st ex.s. c 7 § 36.]

Severability—1986 c 203: See note following RCW 15.17.230.

69.04.399 Civil penalty for violations of standards for component parts of fluid dairy products adopted under RCW 69.04.398. See RCW 15.36.471.

69.04.400 Conformance with federal regulations. The regulations promulgated under RCW 69.04.390 shall conform, insofar as practicable, with those promulgated under section 406 of the federal act. [1963 c 198 § 7; 1945 c 257 § 58; Rem. Supp. 1945 § 6163-107.]

69.04.410 Drugs—Adulteration by harmful substances. A drug or device shall be deemed to be adulterated (1) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (2) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have been contaminated with filth, or whereby it may have been rendered injurious to health; or (3) if it is a drug and its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (4) if it is a drug and it bears or contains, for purposes of coloring only, a coal tar color other than one that is harmless and suitable for use in drugs for such purposes, as provided by regulations promulgated under section 504 of the federal act. [1945 c 257 § 59; Rem. Supp. 1945 § 6163-108. Prior: 1923 c 36 § 1; 1907 c 211 § 3; 1901 c 94 § 3.]

69.04.420 Drugs—Adulteration for failure to comply with compendium standard. If a drug or device purports to be or is represented as a drug the name of which is recognized in an official compendium, and its strength differs from, or its quality or purity falls below, the standard set forth in such compendium, it shall be deemed to be adulterated. Such determination as to strength, quality or purity shall be made in accordance with the tests or methods of assay set forth in such compendium or prescribed by regulations promulgated under section 501(b) of the federal act. No drug defined in an official compendium shall be deemed to be adulterated under this section because it differs from the standard of strength, quality, or purity therefor set forth in such compendium, if its difference in strength, quality, or purity from such standard is plainly stated on its label. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia unless it is labeled and offered for sale as a homeopathic drug, in which

case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States and not to those of the United States pharmacopoeia. [1945 c 257 § 60; Rem. Supp. 1945 § 6163-109.]

69.04.430 Drugs—Adulteration for lack of represented purity or quality. If a drug or device is not subject to the provisions of RCW 69.04.420 and its strength differs from, or its purity or quality falls below, that which it purports or is represented to possess, it shall be deemed to be adulterated. [1945 c 257 § 61; Rem. Supp. 1945 § 6163-110.]

69.04.440 Drugs—Adulteration by admixture or substitution of ingredients. A drug shall be deemed to be adulterated if any substance has been (1) mixed or packed therewith so as to reduce its quality or strength or (2) substituted wholly or in part therefor. [1945 c 257 § 62; Rem. Supp. 1945 § 6163-111.]

69.04.450 Drugs—Misbranding by false labeling. A drug or device shall be deemed to be misbranded if its labeling is false or misleading in any particular. [1945 c 257 § 63; Rem. Supp. 1945 § 6163-112. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.460 Packaged drugs—Misbranding. If a drug or device is in package form, it shall be deemed to be misbranded unless it bears a label containing (1) the name and place of business of the manufacturer, packer, or distributor; and (2) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (2) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations promulgated by the director. [1945 c 257 § 64; Rem. Supp. 1945 § 6163-113. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.470 Drugs—Misbranding by lack of prominent label. A drug or device shall be deemed to be misbranded if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use. [1945 c 257 § 65; Rem. Supp. 1945 § 6163-114. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.480 Drugs—Misbranding for failure to state content of habit forming drug. A drug or device shall be deemed to be misbranded if it is for use by man and contains any quantity of the narcotic or hypnotic substance alpha eucaine, barbituric acid, beta eucaine, bromal, cannabis, carbromal, chloral, coca, cocaine, codeine, heroin, marijuana, morphine, opium, paraldehyde, peyote, or sulphomethane; or any chemical derivative of such substance, which derivative has been designated as habit forming by regulations promulgated under section 502(d) of the federal act; unless its label bears the name and quantity or proportion of such substance

or derivative and in juxtaposition therewith the statement "Warning—May be habit forming." [1945 c 257 § 66; Rem. Supp. 1945 § 6163-115. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.490 Drugs—Misbranding by failure to show usual name and ingredients. If a drug is not designated solely by a name recognized in an official compendium it shall be deemed to be misbranded unless its label bears (1) the common or usual name of the drug, if such there be; and (2), in case it is fabricated from two or more ingredients, the common or usual name of each active ingredient, including the quantity, kind, and proportion of any alcohol, and also including, whether active or not, the name and quantity or proportion of any bromides, ether, chloroform, acetanilid, acetphenetidin, amidopyrine, antipyrine, atropine, hyoscyne, hyoscyamine, arsenic, digitalis, glucosides, mercury, ouabain, strophanthin, strychnine, thyroid, or any derivative or preparation of any such substances, contained therein: PROVIDED, That to the extent that compliance with the requirements of clause (2) of this section is impracticable, exemptions shall be established by regulations promulgated by the director. [1945 c 257 § 67; Rem. Supp. 1945 § 6163-116. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.500 Drugs—Misbranding by failure to give directions for use and warnings. A drug or device shall be deemed to be misbranded unless its labeling bears (1) adequate directions for use; and (2) such adequate warnings against use in those pathological conditions or by children where its use may be dangerous to health, or against unsafe dosage or methods or duration of administration or application, in such manner and form, as are necessary for the protection of users: PROVIDED, That where any requirement of clause (1) of this section as applied to any drug or device, is not necessary for the protection of the public health, the director shall promulgate regulations exempting such drug or device from such requirements. Such regulations shall include the exemptions prescribed under section 502(f)(1) of the federal act, insofar as such exemptions are applicable hereunder. [1945 c 257 § 68; Rem. Supp. 1945 § 6163-117. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.510 Drugs—Misbranding for improper packaging and labeling. A drug or device shall be deemed to be misbranded if it purports to be a drug the name of which is recognized in an official compendium, unless it is packaged and labeled as prescribed therein: PROVIDED, That the method of packing may be modified with the consent of the director, as permitted under section 502(g) of the federal act. Whenever a drug is recognized in both the United States pharmacopoeia and the homeopathic pharmacopoeia of the United States, it shall be subject to the requirements of the United States pharmacopoeia with respect to packaging and labeling unless it is labeled and offered for sale as a homeopathic drug, in which case it shall be subject to the provisions of the homeopathic pharmacopoeia of the United States, and not to those of the United States pharmacopoeia. [1945 c 257 § 69; Rem. Supp. 1945 § 6163-118. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

(2004 Ed.)

69.04.520 Drugs—Misbranding for failure to show possibility of deterioration. If a drug or device has been found by the secretary of agriculture of the United States to be a drug liable to deterioration, it shall be deemed to be misbranded unless it is packaged in such form and manner, and its label bears a statement of such precautions, as required in an official compendium or by regulations promulgated under section 502(h) of the federal act for the protection of the public health. [1945 c 257 § 70; Rem. Supp. 1945 § 6163-119. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.530 Drugs—Misbranding by misleading representation. A drug shall be deemed to be misbranded if (1) its container is so made, formed, or filled as to be misleading; or (2) if it is an imitation of another drug; or (3) if it is offered for sale under the name of another drug; or (4) if it is dangerous to health when used in the dosage, or with the frequency or duration prescribed, recommended, or suggested in the labeling thereof. [1945 c 257 § 71; Rem. Supp. 1945 § 6163-120. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.540 Drugs—Misbranding by sale without prescription of drug requiring it. A drug or device shall be deemed to be misbranded if it is a drug which by label provides, or which the federal act or any applicable law requires by label to provide, in effect, that it shall be used only upon the prescription of a physician, dentist, or veterinarian, unless it is dispensed at retail on a written prescription signed by a physician, dentist, or veterinarian, who is licensed by law to administer such a drug. [1945 c 257 § 72; Rem. Supp. 1945 § 6163-121. Prior: 1923 c 36 § 2; 1907 c 211 § 4.]

69.04.550 Drugs exempt if in transit for completion purposes. A drug or device which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling and packaging requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 73; Rem. Supp. 1945 § 6163-122.]

69.04.560 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of the conduct of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the requirements of RCW 69.04.450 through 69.04.540. [1945 c 257 § 74; Rem. Supp. 1945 § 6163-123.]

69.04.565 DMSO (dimethyl sulfoxide) authorized. Notwithstanding any other provision of state law, DMSO

(dimethyl sulfoxide) may be introduced into intrastate commerce as long as (1) it is manufactured or distributed by persons licensed pursuant to chapter 18.64 RCW or chapter 18.92 RCW, and (2) it is used, or intended to be used, in the treatment of human beings or animals for any ailment or adverse condition: PROVIDED, That DMSO intended for topical application, consistent with rules governing purity and labeling promulgated by the state board of pharmacy, shall not be considered a legend drug and may be sold by any retailer. [1981 c 50 § 1.]

DMSO use by health facilities, physicians: RCW 70.54.190.

69.04.570 Introduction of new drug. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is subject to section 505 of the federal act unless an application with respect to such drug has become effective thereunder. No person shall introduce or deliver for introduction into intrastate commerce any new drug which is not subject to section 505 of the federal act, unless (1) it has been found, by appropriate tests, that such drug is not unsafe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; and (2) an application has been filed under this section of this chapter with respect to such drug: PROVIDED, That the requirement of clause (2) shall not apply to any drug introduced into intrastate commerce at any time prior to the enactment of this chapter or introduced into interstate commerce at any time prior to the enactment of the federal act: PROVIDED FURTHER, That if the director finds that the requirement of clause (2) as applied to any drug or class of drugs, is not necessary for the protection of the public health, he shall promulgate regulations of exemption accordingly. [1945 c 257 § 75; Rem. Supp. 1945 § 6163-124.]

69.04.580 Application for introduction. An application under RCW 69.04.570 shall be filed with the director, and subject to any waiver by the director, shall include (1) full reports of investigations which have been made to show whether or not the drug, subject to the application, is safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof; (2) a full list of the articles used as components of such drug; (3) a full statement of the composition of such drug; (4) a full description of the methods used in, and the facilities and controls used for, the manufacture, processing, and packing of such drug; (5) such samples of such drug and of the articles used as components thereof as the director may require; and (6) specimens of the labeling proposed to be used for such drug. [1945 c 257 § 76; Rem. Supp. 1945 § 6163-125.]

69.04.590 Effective date of application. An application filed under RCW 69.04.570 shall become effective on the sixtieth day after the filing thereof, unless the director (1) makes such application effective prior to such day; or (2) issues an order with respect to such application pursuant to RCW 69.04.600. [1945 c 257 § 77; Rem. Supp. 1945 § 6163-126.]

69.04.600 Denial of application. If the director finds, upon the basis of the information before him and after due

notice and opportunity for hearing to the applicant, that the drug, subject to the application, is not safe for use under the conditions prescribed, recommended, or suggested in the labeling thereof, he shall, prior to such effective date, issue an order refusing to permit such application to become effective and stating the findings upon which it is based. [1945 c 257 § 78; Rem. Supp. 1945 § 6163-127.]

69.04.610 Revocation of denial. An order refusing to permit an application under RCW 69.04.570 to become effective may be suspended or revoked by the director, for cause and by order stating the findings upon which it is based. [1945 c 257 § 79; Rem. Supp. 1945 § 6163-128.]

69.04.620 Service of order of denial. Orders of the director issued under RCW 69.04.600 shall be served (1) in person by a duly authorized representative of the director or (2) by mailing the order by registered mail addressed to the applicant or respondent at his address last known to the director. [1945 c 257 § 80; Rem. Supp. 1945 § 6163-129.]

69.04.630 Drug for investigational use exempt. A drug shall be exempt from the operation of RCW 69.04.570 which is intended, and introduced or delivered for introduction into intrastate commerce, solely for investigational use by experts qualified by scientific training and experience to investigate the safety of drugs and which is plainly labeled "For investigational use only." [1945 c 257 § 81; Rem. Supp. 1945 § 6163-130.]

69.04.640 Court review of denial. The superior court of Thurston county shall have jurisdiction to review and to affirm, modify, or set aside any order issued under RCW 69.04.600, upon petition seasonably made by the person to whom the order is addressed and after prompt hearing upon due notice to both parties. [1945 c 257 § 82; Rem. Supp. 1945 § 6163-131.]

69.04.650 Dispensing of certain drugs exempt. A drug dispensed on a written prescription signed by a physician, dentist, or veterinarian (except a drug dispensed in the course of a business of dispensing drugs pursuant to diagnosis by mail) shall, if (1) such physician, dentist, or veterinarian is licensed by law to administer such drug, and (2) such drug bears a label containing the name and place of business of the dispenser, the serial number and date of such prescription, and the name of such physician, dentist, or veterinarian, be exempt from the operation of RCW 69.04.570 through 69.04.640. [1945 c 257 § 83; Rem. Supp. 1945 § 6163-132.]

69.04.660 Federally licensed drugs exempt. The provisions of RCW 69.04.570 shall not apply to any drug which is licensed under the federal virus, serum, and toxin act of July 1, 1902; or under the federal virus, serums, toxins, anti-toxins, and analogous products act of March 4, 1913. [1945 c 257 § 84; Rem. Supp. 1945 § 6163-133.]

69.04.670 Cosmetics—Adulteration by injurious substances. A cosmetic shall be deemed to be adulterated

(1) if it bears or contains any poisonous or deleterious substance which may render it injurious to users under the conditions of use prescribed in the labeling thereof, or under such conditions of use as are customary or usual: PROVIDED, That this provision shall not apply to coal tar hair dye, the label of which bears the following legend conspicuously displayed thereon: "Caution—This product contains ingredients which may cause skin irritation on certain individuals and a preliminary test according to accompanying direction should first be made. This product must not be used for dyeing the eyelashes or eyebrows; to do so may cause blindness.", and the labeling of which bears adequate directions for such preliminary testing. For the purposes of this paragraph and paragraph (5) the term "hair dye" shall not include eyelash dyes or eyebrow dyes; or (2) if it consists in whole or in part of any filthy, putrid, or decomposed substance; or (3) if it has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health; or (4) if its container is composed in whole or in part of any poisonous or deleterious substance which may render the contents injurious to health; or (5) if it is not a hair dye and it bears or contains a coal tar color other than one that is harmless and suitable for use in cosmetics, as provided by regulations promulgated under section 604 of the federal act. [1945 c 257 § 85; Rem. Supp. 1945 § 6163-134.]

69.04.680 Cosmetics—Misbranding by false label, etc. A cosmetic shall be deemed to be misbranded (1) if its labeling is false or misleading in any particular; or (2) if in package form, unless it bears a label containing (a) the name and place of business of the manufacturer, packer, or distributor; and (b) an accurate statement of the quantity of the contents in terms of weight, measure, or numerical count: PROVIDED, That under clause (b) of this section reasonable variations shall be permitted, and exemptions as to small packages shall be established, by regulations prescribed by the director. [1945 c 257 § 86; Rem. Supp. 1945 § 6163-135.]

69.04.690 Cosmetics—Misbranding by lack of prominent label. A cosmetic shall be deemed to be misbranded (1) if any word, statement, or other information required by or under authority of this chapter to appear on the label or labeling is not prominently placed thereon with such conspicuousness (as compared with other words, statements, designs, or devices, in the labeling) and in such terms as to render it likely to be read and understood by the ordinary individual under customary conditions of purchase and use; or (2) if its container is so made, formed, or filled as to be misleading. [1945 c 257 § 87; Rem. Supp. 1945 § 6163-136.]

69.04.700 Cosmetics exempt if in transit for completion purposes. A cosmetic which is, in accordance with the practice of the trade, to be processed, labeled, or repacked in substantial quantities at an establishment other than the establishment where it was originally processed or packed, is exempted from the affirmative labeling requirements of this chapter, while it is in transit in intrastate commerce from the one establishment to the other, if such transit is made in good

(2004 Ed.)

faith for such completion purposes only; but it is otherwise subject to all the applicable provisions of this chapter. [1945 c 257 § 88; Rem. Supp. 1945 § 6163-137.]

69.04.710 Advertisement, when deemed false. An advertisement of a food, drug, device, or cosmetic shall be deemed to be false, if it is false or misleading in any particular. [1945 c 257 § 89; Rem. Supp. 1945 § 6163-138.]

69.04.720 Advertising of cure of certain diseases deemed false. The advertisement of a drug or device representing it to have any effect in albuminuria, appendicitis, arteriosclerosis, blood poison, bone disease, Bright's disease, cancer, carbuncles, cholecystitis, diabetes, diphtheria, dropsy, erysipelas, gallstones, heart and vascular diseases, high blood pressure, mastoiditis, measles, meningitis, mumps, nephritis, otitis media, paralysis, pneumonia, poliomyelitis (infantile paralysis), prostate gland disorders, pyelitis, scarlet fever, sexual impotence, sinus infection, smallpox, tuberculosis, tumors, typhoid, uremia, *venereal disease, shall also be deemed to be false; except that no advertisement not in violation of RCW 69.04.710 shall be deemed to be false under this section if it is disseminated only to members of the medical, veterinary, dental, pharmaceutical, and other legally recognized professions dealing with the healing arts, or appears only in the scientific periodicals of these professions, or is disseminated only for the purpose of public health education by persons not commercially interested, directly or indirectly, in the sale of such drugs or devices: PROVIDED, That whenever the director determines that an advance in medical science has made any type of self-medication safe as to any of the diseases named above, the director shall by regulation authorize the advertisement of drugs having curative or therapeutic effect for such disease, subject to such conditions and restrictions as the director may deem necessary in the interest of public health: PROVIDED FURTHER, That this section shall not be construed as indicating that self-medication for diseases other than those named herein is safe or efficacious. [1945 c 257 § 90; Rem. Supp. 1945 § 6163-139.]

*Reviser's note: The term "venereal disease" was changed to "sexually transmitted disease" by 1988 c 206.

69.04.730 Enforcement, where vested—Regulations. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director: PROVIDED, HOWEVER, That the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [1945 c 257 § 91 (vetoed); 1947 c 25 (passed notwithstanding veto); Rem. Supp. 1947 § 6163-139a.]

69.04.740 Regulations to conform with federal regulations. The purpose of this chapter being to promote uniformity of state legislation with the federal act, the director is hereby authorized (1) to adopt, insofar as applicable, the regulations from time to time promulgated under the federal act; and (2) to make the regulations promulgated under this chapter conform, insofar as practicable, with those promulgated

under the federal act. [1945 c 257 § 92; Rem. Supp. 1945 § 6163-140.]

69.04.750 Hearings. Hearings authorized or required by this chapter shall be conducted by the director or his duly authorized representative designated for the purpose. [1945 c 257 § 93; Rem. Supp. 1945 § 6163-141.]

69.04.761 Hearing on proposed regulation—Procedure. The director shall hold a public hearing upon a proposal to promulgate any new or amended regulation under this chapter. The procedure to be followed concerning such hearings shall comply in all respects with chapter 34.05 RCW (Administrative Procedure Act) as now enacted or hereafter amended. [1963 c 198 § 13.]

69.04.770 Review on petition prior to effective date. The director shall have jurisdiction to review and to affirm, modify, or set aside any order issued under *RCW 69.04.760, promulgating a new or amended regulation under this chapter, upon petition made at any time prior to the effective date of such regulation, by any person adversely affected by such order. [1945 c 257 § 95; Rem. Supp. 1945 § 6163-143.]

*Reviser's note: RCW 69.04.760 was repealed by 1963 c 198 § 15. Later enactment, see RCW 69.04.761.

69.04.780 Investigations—Samples—Right of entry—Verified statements. The director shall cause the investigation and examination of food, drugs, devices, and cosmetics subject to this chapter. The director shall have the right (1) to take a sample or specimen of any such article, for examination under this chapter, upon tendering the market price therefor to the person having such article in custody; and (2) to enter any place or establishment within this state, at reasonable times, for the purpose of taking a sample or specimen of any such article, for such examination.

The director and the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. Such department personnel are empowered to administer oaths of verification on the statements. [1991 c 162 § 6; 1945 c 257 § 96; Rem. Supp. 1945 § 6163-144.]

69.04.790 Owner may obtain part of sample. Where a sample or specimen of any such article is taken for examination under this chapter the director shall, upon request, provide a part thereof for examination by any person named on the label of such article, or the owner thereof, or his attorney or agent; except that the director is authorized, by regulation, to make such reasonable exceptions from, and to impose such reasonable terms and conditions relating to, the operation of this section as he finds necessary for the proper administration of the provisions of this chapter. [1945 c 257 § 97; Rem. Supp. 1945 § 6163-145.]

69.04.800 Access to records of other agencies. For the purpose of enforcing the provisions of this chapter, pertinent records of any administrative agency of the state government

shall be open to inspection by the director. [1945 c 257 § 98; Rem. Supp. 1945 § 6163-146.]

69.04.810 Access to records of intrastate carriers. For the purpose of enforcing the provisions of this chapter, carriers engaged in intrastate commerce, and persons receiving food, drugs, devices, or cosmetics in intrastate commerce or holding such articles so received, shall, upon the request of the director, permit the director at reasonable times, to have access to and to copy all records showing the movement in intrastate commerce of any food, drug, device, or cosmetic, or the holding thereof during or after such movement, and the quantity, shipper, and consignee thereof; and it shall be unlawful for any such carrier or person to fail to permit such access to and the copying of any such records so requested when such request is accompanied by a statement in writing specifying the nature or kind of food, drug, device, or cosmetic to which such request relates: PROVIDED, That evidence obtained under this section shall not be used in a criminal prosecution of the person from whom obtained: PROVIDED FURTHER, That except for violations of RCW 69.04.955, penalties levied under RCW 69.04.980, the requirements of RCW 69.04.950 through 69.04.980, and the requirements of this section, carriers shall not be subject to the other provisions of this chapter by reason of their receipt, carriage, holding, or delivery of food, drugs, devices, or cosmetics in the usual course of business as carriers. [1990 c 202 § 9; 1945 c 257 § 99; Rem. Supp. 1945 § 6163-147.]

69.04.820 Right of entry to factories, warehouses, vehicles, etc. For the purpose of enforcing the provisions of this chapter, the director is authorized (1) to enter, at reasonable times, any factory, warehouse, or establishment subject to this chapter, or to enter any vehicle being used to transport or hold food, drugs, devices, or cosmetics in intrastate commerce; and (2) to inspect, at reasonable times, such factory, warehouse, establishment, or vehicle and all pertinent equipment, finished and unfinished materials, containers, labeling, and advertisements therein. [1945 c 257 § 100; Rem. Supp. 1945 § 6163-148.]

69.04.830 Publication of reports of judgments, orders and decrees. The director may cause to be published from time to time reports summarizing all judgments, decrees, and court orders which have been rendered under this chapter, including the nature of the charge and the disposition thereof. [1945 c 257 § 101; Rem. Supp. 1945 § 6163-149.]

69.04.840 Dissemination of information. The director may cause to be disseminated information regarding food, drugs, devices, or cosmetics in situations involving, in the opinion of the director, imminent danger to health or gross deception of, or fraud upon, the consumer. Nothing in this section shall be construed to prohibit the director from collecting, reporting, and illustrating the results of his examinations and investigations under this chapter. [1945 c 257 § 102; Rem. Supp. 1945 § 6163-150.]

69.04.845 Severability—1945 c 257. If any provision of this chapter is declared unconstitutional, or the applicability thereof to any person or circumstances is held invalid, the constitutionality of the remainder of the chapter and the applicability thereof to other persons and circumstances shall not be affected thereby. [1945 c 257 § 103; Rem. Supp. 1945 § 6163-151.]

69.04.850 Construction—1945 c 257. This chapter and the regulations promulgated hereunder shall be so interpreted and construed as to effectuate its general purpose to secure uniformity with federal acts and regulations relating to adulterating, misbranding and false advertising of food, drugs, devices, and cosmetics. [1945 c 257 § 104; Rem. Supp. 1945 § 6163-152.]

69.04.860 Effective date of chapter—1945 c 257. This chapter shall take effect ninety days after the date of its enactment, and all state laws or parts of laws in conflict with this chapter are then repealed: PROVIDED, That the provisions of section 91 shall become effective on the enactment of this chapter, and thereafter the director is hereby authorized to conduct hearings and to promulgate regulations which shall become effective on or after the effective date of this chapter as the director shall direct: PROVIDED FURTHER, That all other provisions of this chapter to the extent that they may relate to the enforcement of such sections, shall take effect on the date of the enactment of this chapter. [1945 c 257 § 105; Rem. Supp. 1945 § 6163-153.]

Reviser's note: 1945 c 257 § 91 referred to herein was vetoed by the governor but was subsequently reenacted as 1947 c 25 notwithstanding the veto. Section 91 is codified as RCW 69.04.730. For effective date of section 91 see preface 1947 session laws.

69.04.870 Short title. This chapter may be cited as the Uniform Washington Food, Drug, and Cosmetic Act. [1945 c 257 § 1; Rem. Supp. 1945 § 6163-50.]

69.04.880 Civil penalty. Whenever the director finds that a person has committed a violation of a provision of this chapter, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each and every such violation shall be a separate and distinct offense. Imposition of the civil penalty shall be subject to a hearing in conformance with chapter 34.05 RCW. [1991 c 162 § 2.]

69.04.900 Perishable packaged food—Pull date labeling—Definitions. For the purpose of RCW 69.04.900 through 69.04.920:

(1) "Perishable packaged food goods" means and includes all foods and beverages, except alcoholic beverages, frozen foods, fresh meat, poultry and fish and a raw agricultural commodity as defined in this chapter, intended for human consumption which are canned, bottled, or packaged other than at the time and point of retail sale, which have a high risk of spoilage within a period of thirty days, and as determined by the director of the department of agriculture by rule and regulation to be perishable.

(2) "Pull date" means the latest date a packaged food product shall be offered for sale to the public.

(2004 Ed.)

(3) "Shelf life" means the length of time during which a packaged food product will retain its safe consumption quality if stored under proper temperature conditions.

(4) "Fish" as used in subsection (1) of this section shall mean any water breathing animals, including, but not limited to, shellfish such as lobster, clams, crab, or other mollusks which are prepared, processed, sold, or intended or offered for sale. [1974 ex.s. c 57 § 1; 1973 1st ex.s. c 112 § 1.]

69.04.905 Perishable packaged food—Pull date labeling—Required. All perishable packaged food goods with a projected shelf life of thirty days or less, which are offered for sale to the public after January 1, 1974 shall state on the package the pull date. The pull date must be stated in day, and month and be in a style and format that is readily decipherable by consumers: PROVIDED, That the director of the department of agriculture may exclude the monthly requirement on the pull date for perishable packaged food goods which have a shelf life of seven days or less. No perishable packaged food goods shall be offered for sale after the pull date, except as provided in RCW 69.04.910. [1974 ex.s. c 57 § 2; 1973 1st ex.s. c 112 § 2.]

69.04.910 Perishable packaged food—Pull date labeling—Selling or trading goods beyond pull date—Repackaging to substitute for original date—Exception. No person shall sell, trade or barter any perishable packaged food goods beyond the pull date appearing thereon, nor shall any person rewrap or repackage any packaged perishable food goods with the intention of placing a pull date thereon which is different from the original: PROVIDED, HOWEVER, That those packaged perishable food goods whose pull dates have expired may be sold if they are still wholesome and are without danger to health, and are clearly identified as having passed the pull date. [1973 1st ex.s. c 112 § 3.]

69.04.915 Perishable packaged food—Pull date labeling—Storage—Rules and regulations. The director of the department of agriculture shall by rule and regulation establish uniform standards for pull date labeling, and optimum storage conditions of perishable packaged food goods. In addition to his other duties the director, in consultation with the secretary of the department of health where appropriate, may promulgate such other rules and regulations as may be necessary to carry out the purposes of RCW 69.04.900 through 69.04.920. [1989 1st ex.s. c 9 § 225; 1973 1st ex.s. c 112 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.04.920 Perishable packaged food—Pull date labeling—Penalties. Any person convicted of a violation of RCW 69.04.905 or 69.04.910 shall be punishable by a fine not to exceed five hundred dollars. [1973 1st ex.s. c 112 § 5.]

69.04.928 Seafood labeling requirements—Pamphlet—Direct retail endorsement. The department of agriculture must develop a pamphlet that generally describes the labeling requirements for seafood, as set forth in this chapter, and provide an adequate quantity of the pamphlets to the

department of fish and wildlife to distribute with the issuance of a direct retail endorsement under RCW 77.65.510. [2002 c 301 § 11.]

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

69.04.930 Frozen fish and meat—Labeling requirements—Exceptions. It shall be unlawful for any person to sell at retail or display for sale at retail any food fish as defined in RCW 77.08.022 or shellfish as defined in RCW 77.08.010, any meat, or any meat food product which has been frozen at any time, without having the package or container in which the same is sold bear a label clearly discernible to a customer that such product has been frozen and whether or not the same has since been thawed. No such food fish or shellfish, meat or meat food product shall be sold unless in such a package or container bearing said label: PROVIDED, That this section shall not include any of the aforementioned food or food products that have been frozen prior to being smoked, cured, cooked or subjected to the heat of commercial sterilization. [2003 c 39 § 28; 1999 c 291 § 32; 1988 c 254 § 8; 1983 1st ex.s. c 46 § 179; 1975 c 39 § 1.]

69.04.932 Salmon labeling—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 69.04.933 through 69.04.935.

(1) "Salmon" means all species of the genus *Oncorhynchus*, except those classified as game fish in Title 77 RCW, and includes:

| SCIENTIFIC NAME | COMMON NAME |
|--|-------------------------------|
| <i>Oncorhynchus tshawytscha</i> | Chinook salmon or king salmon |
| <i>Oncorhynchus kisutch</i> | Coho salmon or silver salmon |
| <i>Oncorhynchus keta</i> | Chum salmon |
| <i>Oncorhynchus gorbuscha</i> | Pink salmon |
| <i>Oncorhynchus nerka</i> | Sockeye salmon |
| <i>Salmo salar</i> (in other than its landlocked form) | Atlantic salmon |

(2) "Commercially caught" means salmon harvested by commercial fishers. [1993 c 282 § 2.]

Finding—1993 c 282: "The legislature finds that salmon consumers in Washington benefit from knowing the species and origin of the salmon they purchase. The accurate identification of such species, as well as knowledge of the country or state of origin and of whether they were caught commercially or were farm-raised, is important to consumers." [1993 c 282 § 1.]

69.04.933 Salmon labeling—Identification of species—Exceptions—Penalty. With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen salmon food fish or cultured aquatic salmon without identifying the species of salmon by its common name to the buyer at the point of sale such that the buyer can make an informed decision in purchasing. A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about the species of salmon and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded. [1993 c 282 § 3.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.934 Salmon labeling—Identification as farm-raised or commercially caught—Exceptions—Penalty. With the exception of a commercial fisher engaged in sales of fish to a fish buyer, no person may sell at wholesale or retail any fresh or frozen:

(1) Private sector cultured aquatic salmon without identifying the product as farm-raised salmon; or

(2) Commercially caught salmon designated as food fish under Title 77 RCW without identifying the product as commercially caught salmon.

Identification of the products under subsections (1) and (2) of this section shall be made to the buyer at the point of sale such that the buyer can make an informed decision in purchasing.

A person knowingly violating this section is guilty of misbranding under this chapter. A person who receives misleading or erroneous information about whether the salmon is farm-raised or commercially caught, and subsequently inaccurately identifies salmon shall not be guilty of misbranding. This section shall not apply to salmon that is minced, pulverized, coated with batter, or breaded. [2003 c 39 § 29; 1993 c 282 § 4.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.935 Salmon labeling—Rules for identification and enforcement. To promote honesty and fair dealing for consumers, the director, in consultation with the director of the department of fish and wildlife, shall adopt rules:

(1) Fixing and establishing a reasonable definition and standard of identity for salmon for purposes of identifying and selling salmon;

(2) Enforcing RCW 69.04.933 and 69.04.934. [1994 c 264 § 39; 1993 c 282 § 5.]

Finding—1993 c 282: See note following RCW 69.04.932.

69.04.940 Imported lamb products—Labeling requirements. All retail sales of fresh or frozen lamb products which are imported from another country shall be labelled with the country of origin. For the purposes of this section "imported lamb products" shall include but not be limited to, live lambs imported from another country but slaughtered in the United States. [1987 c 393 § 25.]

69.04.950 Transport of bulk foods—Definitions. The definitions in this section apply throughout RCW 69.04.950 through 69.04.980:

(1) "Food" means: (a) Any article used for food or drink for humans or used as a component of such an article; or (b) a food grade substance.

(2) "Food grade substance" means a substance which satisfies the requirements of the federal food, drug, and cosmetic act, meat inspection act, and poultry products act and rules promulgated thereunder as materials approved by the federal food and drug administration, United States department of agriculture, or United States environmental protection agency for use: (a) As an additive in food or drink for human consumption, (b) in sanitizing food or drink for human consumption, (c) in processing food or drink for human consumption, or (d) in maintaining equipment with food contact surfaces during which maintenance the sub-

stance is expected to come in contact with food or drink for human consumption.

(3) "In bulk form" means a food or substance which is not packaged or contained by anything other than the cargo carrying portion of the vehicle or vessel.

(4) "Vehicle or vessel" means a commercial vehicle or commercial vessel which has a gross weight of more than ten thousand pounds, is used to transport property, and is a motor vehicle, motor truck, trailer, railroad car, or vessel. [1990 c 202 § 1.]

Advisory committee—Report—1990 c 202: "The director of agriculture and the secretary of health shall examine, in consultation with an industry advisory committee, the potential hazards that may be posed to the public health by the transportation of food in other than bulk form in intrastate commerce. The director and secretary shall report the findings to the legislature by January 1, 1992, concerning the extent of the potential hazards, the frequency of mixed shipments of packaged food and nonfood items, the manner in which mixed shipments of packaged food and nonfood items are transported, and the incidents of food contamination in Washington state within the past five years. The findings shall include recommendations, if any, for regulating the transportation of food in other than bulk form.

The director and the secretary shall establish an industry advisory committee to provide advice regarding the examination required by this section. The director and the secretary shall jointly appoint not less than nine persons to the committee. These persons shall be representatives from the manufacturing, processing, wholesaling, distributing, and retailing sectors of the food industry." [1990 c 202 § 8.]

69.04.955 Transport of bulk foods—Prohibitions—

Exemption. (1) Except as provided in RCW 69.04.965 and 69.04.975, no person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel that has been used for transporting in bulk form a cargo other than food.

(2) No person may transport in intrastate commerce food in bulk form in the cargo carrying portion of a vehicle or vessel unless the vehicle or vessel is marked "Food or Food Compatible Only" in conformance with rules adopted under RCW 69.04.960.

(3) No person may transport in intrastate commerce a substance in bulk form other than food or a substance on a list adopted under RCW 69.04.960 in the cargo carrying portion of a vehicle or vessel marked "Food or Food Compatible Only."

(4) This section does not apply to the transportation of a raw agricultural commodity from the point of its production to the facility at which the commodity is first processed or packaged. [1990 c 202 § 2.]

69.04.960 Transport of bulk foods—Compatible substances—Cleaning vehicle or vessel—Vehicle or vessel marking. (1) The director of agriculture and the secretary of health shall jointly adopt by rule:

(a) A list of food compatible substances other than food that may be transported in bulk form as cargo in a vehicle or vessel that is also used, on separate occasions, to transport food in bulk form as cargo. The list shall contain those substances that the director and the secretary determine will not pose a health hazard if food in bulk form were transported in the vehicle or vessel after it transported the substance. In making this determination, the director and the secretary shall assume that some residual portion of the substance will remain in the cargo carrying portion of the vehicle or vessel when the food is transported;

(b) The procedures to be used to clean the vehicle or vessel after transporting the substance and prior to transporting the food;

(c) The form of the certificates to be used under RCW 69.04.965; and

(d) Requirements for the "Food or Food Compatible Only" marking which must be borne by a vehicle or vessel under RCW 69.04.955 or 69.04.965.

(2) In developing and adopting rules under this section and RCW 69.04.970, the director and the secretary shall consult with the secretary of transportation, the chief of the state patrol, the chair of the utilities and transportation commission, and representatives of the vehicle and vessel transportation industries, food processors, and agricultural commodity organizations. [1990 c 202 § 3.]

69.04.965 Transport of bulk foods—Transports not constituting violations. Transporting food as cargo in bulk form in intrastate commerce in a vehicle or vessel that has previously been used to transport in bulk form a cargo other than food does not constitute a violation of RCW 69.04.955 if:

(1) The cargo is a food compatible substance contained on the list adopted by the director and secretary under RCW 69.04.960;

(2) The vehicle or vessel has been cleaned as required by the rules adopted under RCW 69.04.960;

(3) The vehicle or vessel is marked "Food or Food Compatible" in conformance with rules adopted under RCW 69.04.960; and

(4) A certificate accompanies the vehicle or vessel when the food is transported by other than railroad car which attests, under penalty of perjury, to the fact that the vehicle or vessel has been cleaned as required by those rules and is dated and signed by the party responsible for that cleaning. Such certificates shall be maintained by the owner of the vehicle or vessel for not less than three years and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. The director of agriculture and the secretary of health shall jointly adopt rules requiring such certificates for the transportation of food under this section by railroad car and requiring such certificates to be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture. [1990 c 202 § 4.]

69.04.970 Transport of bulk foods—Substances rendering vehicle or vessel permanently unsuitable for bulk food transport—Procedures to rehabilitate vehicles and vessels. The director of agriculture and the secretary of health shall jointly adopt by rule:

(1) A list of substances which, if transported in bulk form in the cargo carrying portion of a vehicle or vessel, render the vehicle or vessel permanently unsuitable for use in transporting food in bulk form because the prospect that any residue might be present in the vehicle or vessel when it transports food poses a hazard to the public health; and

(2) Procedures to be used to rehabilitate a vehicle or vessel that has been used to transport a substance other than a substance contained on a list adopted under RCW 69.04.960

or under subsection (1) of this section. The procedures shall ensure that transporting food in the cargo carrying portion of the vehicle or vessel after its rehabilitation will not pose a health hazard. [1990 c 202 § 5.]

69.04.975 Transport of bulk foods—Rehabilitation of vehicles and vessels—Inspection—Certification—Marking—Costs. A vehicle or vessel that has been used to transport a substance other than food or a substance contained on the lists adopted by the director and secretary under RCW 69.04.960 and 69.04.970, may be rehabilitated and used to transport food only if:

(1) The vehicle or vessel is rehabilitated in accordance with the procedures established by the director and secretary in RCW 69.04.970;

(2) The vehicle or vessel is inspected by the department of agriculture, and the department determines that transporting food in the cargo carrying portion of the vehicle or vessel will not pose a health hazard;

(3) A certificate accompanies the vehicle or vessel certifying that the vehicle or vessel has been rehabilitated and inspected and is authorized to transport food, and is dated and signed by the director of agriculture, or an authorized agent of the director. Such certificates shall be maintained for the life of the vehicle by the owner of the vehicle or vessel, and shall be available for inspection concerning compliance with RCW 69.04.950 through 69.04.980. Forms for the certificates shall be provided by the department of agriculture; and

(4) The vehicle or vessel is marked as required by RCW 69.04.955 or is marked and satisfies the requirements of RCW 69.04.965 which are not inconsistent with the rehabilitation authorized by this section.

No vehicle or vessel that has transported in bulk form a substance contained on the list adopted under RCW 69.04.970 qualifies for rehabilitation.

The cost of rehabilitation shall be borne by the vehicle or vessel owner. The director shall determine a reasonable fee to be imposed on the vehicle or vessel owner based on inspection, laboratory, and administrative costs incurred by the department in rehabilitating the vehicle or vessel. [1990 c 202 § 6.]

69.04.980 Transport of bulk foods—Penalties. A person who knowingly transports a cargo in violation of RCW 69.04.955 or who knowingly causes a cargo to be transported in violation of RCW 69.04.955 is subject to a civil penalty, as determined by the director of agriculture, for each such violation as follows:

(1) For a person's first violation or first violation in a period of five years, not more than five thousand dollars;

(2) For a person's second or subsequent violation within five years of a previous violation, not more than ten thousand dollars.

The director shall impose the penalty by an order which is subject to the provisions of chapter 34.05 RCW.

The director shall, wherever practical, secure the assistance of other public agencies, including but not limited to the department of health, the utilities and transportation commission, and the state patrol, in identifying and investigating potential violations of RCW 69.04.955. [1990 c 202 § 7.]

Chapter 69.06 RCW

FOOD AND BEVERAGE ESTABLISHMENT WORKERS' PERMITS

Sections

| | |
|-----------|---|
| 69.06.010 | Food and beverage service worker's permit—Filing, duration—Minimum training requirements. |
| 69.06.020 | Permit exclusive and valid throughout state—Fee. |
| 69.06.030 | Diseased persons—May not work—Employer may not hire. |
| 69.06.040 | Application of chapter to retail food establishments. |
| 69.06.045 | Application of chapter to temporary food service establishments. |
| 69.06.050 | Permit to be secured within fourteen days from time of employment. |
| 69.06.060 | Penalty. |
| 69.06.070 | Limited duty permit. |

69.06.010 Food and beverage service worker's permit—Filing, duration—Minimum training requirements.

It shall be unlawful for any person to be employed in the handling of unwrapped or unpackaged food unless he or she shall furnish and place on file with the person in charge of such establishment, a food and beverage service worker's permit, as prescribed by the state board of health. Such permit shall be kept on file by the employer or kept by the employee on his or her person and open for inspection at all reasonable hours by authorized public health officials. Such permit shall be returned to the employee upon termination of employment. Initial permits, including limited duty permits, shall be valid for two years from the date of issuance. Subsequent renewal permits shall be valid for three years from the date of issuance, except an employee may be granted a renewal permit that is valid for five years from the date of issuance if the employee demonstrates that he or she has obtained additional food safety training prior to renewal of the permit. Rules establishing minimum training requirements must be adopted by the state board of health and developed by the department of health in conjunction with local health jurisdictions and representatives of the food service industry. [1998 c 136 § 1; 1987 c 223 § 5; 1957 c 197 § 1.]

Effective date—1998 c 136 § 1: "Section 1 of this act takes effect July 1, 1999." [1998 c 136 § 6.]

69.06.020 Permit exclusive and valid throughout state—Fee.

The permit provided in RCW 69.06.010 or 69.06.070 shall be valid in every city, town and county in the state, for the period for which it is issued, and no other health certificate shall be required of such employees by any municipal corporation or political subdivision of the state. The cost of the permit shall be uniform throughout the state and shall be in that amount set by the state board of health. The cost of the permit shall reflect actual costs of food worker training and education, administration of the program, and testing of applicants. The state board of health shall periodically review the costs associated with the permit program and adjust the fee accordingly. The board shall also ensure that the fee is not set at an amount that would prohibit low-income persons from obtaining permits. [1998 c 136 § 3; 1987 c 223 § 6; 1957 c 197 § 2.]

69.06.030 Diseased persons—May not work—Employer may not hire.

It shall be unlawful for any person afflicted with any contagious or infectious disease that may be transmitted by food or beverage to work in or about any

place where unwrapped or unpackaged food and/or beverage products are prepared or sold, or offered for sale for human consumption and it shall be unlawful for any person knowingly to employ a person so afflicted. Nothing in this section eliminates any authority or requirement to control or suppress communicable diseases pursuant to chapter 70.05 RCW and RCW 43.20.050(2)(e). [1998 c 136 § 4; 1957 c 197 § 3.]

69.06.040 Application of chapter to retail food establishments. This chapter shall apply to any retail establishment engaged in the business of food handling or food service. [1987 c 223 § 7; 1957 c 197 § 4.]

69.06.045 Application of chapter to temporary food service establishments. As used in this section, "temporary food service establishment" means a food service establishment operating at a fixed location for a period of time of not more than twenty-one consecutive days in conjunction with a single event or celebration. This chapter applies to temporary food service establishments with the following exceptions:

- (1) Only the operator or person in charge of a temporary food service establishment shall be required to secure a food and beverage service workers' permit; and
- (2) The operator or person in charge of a temporary food service establishment shall secure a valid food and beverage service workers' permit before commencing the food handling operation. [1987 c 223 § 8.]

69.06.050 Permit to be secured within fourteen days from time of employment. Individuals under this chapter must obtain a food and beverage service workers' permit within fourteen days from commencement of employment. Individuals under this chapter may work for up to fourteen calendar days without a food and beverage service workers' permit, provided that they receive information or training regarding safe food handling practices from the employer prior to commencement of employment. Documentation that the information or training has been provided to the individual must be kept on file by the employer. [1998 c 136 § 5; 1957 c 197 § 5.]

69.06.060 Penalty. Any violation of the provisions of this chapter shall be a misdemeanor. [1957 c 197 § 6.]

69.06.070 Limited duty permit. The local health officer may issue a limited duty permit when necessary to reasonably accommodate a person with a disability. The limited duty permit must specify the activities that the permit holder may perform, and must include only activities having low public health risk. [1998 c 136 § 2.]

Chapter 69.07 RCW

WASHINGTON FOOD PROCESSING ACT

Sections

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| 69.07.005 | Legislative declaration. |
| 69.07.010 | Definitions. |
| 69.07.020 | Enforcement—Rules—Adoption—Contents—Standards. |
| 69.07.040 | Food processing license—Waiver if licensed under chapter 15.36 RCW—Expiration date—Application, contents—Fee. |
| 69.07.050 | Renewal of license—Additional fee, when. |

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| 69.07.060 | Denial, suspension or revocation of license—Grounds. |
| 69.07.065 | Suspension of license summarily—Reinstatement. |
| 69.07.070 | Rules and regulations, hearings subject to Administrative Procedure Act. |
| 69.07.080 | Inspections by department—Access—When. |
| 69.07.085 | Sanitary certificates—Fee. |
| 69.07.095 | Authority of director and personnel. |
| 69.07.100 | Establishments exempted from provisions of chapter. |
| 69.07.103 | Chickens—Slaughter, preparation, sale—One thousand or fewer—Special, temporary permit—Rules—Fee. |
| 69.07.110 | Enforcement of chapter. |
| 69.07.120 | Disposition of money into food processing inspection account. |
| 69.07.135 | Unlawful to sell or distribute food from unlicensed processor. |
| 69.07.140 | Violations—Warning notice. |
| 69.07.150 | Violations—Penalties. |
| 69.07.160 | Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW. |
| 69.07.170 | Definitions. |
| 69.07.180 | Bottled water labeling standards. |
| 69.07.190 | Bottled soft drinks, soda, or seltzer exempt from bottled water labeling requirements. |
| 69.07.900 | Chapter is cumulative and nonexclusive. |
| 69.07.910 | Severability—1967 ex.s.c 121. |
| 69.07.920 | Short title. |

69.07.005 Legislative declaration. The processing of food intended for public consumption is important and vital to the health and welfare both immediate and future and is hereby declared to be a business affected with the public interest. The provisions of this chapter [1991 c 137] are enacted to safeguard the consuming public from unsafe, adulterated, or misbranded food by requiring licensing of all food processing plants as defined in this chapter and setting forth the requirements for such licensing. [1991 c 137 § 1.]

69.07.010 Definitions. For the purposes of this chapter:

- (1) "Department" means the department of agriculture of the state of Washington;
- (2) "Director" means the director of the department;
- (3) "Food" means any substance used for food or drink by any person, including ice, bottled water, and any ingredient used for components of any such substance regardless of the quantity of such component;
- (4) "Sale" means selling, offering for sale, holding for sale, preparing for sale, trading, bartering, offering a gift as an inducement for sale of, and advertising for sale in any media;
- (5) "Food processing" means the handling or processing of any food in any manner in preparation for sale for human consumption: PROVIDED, That it shall not include fresh fruit or vegetables merely washed or trimmed while being prepared or packaged for sale in their natural state;
- (6) "Food processing plant" includes but is not limited to any premises, plant, establishment, building, room, area, facilities and the appurtenances thereto, in whole or in part, where food is prepared, handled or processed in any manner for distribution or sale for resale by retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer: PROVIDED, That, as set forth herein, establishments processing foods in any manner for resale shall be considered a food processing plant as to such processing;
- (7) "Food service establishment" shall mean any fixed or mobile restaurant, coffee shop, cafeteria, short order cafe, luncheonette, grill, tearoom, sandwich shop, soda fountain, tavern, bar, cocktail lounge, night club, roadside stand, industrial-feeding establishment, retail grocery, retail food market, retail meat market, retail bakery, private, public, or nonprofit

organization routinely serving food, catering kitchen, commissary or similar place in which food or drink is prepared for sale or for service on the premises or elsewhere, and any other eating or drinking establishment or operation where food is served or provided for the public with or without charge.

For the purpose of this chapter any custom cannery or processing plant where raw food products, food, or food products are processed for the owner thereof, or the food processing facilities are made available to the owners or persons in control of raw food products or food or food products for processing in any manner, shall be considered to be food processing plants;

(8) "Person" means an individual, partnership, corporation, or association. [1992 c 34 § 3; 1991 c 137 § 2; 1967 ex.s. c 121 § 1.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.07.020 Enforcement—Rules—Adoption—Contents—Standards. (1) The department shall enforce and carry out the provisions of this chapter, and may adopt the necessary rules to carry out its purposes.

(2) Such rules may include:

(a) Standards for temperature controls in the storage of foods, so as to provide proper refrigeration.

(b) Standards for temperatures at which low acid foods must be processed and the length of time such temperatures must be applied and at what pressure in the processing of such low acid foods.

(c) Standards and types of recording devices that must be used in providing records of the processing of low acid foods, and how they shall be made available to the department of agriculture for inspection.

(d) Requirements for the keeping of records of the temperatures, times and pressures at which foods were processed, or for the temperatures at which refrigerated products were stored by the licensee and the furnishing of such records to the department.

(e) Standards that must be used to establish the temperature and purity of water used in the processing of foods. [1969 c 68 § 1; 1967 ex.s. c 121 § 2.]

69.07.040 Food processing license—Waiver if licensed under chapter 15.36 RCW—Expiration date—Application, contents—Fee. It shall be unlawful for any person to operate a food processing plant or process foods in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. License fees shall be prorated where necessary to accommodate staggering of expiration dates. Application for a license shall be on a form prescribed by the director and accompanied by the license fee. The license fee is determined by computing the gross annual sales for the accounting year immediately preceding the license year. If the license is for a new operator, the license fee shall be based on an estimated gross annual sales for the initial license period.

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|----------------------------|---------------------|
| If gross annual sales are: | The license fee is: |
| \$0 to \$50,000 | \$55.00 |
| \$50,001 to \$500,000 | \$110.00 |
| \$500,001 to \$1,000,000 | \$220.00 |

| | |
|-----------------------------|----------|
| \$1,000,001 to \$5,000,000 | \$385.00 |
| \$5,000,001 to \$10,000,000 | \$550.00 |
| Greater than \$10,000,000 | \$825.00 |

Such application shall include the full name of the applicant for the license and the location of the food processing plant he or she intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant. The application shall also specify the type of food to be processed and the method or nature of processing operation or preservation of that food and any other necessary information. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof.

Licenses shall be issued to cover only those products, processes, and operations specified in the license application and approved for licensing. Wherever a license holder wishes to engage in processing a type of food product that is different than the type specified on the application supporting the licensee's existing license and processing that type of food product would require a major addition to or modification of the licensee's processing facilities or has a high potential for harm, the licensee shall submit an amendment to the current license application. In such a case, the licensee may engage in processing the new type of food product only after the amendment has been approved by the department.

If upon investigation by the director, it is determined that a person is processing food for retail sale and is not under permit, license, or inspection by a local health authority, then that person may be considered a food processor and subject to the provisions of this chapter. The director may waive the licensure requirements of this chapter for a person's operations at a facility if the person has obtained a milk processing plant license under chapter 15.36 RCW to conduct the same or a similar operation at the facility. [1995 c 374 § 21. Prior: 1993 sp.s. c 19 § 11; 1993 c 212 § 2; 1992 c 160 § 3; 1991 c 137 § 3; 1988 c 5 § 1; 1969 c 68 § 2; 1967 ex.s. c 121 § 4.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.07.050 Renewal of license—Additional fee, when. If the application for renewal of any license provided for under this chapter is not filed prior to the expiration date as established by rule by the director, an additional fee of ten percent of the cost of the license shall be assessed and added to the original fee and shall be paid by the applicant before the renewal license shall be issued: PROVIDED, That such additional fee shall not be charged if the applicant furnishes an affidavit certifying that he or she has not operated a food processing plant or processed foods subsequent to the expiration of his or her license. [1992 c 160 § 4; 1991 c 137 § 4; 1988 c 5 § 2; 1967 ex.s. c 121 § 5.]

69.07.060 Denial, suspension or revocation of license—Grounds. The director may, subsequent to a hearing thereon, deny, suspend or revoke any license provided for in this chapter if he determines that an applicant has committed any of the following acts:

(1) Refused, neglected or failed to comply with the provisions of this chapter, the rules and regulations adopted hereunder, or any lawful order of the director.

(2) Refused, neglected or failed to keep and maintain records required by this chapter, or to make such records available when requested pursuant to the provisions of this chapter.

(3) Refused the department access to any portion or area of the food processing plant for the purpose of carrying out the provisions of this chapter.

(4) Refused the department access to any records required to be kept under the provisions of this chapter.

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington Food, Drug, and Cosmetic Act, or any regulations adopted thereunder.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 69.07.065. [1991 c 137 § 5; 1979 c 154 § 19; 1967 ex.s. c 121 § 6.]

Severability—1979 c 154: See note following RCW 15.49.330.

69.07.065 Suspension of license summarily—Reinstatement. (1) Whenever the director finds an establishment operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an onsite inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) Whenever a license is summarily suspended, food processing operations shall immediately cease. However, the director may reinstate the license when the condition that caused the suspension has been abated to the director's satisfaction. [1991 c 137 § 6.]

69.07.070 Rules and regulations, hearings subject to Administrative Procedure Act. The adoption of any rules and regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued under the provisions of this chapter shall be subject to the applicable provisions of chapter 34.05 RCW, the Administrative Procedure Act, as enacted or hereafter amended. [1967 ex.s. c 121 § 7.]

69.07.080 Inspections by department—Access—When. For purpose of determining whether the rules adopted pursuant to RCW 69.07.020, as now or hereafter amended are complied with, the department shall have access for inspection purposes to any part, portion or area of a food processing plant, and any records required to be kept under

the provisions of this chapter or rules and regulations adopted hereunder. Such inspection shall, when possible, be made during regular business hours or during any working shift of said food processing plant. The department may, however, inspect such food processing plant at any time when it has received information that an emergency affecting the public health has arisen and such food processing plant is or may be involved in the matters causing such emergency. [1969 c 68 § 3; 1967 ex.s. c 121 § 8.]

69.07.085 Sanitary certificates—Fee. The department may issue sanitary certificates to food processors under this chapter subject to such requirements as it may establish by rule. The fee for issuance shall be fifty dollars per certificate. Fees collected under this section shall be deposited in the agricultural local fund. [1995 c 374 § 23; 1988 c 254 § 9.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.07.095 Authority of director and personnel. The director or the director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are empowered to administer oaths of verification on the statement. [1991 c 137 § 7.]

69.07.100 Establishments exempted from provisions of chapter. The provisions of this chapter shall not apply to establishments issued a permit or licensed under the provisions of:

(1) Chapter 69.25 RCW, the Washington wholesome eggs and egg products act;

(2) Chapter 69.28 RCW, the Washington state honey act;

(3) Chapter 16.49 RCW, the Meat inspection act;

(4) Chapter 77.65 RCW, relating to the direct retail endorsement for wild-caught seafood;

(5) Title 66 RCW, relating to alcoholic beverage control; and

(6) Chapter 69.30 RCW, the Sanitary control of shellfish act. However, if any such establishments process foods not specifically provided for in the above entitled acts, such establishments shall be subject to the provisions of this chapter.

The provisions of this chapter shall not apply to restaurants or food service establishments. [2002 c 301 § 10; 1995 c 374 § 22; 1988 c 5 § 4; 1983 c 3 § 168; 1967 ex.s. c 121 § 10.]

Finding—Effective date—2002 c 301: See notes following RCW 77.65.510.

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.07.103 Chickens—Slaughter, preparation, sale—One thousand or fewer—Special, temporary permit—Rules—Fee. (1) A special, temporary permit issued by the department under this section is required for the slaughter and preparation of one thousand or fewer pastured chickens in a calendar year by the agricultural producer of the chickens for the sale of whole raw chickens by the producer directly to the ultimate consumer at the producer's farm, and for such

sale. Such activities shall not be conducted without the permit. However, if the activities are conducted under such a permit, the activities are exempted from any other licensing requirements of this chapter.

(2)(a) The department must adopt by rule requirements for a special, temporary permit for the activities described in subsection (1) of this section. The requirements must be generally patterned after those established by WAC 246-215-190 as it exists on July 27, 2003, for temporary food service establishments, but must be tailored specifically to these slaughter, preparation, and sale activities. The requirements must include, but are not limited to, those for: Cooling procedures, when applicable; sanitary facilities, equipment, and utensils; clean water; washing and other hygienic practices; and waste and wastewater disposal.

(b) The rules must also identify the length of time such a permit is valid. In determining the length of time, the department must take care to ensure that it is adequate to accommodate the seasonal nature of the permitted activities. In adopting any rule under this section, the department must also carefully consider the economic constraints on the regulated activity.

(3) The department shall conduct such inspections of the activities permitted under this section as are reasonably necessary to ensure compliance with permit requirements.

(4) The fee for a special permit issued under this section is seventy-five dollars.

(5) For the purposes of this section, "chicken" means the species *Gallus domesticus*. [2003 c 397 § 2.]

69.07.110 Enforcement of chapter. The department may use all the civil remedies provided for in chapter 69.04 RCW (The Uniform Washington Food, Drug, and Cosmetic Act) in carrying out and enforcing the provisions of this chapter. [1967 ex.s. c 121 § 11.]

69.07.120 Disposition of money into food processing inspection account. All moneys received by the department under the provisions of this chapter shall be paid into the food processing inspection account hereby created within the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out the provisions of this chapter and chapter 69.04 RCW. [1992 c 160 § 5; 1967 ex.s. c 121 § 12.]

69.07.135 Unlawful to sell or distribute food from unlicensed processor. It shall be unlawful to resell, to offer for resale, or to distribute for resale in intrastate commerce any food processed in a food processing plant, which has not obtained a license, as provided for in this chapter, once notification by the director has been given to the person or persons reselling, offering, or distributing food for resale, that said food is from an unlicensed processing operation. [1991 c 137 § 8.]

69.07.140 Violations—Warning notice. Nothing in this chapter shall be construed as requiring the department to report for prosecution violations of this chapter when it believes that the public interest will best be served by a suitable notice of warning in writing. [1967 ex.s. c 121 § 14.]

69.07.150 Violations—Penalties. (1)(a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule or regulation adopted hereunder is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense. [2003 c 53 § 316; 1991 c 137 § 9; 1967 ex.s. c 121 § 15.]

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

69.07.160 Authority of director and department under chapter 69.04 RCW not impaired by any provision of chapter 69.07 RCW. The authority granted to the director and to the department under the provisions of the Uniform Washington Food, Drug, and Cosmetic Act (chapter 69.04 RCW), as now or hereafter amended, shall not be deemed to be reduced or otherwise impaired as a result of any provision or provisions of the Washington Food Processing Act (chapter 69.07 RCW). [1969 c 68 § 4.]

69.07.170 Definitions. As used in RCW 69.07.180 and 69.07.190:

(1) "Artesian water" means bottled water from a well tapping a confined aquifer in which the water level stands above the water table. "Artesian water" shall meet the requirements of "natural water."

(2) "Bottled water" means water that is placed in a sealed container or package and is offered for sale for human consumption or other consumer uses.

(3) "Carbonated water" or "sparkling water" means bottled water containing carbon dioxide.

(4) "Department" means the department of agriculture.

(5) "Distilled water" means bottled water that has been produced by a process of distillation and meets the definition of purified water in the most recent edition of the United States Pharmacopeia.

(6) "Drinking water" means bottled water obtained from an approved source that has at minimum undergone treatment consisting of filtration, activated carbon or particulate, and ozonation or an equivalent disinfection process, or that meets the requirements of the federal safe drinking water act of 1974 as amended and complies with all department of health rules regarding drinking water.

(7) "Mineral water" means bottled water that contains not less than five hundred parts per million total dissolved solids. "Natural mineral water" shall meet the requirements of "natural water."

(8) "Natural water" means bottled spring, mineral, artesian, or well water that is derived from an underground formation and may be derived from a public water system as defined in RCW 70.119A.020 only if that supply has a single source such as an actual spring, artesian well, or pumped well, and has not undergone any treatment that changes its

original chemical makeup except ozonization or an equivalent disinfection process.

(9) "Plant operator" means a person who owns or operates a bottled water plant.

(10) "Purified water" means bottled water produced by distillation, deionization, reverse osmosis, or other suitable process and that meets the definition of purified water in the most recent edition of the United States Pharmacopeia. Water that meets this definition and is vaporized, then condensed, may be labeled "distilled water."

(11) "Spring water" means water derived from an underground formation from which water flows naturally to the surface of the earth. "Spring water" shall meet the requirements of "natural water."

(12) "Water dealer" means a person who imports bottled water or causes bulk water to be transported for bottling for human consumption or other consumer uses.

(13) "Well water" means water from a hole bored, drilled, or otherwise constructed in the ground that taps the water of an aquifer. "Well water" shall meet the requirements of "natural water." [1992 c 34 § 1.]

Severability—1992 c 34: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1992 c 34 § 9.]

69.07.180 Bottled water labeling standards. All bottled water must conform to applicable federal and state labeling laws and be labeled in compliance with the following standards:

(1) Mineral water may be labeled "mineral water." Bottled water to which minerals are added shall be labeled so as to disclose that minerals are added, and may not be labeled "natural mineral water."

(2) Spring water may be labeled "spring water" or "natural spring water."

(3) Water containing carbon dioxide that emerges from the source and is bottled directly with its entrapped gas or from which the gas is mechanically separated and later reintroduced at a level not higher than naturally occurring in the water may bear on its label the words "naturally carbonated" or "naturally sparkling."

(4) Bottled water that contains carbon dioxide other than that naturally occurring in the source of the product shall be labeled with the words "carbonated," "carbonation added," or "sparkling" if the carbonation is obtained from a natural or manufactured source.

(5) Well water may be labeled "well water" or "natural well water."

(6) Artesian water may be labeled "artesian water" or "natural artesian water."

(7) Purified water may be labeled "purified water" and the method of preparation shall be stated on the label, except that purified water produced by distillation may be labeled as "distilled water."

(8) Drinking water may be labeled "drinking water."

(9) The use of the word "spring," or any derivative of "spring" other than in a trademark, trade name, or company name, to describe water that is not spring water is prohibited.

(10) A product meeting more than one of the definitions in RCW 69.07.170 may be identified by any of the applicable

(2004 Ed.)

product types defined in RCW 69.07.170, except where otherwise specifically prohibited.

(11) Supplemental printed information and graphics may appear on the label but shall not imply properties of the product or preparation methods that are not factual. [1992 c 34 § 6.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.07.190 Bottled soft drinks, soda, or seltzer exempt from bottled water labeling requirements. Bottled soft drinks, soda, or seltzer products commonly recognized as soft drinks and identified on the product identity panel with a common or usual name other than one of those specified in RCW 69.07.170 are exempt from the requirements of RCW 69.07.180. Water that is not in compliance with the requirements of RCW 69.07.180 may not be identified, labeled, or advertised as "artesian water," "bottled water," "distilled water," "natural water," "purified water," "spring water," or "well water." [1992 c 34 § 7.]

Severability—1992 c 34: See note following RCW 69.07.170.

69.07.900 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1967 ex.s. c 121 § 16.]

69.07.910 Severability—1967 ex.s. c 121. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1967 ex.s. c 121 § 17.]

69.07.920 Short title. This chapter shall be known and designated as the Washington food processing act. [1967 ex.s. c 121 § 18.]

Chapter 69.10 RCW

FOOD STORAGE WAREHOUSES

Sections

| | |
|-----------|---|
| 69.10.005 | Definitions. |
| 69.10.010 | Inspection of food storage warehouses—Powers of director. |
| 69.10.015 | Annual license required—Director's duties—Fee—Application—Renewal. |
| 69.10.020 | Exemption from licensure—Independent inspection—Report to department. |
| 69.10.025 | Application for renewal of license after expiration date—Additional fee. |
| 69.10.030 | Director may deny, suspend, or revoke license—Actions by applicant—Hearing required. |
| 69.10.035 | Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license. |
| 69.10.040 | Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce. |
| 69.10.045 | Disposition of moneys received under this chapter. |
| 69.10.050 | Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses. |
| 69.10.055 | Rules. |
| 69.10.060 | Director and deputies, assistants, and inspectors authorized to act—May take verified statements. |
| 69.10.900 | Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68. |

69.10.005 Definitions. For the purpose of this chapter:

[Title 69 RCW—page 25]

(1) "Food storage warehouse" means any premises, establishment, building, room area, facility, or place, in whole or in part, where food is stored, kept, or held for wholesale distribution to other wholesalers or to retail outlets, restaurants, and any such other facility selling or distributing to the ultimate consumer. Food storage warehouses include, but are not limited to, facilities where food is kept or held refrigerated or frozen and include facilities where food is stored to the account of another firm and/or is owned by the food storage warehouse. "Food storage warehouse" does not include grain elevators or fruit and vegetable storage and packing houses that store, pack, and ship fresh fruit and vegetables even though they may use refrigerated or controlled atmosphere storage practices in their operation. However, this chapter applies to multiple food storage operations that also distribute or ripen fruits and vegetables.

(2) "Department" means the Washington department of agriculture.

(3) "Director" means the director of the Washington department of agriculture.

(4) "Food" means the same as defined in RCW 69.04.008.

(5) "Independent sanitation consultant" means an individual, partnership, cooperative, or corporation that by reason of education, certification, and experience has satisfactorily demonstrated expertise in food and dairy sanitation and is approved by the director to advise on such areas including, but not limited to: Principles of cleaning and sanitizing food processing plants and equipment; rodent, insect, bird, and other pest control; principals [principles] of hazard analysis critical control point; basic food product labeling; principles of proper food storage and protection; proper personnel work practices and attire; sanitary design, construction, and installation of food plant facilities, equipment, and utensils; and other pertinent food safety issues. [1995 c 374 § 8.]

69.10.010 Inspection of food storage warehouses—Powers of director. The director or his or her representative may inspect food storage warehouses for compliance with the provisions of chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW as deemed necessary by the director. Any food storage warehouse found to not be in substantial compliance with chapter 69.04 RCW and the rules adopted under chapter 69.04 RCW will be reinspected as deemed necessary by the director to determine compliance. This does not preclude the director from using any other remedies as provided under chapter 69.04 RCW to gain compliance or to embargo products as provided under RCW 69.04.110 to protect the public from adulterated foods. [1995 c 374 § 9.]

69.10.015 Annual license required—Director's duties—Fee—Application—Renewal. Except as provided in this section and RCW 69.10.020, it shall be unlawful for any person to operate a food storage warehouse in the state without first having obtained an annual license from the department, which shall expire on a date set by rule by the director. Application for a license or license renewal shall be on a form prescribed by the director and accompanied by the license fee. The license fee is fifty dollars.

For a food storage warehouse that has been inspected on at least an annual basis for compliance with the provisions of the current good manufacturing practices (Title 21 C.F.R. part 110) by a federal agency or by a state agency acting on behalf of and under contract with a federal agency and that is not exempted from licensure by RCW 69.10.020, the annual license fee for the warehouse is twenty-five dollars.

The application shall include the full name of the applicant for the license and the location of the food storage warehouse he or she intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association, or corporation, the full name of each member of the firm or partnership, or names of the officers of the association or corporation must be given on the application. The application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant. Upon the approval of the application by the director and compliance with the provisions of this chapter, including the applicable regulations adopted under this chapter by the department, the applicant shall be issued a license or renewal thereof. The director shall waive licensure under this chapter for firms that are licensed under the provisions of chapter 69.07 or 15.36 RCW. [1995 c 374 § 10.]

69.10.020 Exemption from licensure—Independent inspection—Report to department. A food storage warehouse that is inspected for compliance with the current good manufacturing practices (Title 21 C.F.R. part 110) on at least an annual basis by an independent sanitation consultant approved by the department shall be exempted from licensure under this chapter.

A report identifying the inspector and the inspecting entity, the date of the inspection, and any violations noted on such inspection shall be forwarded to the department by the food storage warehouse within sixty days of the completion of the inspection. An inspection shall be conducted and an inspection report for a food storage warehouse shall be filed with the department at least once every twelve months or the warehouse shall be licensed under this chapter and inspected by the department for a period of two years. [1995 c 374 § 11.]

69.10.025 Application for renewal of license after expiration date—Additional fee. If the application for renewal of any license provided for under this chapter is not filed prior to the expiration date as established by rule by the director, an additional fee of ten percent of the cost of the license shall be assessed and added to the original fee and must be paid by the applicant before the renewal license is issued. [1995 c 374 § 12.]

69.10.030 Director may deny, suspend, or revoke license—Actions by applicant—Hearing required. The director may, subsequent to a hearing thereon, deny, suspend, or revoke any license provided for in this chapter if he or she determines that an applicant has committed any of the following acts:

(1) Refused, neglected, or failed to comply with the provisions of this chapter, the rules adopted under this chapter, or any lawful order of the director;

(2) Refused, neglected, or failed to keep and maintain records required by this chapter, or to make such records available if requested pursuant to the provisions of this chapter;

(3) Refused the department access to any portion or area of the food storage warehouse for the purpose of carrying out the provisions of this chapter;

(4) Refused the department access to any records required to be kept under the provisions of this chapter;

(5) Refused, neglected, or failed to comply with any provisions of chapter 69.04 RCW, Washington food, drug, and cosmetic act, or any rules adopted under chapter 69.04 RCW.

The provisions of this section requiring that a hearing be conducted before an action may be taken against a license do not apply to an action taken under RCW 69.10.035. [1995 c 374 § 13.]

69.10.035 Immediate danger to public health—Summarily suspending license—Written notification—Hearing—Reinstatement of license. (1) Whenever the director finds a food storage warehouse operating under conditions that constitute an immediate danger to public health or whenever the licensee or any employee of the licensee actively prevents the director or the director's representative, during an on-site inspection, from determining whether such a condition exists, the director may summarily suspend, pending a hearing, a license provided for in this chapter.

(2) Whenever a license is summarily suspended, the holder of the license shall be notified in writing that the license is, upon service of the notice, immediately suspended and that prompt opportunity for a hearing will be provided.

(3) Whenever a license is summarily suspended, food distribution operations shall immediately cease. However, the director may reinstate the license if the condition that caused the suspension has been abated to the director's satisfaction. [1995 c 374 § 14.]

69.10.040 Unlicensed food storage warehouse—Unlawful to sell, offer for sale, or distribute in intrastate commerce. It is unlawful to sell, offer for sale, or distribute in intrastate commerce food from or stored in a food storage warehouse that is required to be licensed under this chapter but that has not obtained a license, once notification by the director has been given to the persons selling, offering, or distributing food for sale, that the food is in or from such an unlicensed food storage warehouse. [1995 c 374 § 15.]

69.10.045 Disposition of moneys received under this chapter. All moneys received by the department under provisions of this chapter, except moneys collected for civil penalties levied under this chapter, shall be paid into an account created in the agricultural local fund established in RCW 43.23.230 and shall be used solely to carry out provisions of this chapter and chapter 69.04 RCW. All moneys collected for civil penalties levied under this chapter shall be deposited in the state general fund. [1995 c 374 § 16.]

(2004 Ed.)

69.10.050 Civil remedies—Restrictions on civil penalties—Fee limitations for inspections and analyses. (1) Except as provided in subsection (2) of this section, the department may use all the civil remedies provided under chapter 69.04 RCW in carrying out and enforcing the provisions of this chapter.

(2) Civil penalties are intended to be used to obtain compliance and shall not be collected if a warehouse successfully completes a mutually agreed upon compliance agreement with the department. A warehouse that enters into a compliance agreement with the department shall pay only for inspections conducted by the department and any laboratory analyses as required by the inspections as outlined and agreed to in the compliance agreement. In no event shall the fee for these inspections and analyses exceed four hundred dollars per inspection or one thousand dollars in total. [1995 c 374 § 17.]

69.10.055 Rules. (1) The department shall enforce and carry out the provisions of this chapter and may adopt the necessary rules to carry out its purpose.

(2) The adoption of rules under the provisions of this chapter are subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act. [1995 c 374 § 18.]

69.10.060 Director and deputies, assistants, and inspectors authorized to act—May take verified statements. The director or director's deputies, assistants, and inspectors are authorized to do all acts and things necessary to carry out the provisions of this chapter, including the taking of verified statements. The department personnel are empowered to administer oaths of verification on the statement. [1995 c 374 § 19.]

69.10.900 Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68. See note following RCW 15.36.012.

Chapter 69.25 RCW

WASHINGTON WHOLESOME EGGS AND EGG PRODUCTS ACT

Sections

| | |
|-----------|--|
| 69.25.010 | Legislative finding. |
| 69.25.020 | Definitions. |
| 69.25.030 | Purpose—Certain federal rules adopted by reference—Hearing, notice by director—Adoption of rules by director. |
| 69.25.040 | Application of administrative procedure act. |
| 69.25.050 | Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure. |
| 69.25.060 | Egg handler's or dealer's license—Late renewal fee. |
| 69.25.070 | Egg handler's or dealer's license—Denial, suspension, revocation, or conditional issuance. |
| 69.25.080 | Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers. |
| 69.25.090 | Sanitary operation of official plants—Inspection refused if requirements not met. |
| 69.25.100 | Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal. |
| 69.25.110 | Prohibited acts and practices. |
| 69.25.120 | Director to cooperate with other agencies—May conduct examinations. |
| 69.25.130 | Eggs or egg products not intended for use as human food—Identification or denaturing required. |

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|-----------|--|
| 69.25.140 | Records required, access to and copying of. |
| 69.25.150 | Penalties—Liability of employer—Defense. |
| 69.25.155 | Interference with person performing official duties. |
| 69.25.160 | Notice of violation—May take place of prosecution. |
| 69.25.170 | Exemptions permitted by rule of director. |
| 69.25.180 | Limiting entry of eggs and egg products into official plants. |
| 69.25.190 | Embargo of eggs or egg products in violation of this chapter— Time limit—Removal of official marks. |
| 69.25.200 | Embargo—Petition for court order affirming—Removal of embargo or destruction or correction and release—Court costs, fees, administrative expenses—Bond may be required. |
| 69.25.210 | Embargo—Order affirming not required, when. |
| 69.25.220 | Embargo—Consolidation of petitions. |
| 69.25.230 | Embargo—Sampling of article. |
| 69.25.240 | Condemnation—Recovery of damages restricted. |
| 69.25.250 | Assessment—Rate, applicability, time of payment— Reports—Contents, frequency. |
| 69.25.260 | Assessment—Prepayment by purchase of egg seals—Permit for printing seal on containers or labels. |
| 69.25.270 | Assessment—Monthly payment—Audit—Failure to pay, pen- alty. |
| 69.25.280 | Assessment—Use of proceeds. |
| 69.25.290 | Assessment—Exclusions. |
| 69.25.300 | Transfer of moneys in state egg account. |
| 69.25.310 | Containers—Marking required—Obliteration of previous markings required for reuse—Temporary use of another han- dler's or dealer's permanent number—Penalty. |
| 69.25.320 | Records required, additional—Sales to retailer or food ser- vice—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time—Requirements for storage, display, or transportation. |
| 69.25.900 | Savings. |
| 69.25.910 | Chapter is cumulative and nonexclusive. |
| 69.25.920 | Severability—1975 1st ex.s. c 201. |
| 69.25.930 | Short title. |

69.25.010 Legislative finding. Eggs and egg products are an important source of the state's total supply of food, and are used in food in various forms. They are consumed throughout the state and the major portion thereof moves in intrastate commerce. It is essential, in the public interest, that the health and welfare of consumers be protected by the adoption of measures prescribed herein for assuring that eggs and egg products distributed to them and used in products consumed by them are wholesome, otherwise not adulterated, and properly labeled and packaged. Lack of effective regulation for the handling or disposition of unwholesome, otherwise adulterated, or improperly labeled or packaged egg products and certain qualities of eggs is injurious to the public welfare and destroys markets for wholesome, unadulterated, and properly labeled and packaged eggs and egg products and results in sundry losses to producers and processors, as well as injury to consumers. Unwholesome, otherwise adulterated, or improperly labeled or packaged products can be sold at lower prices and compete unfairly with the wholesome, unadulterated, and properly labeled and packaged products, to the detriment of consumers and the public generally. It is hereby found that all egg products and the qualities of eggs which are regulated under this chapter are either in intrastate commerce, or substantially affect such commerce, and that regulation by the director, as contemplated by this chapter, is appropriate to protect the health and welfare of consumers. [1975 1st ex.s. c 201 § 2.]

69.25.020 Definitions. When used in this chapter the following terms shall have the indicated meanings, unless the context otherwise requires:

(1) "Department" means the department of agriculture of the state of Washington.

(2) "Director" means the director of the department or his duly authorized representative.

(3) "Person" means any natural person, firm, partnership, exchange, association, trustee, receiver, corporation, and any member, officer, or employee thereof, or assignee for the benefit of creditors.

(4) "Adulterated" applies to any egg or egg product under one or more of the following circumstances:

(a) If it bears or contains any poisonous or deleterious substance which may render it injurious to health; but in case the substance is not an added substance, such article shall not be considered adulterated under this clause if the quantity of such substance in or on such article does not ordinarily render it injurious to health;

(b) If it bears or contains any added poisonous or added deleterious substance (other than one which is: (i) A pesticide chemical in or on a raw agricultural commodity; (ii) a food additive; or (iii) a color additive) which may, in the judgment of the director, make such article unfit for human food;

(c) If it is, in whole or in part, a raw agricultural commodity and such commodity bears or contains a pesticide chemical which is unsafe within the meaning of RCW 69.04.392, as enacted or hereafter amended;

(d) If it bears or contains any food additive which is unsafe within the meaning of RCW 69.04.394, as enacted or hereafter amended;

(e) If it bears or contains any color additive which is unsafe within the meaning of RCW 69.04.396, as enacted or hereafter amended: PROVIDED, That an article which is not otherwise deemed adulterated under subsection (4)(c), (d), or (e) of this section shall nevertheless be deemed adulterated if use of the pesticide chemical, food additive, or color additive, in or on such article, is prohibited by regulations of the director in official plants;

(f) If it consists in whole or in part of any filthy, putrid, or decomposed substance, or if it is otherwise unfit for human food;

(g) If it consists in whole or in part of any damaged egg or eggs to the extent that the egg meat or white is leaking, or it has been contacted by egg meat or white leaking from other eggs;

(h) If it has been prepared, packaged, or held under insanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(i) If it is an egg which has been subjected to incubation or the product of any egg which has been subjected to incubation;

(j) If its container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(k) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with a regulation or exemption in effect pursuant to RCW 69.04.394; or

(l) If any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith

so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is.

(5) "Capable of use as human food" shall apply to any egg or egg product unless it is denatured, or otherwise identified, as required by regulations prescribed by the director, to deter its use as human food.

(6) "Intrastate commerce" means any eggs or egg products in intrastate commerce, whether such eggs or egg products are intended for sale, held for sale, offered for sale, sold, stored, transported, or handled in this state in any manner and prepared for eventual distribution in this state, whether at wholesale or retail.

(7) "Container" or "package" includes any box, can, tin, plastic, or other receptacle, wrapper, or cover.

(8) "Immediate container" means any consumer package, or any other container in which egg products, not consumer-packaged, are packed.

(9) "Shipping container" means any container used in packaging a product packed in an immediate container.

(10) "Egg handler" or "dealer" means any person who produces, contracts for or obtains possession or control of any eggs for the purpose of sale to another dealer or retailer, or for processing and sale to a dealer, retailer or consumer: PROVIDED, That for the purpose of this chapter, "sell" or "sale" includes the following: Offer for sale, expose for sale, have in possession for sale, exchange, barter, trade, or as an inducement for the sale of another product.

(11) "Egg product" means any dried, frozen, or liquid eggs, with or without added ingredients, excepting products which contain eggs only in a relatively small proportion, or historically have not been, in the judgment of the director, considered by consumers as products of the egg food industry, and which may be exempted by the director under such conditions as he may prescribe to assure that the egg ingredients are not adulterated and such products are not represented as egg products.

(12) "Egg" means the shell egg of the domesticated chicken, turkey, duck, goose, or guinea, or any other species of fowl.

(13) "Check" means an egg that has a broken shell or crack in the shell but has its shell membranes intact and contents not leaking.

(14) "Clean and sound shell egg" means any egg whose shell is free of adhering dirt or foreign material and is not cracked or broken.

(15) "Dirty egg" means an egg that has a shell that is unbroken and has adhering dirt or foreign material.

(16) "Incubator reject" means an egg that has been subjected to incubation and has been removed from incubation during the hatching operations as infertile or otherwise unhatchable.

(17) "Inedible" means eggs of the following descriptions: Black rots, yellow rots, white rots, mixed rots (addled eggs), sour eggs, eggs with green whites, eggs with stuck yolks, moldy eggs, musty eggs, eggs showing blood rings, and eggs containing embryo chicks (at or beyond the blood ring stage).

(18) "Leaker" means an egg that has a crack or break in the shell and shell membranes to the extent that the egg contents are exposed or are exuding or free to exude through the shell.

(19) "Loss" means an egg that is unfit for human food because it is smashed or broken so that its contents are leaking; or overheated, frozen, or contaminated; or an incubator reject; or because it contains a bloody white, large meat spots, a large quantity of blood, or other foreign material.

(20) "Restricted egg" means any check, dirty egg, incubator reject, inedible, leaker, or loss.

(21) "Inspection" means the application of such inspection methods and techniques as are deemed necessary by the director to carry out the provisions of this chapter.

(22) "Inspector" means any employee or official of the department authorized to inspect eggs or egg products under the authority of this chapter.

(23) "Misbranded" shall apply to egg products which are not labeled and packaged in accordance with the requirements prescribed by regulations of the director under RCW 69.25.100.

(24) "Official certificate" means any certificate prescribed by regulations of the director for issuance by an inspector or other person performing official functions under this chapter.

(25) "Official device" means any device prescribed or authorized by the director for use in applying any official mark.

(26) "Official inspection legend" means any symbol prescribed by regulations of the director showing that egg products were inspected in accordance with this chapter.

(27) "Official mark" means the official inspection legend or any other symbol prescribed by regulations of the director to identify the status of any article under this chapter.

(28) "Official plant" means any plant which is licensed under the provisions of this chapter, at which inspection of the processing of egg products is maintained by the United States department of agriculture or by the state under cooperative agreements with the United States department of agriculture or by the state.

(29) "Official standards" means the standards of quality, grades, and weight classes for eggs, adopted under the provisions of this chapter.

(30) "Pasteurize" means the subjecting of each particle of egg products to heat or other treatments to destroy harmful, viable micro-organisms by such processes as may be prescribed by regulations of the director.

(31) "Pesticide chemical", "food additive", "color additive", and "raw agricultural commodity" shall have the same meaning for purposes of this chapter as prescribed in chapter 69.04 RCW.

(32) "Plant" means any place of business where egg products are processed.

(33) "Processing" means manufacturing egg products, including breaking eggs or filtering, mixing, blending, pasteurizing, stabilizing, cooling, freezing, drying, or packaging egg products.

(34) "Retailer" means any person in intrastate commerce who sells eggs to a consumer.

(35) "At retail" means any transaction in intrastate commerce between a retailer and a consumer.

(36) "Consumer" means any person who purchases eggs for his or her own family use or consumption; or any restaurant, hotel, boarding house, bakery, or other institution or

concern which purchases eggs for serving to guests or patrons thereof, or for its own use in cooking or baking.

(37) "Candling" means the examination of the interior of eggs by the use of transmitted light used in a partially dark room or place.

(38) "Master license system" means the mechanism established by chapter 19.02 RCW by which master licenses, endorsed for individual state-issued licenses, are issued and renewed utilizing a master application and a master license expiration date common to each renewable license endorsement.

(39) "Ambient temperature" means the atmospheric temperature surrounding or encircling shell eggs. [1995 c 374 § 25; 1982 c 182 § 42; 1975 1st ex.s. c 201 § 3.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1982 c 182: See RCW 19.02.901.

69.25.030 Purpose—Certain federal rules adopted by reference—Hearing, notice by director—Adoption of rules by director. The purpose of this chapter is to promote uniformity of state legislation and regulations with the federal egg products inspection act, 21 U.S.C. sec. 1031, et seq., and regulations adopted thereunder. In accord with such declared purpose, any regulations adopted under the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), in effect on July 1, 1975, are hereby deemed to have been adopted under the provisions hereof. Further, to promote such uniformity, any regulations adopted hereafter under the provisions of the federal egg products inspection act relating to eggs and egg products, as defined in RCW 69.25.020 (11) and (12), and published in the federal register, shall be deemed to have been adopted under the provisions of this chapter in accord with chapter 34.05 RCW, as now or hereafter amended. The director may, however, within thirty days of the publication of the adoption of any such regulation under the federal egg products inspection act, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be in accord with the requirements of chapter 34.05 RCW, as now or hereafter amended.

The director, in addition to the foregoing, may adopt any rule and regulation necessary to carry out the purpose and provisions of this chapter. [1975 1st ex.s. c 201 § 4.]

69.25.040 Application of administrative procedure act. The adoption, amendment, modification, or revocation of any rules or regulations under the provisions of this chapter, or the holding of a hearing in regard to a license issued or which may be issued or denied under the provisions of this chapter, shall be subject to the applicable provisions of chapter 34.05 RCW, the administrative procedure act, as now or hereafter amended. [1975 1st ex.s. c 201 § 5.]

69.25.050 Egg handler's or dealer's license and number—Branch license—Application, fee, posting required, procedure. No person shall act as an egg handler or dealer without first obtaining an annual license and permanent dealer's number from the department; such license shall

expire on the master license expiration date. Application for an egg dealer license or egg dealer branch license, shall be made through the master license system. The annual egg dealer license fee shall be thirty dollars and the annual egg dealer branch license fee shall be fifteen dollars. A copy of the master license shall be posted at each location where such licensee operates. Such application shall include the full name of the applicant for the license and the location of each facility he intends to operate. If such applicant is an individual, receiver, trustee, firm, partnership, association or corporation, the full name of each member of the firm or partnership or the names of the officers of the association or corporation shall be given on the application. Such application shall further state the principal business address of the applicant in the state and elsewhere and the name of a person domiciled in this state authorized to receive and accept service of summons of legal notices of all kinds for the applicant and any other necessary information prescribed by the director. Upon the approval of the application and compliance with the provisions of this chapter, including the applicable regulations adopted hereunder by the department, the applicant shall be issued a license or renewal thereof. Such license and permanent egg handler or dealer's number shall be non-transferable. [1995 c 374 § 26; 1982 c 182 § 43; 1975 1st ex.s. c 201 § 6.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

Severability—1982 c 182: See RCW 19.02.901.

Master license—Expiration date: RCW 19.02.090.

Master license system

definition: RCW 69.25.020(38).

existing licenses or permits registered under, when: RCW 19.02.810.

to include additional licenses: RCW 19.02.110.

69.25.060 Egg handler's or dealer's license—Late renewal fee. If the application for the renewal of an egg handler's or dealer's license is not filed before the master license expiration date, the master license delinquency fee shall be assessed under chapter 19.02 RCW and shall be paid by the applicant before the renewal license shall be issued. [1982 c 182 § 44; 1975 1st ex.s. c 201 § 7.]

Severability—1982 c 182: See RCW 19.02.901.

Master license

delinquency fee—Rate—Disposition: RCW 19.02.085.

expiration date: RCW 19.02.090.

system—Existing licenses or permits registered under, when: RCW 19.02.810.

69.25.070 Egg handler's or dealer's license—Denial, suspension, revocation, or conditional issuance. The department may deny, suspend, revoke, or issue a license or a conditional license if it determines that an applicant or licensee has committed any of the following acts:

(1) That the applicant or licensee is violating or has violated any of the provisions of this chapter or rules and regulations adopted thereunder.

(2) That the application contains any materially false or misleading statement or involves any misrepresentation by any officer, agent, or employee of the applicant.

(3) That the applicant or licensee has concealed or withheld any facts regarding any violation of this chapter by any

officer, agent, or employee of the applicant or licensee. [1975 1st ex.s. c 201 § 8.]

69.25.080 Continuous inspection at processing plants—Exemptions—Condemnation and destruction of adulterated eggs and egg products—Reprocessing—Appeal—Inspections of egg handlers. (1) For the purpose of preventing the entry into or movement in intrastate commerce of any egg product which is capable of use as human food and is misbranded or adulterated, the director shall, whenever processing operations are being conducted, unless under inspection by the United States department of agriculture, cause continuous inspection to be made, in accordance with the regulations promulgated under this chapter, of the processing of egg products, in each plant processing egg products for commerce, unless exempted under RCW 69.25.170. Without restricting the application of the preceding sentence to other kinds of establishments within its provisions, any food manufacturing establishment, institution, or restaurant which uses any eggs that do not meet the requirements of RCW 69.25.170(1)(a) in the preparation of any articles for human food, shall be deemed to be a plant processing egg products, with respect to such operations.

(2) The director, at any time, shall cause such retention, segregation, and reinspection as he deems necessary of eggs and egg products capable of use as human food in each official plant.

(3) Eggs and egg products found to be adulterated at official plants shall be condemned, and if no appeal be taken from such determination or condemnation, such articles shall be destroyed for human food purposes under the supervision of an inspector: PROVIDED, That articles which may by reprocessing be made not adulterated need not be condemned and destroyed if so reprocessed under the supervision of an inspector and thereafter found to be not adulterated. If an appeal be taken from such determination, the eggs or egg products shall be appropriately marked and segregated pending completion of an appeal inspection, which appeal shall be at the cost of the appellant if the director determines that the appeal is frivolous. If the determination of condemnation is sustained, the eggs or egg products shall be destroyed for human food purposes under the supervision of an inspector.

(4) The director shall cause such other inspections to be made of the business premises, facilities, inventory, operations, and records of egg handlers, and the records and inventory of other persons required to keep records under RCW 69.25.140, as he deems appropriate (and in the case of shell egg packers, packing eggs for the ultimate consumer, at least once each calendar quarter) to assure that only eggs fit for human food are used for such purpose, and otherwise to assure compliance by egg handlers and other persons with the requirements of RCW 69.25.140, except that the director shall cause such inspections to be made as he deems appropriate to assure compliance with such requirements at food manufacturing establishments, institutions, and restaurants, other than plants processing egg products. Representatives of the director shall be afforded access to all such places of business for purposes of making the inspections provided for in this chapter. [1975 1st ex.s. c 201 § 9.]

(2004 Ed.)

69.25.090 Sanitary operation of official plants—Inspection refused if requirements not met. (1) The operator of each official plant shall operate such plant in accordance with such sanitary practices and shall have such premises, facilities, and equipment as are required by regulations promulgated by the director to effectuate the purposes of this chapter, including requirements for segregation and disposition of restricted eggs.

(2) The director shall refuse to render inspection to any plant whose premises, facilities, or equipment, or the operation thereof, fail to meet the requirements of this section. [1975 1st ex.s. c 201 § 10.]

69.25.100 Egg products—Pasteurization—Labeling requirements—False or misleading labels or containers—Director may order use of withheld—Hearing, determination, and appeal. (1) Egg products inspected at any official plant under the authority of this chapter and found to be not adulterated shall be pasteurized before they leave the official plant, except as otherwise permitted by regulations of the director, and shall at the time they leave the official plant, bear in distinctly legible form on their shipping containers or immediate containers, or both, when required by regulations of the director, the official inspection legend and official plant number, of the plant where the products were processed, and such other information as the director may require by regulations to describe the products adequately and to assure that they will not have false or misleading labeling.

(2) No labeling or container shall be used for egg products at official plants if it is false or misleading or has not been approved as required by the regulations of the director. If the director has reason to believe that any labeling or the size or form of any container in use or proposed for use with respect to egg products at any official plant is false or misleading in any particular, he may direct that such use be withheld unless the labeling or container is modified in such manner as he may prescribe so that it will not be false or misleading. If the person using or proposing to use the labeling or container does not accept the determination of the director, such person may request a hearing, but the use of the labeling or container shall, if the director so directs, be withheld pending hearing and final determination by the director. Any such determination by the director shall be conclusive unless, within thirty days after receipt of notice of such final determination, the person adversely affected thereby appeals to the superior court in the county in which such person has its principal place of business. [1975 1st ex.s. c 201 § 11.]

69.25.110 Prohibited acts and practices. (1) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in any business in intrastate commerce any restricted eggs, capable of use as human food, except as authorized by regulations of the director under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(2) No egg handler shall possess with intent to use, or use, any restricted eggs in the preparation of human food for intrastate commerce except that such eggs may be so possessed and used when authorized by regulations of the direc-

tor under such conditions as he may prescribe to assure that only eggs fit for human food are used for such purpose.

(3) No person shall process any egg products for intrastate commerce at any plant except in compliance with the requirements of this chapter.

(4) No person shall buy, sell, or transport, or offer to buy or sell, or offer or receive for transportation, in intrastate commerce any egg products required to be inspected under this chapter unless they have been so inspected and are labeled and packaged in accordance with the requirements of RCW 69.25.100.

(5) No operator of any official plant shall allow any egg products to be moved from such plant if they are adulterated or misbranded and capable of use as human food.

(6) No person shall:

(a) Manufacture, cast, print, lithograph, or otherwise make any device containing any official mark or simulation thereof, or any label bearing any such mark or simulation, or any form of official certificate or simulation thereof, except as authorized by the director;

(b) Forge or alter any official device, mark, or certificate;

(c) Without authorization from the director, use any official device, mark, or certificate, or simulation thereof, or detach, deface, or destroy any official device or mark; or use any labeling or container ordered to be withheld from use under RCW 69.25.100 after final judicial affirmance of such order or expiration of the time for appeal if no appeal is taken under said section;

(d) Contrary to the regulations prescribed by the director, fail to use, or to detach, deface, or destroy any official device, mark, or certificate;

(e) Knowingly possess, without promptly notifying the director or his representative, any official device or any counterfeit, simulated, forged, or improperly altered official certificate or any device or label, or any eggs or egg products bearing any counterfeit, simulated, forged, or improperly altered official mark;

(f) Knowingly make any false statement in any shipper's certificate or other nonofficial or official certificate provided for in the regulations prescribed by the director;

(g) Knowingly represent that any article has been inspected or exempted, under this chapter when in fact it has not been so inspected or exempted; and

(h) Refuse access, at any reasonable time, to any representative of the director, to any plant or other place of business subject to inspection under any provisions of this chapter.

(7) No person, while an official or employee of the state or local governmental agency, or thereafter, shall use to his own advantage, or reveal other than to the authorized representatives of the United States government or the state in their official capacity, or as ordered by a court in a judicial proceeding, any information acquired under the authority of this chapter concerning any matter which the originator or relator of such information claims to be entitled to protection as a trade secret. [1975 1st ex.s. c 201 § 12.]

69.25.120 Director to cooperate with other agencies—May conduct examinations. The director shall, whenever he determines that it would effectuate the purposes of this chapter, cooperate with any state, federal or other gov-

ernmental agencies in carrying out any provisions of this chapter. In carrying out the provisions of this chapter, the director may conduct such examinations, investigations, and inspections as he determines practicable through any officer or employee of any such agency commissioned by him for such purpose. [1975 1st ex.s. c 201 § 13.]

69.25.130 Eggs or egg products not intended for use as human food—Identification or denaturing required. Inspection shall not be provided under this chapter at any plant for the processing of any egg products which are not intended for use as human food, but such articles, prior to their offer for sale or transportation in intrastate commerce, shall be denatured or identified as prescribed by regulations of the director to deter their use for human food. No person shall buy, sell, or transport or offer to buy or sell, or offer or receive for transportation, in intrastate commerce, any restricted eggs or egg products which are not intended for use as human food unless they are denatured or identified as required by the regulations of the director. [1975 1st ex.s. c 201 § 14.]

69.25.140 Records required, access to and copying of. For the purpose of enforcing the provisions of this chapter and the regulations promulgated thereunder, all persons engaged in the business of transporting, shipping, or receiving any eggs or egg products in intrastate commerce or in interstate commerce, or holding such articles so received, and all egg handlers, shall maintain such records showing, for such time and in such form and manner, as the director may prescribe, to the extent that they are concerned therewith, the receipt, delivery, sale, movement, and disposition of all eggs and egg products handled by them, and shall, upon the request of the director, permit him at reasonable times to have access to and to copy all such records. [1975 1st ex.s. c 201 § 15.]

69.25.150 Penalties—Liability of employer—Defense. (1)(a) Except as provided in (b) of this subsection, any person violating any provision of this chapter or any rule adopted under this chapter is guilty of a misdemeanor.

(b) A second or subsequent violation is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense.

(2) Whenever the director finds that a person has committed a violation of any of the provisions of this chapter, and that violation has not been punished pursuant to subsection (1) of this section, the director may impose upon and collect from the violator a civil penalty not exceeding one thousand dollars per violation per day. Each violation shall be a separate and distinct offense.

(3) When construing or enforcing the provisions of RCW 69.25.110, the act, omission, or failure of any person acting for or employed by any individual, partnership, corporation, or association within the scope of the person's employment or office shall in every case be deemed the act, omission, or failure of such individual, partnership, corporation, or association, as well as of such person.

(4) No carrier or warehouseman shall be subject to the penalties of this chapter, other than the penalties for violation

of RCW 69.25.140, or 69.25.155, by reason of his or her receipt, carriage, holding, or delivery, in the usual course of business, as a carrier or warehouseman of eggs or egg products owned by another person unless the carrier or warehouseman has knowledge, or is in possession of facts which would cause a reasonable person to believe that such eggs or egg products were not eligible for transportation under, or were otherwise in violation of, this chapter, or unless the carrier or warehouseman refuses to furnish on request of a representative of the director the name and address of the person from whom he or she received such eggs or egg products and copies of all documents, if there be any, pertaining to the delivery of the eggs or egg products to, or by, such carrier or warehouseman. [2003 c 53 § 317; 1995 c 374 § 27; 1992 c 7 § 47; 1975 1st ex.s. c 201 § 16.]

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

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.155 Interference with person performing official duties. (1) Notwithstanding any other provision of law, any person who forcibly assaults, resists, impedes, intimidates, or interferes with any person while engaged in or on account of the performance of his or her official duties under this chapter is guilty of a class C felony and shall be punished by a fine of not more than five thousand dollars or imprisonment in a state correctional facility for not more than three years, or both.

(2) Whoever, in the commission of any act described in subsection (1) of this section, uses a deadly or dangerous weapon is guilty of a class B felony and shall be punished by a fine of not more than ten thousand dollars or by imprisonment in a state correctional facility for not more than ten years, or both. [2003 c 53 § 318.]

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

69.25.160 Notice of violation—May take place of prosecution. Before any violation of this chapter, other than RCW 69.25.155, is reported by the director to any prosecuting attorney for institution of a criminal proceeding, the person against whom such proceeding is contemplated shall be given reasonable notice of the alleged violation and opportunity to present his or her views orally or in writing with regard to such contemplated proceeding. Nothing in this chapter shall be construed as requiring the director to report for criminal prosecution violation of this chapter whenever he or she believes that the public interest will be adequately served and compliance with this chapter obtained by a suitable written notice of warning. [2003 c 53 § 319; 1975 1st ex.s. c 201 § 17.]

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

69.25.170 Exemptions permitted by rule of director. (1) The director may, by regulation and under such conditions and procedures as he may prescribe, exempt from specific provisions of this chapter:

(a) The sale, transportation, possession, or use of eggs which contain no more restricted eggs than are allowed by the

tolerance in the official state standards for consumer grades for shell eggs;

(b) The processing of egg products at any plant where the facilities and operating procedures meet such sanitary standards as may be prescribed by the director, and where the eggs received or used in the manufacture of egg products contain no more restricted eggs than are allowed by the official standards of the state consumer grades for shell eggs, and the egg products processed at such plant;

(c) The sale of eggs by any poultry producer from his own flocks directly to a household consumer exclusively for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(d) The sale of eggs by shell egg packers on his own premises directly to household consumers for use by such consumer and members of his household and his nonpaying guests and employees, and the transportation, possession, and use of such eggs in accordance with this subsection;

(e) The sale of eggs by any egg producer with an annual egg production from a flock of three thousand hens or less.

(2) The director may modify or revoke any regulation granting exemption under this chapter whenever he deems such action appropriate to effectuate the purposes of this chapter. [1995 c 374 § 28; 1975 1st ex.s. c 201 § 18.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.180 Limiting entry of eggs and egg products into official plants. The director may limit the entry of eggs and egg products and other materials into official plants under such conditions as he may prescribe to assure that allowing the entry of such articles into such plants will be consistent with the purposes of this chapter. [1975 1st ex.s. c 201 § 19.]

69.25.190 Embargo of eggs or egg products in violation of this chapter—Time limit—Removal of official marks. Whenever any eggs or egg products subject to this chapter are found by any authorized representative of the director upon any premises and there is reason to believe that they are or have been processed, bought, sold, possessed, used, transported, or offered or received for sale or transportation in violation of this chapter, or that they are in any other way in violation of this chapter, or whenever any restricted eggs capable of use as human food are found by such a representative in the possession of any person not authorized to acquire such eggs under the regulations of the director, such articles may be embargoed by such representative for a reasonable period but not to exceed twenty days, pending action under RCW 69.25.200 or notification of any federal or other governmental authorities having jurisdiction over such articles, and shall not be moved by any person from the place at which they are located when so detained until released by such representative. All official marks may be required by such representative to be removed from such articles before they are released unless it appears to the satisfaction of the director that the articles are eligible to retain such marks. [1975 1st ex.s. c 201 § 20.]

69.25.200 Embargo—Petition for court order affirming—Removal of embargo or destruction or correction and release—Court costs, fees, administrative expenses—Bond may be required. When the director has embargoed any eggs or egg products, he shall petition the superior court of the county in which the eggs or egg products are located for an order affirming such embargo. Such court shall have jurisdiction for cause shown and after a prompt hearing to any claimant of eggs or egg products, shall issue an order which directs the removal of such embargo or the destruction or correction and release of such eggs and egg products. An order for destruction or the correction and release of such eggs and egg products shall contain such provision for the payment of pertinent court costs and fees and administrative expenses as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provisions for a bond as the court finds indicated in the circumstance. [1975 1st ex.s. c 201 § 21.]

69.25.210 Embargo—Order affirming not required, when. The director need not petition the superior court as provided for in RCW 69.25.200 if the owner or claimant of such eggs or egg products agrees in writing to the disposition of such eggs or egg products as the director may order. [1975 1st ex.s. c 201 § 22.]

69.25.220 Embargo—Consolidation of petitions. Two or more petitions under RCW 69.25.200 which pend at the same time and which present the same issue and claimant hereunder may be consolidated for simultaneous determination by one court of competent jurisdiction, upon application to any court of jurisdiction by the director or claimant. [1975 1st ex.s. c 201 § 23.]

69.25.230 Embargo—Sampling of article. The claimant in any proceeding by petition under RCW 69.25.200 shall be entitled to receive a representative sample of the article subject to such proceedings upon application to the court of competent jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 201 § 24.]

69.25.240 Condemnation—Recovery of damages restricted. No state court shall allow the recovery of damages for administrative action for condemnation under the provisions of this chapter, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 201 § 25.]

69.25.250 Assessment—Rate, applicability, time of payment—Reports—Contents, frequency. There is hereby levied an assessment not to exceed three mills per dozen eggs entering intrastate commerce, as prescribed by rules and regulations issued by the director. Such assessment shall be applicable to all eggs entering intrastate commerce except as provided in RCW 69.25.170 and 69.25.290. Such assessment shall be paid to the director on a monthly basis on or before the tenth day following the month such eggs enter intrastate commerce. The director may require reports by egg handlers or dealers along with the payment of the assessment fee. Such reports may include any and all pertinent information necessary to carry out the purposes of this chapter. The

director may, by regulations, require egg container manufacturers to report on a monthly basis all egg containers sold to any egg handler or dealer and bearing such egg handler or dealer's permanent number. [1995 c 374 § 29; 1993 sp.s. c 19 § 12; 1975 1st ex.s. c 201 § 26.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.260 Assessment—Prepayment by purchase of egg seals—Permit for printing seal on containers or labels. Any egg handler or dealer may prepay the assessment provided for in RCW 69.25.250 by purchasing Washington state egg seals from the director to be placed on egg containers showing that the proper assessment has been paid. Any carton manufacturer or printer may apply to the director for a permit to place reasonable facsimiles of the Washington state egg seals to be imprinted on egg containers or on the identification labels which show egg grade and size and the name of the egg handler or dealer. The director shall, from time to time, prescribe rules and regulations governing the affixing of seals and he is authorized to cancel any such permit issued pursuant to this chapter, whenever he finds that a violation of the terms under which the permit has been granted has been violated. [1979 ex.s. c 238 § 10; 1975 1st ex.s. c 201 § 27.]

Severability—1979 ex.s. c 238: See note following RCW 15.44.010.

69.25.270 Assessment—Monthly payment—Audit—Failure to pay, penalty. Every egg handler or dealer who pays assessments required under the provisions of this chapter on a monthly basis in lieu of seals shall be subject to audit by the director at such frequency as is deemed necessary by the director. The cost to the director for performing such audit shall be chargeable to and payable by the egg handler or dealer subject to audit. Failure to pay assessments when due or refusal to pay for audit costs may be cause for a summary suspension of an egg handler's or dealer's license and a charge of one percent per month, or fraction thereof shall be added to the sum due the director, for each remittance not received by the director when due. The conditions and charges applicable to egg handlers and dealers set forth herein shall also be applicable to payments due the director for facsimiles of seals placed on egg containers. [1987 c 393 § 16; 1975 1st ex.s. c 201 § 28.]

69.25.280 Assessment—Use of proceeds. The proceeds from assessment fees paid to the director shall be retained for the inspection of eggs and carrying out the provisions of this chapter relating to eggs. [1975 1st ex.s. c 201 § 29.]

69.25.290 Assessment—Exclusions. The assessments provided in this chapter shall not apply to:

- (1) Sale and shipment to points outside of this state;
- (2) Sale to the United States government and its instrumentalities;
- (3) Sale to breaking plants for processing into egg products;
- (4) Sale between egg dealers. [1975 1st ex.s. c 201 § 30.]

69.25.300 Transfer of moneys in state egg account.

All moneys in the state egg account, created by *RCW 69.24.450, at the time of July 1, 1975, shall be transferred to the director and shall be retained and expended for administering and carrying out the purposes of this chapter. [1975 1st ex.s. c 201 § 31.]

*Reviser's note: RCW 69.24.450 was repealed by 1975 1st ex.s. c 201 § 40.

69.25.310 Containers—Marking required—Obliteration of previous markings required for reuse—Temporary use of another handler's or dealer's permanent number—Penalty. (1) All containers used by an egg handler or dealer to package eggs shall bear the name and address or the permanent number issued by the director to said egg handler or dealer. Such permanent number shall be displayed in a size and location prescribed by the director. It shall be a violation for any egg handler or dealer to use a container that bears the permanent number of another egg handler or dealer unless such number is totally obliterated prior to use. The director may in addition require the obliteration of any or all markings that may be on any container which will be used for eggs by an egg handler or dealer.

(2) Notwithstanding subsection (1) of this section and following written notice to the director, licensed egg handlers and dealers may use new containers bearing another handler's or dealer's permanent number on a temporary basis, in any event not longer than one year, with the consent of such other handler or dealer for the purpose of using up existing container stocks. Sale of container stock shall constitute agreement by the parties to use the permanent number. [1995 c 374 § 30; 1975 1st ex.s. c 201 § 32.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.320 Records required, additional—Sales to retailer or food service—Exception—Defense to charged violation—Sale of eggs deteriorated due to storage time—Requirements for storage, display, or transportation. (1) In addition to any other records required to be kept and furnished the director under the provisions of this chapter, the director may require any person who sells to any retailer, or to any restaurant, hotel, boarding house, bakery, or any institution or concern which purchases eggs for serving to guests or patrons thereof or for its use in preparation of any food product for human consumption, candled or graded eggs other than those of his own production sold and delivered on the premises where produced, to furnish that retailer or other purchaser with an invoice covering each such sale, showing the exact grade or quality, and the size or weight of the eggs sold, according to the standards prescribed by the director, together with the name and address of the person by whom the eggs were sold. The person selling and the retailer or other purchaser shall keep a copy of said invoice on file at his place of business for a period of thirty days, during which time the copy shall be available for inspection at all reasonable times by the director: PROVIDED, That no retailer or other purchaser shall be guilty of a violation of this chapter if he can establish a guarantee from the person from whom the eggs were purchased to the effect that they, at the time of purchase, conformed to the information required by the director

(2004 Ed.)

on such invoice: PROVIDED FURTHER, That if the retailer or other purchaser having labeled any such eggs in accordance with the invoice keeps them for such a time after they are purchased as to cause them to deteriorate to a lower grade or standard, and sells them under the label of the invoice grade or standard, he shall be guilty of a violation of this chapter.

(2) Each retailer and each distributor shall store shell eggs awaiting sale or display eggs under clean and sanitary conditions in areas free from rodents and insects. Shell eggs must be stored up off the floor away from strong odors, pesticides, and cleaners.

(3) After being received at the point of first purchase, all graded shell eggs packed in containers for the purpose of sale to consumers shall be held and transported under refrigeration at ambient temperatures no greater than forty-five degrees Fahrenheit (seven and two-tenths degrees Celsius). This provision shall apply without limitation to retailers, institutional users, dealer/wholesalers, food handlers, transportation firms, or any person who handles eggs after the point of first purchase.

(4) No invoice shall be required on eggs when packed for sale to the United States department of defense, or a component thereof, if labeled with grades promulgated by the United States secretary of agriculture. [1995 c 374 § 31; 1975 1st ex.s. c 201 § 33.]

Effective date—1995 c 374 §§ 1-47, 50-53, and 59-68: See note following RCW 15.36.012.

69.25.900 Savings. The enactment of this chapter shall not have the effect of terminating or in any way modifying any liability, civil or criminal, which shall already be in existence on July 1, 1975. [1975 1st ex.s. c 201 § 35.]

69.25.910 Chapter is cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy at law. [1975 1st ex.s. c 201 § 37.]

69.25.920 Severability—1975 1st ex.s. c 201. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1975 1st ex.s. c 201 § 38.]

69.25.930 Short title. This act may be known and cited as the "Washington wholesome eggs and egg products act". [1975 1st ex.s. c 201 § 39.]

Chapter 69.28 RCW**HONEY**

Sections

| | |
|-----------|--|
| 69.28.020 | Enforcement power and duty of director and agents. |
| 69.28.025 | Rules and regulations have force of law. |
| 69.28.030 | Rules prescribing standards. |
| 69.28.040 | Right to enter, inspect, and take samples. |
| 69.28.050 | Containers to be labeled. |
| 69.28.060 | Requisites of markings. |
| 69.28.070 | "Marked" defined—When honey need not be marked. |
| 69.28.080 | Purchaser to be advised of standards—Exceptions. |
| 69.28.090 | Forgery, simulation, etc., of marks, labels, etc., unlawful. |

| | |
|-----------|---|
| 69.28.095 | Unlawful mutilation or removal of seals, marks, etc., used by director. |
| 69.28.100 | Marks for "slack-filled" container. |
| 69.28.110 | Use of used containers. |
| 69.28.120 | Floral source labels. |
| 69.28.130 | Adulterated honey—Sale or offer unlawful. |
| 69.28.133 | Nonconforming honey—Sale or offer unlawful. |
| 69.28.135 | Warning-tagged honey—Movement prohibited. |
| 69.28.140 | Possession of unlawful honey as evidence. |
| 69.28.170 | Inspectors—Prosecutions. |
| 69.28.180 | Violation of rules and regulations unlawful. |
| 69.28.185 | Penalty. |
| 69.28.190 | "Director" defined. |
| 69.28.200 | "Container" defined. |
| 69.28.210 | "Subcontainer" defined. |
| 69.28.220 | "Section box" defined. |
| 69.28.230 | "Clean and sound containers" defined. |
| 69.28.240 | "Pack", "packing", or "packed" defined. |
| 69.28.250 | "Label" defined. |
| 69.28.260 | "Person" defined. |
| 69.28.270 | "Slack-filled" defined. |
| 69.28.280 | "Deceptive arrangement" defined. |
| 69.28.290 | "Mislabeled" defined. |
| 69.28.300 | "Placard" defined. |
| 69.28.310 | "Honey" defined. |
| 69.28.320 | "Comb-honey" defined. |
| 69.28.330 | "Extracted honey" defined. |
| 69.28.340 | "Crystallized honey" defined. |
| 69.28.350 | "Honeydew" defined. |
| 69.28.360 | "Foreign material" defined. |
| 69.28.370 | "Foreign honey" defined. |
| 69.28.380 | "Adulterated honey" defined. |
| 69.28.390 | "Serious damage" defined. |
| 69.28.400 | Labeling requirements for artificial honey or mixtures containing honey. |
| 69.28.410 | Embargo on honey or product—Notice by director—Removal. |
| 69.28.420 | Embargo on honey or product—Court order affirming, required—Order for destruction or correction and release—Bond. |
| 69.28.430 | Consolidation of petitions presenting same issue and claimant. |
| 69.28.440 | Sample of honey or product may be obtained—Procedure. |
| 69.28.450 | Recovery of damages barred if probable cause for embargo. |
| 69.28.900 | Severability—1939 c 199. |
| 69.28.910 | Short title. |

Bees and apiaries: Chapter 15.60 RCW.

Commission merchants, agricultural products: Title 20 RCW.

69.28.020 Enforcement power and duty of director and agents. The director is hereby empowered, through his duly authorized agents, to enforce all provisions of this chapter. The director shall have the power to define, promulgate and enforce such reasonable regulations as he may deem necessary in carrying out the provisions of this chapter. [1939 c 199 § 29; RRS § 6163-29. FORMER PART OF SECTION: 1939 c 199 § 44 now codified as RCW 69.28.025.]

69.28.025 Rules and regulations have force of law. Any rules or regulations promulgated and published by the director under the provisions of this chapter shall have the force and effect of law. [1939 c 199 § 44; RRS § 6163-44. Formerly RCW 69.28.020, part.]

69.28.030 Rules prescribing standards. The director is hereby authorized, and it shall be his duty, upon the taking effect of this chapter and from time to time thereafter, to adopt, establish and promulgate reasonable rules and regulations specifying grades or standards of quality governing the sale of honey: PROVIDED, That, in the interest of uniformity, such grades and standards of quality shall conform as nearly to those established by the United States department of agriculture as local conditions will permit. [1939 c 199 § 24; RRS § 6163-24.]

69.28.040 Right to enter, inspect, and take samples.

The director or any of his duly authorized agents shall have the power to enter and inspect at reasonable times every place, vehicle, plant or other place where honey is being produced, stored, packed, transported, exposed, or offered for sale, and to inspect all such honey and the containers thereof and to take for inspection such samples of said honey as may be necessary. [1939 c 199 § 28; RRS § 6163-28.]

69.28.050 Containers to be labeled. It shall be unlawful to deliver for shipment, ship, transport, sell, expose or offer for sale any containers or subcontainers of honey within this state unless they shall be conspicuously marked with the name and address of the producer or distributor, the net weight of the honey, the grade of the honey, and, if imported from any foreign country, the name of the country or territory from which the said honey was imported, or if a blend of honey, any part of which is foreign honey, the container must be labeled with the name of the country or territory where such honey was produced and the proportion of each foreign honey used in the blend. [1939 c 199 § 32; RRS § 6163-32.]

69.28.060 Requisites of markings. When any markings are used or required to be used under this chapter on any container of honey to identify the container or describe the contents thereof, such markings must be plainly and conspicuously marked, stamped, stenciled, printed, labeled or branded in the English language, in letters large enough to be discernible by any person, on the front, side or top of any container. [1939 c 199 § 35; RRS § 6163-35.]

69.28.070 "Marked" defined—When honey need not be marked. The term "marked" shall mean printed in the English language on the top, front or side of any container containing honey: PROVIDED, That it shall not be necessary to mark honey sold by the producer thereof to any distributor, packer or manufacturer with the net weight, color or grade if the honey is to be used in the manufacture of honey products or is to be graded and packaged by the distributor or packer for resale. [1939 c 199 § 21; RRS § 6163-21.]

69.28.080 Purchaser to be advised of standards—Exceptions. It shall be unlawful for any person to deliver, sell, offer, or expose for sale any honey for human consumption within the state without notifying the person or persons purchasing or intending to purchase the same, of the exact grade or quality of such honey, according to the standards prescribed by the director, by stamping or printing on the container of any such honey such grade or quality: PROVIDED, This section shall not apply to honey while it is in transit in intrastate commerce from one establishment to the other, to be processed, labeled, or repacked. [1961 c 60 § 1; 1957 c 103 § 1; 1949 c 105 § 6; 1939 c 199 § 39; Rem. Supp. 1949 § 6163-39.]

69.28.090 Forgery, simulation, etc., of marks, labels, etc., unlawful. It shall be unlawful to forge, counterfeit, simulate, falsely represent or alter without proper authority any mark, stamp, tab, label, seal, sticker or other identification device provided by this chapter. [1961 c 60 § 2; 1939 c 199

§ 40; RRS § 6163-40. FORMER PART OF SECTION: 1939 c 199 § 41 now codified as RCW 69.28.095.]

69.28.095 Unlawful mutilation or removal of seals, marks, etc., used by director. It shall be unlawful to mutilate, destroy, obliterate, or remove without proper authority, any mark, stamp, tag, label, seal, sticker or other identification device used by the director under the provisions of this chapter. [1939 c 199 § 41; RRS § 6163-41. Formerly RCW 69.28.090, part.]

69.28.100 Marks for "slack-filled" container. Any slack-filled container shall be conspicuously marked "slack-filled". [1939 c 199 § 36; RRS § 6163-36. FORMER PART OF SECTION: 1939 c 199 § 10 now codified as RCW 69.28.270.]

69.28.110 Use of used containers. It shall be unlawful to sell, offer, or expose for sale to the consumer any honey in any second-hand or used containers which formerly contained honey, unless all markings as to grade, name and weight have been obliterated, removed or erased. [1939 c 199 § 37; RRS § 6163-37.]

69.28.120 Floral source labels. Any honey which is a blend of two or more floral types of honey shall not be labeled as a honey product from any one particular floral source alone. [1939 c 199 § 34; RRS § 6163-34.]

69.28.130 Adulterated honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any adulterated honey as honey. [1939 c 199 § 26; RRS § 6163-26. FORMER PART OF SECTION: 1939 c 199 §§ 27 and 33 now codified as RCW 69.28.133 and 69.28.135.]

69.28.133 Nonconforming honey—Sale or offer unlawful. It shall be unlawful for any person to sell, offer or intend for sale any honey which does not conform to the provisions of this chapter or any regulation promulgated by the director under this chapter. [1939 c 199 § 27; RRS § 6163-27. Formerly RCW 69.28.130, part.]

69.28.135 Warning-tagged honey—Movement prohibited. It shall be unlawful to move any honey or containers of honey to which any warning tag or notice has been affixed except under authority from the director. [1939 c 199 § 33; RRS § 6163-33. Formerly RCW 69.28.130, part.]

69.28.140 Possession of unlawful honey as evidence. Possession by any person, of any honey which is sold, exposed or offered for sale in violation of this chapter shall be prima facie evidence that the same is kept or shipped to the said person, in violation of the provisions of this chapter. [1939 c 199 § 30; RRS § 6163-30.]

69.28.170 Inspectors—Prosecutions. It shall be the duty of the director to enforce this chapter and to appoint and employment [employ] such inspectors as may be necessary therefor. The director shall notify the prosecuting attorneys

for the counties of the state of violations of this chapter occurring in their respective counties, and it shall be the duty of the respective prosecuting attorneys immediately to institute and prosecute proceeding in their respective counties and to enforce the penalties provided for by this chapter. [1939 c 199 § 43; RRS § 6163-43.]

69.28.180 Violation of rules and regulations unlawful. It shall be unlawful for any person to violate any rule or regulation promulgated by the director under the provisions of this chapter. [1939 c 199 § 25; RRS § 6163-25. FORMER PART OF SECTION: 1939 c 199 § 44 now codified in RCW 69.28.185.]

69.28.185 Penalty. Any person who violates any of the provisions of this chapter shall be guilty of a misdemeanor, and upon violation thereof shall be punishable by a fine of not more than five hundred dollars or imprisonment in the county jail for a period of not more than six months or by both such fine and imprisonment. [1939 c 199 § 42; RRS § 6163-42. Formerly RCW 69.28.180, part.]

69.28.190 "Director" defined. The term "director" means the director of agriculture of the state of Washington or his duly authorized representative. [1939 c 199 § 2; RRS § 6163-2. Formerly RCW 69.28.010, part.]

69.28.200 "Container" defined. The term "container" shall mean any box, crate, chest, carton, barrel, keg, bottle, jar, can or any other receptacle containing honey. [1939 c 199 § 3; RRS § 6163-3.]

69.28.210 "Subcontainer" defined. The term "subcontainer" shall mean any section box or other receptacle used within a container. [1939 c 199 § 4; RRS § 6163-4.]

69.28.220 "Section box" defined. The term "section box" shall mean the wood or other frame in which bees have built a small comb of honey. [1939 c 199 § 5; RRS § 6163-5.]

69.28.230 "Clean and sound containers" defined. The term "clean and sound containers" shall mean containers which are virtually free from rust, stains or leaks. [1939 c 199 § 6; RRS § 6163-6.]

69.28.240 "Pack", "packing", or "packed" defined. The term "pack", "packing", or "packed" shall mean the arrangement of all or part of the subcontainers in any container. [1939 c 199 § 7; RRS § 6163-7.]

69.28.250 "Label" defined. The term "label" shall mean a display of written, printed or graphic matter upon the immediate container of any article. [1939 c 199 § 8; RRS § 6163-8.]

69.28.260 "Person" defined. The term "person" includes individual, partnership, corporation and/or association. [1939 c 199 § 9; RRS § 6163-9.]

69.28.270 "Slack-filled" defined. The term "slack-filled" shall mean that the contents of any container occupy less than ninety-five percent of the volume of the closed container. [1939 c 199 § 10; RRS § 6163-10. Formerly RCW 69.28.100, part.]

69.28.280 "Deceptive arrangement" defined. The term "deceptive arrangement" shall mean any lot or load, arrangement or display of honey which has in any exposed surface, honey which is so superior in quality, appearance or condition, or in any other respects, to any of that which is concealed or unexposed as to materially misrepresent any part of the lot, load, arrangement or display. [1939 c 199 § 11; RRS § 6163-11.]

69.28.290 "Mislabeled" defined. The term "mislabeled" shall mean the placing or presence of any false or misleading statement, design or device upon, or in connection with, any container or lot of honey, or upon the label, lining or wrapper of any such container, or any placard used in connection therewith, and having reference to such honey. A statement, design or device is false and misleading when the honey to which it refers does not conform in every respect to such statement. [1939 c 199 § 12; RRS § 6163-12.]

69.28.300 "Placard" defined. The term "placard" means any sign, label or designation, other than an oral designation, used with any honey as a description or identification thereof. [1939 c 199 § 13; RRS § 6163-13.]

69.28.310 "Honey" defined. The term "honey" as used herein is the nectar of floral exudations of plants, gathered and stored in the comb by honey bees (*apis mellifica*). It is laevo-rotatory, contains not more than twenty-five percent of water, not more than twenty-five one-hundredths of one percent of ash, not more than eight percent of sucrose, its specific gravity is 1.412, its weight not less than eleven pounds twelve ounces per standard gallon of 231 cubic inches at sixty-eight degrees Fahrenheit. [1939 c 199 § 14; RRS § 6163-14. Formerly RCW 69.28.010, part.]

69.28.320 "Comb-honey" defined. The term "comb-honey" means honey which has not been extracted from the comb. [1939 c 199 § 15; RRS § 6163-15.]

69.28.330 "Extracted honey" defined. The term "extracted honey" means honey which has been removed from the comb. [1939 c 199 § 16; RRS § 6163-16.]

69.28.340 "Crystallized honey" defined. The term "crystallized honey" means honey which has assumed a solid form due to the crystallization of one or more of the natural sugars therein. [1939 c 199 § 17; RRS § 6163-17.]

69.28.350 "Honeydew" defined. The term "honeydew" is the saccharine exudation of plants, other than nectarous exudations, gathered and stored in the comb by honey bees (*apis mellifica*) and is dextrorotatory. [1939 c 199 § 18; RRS § 6163-18. Formerly RCW 69.28.010, part.]

69.28.360 "Foreign material" defined. The term "foreign material" means pollen, wax particles, insects, or materials not deposited by bees. [1937 c 199 § 19; RRS § 6163-19.]

69.28.370 "Foreign honey" defined. The term "foreign honey" means any honey not produced within the continental United States. [1939 c 199 § 20; RRS § 6163-20.]

69.28.380 "Adulterated honey" defined. The term "adulterated honey" means any honey to which has been added honeydew, glucose, dextrose, molasses, sugar, sugar syrup, invert sugar, or any other similar product or products, other than the nectar of floral exudations of plants gathered and stored in the comb by honey bees. [1939 c 199 § 22; RRS § 6163-22. Formerly RCW 69.28.010, part.]

69.28.390 "Serious damage" defined. The term "serious damage" means any injury or defect that seriously affects the edibility or shipping quality of the honey. [1939 c 199 § 23; RRS § 6163-23.]

69.28.400 Labeling requirements for artificial honey or mixtures containing honey. (1) No person shall sell, keep for sale, expose or offer for sale, any article or product in imitation or semblance of honey branded exclusively as "honey", "liquid or extracted honey", "strained honey" or "pure honey".

(2) No person, firm, association, company or corporation shall manufacture, sell, expose or offer for sale, any compound or mixture branded or labeled exclusively as honey which shall be made up of honey mixed with any other substance or ingredient.

(3) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed in imitation or semblance of honey, the product shall be labeled with the word "artificial" or "imitation" in the same type size and style as the word "honey";

(4) Whenever any substance or commodity is to be marketed in imitation or semblance of honey, but contains no honey, the product shall not be branded or labeled with the word "honey" and/or depict thereon a picture or drawing of a bee, bee hive, or honeycomb;

(5) Whenever honey is mixed with any other substance or ingredient and the commodity is to be marketed, there shall be printed on the package containing such compound or mixture a statement giving the ingredients of which it is made; if honey is one of such ingredients it shall be so stated in the same size type as are the other ingredients; nor shall such compound or mixture be branded or labeled exclusively with the word "honey" in any form other than as herein provided; nor shall any product in semblance of honey, whether a mixture or not, be sold, exposed or offered for sale as honey, or branded or labeled exclusively with the word "honey", unless such article is pure honey. [1975 1st ex.s. c 283 § 1.]

69.28.410 Embargo on honey or product—Notice by director—Removal. Whenever the director shall find, or shall have probable cause to believe, that any honey or prod-

uct subject to the provisions of this chapter, as now or hereafter amended, is in intrastate commerce, which was introduced into such intrastate commerce in violation of the provisions of this chapter, as now or hereafter amended, he is hereby authorized to affix to such honey or product a notice placing an embargo on such honey or product, and prohibiting its sale in intrastate commerce, and no person shall move or sell such honey or product without first receiving permission from the director to move or sell such honey or product. But if, after such honey or product has been embargoed, the director shall find that such honey or product does not involve a violation of this chapter, as now or hereafter amended, such embargo shall be forthwith removed. [1975 1st ex.s. c 283 § 3.]

69.28.420 Embargo on honey or product—Court order affirming, required—Order for destruction or correction and release—Bond. When the director has embargoed any honey or product he shall, no later than twenty days after the affixing of notice of its embargo, petition the superior court for an order affirming such embargo. Such court shall then have jurisdiction, for cause shown and after prompt hearing to any claimant of such honey or product, to issue an order which directs the removal of such embargo or the destruction or the correction and release of such honey or product. An order for destruction or correction and release shall contain such provision for the payment of pertinent court costs and fees and administrative expenses, as is equitable and which the court deems appropriate in the circumstances. An order for correction and release may contain such provision for bond, as the court finds indicated in the circumstances. [1975 1st ex.s. c 283 § 4.]

69.28.430 Consolidation of petitions presenting same issue and claimant. Two or more petitions under this chapter, as now or hereafter amended, which pend at the same time and which present the same issue and claimant hereunder, shall be consolidated for simultaneous determination by one court of jurisdiction, upon application to any court of jurisdiction by the director or by such claimant. [1975 1st ex.s. c 283 § 5.]

69.28.440 Sample of honey or product may be obtained—Procedure. The claimant in any proceeding by petition under this chapter, as now or hereafter amended, shall be entitled to receive a representative sample of the honey or product subject to such proceeding, upon application to the court of jurisdiction made at any time after such petition and prior to the hearing thereon. [1975 1st ex.s. c 283 § 6.]

69.28.450 Recovery of damages barred if probable cause for embargo. No state court shall allow the recovery of damages for embargo under this chapter, as now or hereafter amended, if the court finds that there was probable cause for such action. [1975 1st ex.s. c 283 § 7.]

69.28.900 Severability—1939 c 199. If any provisions of this chapter, or the application thereof to any person or circumstance, is held invalid, the remainder of the chapter, and the application of such provisions to other persons or circum-

stances, shall not be affected thereby. If any section, subsection, sentence, clause, or phrase of this chapter is for any reason held to be unconstitutional, such decisions shall not affect the validity of the remaining portions of this chapter. The legislature hereby declares that it would have passed this chapter and each section, subsection, sentence, clause and phrase thereof, irrespective of the fact that any one or more of the other sections, subsections, sentences, clauses and phrases be declared unconstitutional. [1939 c 199 § 45; RRS § 6163-45.]

69.28.910 Short title. This chapter may be known and cited as the Washington state honey act. [1939 c 199 § 1; RRS § 6163-1.]

Chapter 69.30 RCW

SANITARY CONTROL OF SHELLFISH

Sections

| | |
|-----------|--|
| 69.30.005 | Purpose. |
| 69.30.010 | Definitions. |
| 69.30.020 | Certificate of compliance required for sale. |
| 69.30.030 | Rules and regulations—Duties of state board of health. |
| 69.30.050 | Certificates of approval—Shellfish growing areas. |
| 69.30.060 | Certificates of approval—Culling, shucking, packing establishments. |
| 69.30.070 | Certificates of approval—Compliance with other laws and rules required. |
| 69.30.080 | Certificates of approval—Denial, revocation, suspension, modification—Procedure. |
| 69.30.085 | License, certificate of approval—Denial, revocation, suspension—Prohibited acts. |
| 69.30.110 | Possession or sale in violation of chapter—Enforcement—Seizure—Disposal. |
| 69.30.120 | Inspection by department—Access to regulated business or entity—Administrative inspection warrant. |
| 69.30.130 | Water pollution laws and rules applicable. |
| 69.30.140 | Penalties. |
| 69.30.145 | Civil penalties. |
| 69.30.150 | Civil penalties—General provisions. |
| 69.30.900 | Severability—1955 c 144. |

Shellfish: Chapter 77.60 RCW.

69.30.005 Purpose. The purpose of this chapter is to provide for the sanitary control of shellfish. Protection of the public health requires assurances that commercial shellfish are harvested only from approved growing areas and that processing of shellfish is conducted in a safe and sanitary manner. [1989 c 200 § 2.]

69.30.010 Definitions. When used in this chapter, the following terms shall have the following meanings:

(1) "Shellfish" means all varieties of fresh and frozen oysters, mussels, clams, and scallops, either shucked or in the shell, and any fresh or frozen edible products thereof.

(2) "Sale" means to sell, offer for sale, barter, trade, deliver, consign, hold for sale, consignment, barter, trade, or delivery, and/or possess with intent to sell or dispose of in any commercial manner.

(3) "Shellfish growing areas" means the lands and waters in and upon which shellfish are grown for harvesting in commercial quantity or for sale for human consumption.

(4) "Establishment" means the buildings, together with the necessary equipment and appurtenances, used for the storage, culling, shucking, packing and/or shipping of shell-

fish in commercial quantity or for sale for human consumption.

(5) "Person" means any individual, partnership, firm, company, corporation, association, or the authorized agents of any such entities.

(6) "Department" means the state department of health.

(7) "Secretary" means the secretary of health or his or her authorized representatives.

(8) "Commercial quantity" means any quantity exceeding: (a) Forty pounds of mussels; (b) one hundred oysters; (c) fourteen horse clams; (d) six geoducks; (e) fifty pounds of hard or soft shell clams; or (f) fifty pounds of scallops. The poundage in this subsection (8) constitutes weight with the shell.

(9) "Fish and wildlife officer" means a fish and wildlife officer as defined in RCW 77.08.010.

(10) "Ex officio fish and wildlife officer" means an ex officio fish and wildlife officer as defined in RCW 77.08.010. [2001 c 253 § 5; 1995 c 147 § 1; 1991 c 3 § 303; 1989 c 200 § 1; 1985 c 51 § 1; 1979 c 141 § 70; 1955 c 144 § 1.]

69.30.020 Certificate of compliance required for sale.

Only shellfish bearing a certificate of compliance with the sanitary requirements of this state or a state, territory, province or country of origin whose requirements are equal or comparable to those established pursuant to this chapter may be sold or offered for sale in the state of Washington. [1955 c 144 § 2.]

69.30.030 Rules and regulations—Duties of state board of health. The state board of health shall cause such investigations to be made as are necessary to determine reasonable requirements governing the sanitation of shellfish, shellfish growing areas, and shellfish plant facilities and operations, in order to protect public health and carry out the provisions of this chapter; and shall adopt such requirements as rules and regulations of the state board of health. Such rules and regulations may include reasonable sanitary requirements relative to the quality of shellfish growing waters and areas, boat and barge sanitation, building construction, water supply, sewage and waste water disposal, lighting and ventilation, insect and rodent control, shell disposal, garbage and waste disposal, cleanliness of establishment, the handling, storage, construction and maintenance of equipment, the handling, storage and refrigeration of shellfish, the identification of containers, and the handling, maintenance, and storage of permits, certificates, and records regarding shellfish taken under this chapter. [1995 c 147 § 2; 1955 c 144 § 3.]

69.30.050 Certificates of approval—Shellfish growing areas. Shellfish growing areas, from which shellfish are removed in a commercial quantity or for sale for human consumption shall meet the requirements of this chapter and the state board of health; and such shellfish growing areas shall be so certified by the department. Any person desiring to remove shellfish in a commercial quantity or for sale for human consumption from a growing area in the state of Washington shall first apply to the department for a certificate of approval of the growing area. The department shall

cause the shellfish growing area to be inspected and if the area meets the requirements of this chapter and the state board of health, the department shall issue a certificate of approval for that area. Such certificates shall be issued for a period not to exceed twelve months and may be revoked at any time the area is found not to be in compliance with the requirements of this chapter and the state board of health.

Shellfish growing areas from which shellfish are removed in a commercial quantity for purposes other than human consumption including but not limited to bait or seed, shall be readily subject to monitoring and inspections, and shall otherwise be of a character ensuring that shellfish harvested from such areas are not diverted for use as food. A certificate of approval issued by the department for shellfish growing areas from which shellfish are to be removed for purposes other than human consumption shall specify the date or dates and time of harvest and all applicable conditions of harvest, identification by tagging, dyeing, or other means, transportation, processing, sale, and other factors to ensure that shellfish harvested from such areas are not diverted for use as food. [1995 c 147 § 3; 1985 c 51 § 2; 1955 c 144 § 5.]

69.30.060 Certificates of approval—Culling, shucking, packing establishments. No person shall cull, shuck, or pack shellfish in the state of Washington in a commercial quantity or for sale for human consumption unless the establishment in which such operations are conducted has been certified by the department as meeting the requirements of the state board of health. Any person desiring to cull, shuck, or pack shellfish within the state of Washington in a commercial quantity or for sale for human consumption, shall apply to the department for a certificate of approval for the establishment in which such operations will be done. The department shall cause such establishment to be inspected, and if the establishment meets the sanitary requirements of the state board of health, the department shall issue a certificate of approval. Such certificates of approval shall be issued for a period not to exceed twelve months, and may be revoked at any time the establishment or the operations are found not to be in compliance with the sanitary requirements of the state board of health. [1985 c 51 § 3; 1955 c 144 § 6.]

69.30.070 Certificates of approval—Compliance with other laws and rules required. Any certificate of approval issued under the provisions of this chapter shall not relieve any person from complying with the laws, rules and/or regulations of the department of fish and wildlife, relative to shellfish. [1994 c 264 § 40; 1955 c 144 § 7.]

69.30.080 Certificates of approval—Denial, revocation, suspension, modification—Procedure. The department may deny, revoke, suspend, or modify a certificate of approval, license, or other necessary departmental approval in any case in which it determines there has been a failure or refusal to comply with this chapter or rules adopted under it. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 304; 1989 c 175 § 125; 1979 c 141 § 71; 1955 c 144 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

69.30.085 License, certificate of approval—Denial, revocation, suspension—Prohibited acts. (1) A person whose license or certificate of approval is denied, revoked, or suspended as a result of violations of this chapter or rules adopted under this chapter may not:

(a) Serve as the person in charge of, be employed by, manage, or otherwise participate to any degree in a shellfish operation licensed or certified under this chapter or rules adopted under this chapter; or

(b) Participate in the harvesting, shucking, packing, or shipping of shellfish in commercial quantities or for sale for human consumption.

(2) This section applies to a person only during the period of time in which that person's license or certificate of approval is denied, revoked, or suspended. [1998 c 44 § 1.]

69.30.110 Possession or sale in violation of chapter—Enforcement—Seizure—Disposal. It is unlawful for any person to possess a commercial quantity of shellfish or to sell or offer to sell shellfish in the state which have not been grown, shucked, packed, or shipped in accordance with the provisions of this chapter. Failure of a shellfish grower to display immediately a certificate of approval issued under RCW 69.30.050 to an authorized representative of the department, a fish and wildlife officer, or an ex officio fish and wildlife officer subjects the grower to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Failure of a shellfish processor to display a certificate of approval issued under RCW 69.30.060 to an authorized representative of the department, a fish and wildlife officer, or an ex officio fish and wildlife officer subjects the processor to the penalty provisions of this chapter, as well as immediate seizure of the shellfish by the representative or officer.

Shellfish seized under this section shall be subject to prompt disposal by the representative or officer and may not be used for human consumption. The state board of health shall develop by rule procedures for the disposal of the seized shellfish. [2001 c 253 § 6; 1995 c 147 § 4; 1985 c 51 § 4; 1979 c 141 § 74; 1955 c 144 § 11.]

69.30.120 Inspection by department—Access to regulated business or entity—Administrative inspection warrant. The department may enter and inspect any shellfish growing area or establishment for the purposes of determining compliance with this chapter and rules adopted under this chapter. The department may inspect all shellfish, all permits, all certificates of approval and all records.

During such inspections the department shall have free and unimpeded access to all buildings, yards, warehouses, storage and transportation facilities, vehicles, and other places reasonably considered to be or to have been part of the regulated business or entity, to all ledgers, books, accounts, memorandums, or records required to be compiled or maintained under this chapter or under rules adopted pursuant to this chapter, and to any products, components, or other materials reasonably believed to be or to have been used, processed, or produced by or in connection with the regulated business or activity. In connection with such inspections the department may take such samples or specimens as may be

reasonably necessary to determine whether there exists a violation of this chapter or rules adopted under this chapter.

Inspection of establishments may be conducted between eight a.m. and five p.m. on any weekday that is not a legal holiday, during any time the regulated business or entity has established as its usual business hours, at any time the regulated business or entity is open for business or is otherwise in operation, and at any other time with the consent of the owner or authorized agent of the regulated business or entity.

The department may apply for an administrative inspection warrant to a court of competent jurisdiction and an administrative inspection warrant may issue where:

(1) The department has attempted an inspection under this chapter and access to all or part of the regulated business or entity has been actually or constructively denied; or

(2) There is reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred. [1995 c 147 § 5; 1985 c 51 § 5; 1955 c 144 § 12.]

69.30.130 Water pollution laws and rules applicable.

All existing laws and rules and regulations governing the pollution of waters of the state shall apply in the control of pollution of shellfish growing areas. [1955 c 144 § 13.]

69.30.140 Penalties. Any person convicted of violating any of the provisions of this chapter shall be guilty of a gross misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a conviction for purposes of license revocation and suspension of privileges under *RCW 77.15.700(5). [2001 c 253 § 7; 1995 c 147 § 6; 1985 c 51 § 6; 1955 c 144 § 14.]

*Reviser's note: RCW 77.15.700 was amended by 2003 c 386 § 2, deleting subsection (5).

69.30.145 Civil penalties. As limited by RCW 69.30.150, the department may impose civil penalties for violations of standards set forth in this chapter or rules adopted under RCW 69.30.030. [1989 c 200 § 3.]

69.30.150 Civil penalties—General provisions. (1) In addition to any other penalty provided by law, every person who violates standards set forth in this chapter or rules adopted under RCW 69.30.030 is subject to a penalty of not more than five hundred dollars per day for every violation. Every violation is a separate and distinct offense. In case of a continuing violation, every day's continuance is a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation is in violation of this section and is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation with reasonable particularity. The notice shall be personally served in the manner of service of a summons in a civil action

or in a manner which shows proof of receipt. Any penalty imposed by this section shall become due and payable twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (3) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (4) of this section.

(3) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of the penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department deems proper, giving consideration to the degree of hazard associated with the violation. The department may only grant a remission or mitigation that it deems to be in the best interests of carrying out the purposes of this chapter. The department may ascertain the facts regarding all such applications in a manner it deems proper. When an application for remission or mitigation is made, any penalty incurred pursuant to this section becomes due and payable twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (4) of this section.

(4) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(5) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(6) The attorney general may bring an action in the name of the department in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter.

(7) All penalties imposed under this section shall be paid to the state treasury and credited to the general fund. [1989 c 200 § 4.]

69.30.900 Severability—1955 c 144. If any provision of this chapter or the application thereof to any person or circumstances shall be held invalid, such invalidity shall not affect the provisions of the application of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1955 c 144 § 15.]

Chapter 69.36 RCW

WASHINGTON CAUSTIC POISON ACT OF 1929

Sections

| | |
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| 69.36.010 | Definitions. |
| 69.36.020 | Misbranded sales, etc., prohibited—Exceptions. |
| 69.36.030 | Condemnation of misbranded packages. |
| 69.36.040 | Enforcement—Approval of labels. |
| 69.36.050 | Duty to prosecute. |
| 69.36.060 | Penalty. |
| 69.36.070 | Short title. |

Highway transportation of poisons, corrosives, etc.: RCW 46.48.170 through 46.48.180.

69.36.010 Definitions. In this chapter, unless the context or subject matter otherwise requires,

(1) The term "dangerous caustic or corrosive substance" means each and all of the acids, alkalis, and substances named below: (a) Hydrochloric acid and any preparation containing free or chemically unneutralized hydrochloric acid (HCl) in a concentration of ten percent or more; (b) sulphuric acid and any preparation containing free or chemically unneutralized sulphuric acid (H₂SO₄) in concentration of ten percent or more; (c) nitric acid or any preparation containing free or chemically unneutralized nitric acid (HNO₃) in a concentration of five percent or more; (d) carboic acid (C₆H₅OH), otherwise known as phenol, and any preparation containing carboic acid in a concentration of five percent or more; (e) oxalic acid and any preparation containing free or chemically unneutralized oxalic acid (H₂C₂O₄) in a concentration of ten percent or more; (f) any salt of oxalic acid and any preparation containing any such salt in a concentration of ten percent or more; (g) acetic acid or any preparation containing free or chemically unneutralized acetic acid (HC₂H₃O₂) in a concentration of twenty percent or more; (h) hypochlorous acid, either free or combined, and any preparation containing the same in a concentration so as to yield ten percent or more by weight of available chlorine, excluding calx chlorinata, bleaching powder, and chloride of lime; (i) potassium hydroxide and any preparation containing free or chemically unneutralized potassium hydroxide (KOH), including caustic potash and Vienna paste, in a concentration of ten percent or more; (j) sodium hydroxide and any preparation containing free or chemically unneutralized sodium hydroxide (NaOH), including caustic soda and lye, in a concentration of ten percent or more; (k) silver nitrate, sometimes known as lunar caustic, and any preparation containing silver nitrate (AgNO₃) in a concentration of five percent or more, and (l) ammonia water and any preparation yielding free or chemically uncombined ammonia (NH₃), including ammonium hydroxide and "hartshorn", in a concentration of five percent or more.

(2) The term "misbranded parcel, package, or container" means a retail parcel, package, or container of any dangerous caustic or corrosive substance for household use, not bearing a conspicuous, easily legible label or sticker, containing (a) the name of the article; (b) the name and place of business of the manufacturer, packer, seller, or distributor; (c) the word "POISON", running parallel with the main body of reading matter on said label or sticker, on a clear, plain background of a distinctly contrasting color, in uncondensed gothic capital letters, the letters to be not less than twenty-four point size, unless there is on said label or sticker no other type so large, in which event the type shall be not smaller than the largest type on the label or sticker, and (d) directions for treatment in case of accidental personal injury by the dangerous caustic or corrosive substance; PROVIDED, That such directions need not appear on labels or stickers on parcels, packages or containers at the time of shipment or of delivery for shipment by manufacturers or wholesalers for other than household use. PROVIDED FURTHER, That this chapter is not to be construed as applying to any substance subject to the chapter, sold at wholesale or retail for use by a retail druggist in filling prescriptions or in dispensing, in pursuance of a prescription

by a physician, dentist, or veterinarian; or for use by or under the direction of a physician, dentist, or veterinarian; or for use by a chemist in the practice or teaching of his profession; or for any industrial or professional use, or for use in any of the arts and sciences. [1929 c 82 § 1; RRS § 2508-1. Formerly RCW 69.36.010 and 69.36.020, part.]

69.36.020 Misbranded sales, etc., prohibited—
Exceptions. No person shall sell, barter, or exchange, or receive, hold, pack, display, or offer for sale, barter, or exchange, in this state any dangerous caustic or corrosive substance in a misbranded parcel, package, or container, said parcel, package, or container being designed for household use; PROVIDED, That household products for cleaning and washing purposes, subject to this chapter and labeled in accordance therewith, may be sold, offered for sale, held for sale and distributed in this state by any dealer, wholesale or retail; PROVIDED FURTHER, That no person shall be liable to prosecution and conviction under this chapter when he establishes a guaranty bearing the signature and address of a vendor residing in the United States from whom he purchased the dangerous caustic or corrosive substance, to the effect that such substance is not misbranded within the meaning of this chapter. No person in this state shall give any such guaranty when such dangerous caustic or corrosive substance is in fact misbranded within the meaning of this chapter. [1929 c 82 § 2; RRS § 2508-2. FORMER PART OF SECTION: 1929 c 82 § 1 now codified in RCW 69.32.010.]

69.36.030 Condemnation of misbranded packages. Any dangerous caustic or corrosive substance in a misbranded parcel, package, or container suitable for household use, that is being sold, bartered, or exchanged, or held, displayed, or offered for sale, barter, or exchange, shall be liable to be proceeded against in any superior court within the jurisdiction of which the same is found and seized for confiscation, and if such substance is condemned as misbranded, by said court, it shall be disposed of by destruction or sale, as the court may direct; and if sold, the proceeds, less the actual costs and charges, shall be paid over to the state treasurer; but such substance shall not be sold contrary to the laws of the state: PROVIDED, HOWEVER, That upon the payment of the costs of such proceedings and the execution and delivery of a good and sufficient bond to the effect that such substance will not be unlawfully sold or otherwise disposed of, the court may by order direct that such substance be delivered to the owner thereof. Such condemnation proceedings shall conform as near as may be to proceedings in the seizure, and condemnation of substances unfit for human consumption. [1929 c 82 § 3; RRS § 2508-3.]

69.36.040 Enforcement—Approval of labels. The director of agriculture shall enforce the provisions of this chapter, and he is hereby authorized and empowered to approve and register such brands and labels intended for use under the provisions of this chapter as may be submitted to him for that purpose and as may in his judgment conform to the requirements of this statute: PROVIDED, HOWEVER, That in any prosecution under this chapter the fact that any brand or label involved in said prosecution has not been sub-

mitted to said director for approval, or if submitted, has not been approved by him, shall be immaterial. [1929 c 82 § 5; RRS § 2508-5.]

69.36.050 Duty to prosecute. Every prosecuting attorney to whom there is presented, or who in any way procures, satisfactory evidence of any violation of the provisions of this chapter shall cause appropriate proceedings to be commenced and prosecuted in the proper courts, without delay, for the enforcement of the penalties as in such cases herein provided. [1929 c 82 § 6; RRS § 2508-6.]

69.36.060 Penalty. Any person violating the provisions of this chapter shall be guilty of a misdemeanor. [1929 c 82 § 4; RRS § 2508-4.]

69.36.070 Short title. This chapter may be cited as the Washington Caustic Poison Act of 1929. [1929 c 82 § 7; RRS § 2508-7.]

Chapter 69.38 RCW

POISONS—SALES AND MANUFACTURING

Sections

| | |
|-----------|---|
| 69.38.010 | "Poison" defined. |
| 69.38.020 | Exemptions from chapter. |
| 69.38.030 | Poison register—Identification of purchaser. |
| 69.38.040 | Inspection of poison register—Penalty for failure to maintain register. |
| 69.38.050 | False representation—Penalty. |
| 69.38.060 | Manufacturers and sellers of poisons—License required—Penalty. |

69.38.010 "Poison" defined. As used in this chapter "poison" means:

- (1) Arsenic and its preparations;
- (2) Cyanide and its preparations, including hydrocyanic acid;
- (3) Strychnine; and
- (4) Any other substance designated by the state board of pharmacy which, when introduced into the human body in quantities of sixty grains or less, causes violent sickness or death. [1987 c 34 § 1.]

69.38.020 Exemptions from chapter. All substances regulated under chapters 15.58, 17.21, 69.04, 69.41, and 69.50 RCW, and chapter 69.45 RCW are exempt from the provisions of this chapter. [1987 c 34 § 2.]

69.38.030 Poison register—Identification of purchaser. It is unlawful for any person, either on the person's own behalf or while an employee of another, to sell any poison without first recording in ink in a "poison register" kept solely for this purpose the following information:

- (1) The date and hour of the sale;
- (2) The full name and home address of the purchaser;
- (3) The kind and quantity of poison sold; and
- (4) The purpose for which the poison is being purchased.

The purchaser shall present to the seller identification which contains the purchaser's photograph and signature. No sale may be made unless the seller is satisfied that the purchaser's representations are true and that the poison will be

used for a lawful purpose. Both the purchaser and the seller shall sign the poison register entry.

If a delivery of a poison will be made outside the confines of the seller's premises, the seller may require the business purchasing the poison to submit a letter of authorization as a substitute for the purchaser's photograph and signature requirements. The letter of authorization shall include the unified business identifier and address of the business, a full description of how the substance will be used, and the signature of the purchaser. Either the seller or the employee of the seller delivering or transferring the poison shall affix his or her signature to the letter as a witness to the signature and identification of the purchaser. The transaction shall be recorded in the poison register as provided in this section. Letters of authorization shall be kept with the poison register and shall be subject to the inspection and preservation requirements contained in RCW 69.38.040. [1988 c 197 § 1; 1987 c 34 § 3.]

69.38.040 Inspection of poison register—Penalty for failure to maintain register. Every poison register shall be open for inspection by law enforcement and health officials at all times and shall be preserved for at least two years after the date of the last entry. Any person failing to maintain the poison register as required in this chapter is guilty of a misdemeanor. [1987 c 34 § 4.]

69.38.050 False representation—Penalty. Any person making any false representation to a seller when purchasing a poison is guilty of a gross misdemeanor. [1987 c 34 § 5.]

69.38.060 Manufacturers and sellers of poisons—License required—Penalty. The state board of pharmacy, after consulting with the department of health, shall require and provide for the annual licensure of every person now or hereafter engaged in manufacturing or selling poisons within this state. Upon a payment of a fee as set by the department, the department shall issue a license in such form as it may prescribe to such manufacturer or seller. Such license shall be displayed in a conspicuous place in such manufacturer's or seller's place of business for which it is issued.

Any person manufacturing or selling poison within this state without a license is guilty of a misdemeanor. [1989 1st ex.s. c 9 § 440; 1987 c 34 § 6.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Chapter 69.40 RCW

POISONS AND DANGEROUS DRUGS

Sections

| | |
|-----------|--|
| 69.40.010 | Poison in edible products. |
| 69.40.015 | Poison in edible products—Penalty. |
| 69.40.020 | Poison in milk or food products—Penalty. |
| 69.40.025 | Supplementary to existing laws—Enforcement. |
| 69.40.030 | Placing poison or other harmful object or substance in food, drinks, medicine, or water—Penalty. |
| 69.40.055 | Selling repackaged poison without labeling—Penalty. |
| 69.40.150 | Drug control assistance unit investigative assistance for enforcement of chapter. |

Pharmacists: Chapter 18.64 RCW.

Poison information centers: Chapter 18.76 RCW.

[Title 69 RCW—page 44]

Poisoning animals—Strychnine sales: RCW 16.52.190 and 16.52.193.

Washington pesticide application act: Chapter 17.21 RCW.

69.40.010 Poison in edible products. It shall be unlawful for any person to sell, offer for sale, use, distribute, or leave in any place, any crackers, biscuit, bread or any other preparation resembling or in similitude, of any edible product, containing arsenic, strychnine or any other poison. [1905 c 141 § 1; RRS § 6140. FORMER PART OF SECTION: 1905 c 141 § 2 now codified as RCW 69.40.015.]

69.40.015 Poison in edible products—Penalty. Any person violating the provisions of RCW 69.40.010 shall upon conviction be punished by a fine of not less than ten dollars nor more than five hundred dollars. [1905 c 141 § 2; RRS § 6141. Formerly RCW 69.40.010, part.]

69.40.020 Poison in milk or food products—Penalty. Any person who shall sell, offer to sell, or have in his or her possession for the purpose of sale, either as owner, proprietor, or assistant, or in any manner whatsoever, whether for hire or otherwise, any milk or any food products, containing the chemical ingredient commonly known as formaldehyde, or in which any formaldehyde or other poisonous substance has been mixed, for the purpose of preservation or otherwise, is guilty of a class C felony, and upon conviction thereof shall be imprisoned in the penitentiary for the period of not less than one year nor more than three years. [2003 c 53 § 320; 1905 c 50 § 1; RRS § 6142. FORMER PART OF SECTION: 1905 c 50 § 2, now codified as RCW 69.40.025.]

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

69.40.025 Supplementary to existing laws—Enforcement. *This act shall be supplementary to the laws of this state now in force prohibiting the adulteration of food and fraud in the sale thereof; and the state dairy and food commissioner, the chemist of the state agricultural experiment station, the state attorney general and the prosecuting attorneys of the several counties of this state are hereby required, without additional compensation, to assist in the execution of *this act, and in the prosecution of all persons charged with the violation thereof, in like manner and with like powers as they are now authorized and required by law to enforce the laws of this state against the adulteration of food and fraud in the sale thereof. [1905 c 50 § 2; RRS § 6143. Formerly RCW 69.40.020, part.]

Reviser's note: *(1) "This act" appears in 1905 c 50 and the sections of the act are codified as RCW 69.40.020 and 69.40.025.

(2) The duties of the state dairy and food commissioner have devolved upon the director of agriculture through a chain of statute as follows: 1913 c 60 § 6(2); 1921 c 7 § 93(1). See RCW 43.23.090(1).

69.40.030 Placing poison or other harmful object or substance in food, drinks, medicine, or water—Penalty. (1) Every person who willfully mingles poison or places any harmful object or substance, including but not limited to pins, tacks, needles, nails, razor blades, wire, or glass in any food, drink, medicine, or other edible substance intended or prepared for the use of a human being or who shall knowingly furnish, with intent to harm another person, any food, drink,

(2004 Ed.)

medicine, or other edible substance containing such poison or harmful object or substance to another human being, and every person who willfully poisons any spring, well, or reservoir of water, is guilty of a class B felony and shall be punished by imprisonment in a state correctional facility for not less than five years or by a fine of not less than one thousand dollars.

(2) *This act shall not apply to the employer or employers of a person who violates this section without such employer's knowledge. [2003 c 53 § 321; 1992 c 7 § 48; 1973 c 119 § 1; 1909 c 249 § 264; RRS § 2516. Prior: Code 1881 § 802; 1873 p 185 § 27; 1869 p 202 § 25; 1854 p 79 § 25.]

*Reviser's note: "this act" refers to the 1973 c 119 § 1 amendment to this section.

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

69.40.055 Selling repackaged poison without labeling—Penalty. It shall be unlawful for any person to sell at retail or furnish any repackaged poison drug or product without affixing or causing to be affixed to the bottle, box, vessel, or package a label containing the name of the article, all labeling required by the Food and Drug Administration and other federal or state laws or regulations, and the word "poison" distinctly shown with the name and place of the business of the seller.

This section shall not apply to the dispensing of drugs or poisons on the prescription of a practitioner.

The board of pharmacy shall have the authority to promulgate rules for the enforcement and implementation of this section.

Every person who shall violate any of the provisions of this section shall be guilty of a misdemeanor. [1981 c 147 § 4.]

69.40.150 Drug control assistance unit investigative assistance for enforcement of chapter. See RCW 43.43.610.

Chapter 69.41 RCW

LEGEND DRUGS—PRESCRIPTION DRUGS

Sections

| | |
|-----------|---|
| 69.41.010 | Definitions. |
| 69.41.020 | Prohibited acts—Information not privileged communication. |
| 69.41.030 | Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty. |
| 69.41.032 | Prescription of legend drugs by dialysis programs. |
| 69.41.040 | Prescription requirements—Penalty. |
| 69.41.042 | Record requirements. |
| 69.41.044 | Confidentiality. |
| 69.41.050 | Labeling requirements—Penalty. |
| 69.41.055 | Electronic communication of prescription information—Board may adopt rules. |
| 69.41.060 | Search and seizure. |
| 69.41.062 | Search and seizure at rental premises—Notification of landlord. |
| 69.41.065 | Violations—Juvenile driving privileges. |
| 69.41.072 | Violations of chapter 69.50 RCW not to be charged under chapter 69.41 RCW—Exception. |
| 69.41.075 | Rules—Availability of lists of drugs. |
| 69.41.080 | Animal control—Rules for possession and use of legend drugs. |
| 69.41.085 | Medication assistance—Community-based care setting. |

(2004 Ed.)

SUBSTITUTION OF PRESCRIPTION DRUGS

| | |
|-----------|--|
| 69.41.100 | Legislative recognition and declaration. |
| 69.41.110 | Definitions. |
| 69.41.120 | Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Out-of-state prescriptions—Form—Contents—Procedure. |
| 69.41.130 | Savings in price to be passed on to purchaser. |
| 69.41.140 | Minimum manufacturing standards and practices. |
| 69.41.150 | Liability of practitioner, pharmacist. |
| 69.41.160 | Pharmacy signs as to substitution for prescribed drugs. |
| 69.41.170 | Coercion of pharmacist prohibited—Penalty. |
| 69.41.180 | Rules. |
| 69.41.190 | Preferred drug substitution—Exceptions—Notice. |

IDENTIFICATION OF LEGEND DRUGS—MARKING

| | |
|-----------|--|
| 69.41.200 | Requirements for identification of legend drugs—Marking. |
| 69.41.210 | Definitions. |
| 69.41.220 | Published lists of drug imprints—Requirements for. |
| 69.41.230 | Drugs in violation are contraband. |
| 69.41.240 | Rules—Labeling and marking. |
| 69.41.250 | Exemptions. |
| 69.41.260 | Manufacture or distribution for resale—Requirements. |
| 69.41.280 | Confidentiality of records. |

USE OF STEROIDS

| | |
|-----------|---|
| 69.41.300 | Definitions. |
| 69.41.310 | Rules. |
| 69.41.320 | Practitioners—Restricted use—Medical records. |
| 69.41.330 | Public warnings—School districts. |
| 69.41.340 | Student athletes—Violations—Penalty. |
| 69.41.350 | Penalties. |
| 69.41.900 | Severability—1979 c 110. |

Drug nuisances—Injunctions: Chapter 7.43 RCW.

69.41.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise:

(1) "Administer" means the direct application of a legend drug whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(a) A practitioner; or

(b) The patient or research subject at the direction of the practitioner.

(2) "Community-based care settings" include: Community residential programs for the developmentally disabled, certified by the department of social and health services under chapter 71A.12 RCW; adult family homes licensed under chapter 70.128 RCW; and boarding homes licensed under chapter 18.20 RCW. Community-based care settings do not include acute care or skilled nursing facilities.

(3) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a legend drug, whether or not there is an agency relationship.

(4) "Department" means the department of health.

(5) "Dispense" means the interpretation of a prescription or order for a legend drug and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Dispenser" means a practitioner who dispenses.

(7) "Distribute" means to deliver other than by administering or dispensing a legend drug.

(8) "Distributor" means a person who distributes.

(9) "Drug" means:

(a) Substances recognized as drugs in the official United States pharmacopoeia, official homeopathic pharmacopoeia of the United States, or official national formulary, or any supplement to any of them;

(b) Substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or animals;

(c) Substances (other than food, minerals or vitamins) intended to affect the structure or any function of the body of man or animals; and

(d) Substances intended for use as a component of any article specified in (a), (b), or (c) of this subsection. It does not include devices or their components, parts, or accessories.

(10) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a legend drug between an authorized practitioner and a pharmacy or the transfer of prescription information for a legend drug from one pharmacy to another pharmacy.

(11) "In-home care settings" include an individual's place of temporary and permanent residence, but does not include acute care or skilled nursing facilities, and does not include community-based care settings.

(12) "Legend drugs" means any drugs which are required by state law or regulation of the state board of pharmacy to be dispensed on prescription only or are restricted to use by practitioners only.

(13) "Legible prescription" means a prescription or medication order issued by a practitioner that is capable of being read and understood by the pharmacist filling the prescription or the nurse or other practitioner implementing the medication order.

(14) "Medication assistance" means assistance rendered by a nonpractitioner to an individual residing in a community-based care setting or in-home care setting to facilitate the individual's self-administration of a legend drug or controlled substance. It includes reminding or coaching the individual, handing the medication container to the individual, opening the individual's medication container, using an enabler, or placing the medication in the individual's hand, and such other means of medication assistance as defined by rule adopted by the department. A nonpractitioner may help in the preparation of legend drugs or controlled substances for self-administration where a practitioner has determined and communicated orally or by written direction that such medication preparation assistance is necessary and appropriate. Medication assistance shall not include assistance with intravenous medications or injectable medications, except pre-filled insulin syringes.

(15) "Person" means individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.

(16) "Practitioner" means:

(a) A physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, an optometrist under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, an osteopathic physician assis-

tant under chapter 18.57A RCW, a physician assistant under chapter 18.71A RCW, a naturopath licensed under chapter 18.36A RCW, a pharmacist under chapter 18.64 RCW, or, when acting under the required supervision of a dentist licensed under chapter 18.32 RCW, a dental hygienist licensed under chapter 18.29 RCW;

(b) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to, or to administer a legend drug in the course of professional practice or research in this state; and

(c) A physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery in any state, or province of Canada, which shares a common border with the state of Washington.

(17) "Secretary" means the secretary of health or the secretary's designee. [2003 c 257 § 2; 2003 c 140 § 11; 2000 c 8 § 2. Prior: 1998 c 222 § 1; 1998 c 70 § 2; 1996 c 178 § 16; 1994 sp.s. c 9 § 736; prior: 1989 1st ex.s. c 9 § 426; 1989 c 36 § 3; 1984 c 153 § 17; 1980 c 71 § 1; 1979 ex.s. c 139 § 1; 1973 1st ex.s. c 186 § 1.]

Reviser's note: This section was amended by 2003 c 140 § 11 and by 2003 c 257 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 140: See note following RCW 18.79.040.

Findings—Intent—2000 c 8: "The legislature finds that we have one of the finest health care systems in the world and excellent professionals to deliver that care. However, there are incidents of medication errors that are avoidable and serious mistakes that are preventable. Medical errors throughout the health care system constitute one of the nation's leading causes of death and injury resulting in over seven thousand deaths a year, according to a recent report from the institute of medicine. The majority of medical errors do not result from individual recklessness, but from basic flaws in the way the health system is organized. There is a need for a comprehensive strategy for government, industry, consumers, and health providers to reduce medical errors. The legislature declares a need to bring about greater safety for patients in this state who depend on prescription drugs.

It is the intent of the legislature to promote medical safety as a top priority for all citizens of our state." [2000 c 8 § 1.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.020 Prohibited acts—Information not privileged communication. Legend drugs shall not be sold, delivered, dispensed or administered except in accordance with this chapter.

(1) No person shall obtain or attempt to obtain a legend drug, or procure or attempt to procure the administration of a legend drug:

(a) By fraud, deceit, misrepresentation, or subterfuge; or

(b) By the forgery or alteration of a prescription or of any written order; or

(c) By the concealment of a material fact; or

(d) By the use of a false name or the giving of a false address.

(2) Information communicated to a practitioner in an effort unlawfully to procure a legend drug, or unlawfully to procure the administration of any such drug, shall not be deemed a privileged communication.

(3) No person shall willfully make a false statement in any prescription, order, report, or record, required by this chapter.

(4) No person shall, for the purpose of obtaining a legend drug, falsely assume the title of, or represent himself or herself to be, a manufacturer, wholesaler, or any practitioner.

(5) No person shall make or utter any false or forged prescription or other written order for legend drugs.

(6) No person shall affix any false or forged label to a package or receptacle containing legend drugs.

(7) No person shall willfully fail to maintain the records required by RCW 69.41.042 and *69.41.270.

(8) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 322. Prior: 1989 1st ex.s. c 9 § 408; 1989 c 352 § 8; 1973 1st ex.s. c 186 § 2.]

***Reviser's note:** RCW 69.41.270 was repealed by 2003 c 275 § 5.

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

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.030 Sale, delivery, or possession of legend drug without prescription or order prohibited—Exceptions—Penalty.

(1) It shall be unlawful for any person to sell, deliver, or possess any legend drug except upon the order or prescription of a physician under chapter 18.71 RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a commissioned medical or dental officer in the United States armed forces or public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission, a physician licensed to practice medicine and surgery or a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine, in any province of Canada which shares a common border with the state of Washington or in any state of the United States: PROVIDED, HOWEVER, That the above provisions shall not apply to sale, delivery, or possession by drug wholesalers or drug manufacturers, or their agents or employees, or to any practitioner acting within the scope of his or her license, or to a common or contract carrier or warehouseman, or any employee thereof, whose possession of any legend drug is in the usual course of business or employment: PROVIDED FURTHER, That nothing in this chapter or chapter 18.64 RCW shall prevent a family planning clinic that is under contract with the department of social and health services from

selling, delivering, possessing, and dispensing commercially prepackaged oral contraceptives prescribed by authorized, licensed health care practitioners.

(2)(a) A violation of this section involving the sale, delivery, or possession with intent to sell or deliver is a class B felony punishable according to chapter 9A.20 RCW.

(b) A violation of this section involving possession is a misdemeanor. [2003 c 142 § 3; 2003 c 53 § 323; 1996 c 178 § 17; 1994 sp.s. c 9 § 737; 1991 c 30 § 1; 1990 c 219 § 2; 1987 c 144 § 1; 1981 c 120 § 1; 1979 ex.s. c 139 § 2; 1977 c 69 § 1; 1973 1st ex.s. c 186 § 3.]

Reviser's note: This section was amended by 2003 c 53 § 323 and by 2003 c 142 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—2003 c 142: See note following RCW 18.53.010.

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

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Finding—1990 c 219: "The legislature finds that Washington citizens in the border areas of this state are prohibited from having prescriptions from out-of-state dentists and veterinarians filled at their in-state pharmacies, and that it is in the public interest to remove this barrier for the state's citizens." [1990 c 219 § 1.]

69.41.032 Prescription of legend drugs by dialysis programs.

This chapter shall not prevent a medicare-approved dialysis center or facility operating a medicare-approved home dialysis program from selling, delivering, possessing, or dispensing directly to its dialysis patients, in case or full shelf lots, if prescribed by a physician licensed under chapter 18.57 or 18.71 RCW, those legend drugs determined by the board pursuant to rule. [1987 c 41 § 2.]

Application of pharmacy statutes to dialysis programs: RCW 18.64.257.

69.41.040 Prescription requirements—Penalty.

(1) A prescription, in order to be effective in legalizing the possession of legend drugs, must be issued for a legitimate medical purpose by one authorized to prescribe the use of such legend drugs. An order purporting to be a prescription issued to a drug abuser or habitual user of legend drugs, not in the course of professional treatment, is not a prescription within the meaning and intent of this section; and the person who knows or should know that he or she is filling such an order, as well as the person issuing it, may be charged with violation of this chapter. A legitimate medical purpose shall include use in the course of a bona fide research program in conjunction with a hospital or university.

(2) A violation of this section is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 324; 1973 1st ex.s. c 186 § 4.]

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

69.41.042 Record requirements. A pharmaceutical manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs shall maintain invoices or such other records as are necessary to account for the receipt and disposition of the legend drugs.

The records maintained pursuant to this section shall be available for inspection by the board and its authorized representatives and shall be maintained for two years. [1989 1st ex.s. c 9 § 405.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.044 Confidentiality. All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.17 RCW. Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.17 RCW. [1989 1st ex.s. c 9 § 406.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.050 Labeling requirements—Penalty. (1) To every box, bottle, jar, tube or other container of a legend drug, which is dispensed by a practitioner authorized to prescribe legend drugs, there shall be affixed a label bearing the name of the prescriber, complete directions for use, the name of the drug either by the brand or generic name and strength per unit dose, name of patient and date: PROVIDED, That the practitioner may omit the name and dosage of the drug if he or she determines that his or her patient should not have this information and that, if the drug dispensed is a trial sample in its original package and which is labeled in accordance with federal law or regulation, there need be set forth additionally only the name of the issuing practitioner and the name of the patient.

(2) A violation of this section is a misdemeanor. [2003 c 53 § 325; 1980 c 83 § 8; 1973 1st ex.s. c 186 § 5.]

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

69.41.055 Electronic communication of prescription information—Board may adopt rules. (1) Information concerning an original prescription or information concerning a prescription refill for a legend drug may be electronically communicated between an authorized practitioner and a pharmacy of the patient's choice with no intervening person having access to the prescription drug order pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information and the system used for receiving electronically communicated prescription information must be approved by the board. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The board shall maintain and provide, upon request, a list of systems used for elec-

tronically communicating prescription information currently approved by the board;

(c) An explicit opportunity for practitioners must be made to indicate their preference on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the pharmacy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the board.

(2) The board may adopt rules implementing this section. [1998 c 222 § 2.]

69.41.060 Search and seizure. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior or district court that there is probable cause to believe that any legend drug is being used, manufactured, sold, bartered, exchanged, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any peace officer in the county, commanding the peace officer to search the premises designated and described in such complaint and warrant, and to seize all legend drugs there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, giving away, furnishing or otherwise disposing of such legend drugs and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. A copy of said warrant shall be served upon the person or persons found in possession of any such legend drugs, furniture or fixtures so seized, and if no person be found in the possession thereof, a copy of said warrant shall be posted on the door of the building or room wherein the same are found, or, if there be no door, then in any conspicuous place upon the premises. [1987 c 202 § 227; 1973 1st ex.s. c 186 § 6.]

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

69.41.062 Search and seizure at rental premises—Notification of landlord. Whenever a legend drug which is sold, delivered, or possessed in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known by the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 8.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.41.065 Violations—Juvenile driving privileges.

(1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may notify the department of licensing that the juvenile's privilege to drive should be reinstated.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.50, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 119; 1988 c 148 § 4.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

69.41.072 Violations of chapter 69.50 RCW not to be charged under chapter 69.41 RCW—Exception. Any offense which is a violation of chapter 69.50 RCW other than RCW 69.50.4012 shall not be charged under this chapter. [2003 c 53 § 327.]

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

69.41.075 Rules—Availability of lists of drugs. The state board of pharmacy may make such rules for the enforcement of this chapter as are deemed necessary or advisable. The board shall identify, by rule-making pursuant to chapter 34.05 RCW, those drugs which may be dispensed only on prescription or are restricted to use by practitioners, only. In so doing the board shall consider the toxicity or other potentiality for harmful effect of the drug, the method of its use, and any collateral safeguards necessary to its use. The board shall classify a drug as a legend drug where these considerations indicate the drug is not safe for use except under the supervision of a practitioner.

(2004 Ed.)

In identifying legend drugs the board may incorporate in its rules lists of drugs contained in commercial pharmaceutical publications by making specific reference to each such list and the date and edition of the commercial publication containing it. Any such lists so incorporated shall be available for public inspection at the headquarters of the department of health and shall be available on request from the department of health upon payment of a reasonable fee to be set by the department. [1989 1st ex.s. c 9 § 427; 1979 ex.s. c 139 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.080 Animal control—Rules for possession and use of legend drugs. Humane societies and animal control agencies registered with the state board of pharmacy under chapter 69.50 RCW and authorized to euthanize animals may purchase, possess, and administer approved legend drugs for the sole purpose of sedating animals prior to euthanasia, when necessary, and for use in chemical capture programs. For the purposes of this section, "approved legend drugs" means those legend drugs designated by the board by rule as being approved for use by such societies and agencies for animal sedating or capture and does not include any substance regulated under chapter 69.50 RCW. Any society or agency so registered shall not permit persons to administer any legend drugs unless such person has demonstrated to the satisfaction of the board adequate knowledge of the potential hazards involved in and the proper techniques to be used in administering the drugs.

The board shall promulgate rules to regulate the purchase, possession, and administration of legend drugs by such societies and agencies and to insure strict compliance with the provisions of this section. Such rules shall require that the storage, inventory control, administration, and recordkeeping for approved legend drugs conform to the standards adopted by the board under chapter 69.50 RCW to regulate the use of controlled substances by such societies and agencies. The board may suspend or revoke a registration under chapter 69.50 RCW upon a determination by the board that the person administering legend drugs has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke a registration as provided by law. [1989 c 242 § 1.]

69.41.085 Medication assistance—Community-based care setting. Individuals residing in community-based care settings, such as adult family homes, boarding homes, and residential care settings for the developmentally disabled, including an individual's home, may receive medication assistance. Nothing in this chapter affects the right of an individual to refuse medication or requirements relating to informed consent. [2003 c 140 § 12; 1998 c 70 § 1.]

Effective date—2003 c 140: See note following RCW 18.79.040.

SUBSTITUTION OF PRESCRIPTION DRUGS

69.41.100 Legislative recognition and declaration. The legislature recognizes the responsibility of the state to insure that the citizens of the state are offered a choice between generic drugs and brand name drugs and the benefit

of quality pharmaceutical products at competitive prices. Advances in the drug industry resulting from research and the elimination of counterfeiting of prescription drugs should benefit the users of the drugs. Pharmacy must continue to operate with accountability and effectiveness. The legislature hereby declares it to be the policy of the state that its citizens receive safe and therapeutically effective drug products at the most reasonable cost consistent with high drug quality standards. [1986 c 52 § 1; 1977 ex.s. c 352 § 1.]

Severability—1977 ex.s. c 352: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 352 § 10.]

69.41.110 Definitions. As used in RCW 69.41.100 through 69.41.180, the following words shall have the following meanings:

(1) "Brand name" means the proprietary or trade name selected by the manufacturer and placed upon a drug, its container, label, or wrapping at the time of packaging;

(2) "Generic name" means the official title of a drug or drug ingredients published in the latest edition of a nationally recognized pharmacopoeia or formulary;

(3) "Substitute" means to dispense, with the practitioner's authorization, a "therapeutically equivalent" drug product of the identical base or salt as the specific drug product prescribed: PROVIDED, That with the practitioner's prior consent, therapeutically equivalent drugs other than the identical base or salt may be dispensed;

(4) "Therapeutically equivalent" means essentially the same efficacy and toxicity when administered to an individual in the same dosage regimen; and

(5) "Practitioner" means a physician, osteopathic physician and surgeon, dentist, veterinarian, or any other person authorized to prescribe drugs under the laws of this state. [1979 c 110 § 1; 1977 ex.s. c 352 § 2.]

69.41.120 Prescriptions to contain instruction as to whether or not a therapeutically equivalent generic drug may be substituted—Out-of-state prescriptions—Form—Contents—Procedure. Every drug prescription shall contain an instruction on whether or not a therapeutically equivalent generic drug may be substituted in its place, unless substitution is permitted under a prior-consent authorization.

If a written prescription is involved, the prescription must be legible and the form shall have two signature lines at opposite ends on the bottom of the form. Under the line at the right side shall be clearly printed the words "DISPENSE AS WRITTEN". Under the line at the left side shall be clearly printed the words "SUBSTITUTION PERMITTED". The practitioner shall communicate the instructions to the pharmacist by signing the appropriate line. No prescription shall be valid without the signature of the practitioner on one of these lines. In the case of a prescription issued by a practitioner in another state that uses a one-line prescription form or variation thereof, the pharmacist may substitute a therapeutically equivalent generic drug unless otherwise instructed by the practitioner through the use of the words "dispense as written", words of similar meaning, or some other indication.

If an oral prescription is involved, the practitioner or the practitioner's agent shall instruct the pharmacist as to whether

or not a therapeutically equivalent generic drug may be substituted in its place. The pharmacist shall note the instructions on the file copy of the prescription.

The pharmacist shall note the manufacturer of the drug dispensed on the file copy of a written or oral prescription. [2000 c 8 § 3; 1990 c 218 § 1; 1979 c 110 § 2; 1977 ex.s. c 352 § 3.]

Findings—Intent—2000 c 8: See note following RCW 69.41.010.

69.41.130 Savings in price to be passed on to purchaser. Unless the brand name drug is requested by the patient or the patient's representative, the pharmacist shall substitute an equivalent drug product which he has in stock if its wholesale price to the pharmacist is less than the wholesale price of the prescribed drug product, and at least sixty percent of the savings shall be passed on to the purchaser. [1986 c 52 § 2; 1979 c 110 § 3; 1977 ex.s. c 352 § 4.]

69.41.140 Minimum manufacturing standards and practices. A pharmacist may not substitute a product under the provisions of this section unless the manufacturer has shown that the drug has been manufactured with the following minimum good manufacturing standards and practices:

(1) Maintain quality control standards equal to those of the Food and Drug Administration;

(2) Comply with regulations promulgated by the Food and Drug Administration. [1979 c 110 § 4; 1977 ex.s. c 352 § 5.]

69.41.150 Liability of practitioner, pharmacist. (1) A practitioner who authorizes a prescribed drug shall not be liable for any side effects or adverse reactions caused by the manner or method by which a substituted drug product is selected or dispensed.

(2) A pharmacist who substitutes an equivalent drug product pursuant to RCW 69.41.100 through 69.41.180 as now or hereafter amended assumes no greater liability for selecting the dispensed drug product than would be incurred in filling a prescription for a drug product prescribed by its established name.

(3) A pharmacist who substitutes a preferred drug for a nonpreferred drug pursuant to RCW 69.41.190 assumes no greater liability for substituting the preferred drug than would be incurred in filling a prescription for the preferred drug when prescribed by name. [2003 1st sp.s. c 29 § 6; 1979 c 110 § 5; 1977 ex.s. c 352 § 6.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

69.41.160 Pharmacy signs as to substitution for prescribed drugs. Every pharmacy shall post a sign in a location at the prescription counter that is readily visible to patrons stating, "Under Washington law, an equivalent but less expensive drug may in some cases be substituted for the drug prescribed by your doctor. Such substitution, however, may only be made with the consent of your doctor. Please consult your pharmacist or physician for more information." [1979 c 110 § 6; 1977 ex.s. c 352 § 7.]

69.41.170 Coercion of pharmacist prohibited—Penalty. It shall be unlawful for any employer to coerce, within the meaning of RCW 9A.36.070, any pharmacist to dispense a generic drug or to substitute a generic drug for another drug. A violation of this section shall be punishable as a misdemeanor. [1977 ex.s. c 352 § 8.]

69.41.180 Rules. The state board of pharmacy may adopt any necessary rules under chapter 34.05 RCW for the implementation, continuation, or enforcement of RCW 69.41.100 through 69.41.180, including, but not limited to, a list of therapeutically or nontherapeutically equivalent drugs which, when adopted, shall be provided to all registered pharmacists in the state and shall be updated as necessary. [1979 c 110 § 7; 1977 ex.s. c 352 § 9.]

69.41.190 Preferred drug substitution—Exceptions—Notice. (1) Any pharmacist filling a prescription under a state purchased health care program as defined in RCW 41.05.011(2) shall substitute, where identified, a preferred drug for any nonpreferred drug in a given therapeutic class, unless the endorsing practitioner has indicated on the prescription that the nonpreferred drug must be dispensed as written, or the prescription is for a refill of an antipsychotic, antidepressant, chemotherapy, antiretroviral, or immunosuppressive drug, in which case the pharmacist shall dispense the prescribed nonpreferred drug.

(2) When a substitution is made under subsection (1) of this section, the dispensing pharmacist shall notify the prescribing practitioner of the specific drug and dose dispensed. [2003 1st sp.s. c 29 § 5.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

IDENTIFICATION OF LEGEND DRUGS—MARKING

69.41.200 Requirements for identification of legend drugs—Marking. (1) No legend drug in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or National Drug Code number identifying the drug and the manufacturer or distributor of such drug.

(2) No manufacturer or distributor may sell any legend drug contained within a bottle, vial, carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or National Drug Code number identifying the drug and the manufacturer or distributor of such drug.

(3) Whenever the distributor of a legend drug does not also manufacture it, the names and places of businesses of both shall appear on the stock container or package label in words that truly distinguish each. [1980 c 83 § 1.]

(2004 Ed.)

69.41.210 Definitions. The terms defined in this section shall have the meanings indicated when used in RCW 69.41.200 through 69.41.260.

(1) "Distributor" means any corporation, person, or other entity which distributes for sale a legend drug under its own label even though it is not the actual manufacturer of the legend drug.

(2) "Solid dosage form" means capsules or tablets or similar legend drug products intended for administration and which could be ingested orally.

(3) "Legend drug" means any drugs which are required by state law or regulation of the board to be dispensed as prescription only or are restricted to use by prescribing practitioners only and shall include controlled substances in Schedules II through V of chapter 69.50 RCW.

(4) "Board" means the state board of pharmacy. [1980 c 83 § 2.]

69.41.220 Published lists of drug imprints—Requirements for. Each manufacturer and distributor shall publish and provide to the board by filing with the department printed material which will identify each current imprint used by the manufacturer or distributor. The board shall be notified of any change by the filing of any change with the department. This information shall be provided by the department to all pharmacies licensed in the state of Washington, poison control centers, and hospital emergency rooms. [1989 1st ex.s. c 9 § 428; 1980 c 83 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.41.230 Drugs in violation are contraband. Any legend drug prepared or manufactured or offered for sale in violation of this chapter or implementing rules shall be contraband and subject to seizure under the provisions of RCW 69.41.060. [1980 c 83 § 4.]

69.41.240 Rules—Labeling and marking. The board shall have authority to promulgate rules and regulations for the enforcement and implementation of RCW 69.41.050 and 69.41.200 through 69.41.260. [1980 c 83 § 5.]

69.41.250 Exemptions. (1) The board, upon application of a manufacturer, may exempt a particular legend drug from the requirements of RCW 69.41.050 and 69.41.200 through 69.41.260 on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics.

(2) The provisions of RCW 69.41.050 and 69.41.200 through 69.41.260 shall not apply to any legend drug which is prepared or manufactured by a pharmacy in this state and is for the purpose of retail sale from such pharmacy and not intended for resale. [1980 c 83 § 6.]

69.41.260 Manufacture or distribution for resale—Requirements. All legend drugs manufactured or distributed for resale to any entity in this state other than the ultimate consumer shall meet the requirements of RCW 69.41.050 and 69.41.200 through 69.41.260 from a date eighteen months after June 12, 1980. [1980 c 83 § 7.]

69.41.280 Confidentiality of records. All records, reports, and information obtained by the board or its authorized representatives from or on behalf of a pharmaceutical manufacturer, representative of a manufacturer, wholesaler, pharmacy, or practitioner who purchases, dispenses, or distributes legend drugs under this chapter are confidential and exempt from public inspection and copying under chapter 42.17 RCW. Nothing in this section restricts the investigations or the proceedings of the board so long as the board and its authorized representatives comply with the provisions of chapter 42.17 RCW. [1989 c 352 § 6.]

USE OF STEROIDS

69.41.300 Definitions. For the purposes of RCW 69.41.300 through 69.41.350, "steroids" shall include the following:

(1) "Anabolic steroids" means synthetic derivatives of testosterone or any isomer, ester, salt, or derivative that act in the same manner on the human body;

(2) "Androgens" means testosterone in one of its forms or a derivative, isomer, ester, or salt, that act in the same manner on the human body; and

(3) "Human growth hormones" means growth hormones, or a derivative, isomer, ester, or salt that act in the same manner on the human body. [2003 c 53 § 328; 1989 c 369 § 1.]

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

69.41.310 Rules. The state board of pharmacy shall specify by rule drugs to be classified as steroids as defined in RCW 69.41.300.

On or before December 1 of each year, the board shall inform the appropriate legislative committees of reference of the drugs that the board has added to the steroids in RCW 69.41.300. The board shall submit a statement of rationale for the changes. [1989 c 369 § 2.]

69.41.320 Practitioners—Restricted use—Medical records. (1)(a) A practitioner shall not prescribe, administer, or dispense steroids, as defined in RCW 69.41.300, or any form of autotransfusion for the purpose of manipulating hormones to increase muscle mass, strength, or weight, or for the purpose of enhancing athletic ability, without a medical necessity to do so.

(b) A person violating this subsection is guilty of a gross misdemeanor and is subject to disciplinary action under RCW 18.130.180.

(2) A practitioner shall complete and maintain patient medical records which accurately reflect the prescribing, administering, or dispensing of any substance or drug described in this section or any form of autotransfusion. Patient medical records shall indicate the diagnosis and purpose for which the substance, drug, or autotransfusion is prescribed, administered, or dispensed and any additional information upon which the diagnosis is based. [2003 c 53 § 329; 1989 c 369 § 3.]

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

[Title 69 RCW—page 52]

69.41.330 Public warnings—School districts. The superintendent of public instruction shall develop and distribute to all school districts signs of appropriate design and dimensions advising students of the health risks that steroids present when used solely to enhance athletic ability, and of the penalties for their unlawful possession provided by RCW 69.41.300 through 69.41.350.

School districts shall post or cause the signs to be posted in a prominent place for ease of viewing on the premises of school athletic departments. [2003 c 53 § 330; 1989 c 369 § 5.]

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

69.41.340 Student athletes—Violations—Penalty. The superintendent of public instruction, in consultation with the Washington interscholastic activity association, shall promulgate rules by January 1, 1990, regarding loss of eligibility to participate in school-sponsored athletic events for any student athlete found to have violated this chapter. The regents or trustees of each institution of higher education shall promulgate rules by January 1, 1990, regarding loss of eligibility to participate in school-sponsored athletic events for any student athlete found to have violated this chapter. [1989 c 369 § 6.]

69.41.350 Penalties. (1) A person who violates the provisions of this chapter by possessing under two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a gross misdemeanor.

(2) A person who violates the provisions of this chapter by possessing over two hundred tablets or eight 2cc bottles of steroid without a valid prescription is guilty of a class C felony and shall be punished according to chapter 9A.20 RCW. [2003 c 53 § 326; 1989 c 369 § 4; 1983 1st ex.s. c 4 § 4; 1973 1st ex.s. c 186 § 7. Formerly RCW 69.41.070.]

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

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

69.41.900 Severability—1979 c 110. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 110 § 8.]

Chapter 69.43 RCW PRECURSOR DRUGS

Sections

| | |
|-----------|--|
| 69.43.010 | Report to state board of pharmacy—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties. |
| 69.43.020 | Receipt of substance from source outside state—Report—Penalty. |
| 69.43.030 | Exemptions. |
| 69.43.035 | Suspicious transactions—Report—Penalty. |
| 69.43.040 | Reporting form. |
| 69.43.043 | Recordkeeping requirements—Penalty. |
| 69.43.048 | Reporting and recordkeeping requirements—Submission of computer readable data, copies of federal reports. |
| 69.43.050 | Rules. |
| 69.43.060 | Theft—Missing quantity—Reporting. |

(2004 Ed.)

- 69.43.070 Sale, transfer, or furnishing of substance for unlawful purpose—Receipt of substance with intent to use unlawfully—Class B felony.
- 69.43.080 False statement in report or record—Class C felony.
- 69.43.090 Permit to sell, transfer, furnish, or receive substance—Exemptions—Application for permit—Fee—Renewal—Penalty.
- 69.43.100 Refusal, suspension, or revocation of a manufacturer's or wholesaler's permit.
- 69.43.110 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Penalty.
- 69.43.120 Ephedrine, pseudoephedrine, phenylpropanolamine—Possession of more than fifteen grams—Penalty—Exceptions.
- 69.43.130 Exemptions—Pediatric products—Products exempted by the state board of pharmacy.
- 69.43.140 Civil penalty—State board of pharmacy waiver.
- 69.43.150 Application of chapter to local government.
- 69.43.160 Ephedrine, pseudoephedrine, phenylpropanolamine—Methods to prevent sales violations—Department of health preparation of sign summarizing prohibitions.

69.43.010 Report to state board of pharmacy—List of substances—Modification of list—Identification of purchasers—Report of transactions—Penalties. (1) A report to the state board of pharmacy shall be submitted in accordance with this chapter by a manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes to any person any of the following substances or their salts or isomers:

- (a) Anthranilic acid;
- (b) Barbituric acid;
- (c) Chlorephedrine;
- (d) Diethyl malonate;
- (e) D-lysergic acid;
- (f) Ephedrine;
- (g) Ergotamine tartrate;
- (h) Ethylamine;
- (i) Ethyl malonate;
- (j) Ethylephedrine;
- (k) Lead acetate;
- (l) Malonic acid;
- (m) Methylamine;
- (n) Methylformamide;
- (o) Methylephedrine;
- (p) Methylpseudoephedrine;
- (q) N-acetylanthranilic acid;
- (r) Norpseudoephedrine;
- (s) Phenylacetic acid;
- (t) Phenylpropanolamine;
- (u) Piperidine;
- (v) Pseudoephedrine; and
- (w) Pyrrolidine.

(2) The state board of pharmacy shall administer this chapter and may, by rule adopted pursuant to chapter 34.05 RCW, add a substance to or remove a substance from the list in subsection (1) of this section. In determining whether to add or remove a substance, the board shall consider the following:

- (a) The likelihood that the substance is useable as a precursor in the illegal production of a controlled substance as defined in chapter 69.50 RCW;
- (b) The availability of the substance;
- (c) The relative appropriateness of including the substance in this chapter or in chapter 69.50 RCW; and
- (d) The extent and nature of legitimate uses for the substance.

(2004 Ed.)

(3)(a) Any manufacturer, wholesaler, retailer, or other person shall, before selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section to any person, require proper identification from the purchaser.

(b) For the purposes of this subsection, "proper identification" means:

(i) A motor vehicle operator's license or other official state-issued identification of the purchaser containing a photograph of the purchaser, and includes the residential or mailing address of the purchaser, other than a post office box number;

(ii) The motor vehicle license number of any motor vehicle owned or operated by the purchaser;

(iii) A letter of authorization from any business for which any substance specified in subsection (1) of this section is being furnished, which includes the business license number and address of the business;

(iv) A description of how the substance is to be used;

(v) The signature of the purchaser.

The person selling, transferring, or otherwise furnishing any substance specified in subsection (1) of this section shall affix his or her signature as a witness to the signature and identification of the purchaser.

(c) A violation of or a failure to comply with this subsection is a misdemeanor.

(4) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes the substance specified in subsection (1) of this section to any person shall, not less than twenty-one days before delivery of the substance, submit a report of the transaction, which includes the identification information specified in subsection (3) of this section to the state board of pharmacy. However, the state board of pharmacy may authorize the submission of the reports on a monthly basis with respect to repeated, regular transactions between the furnisher and the recipient involving the same substance if the state board of pharmacy determines that either of the following exist:

(a) A pattern of regular supply of the substance exists between the manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes such substance and the recipient of the substance; or

(b) The recipient has established a record of using the substance for lawful purposes.

(5) Any person specified in subsection (4) of this section who does not submit a report as required by subsection (4) of this section is guilty of a gross misdemeanor. [2001 c 96 § 2; 1998 c 245 § 107; 1988 c 147 § 1.]

Intent—2001 c 96: "Communities all over the state of Washington have experienced an increase in the illegal manufacture of methamphetamine. Illegal methamphetamine labs create a significant threat to the health and safety of the people of the state. Some of the chemicals and compounds used to make methamphetamine, and the toxic wastes the process generates, are hazards to the public health. Increases in crime, violence, and the abuse and neglect of children present at laboratory sites are also associated with the increasing number of illegal laboratory sites. The drugs ephedrine, pseudoephedrine, and phenylpropanolamine, which are used in the illegal manufacture of methamphetamine, have been identified as factors in the increase in the number of illegal methamphetamine labs. Therefore, it is the intent of the legislature to place restrictions on the sale and possession of those three drugs in order to reduce the proliferation of illegal methamphetamine laboratories and the associated threats to public health and safety." [2001 c 96 § 1.]

Severability—2001 c 96: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 96 § 15.]

69.43.020 Receipt of substance from source outside state—Report—Penalty. (1) Any manufacturer, wholesaler, retailer, or other person who receives from a source outside of this state any substance specified in RCW 69.43.010(1) shall submit a report of such transaction to the state board of pharmacy under rules adopted by the board.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor. [2001 c 96 § 3; 1988 c 147 § 2.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.030 Exemptions. RCW 69.43.010 and 69.43.020 do not apply to any of the following:

(1) Any pharmacist or other authorized person who sells or furnishes a substance upon the prescription of a practitioner, as defined in chapter 69.41 RCW;

(2) Any practitioner who administers or furnishes a substance to his or her patients;

(3) Any manufacturer or wholesaler licensed by the state board of pharmacy who sells, transfers, or otherwise furnishes a substance to a licensed pharmacy or practitioner;

(4) Any sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished, over the counter without a prescription under chapter 69.04 or 69.41 RCW. [1988 c 147 § 3.]

69.43.035 Suspicious transactions—Report—Penalty. (1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person in a suspicious transaction shall report the transaction in writing to the state board of pharmacy.

(2) Any person specified in subsection (1) of this section who does not submit a report as required by subsection (1) of this section is guilty of a gross misdemeanor.

(3) For the purposes of this section, "suspicious transaction" means a sale or transfer to which any of the following applies:

(a) The circumstances of the sale or transfer would lead a reasonable person to believe that the substance is likely to be used for the purpose of unlawfully manufacturing a controlled substance under chapter 69.50 RCW, based on such factors as the amount involved, the method of payment, the method of delivery, and any past dealings with any participant in the transaction. The state board of pharmacy shall adopt by rule criteria for determining whether a transaction is suspicious, taking into consideration the recommendations in appendix A of the report to the United States attorney general by the suspicious orders task force under the federal comprehensive methamphetamine control act of 1996.

(b) The transaction involves payment for any substance specified in RCW 69.43.010(1) in cash or money orders in a total amount of more than two hundred dollars.

(4) The board of pharmacy shall transmit to the department of revenue a copy of each report of a suspicious transaction that it receives under this section. [2004 c 52 § 6; 2001 c 96 § 4.]

Finding—Severability—Effective date—2004 c 52: See notes following RCW 18.64.044.

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.040 Reporting form. (1) The department of health, in accordance with rules developed by the state board of pharmacy shall provide a common reporting form for the substances in RCW 69.43.010 that contains at least the following information:

(a) Name of the substance;

(b) Quantity of the substance sold, transferred, or furnished;

(c) The date the substance was sold, transferred, or furnished;

(d) The name and address of the person buying or receiving the substance; and

(e) The name and address of the manufacturer, wholesaler, retailer, or other person selling, transferring, or furnishing the substance.

(2) Monthly reports authorized under RCW 69.43.010(4) may be computer-generated in accordance with rules adopted by the department. [2001 c 96 § 7; 1989 1st ex.s. c 9 § 441; 1988 c 147 § 4.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.043 Recordkeeping requirements—Penalty. (1) Any manufacturer or wholesaler who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) to any person shall maintain a record of each such sale or transfer. The records must contain:

(a) The name of the substance;

(b) The quantity of the substance sold, transferred, or furnished;

(c) The date the substance was sold, transferred, or furnished;

(d) The name and address of the person buying or receiving the substance; and

(e) The method of and amount of payment for the substance.

(2) The records of sales and transfers required by this section shall be available for inspection by the state board of pharmacy and its authorized representatives and shall be maintained for two years.

(3) A violation of this section is a gross misdemeanor. [2001 c 96 § 5.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.048 Reporting and recordkeeping requirements—Submission of computer readable data, copies of

federal reports. A manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010(1) and who is subject to the reporting or recordkeeping requirements of this chapter may satisfy the requirements by submitting to the state board of pharmacy, and its authorized representatives:

(1) Computer readable data from which all of the required information may be readily derived; or

(2) Copies of reports that are filed under federal law that contain all of the information required by the particular reporting or recordkeeping requirement of this chapter which it is submitted to satisfy. [2001 c 96 § 6.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.050 Rules. (1) The state board of pharmacy may adopt all rules necessary to carry out this chapter.

(2) Notwithstanding subsection (1) of this section, the department of health may adopt rules necessary for the administration of this chapter. [1989 1st ex.s. c 9 § 442; 1988 c 147 § 5.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.060 Theft—Missing quantity—Reporting. (1) The theft or loss of any substance under RCW 69.43.010 discovered by any person regulated by this chapter shall be reported to the state board of pharmacy within seven days after such discovery.

(2) Any difference between the quantity of any substance under RCW 69.43.010 received and the quantity shipped shall be reported to the state board of pharmacy within seven days of the receipt of actual knowledge of the discrepancy. When applicable, any report made pursuant to this subsection shall also include the name of any common carrier or person who transported the substance and the date of shipment of the substance. [1988 c 147 § 6.]

69.43.070 Sale, transfer, or furnishing of substance for unlawful purpose—Receipt of substance with intent to use unlawfully—Class B felony. (1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance listed in RCW 69.43.010 with knowledge or the intent that the recipient will use the substance unlawfully to manufacture a controlled substance under chapter 69.50 RCW is guilty of a class B felony under chapter 9A.20 RCW.

(2) Any person who receives any substance listed in RCW 69.43.010 with intent to use the substance unlawfully to manufacture a controlled substance under chapter 69.50 RCW is guilty of a class B felony under chapter 9A.20 RCW. [1988 c 147 § 7.]

69.43.080 False statement in report or record—Class C felony. It is unlawful for any person knowingly to make a false statement in connection with any report or record required under this chapter. A violation of this section is a class C felony under chapter 9A.20 RCW. [1988 c 147 § 8.]

(2004 Ed.)

69.43.090 Permit to sell, transfer, furnish, or receive substance—Exemptions—Application for permit—Fee—Renewal—Penalty. (1) Any manufacturer, wholesaler, retailer, or other person who sells, transfers, or otherwise furnishes any substance specified in RCW 69.43.010 to any person or who receives from a source outside of the state any substance specified in RCW 69.43.010 shall obtain a permit for the conduct of that business from the state board of pharmacy. However, a permit shall not be required of any manufacturer, wholesaler, retailer, or other person for the sale, transfer, furnishing, or receipt of any drug that contains ephedrine, phenylpropanolamine, or pseudoephedrine, or of any cosmetic that contains a substance specified in RCW 69.43.010(1), if such drug or cosmetic is lawfully sold, transferred, or furnished over the counter without a prescription or by a prescription under chapter 69.04 or 69.41 RCW.

(2) Applications for permits shall be filed with the department in writing and signed by the applicant, and shall set forth the name of the applicant, the business in which the applicant is engaged, the business address of the applicant, and a full description of any substance sold, transferred, or otherwise furnished, or received.

(3) The board may grant permits on forms prescribed by it. The permits shall be effective for not more than one year from the date of issuance.

(4) Each applicant shall pay at the time of filing an application for a permit a fee determined by the department.

(5) A permit granted under this chapter may be renewed on a date to be determined by the board, and annually thereafter, upon the filing of a renewal application and the payment of a permit renewal fee determined by the department.

(6) Permit fees charged by the department shall not exceed the costs incurred by the department in administering this chapter.

(7) Selling, transferring, or otherwise furnishing, or receiving any substance specified in RCW 69.43.010 without a required permit, is a gross misdemeanor. [2001 c 96 § 8; 1989 1st ex.s. c 9 § 443; 1988 c 147 § 9.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.43.100 Refusal, suspension, or revocation of a manufacturer's or wholesaler's permit. The board shall have the power to refuse, suspend, or revoke the permit of any manufacturer or wholesaler upon proof that:

(1) The permit was procured through fraud, misrepresentation, or deceit;

(2) The permittee has violated or has permitted any employee to violate any of the laws of this state relating to drugs, controlled substances, cosmetics, or nonprescription drugs, or has violated any of the rules and regulations of the board of pharmacy. [1988 c 147 § 10.]

69.43.110 Ephedrine, pseudoephedrine, phenylpropanolamine—Sales restrictions—Penalty. (1) It is unlawful for a pharmacy licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW, or an employee thereof, or a practitioner as

defined in RCW 18.64.011, knowingly to sell, transfer, or to otherwise furnish, in a single transaction:

(a) More than three packages of one or more products that he or she knows to contain ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers; or

(b) A single package of any product that he or she knows to contain more than three grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of these substances.

(2) It is unlawful for a person who is not a manufacturer, wholesaler, pharmacy, practitioner, shopkeeper, or itinerant vendor licensed by or registered with the department of health under chapter 18.64 RCW to purchase or acquire, in any twenty-four hour period, more than the quantities of the substances specified in subsection (1) of this section.

(3) It is unlawful for any person to sell or distribute any of the substances specified in subsection (1) of this section unless the person is licensed by or registered with the department of health under chapter 18.64 RCW, or is a practitioner as defined in RCW 18.64.011.

(4) A violation of this section is a gross misdemeanor. [2004 c 52 § 5; 2001 c 96 § 9.]

Finding—Severability—Effective date—2004 c 52: See notes following RCW 18.64.044.

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.120 Ephedrine, pseudoephedrine, phenylpropanolamine—Possession of more than fifteen grams—Penalty—Exceptions. (1) Any person who possesses more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, or a combination of any of those substances, is guilty of a gross misdemeanor.

(2) This section does not apply to any of the following:

(a) A pharmacist or other authorized person who sells or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers upon the prescription of a practitioner, as defined in RCW 69.41.010;

(b) A practitioner who administers or furnishes ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers to his or her patients;

(c) A pharmacy, manufacturer, or wholesaler licensed by, or shopkeeper or itinerant vendor registered with, the department of health under chapter 18.64 RCW;

(d) A person in the course of his or her business of selling, transporting, or storing ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers, for a person described in (a), (b), or (c) of this subsection; or

(e) A person in possession of more than fifteen grams of ephedrine, pseudoephedrine, or phenylpropanolamine, their salts, isomers, or salts of isomers in their home or residence under circumstances consistent with typical medicinal or household use as indicated by, but not limited to, storage location and possession of products in a variety of strengths, brands, types, purposes, and expiration dates. [2001 c 96 § 10.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.130 Exemptions—Pediatric products—Products exempted by the state board of pharmacy. RCW 69.43.110 and 69.43.120 do not apply to:

(1) Pediatric products primarily intended for administration to children under twelve years of age, according to label instructions, either: (a) In solid dosage form whose individual dosage units do not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine; or (b) in liquid form whose recommended dosage, according to label instructions, does not exceed fifteen milligrams of ephedrine, pseudoephedrine, or phenylpropanolamine per five milliliters of liquid product;

(2) Pediatric liquid products primarily intended for administration to children under two years of age for which the recommended dosage does not exceed two milliliters and the total package content does not exceed one fluid ounce;

(3) Products that the state board of pharmacy, upon application of a manufacturer, exempts by rule from RCW 69.43.110 and 69.43.120 because the product has been formulated in such a way as to effectively prevent the conversion of the active ingredient into methamphetamine, or its salts or precursors; or

(4) Products, as packaged, that the board of pharmacy, upon application of a manufacturer, exempts from RCW 69.43.110(1)(b) and 69.43.120 because:

(a) The product meets the federal definition of an ordinary over-the-counter pseudoephedrine product as defined in 21 U.S.C. 802;

(b) The product is a salt, isomer, or salts of isomers of pseudoephedrine and, as packaged, has a total weight of more than three grams but the net weight of the pseudoephedrine base is equal to or less than three grams; and

(c) The board of pharmacy determines that the value to the people of the state of having the product, as packaged, available for sale to consumers outweighs the danger, and the product, as packaged, has not been used in the illegal manufacture of methamphetamine. [2004 c 52 § 7; 2001 c 96 § 11.]

Finding—Severability—Effective date—2004 c 52: See notes following RCW 18.64.044.

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.140 Civil penalty—State board of pharmacy waiver. (1) In addition to the other penalties provided for in this chapter or in chapter 18.64 RCW, the state board of pharmacy may impose a civil penalty, not to exceed ten thousand dollars for each violation, on any licensee or registrant who has failed to comply with this chapter or the rules adopted under this chapter. In the case of a continuing violation, every day the violation continues shall be considered a separate violation.

(2) The state board of pharmacy may waive the suspension or revocation of a license or registration issued under chapter 18.64 RCW, or waive any civil penalty under this chapter, if the licensee or registrant establishes that he or she acted in good faith to prevent violations of this chapter, and the violation occurred despite the licensee's or registrant's exercise of due diligence. In making such a determination, the state board of pharmacy may consider evidence that an employer trained employees on how to sell, transfer, or oth-

erwise furnish substances specified in RCW 69.43.010(1) in accordance with applicable laws. [2001 c 96 § 12.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.150 Application of chapter to local government. This chapter is applicable and uniform throughout this state and in all counties, cities, code cities, and towns therein. A county, city, code city, or town may not adopt or enforce any ordinance, pertaining to this chapter, which prohibits conduct that is not prohibited under this chapter, or defining violations or penalties different from those provided under this chapter. However, this section does not preclude a county, city, code city, or town from revoking, canceling, suspending, or otherwise limiting a business or professional license it has issued for conduct that violates any provision of this chapter. [2001 c 96 § 13.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

69.43.160 Ephedrine, pseudoephedrine, phenylpropanolamine—Methods to prevent sales violations—Department of health preparation of sign summarizing prohibitions. (1) To prevent violations of RCW 69.43.110, every licensee and registrant under chapter 18.64 RCW, who sells at retail any products containing ephedrine, pseudoephedrine, or phenylpropanolamine, or their salts, isomers, or salts of isomers, shall do either or may do both of the following:

(a) Program scanners, cash registers, or other electronic devices used to record sales in a manner that will alert persons handling transactions to potential violations of RCW 69.43.110(1) and/or prevent such violations; or

(b) Place one or more signs on the premises to notify customers of the prohibitions of RCW 69.43.110. Any such sign may, but is not required to, conform to the language and format prepared by the department of health under subsection (2) of this section.

(2) The department of health shall prepare language and format for a sign summarizing the prohibitions in RCW 69.43.110 and 69.43.120 and make the language and format available to licensees and registrants under chapter 18.64 RCW, for voluntary use in their places of business to inform customers and employees of the prohibitions. Nothing in this section requires the department of health to provide licensees or registrants with copies of signs, or any licensee or registrant to use the specific language or format prepared by the department under this subsection. [2001 c 96 § 14.]

Intent—Severability—2001 c 96: See notes following RCW 69.43.010.

Chapter 69.45 RCW DRUG SAMPLES

Sections

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| 69.45.010 | Definitions. |
| 69.45.020 | Registration of manufacturers—Additional information required by the department. |
| 69.45.030 | Records maintained by manufacturer—Report of loss or theft of drug samples—Reports of practitioners receiving controlled substance drug samples. |

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| 69.45.040 | Storage and transportation of drug samples—Disposal of samples which have exceeded their expiration dates. |
| 69.45.050 | Distribution of drug samples—Written request—No fee or charge permitted—Possession of legend drugs or controlled substances by manufacturers' representatives. |
| 69.45.060 | Disposal of surplus, outdated, or damaged drug samples. |
| 69.45.070 | Registration fees—Penalty. |
| 69.45.080 | Violations of chapter—Manufacturer's liability—Penalty—Seizure of drug samples. |
| 69.45.090 | Records, reports, and information confidential—Exemption from public inspection under chapter 42.17 RCW. |
| 69.45.900 | Severability—1987 c 411. |

69.45.010 Definitions. The definitions in this section apply throughout this chapter.

(1) "Board" means the board of pharmacy.

(2) "Drug samples" means any federal food and drug administration approved controlled substance, legend drug, or products requiring prescriptions in this state, which is distributed at no charge to a practitioner by a manufacturer or a manufacturer's representative, exclusive of drugs under clinical investigations approved by the federal food and drug administration.

(3) "Controlled substance" means a drug, substance, or immediate precursor of such drug or substance, so designated under or pursuant to chapter 69.50 RCW, the uniform controlled substances act.

(4) "Deliver" or "delivery" means the actual, constructive, or attempted transfer from one person to another of a drug or device, whether or not there is an agency relationship.

(5) "Dispense" means the interpretation of a prescription or order for a drug, biological, or device and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(6) "Distribute" means to deliver, other than by administering or dispensing, a legend drug.

(7) "Legend drug" means any drug that is required by state law or by regulations of the board to be dispensed on prescription only or is restricted to use by practitioners only.

(8) "Manufacturer" means a person or other entity engaged in the manufacture or distribution of drugs or devices, but does not include a manufacturer's representative.

(9) "Person" means any individual, corporation, government or governmental subdivision or agency, business trust, estate, trust, partnership, association, or any other legal entity.

(10) "Practitioner" means a physician under chapter 18.71 RCW, an osteopathic physician or an osteopathic physician and surgeon under chapter 18.57 RCW, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a pharmacist under chapter 18.64 RCW, a commissioned medical or dental officer in the United States armed forces or the public health service in the discharge of his or her official duties, a duly licensed physician or dentist employed by the veterans administration in the discharge of his or her official duties, a registered nurse or advanced registered nurse practitioner under chapter 18.79 RCW when authorized to prescribe by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the board of osteopathic medicine and surgery, or a physician assistant under chapter

18.71A RCW when authorized by the medical quality assurance commission.

(11) "Manufacturer's representative" means an agent or employee of a drug manufacturer who is authorized by the drug manufacturer to possess drug samples for the purpose of distribution in this state to appropriately authorized health care practitioners.

(12) "Reasonable cause" means a state of facts found to exist that would warrant a reasonably intelligent and prudent person to believe that a person has violated state or federal drug laws or regulations.

(13) "Department" means the department of health.

(14) "Secretary" means the secretary of health or the secretary's designee. [1994 sp.s. c 9 § 738; 1989 1st ex.s. c 9 § 444; 1987 c 411 § 1.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.020 Registration of manufacturers—Additional information required by the department. A manufacturer that intends to distribute drug samples in this state shall register annually with the department, providing the name and address of the manufacturer, and shall:

(1) Provide a twenty-four hour telephone number and the name of the individual(s) who shall respond to reasonable official inquiries from the department, as directed by the board, based on reasonable cause, regarding required records, reports, or requests for information pursuant to a specific investigation of a possible violation. Each official request by the department and each response by a manufacturer shall be limited to the information specifically relevant to the particular official investigation. Requests for the address of sites in this state at which drug samples are stored by the manufacturer's representative and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples shall be responded to as soon as possible but not later than the close of business on the next business day following the request; or

(2) If a twenty-four hour telephone number is not available, provide the addresses of sites in this state at which drug samples are stored by the manufacturer's representative, and the names and addresses of the individuals who are responsible for the storage or distribution of the drug samples. The manufacturer shall annually submit a complete updated list of the sites and individuals to the department. [1989 1st ex.s. c 9 § 445; 1987 c 411 § 2.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.030 Records maintained by manufacturer—Report of loss or theft of drug samples—Reports of practitioners receiving controlled substance drug samples. (1) The following records shall be maintained by the manufacturer distributing drug samples in this state and shall be available for inspection by authorized representatives of the department based on reasonable cause and pursuant to an official investigation:

(a) An inventory of drug samples held in this state for distribution, taken at least annually by a representative of the

manufacturer other than the individual in direct control of the drug samples;

(b) Records or documents to account for all drug samples distributed, destroyed, or returned to the manufacturer. The records shall include records for sample drugs signed for by practitioners, dates and methods of destruction, and any dates of returns; and

(c) Copies of all reports of lost or stolen drug samples.

(2) All required records shall be maintained for two years and shall include transaction dates.

(3) Manufacturers shall report to the department the discovery of any loss or theft of drug samples as soon as possible but not later than the close of business on the next business day following the discovery.

(4) Manufacturers shall report to the department as frequently as, and at the same time as, their other reports to the federal drug enforcement administration, or its lawful successor, the name, address and federal registration number for each practitioner who has received controlled substance drug samples and the name, strength and quantity of the controlled substance drug samples distributed. [1989 1st ex.s. c 9 § 446; 1987 c 411 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.040 Storage and transportation of drug samples—Disposal of samples which have exceeded their expiration dates. (1) Drug samples shall be stored in compliance with the requirements of federal and state laws, rules, and regulations.

(2) Drug samples shall be maintained in a locked area to which access is limited to persons authorized by the manufacturer.

(3) Drug samples shall be stored and transported in such a manner as to be free of contamination, deterioration, and adulteration.

(4) Drug samples shall be stored under conditions of temperature, light, moisture, and ventilation so as to meet the label instructions for each drug.

(5) Drug samples which have exceeded the expiration date shall be physically separated from other drug samples until disposed of or returned to the manufacturer. [1987 c 411 § 4.]

69.45.050 Distribution of drug samples—Written request—No fee or charge permitted—Possession of legend drugs or controlled substances by manufacturers' representatives. (1) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to practitioners legally authorized to prescribe such drugs or, at the request of such practitioner, to pharmacies of hospitals or other health care entities. The recipient of the drug sample must execute a written receipt upon delivery that is returned to the manufacturer or the manufacturer's representative.

(2) Drug samples may be distributed by a manufacturer or a manufacturer's representative only to a practitioner legally authorized to prescribe such drugs pursuant to a written request for such samples. The request shall contain:

(a) The recipient's name, address, and professional designation;

(b) The name, strength, and quantity of the drug samples delivered;

(c) The name or identification of the manufacturer and of the individual distributing the drug sample; and

(d) The dated signature of the practitioner requesting the drug sample.

(3) No fee or charge may be imposed for sample drugs distributed in this state.

(4) A manufacturer's representative shall not possess legend drugs or controlled substances other than those distributed by the manufacturer they represent. Nothing in this section prevents a manufacturer's representative from possessing a legally prescribed and dispensed legend drug or controlled substance. [1989 c 164 § 2; 1987 c 411 § 5.]

Legislative finding—1989 c 164: "The legislature finds that chapter 69.45 RCW is more restrictive than the federal prescription drug marketing act of 1987, and the legislature further finds that a change in chapter 69.45 RCW accepting the position of the federal law is beneficial to the citizens of this state." [1989 c 164 § 1.]

69.45.060 Disposal of surplus, outdated, or damaged drug samples. Surplus, outdated, or damaged drug samples shall be disposed of as follows:

(1) Returned to the manufacturer; or

(2) Witnessed destruction by such means as to assure that the drug cannot be retrieved. However, controlled substances shall be returned to the manufacturer or disposed of in accordance with rules adopted by the board: PROVIDED, That the board shall adopt by rule the regulations of the federal drug enforcement administration or its lawful successor unless, stating reasonable grounds, it adopts rules consistent with such regulations. [1987 c 411 § 6.]

69.45.070 Registration fees—Penalty. The department may charge reasonable fees for registration. The registration fee shall not exceed the fee charged by the department for a pharmacy location license. If the registration fee is not paid on or before the date due, a renewal or new registration may be issued only upon payment of the registration renewal fee and a penalty fee equal to the registration renewal fee. [1991 c 229 § 8; 1989 1st ex.s. c 9 § 447; 1987 c 411 § 7.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.45.080 Violations of chapter—Manufacturer's liability—Penalty—Seizure of drug samples. (1) The manufacturer is responsible for the actions and conduct of its representatives with regard to drug samples.

(2) The board may hold a public hearing to examine a possible violation and may require a designated representative of the manufacturer to attend.

(3) If a manufacturer fails to comply with this chapter following notification by the board, the board may impose a civil penalty of up to five thousand dollars. The board shall take no action to impose any civil penalty except pursuant to a hearing held in accordance with chapter 34.05 RCW.

(4) Specific drug samples which are distributed in this state in violation of this chapter, following notification by the board, shall be subject to seizure following the procedures set out in RCW 69.41.060. [1987 c 411 § 8.]

69.45.090 Records, reports, and information confidential—Exemption from public inspection under chapter 42.17 RCW. All records, reports, and information obtained by the board from or on behalf of a manufacturer or manufacturer's representative under this chapter are confidential and exempt from public inspection and copying under chapter 42.17 RCW. This section does not apply to public disclosure of the identity of persons found by the board to have violated state or federal law, rules, or regulations. This section is not intended to restrict the investigations and proceedings of the board so long as the board maintains the confidentiality required by this section. [1987 c 411 § 9.]

69.45.900 Severability—1987 c 411. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 411 § 12.]

Chapter 69.50 RCW

UNIFORM CONTROLLED SUBSTANCES ACT

Sections

ARTICLE I—DEFINITIONS

- 69.50.101 Definitions.
- 69.50.102 Drug paraphernalia—Definitions.

ARTICLE II—STANDARDS AND SCHEDULES

- 69.50.201 Enforcement of chapter—Authority to change schedules of controlled substances.
- 69.50.202 Nomenclature.
- 69.50.203 Schedule I tests.
- 69.50.204 Schedule I.
- 69.50.205 Schedule II tests.
- 69.50.206 Schedule II.
- 69.50.207 Schedule III tests.
- 69.50.208 Schedule III.
- 69.50.209 Schedule IV tests.
- 69.50.210 Schedule IV.
- 69.50.211 Schedule V tests.
- 69.50.212 Schedule V.
- 69.50.213 Republishing of schedules.
- 69.50.214 Controlled substance analog.

ARTICLE III—REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

- 69.50.301 Rules—Fees.
- 69.50.302 Registration requirements.
- 69.50.303 Registration.
- 69.50.304 Revocation and suspension of registration—Seizure or placement under seal of controlled substances.
- 69.50.305 Procedure for denial, suspension, or revocation of registration.
- 69.50.306 Records of registrants.
- 69.50.308 Prescriptions.
- 69.50.309 Containers.
- 69.50.310 Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control.
- 69.50.311 Triplicate prescription form program—Compliance by health care practitioners.
- 69.50.312 Electronic communication of prescription information—Board may adopt rules.
- 69.50.320 Registration of department of fish and wildlife for use in chemical capture programs—Rules.

ARTICLE IV—OFFENSES AND PENALTIES

- 69.50.401 Prohibited acts: A—Penalties.
- 69.50.4011 Counterfeit substances—Penalties.
- 69.50.4012 Delivery of substance in lieu of controlled substance—Penalty.
- 69.50.4013 Possession of controlled substance—Penalty.
- 69.50.4014 Possession of forty grams or less of marihuana—Penalty.
- 69.50.4015 Involving a person under eighteen in unlawful controlled substance transaction—Penalty.

| | |
|------------|---|
| 69.50.4016 | Provisions not applicable to offenses under RCW 69.50.410. |
| 69.50.402 | Prohibited acts: B—Penalties. |
| 69.50.403 | Prohibited acts: C—Penalties. |
| 69.50.404 | Penalties under other laws. |
| 69.50.405 | Bar to prosecution. |
| 69.50.406 | Distribution to persons under age eighteen. |
| 69.50.407 | Conspiracy. |
| 69.50.408 | Second or subsequent offenses. |
| 69.50.410 | Prohibited acts: D—Penalties. |
| 69.50.412 | Prohibited acts: E—Penalties. |
| 69.50.4121 | Drug paraphernalia—Selling or giving—Penalty. |
| 69.50.413 | Health care practitioners—Suspension of license for violation of chapter. |
| 69.50.414 | Sale or transfer of controlled substance to minor—Cause of action by parent—Damages. |
| 69.50.415 | Controlled substances homicide—Penalty. |
| 69.50.416 | Counterfeit substances prohibited—Penalties. |
| 69.50.420 | Violations—Juvenile driving privileges. |
| 69.50.425 | Misdemeanor violations—Minimum penalties. |
| 69.50.430 | Additional fine for certain felony violations. |
| 69.50.435 | Violations committed in or on certain public places or facilities—Additional penalty—Defenses—Construction—Definitions. |
| 69.50.440 | Possession with intent to manufacture—Penalty. |

ARTICLE V—ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

| | |
|-----------|--|
| 69.50.500 | Powers of enforcement personnel. |
| 69.50.501 | Administrative inspections. |
| 69.50.502 | Warrants for administrative inspections. |
| 69.50.503 | Injunctions. |
| 69.50.504 | Cooperative arrangements. |
| 69.50.505 | Seizure and forfeiture. |
| 69.50.506 | Burden of proof; liabilities. |
| 69.50.507 | Judicial review. |
| 69.50.508 | Education and research. |
| 69.50.509 | Search and seizure of controlled substances. |
| 69.50.510 | Search and seizure at rental premises—Notification of landlord. |
| 69.50.511 | Clean-up of hazardous substances at illegal drug manufacturing facility—Rules. |
| 69.50.520 | Violence reduction and drug enforcement account. |
| 69.50.525 | Diversion prevention and control—Report. |

ARTICLE VI—MISCELLANEOUS

| | |
|-----------|----------------------------------|
| 69.50.601 | Pending proceedings. |
| 69.50.602 | Continuation of rules. |
| 69.50.603 | Uniformity of interpretation. |
| 69.50.604 | Short title. |
| 69.50.605 | Severability—1971 ex.s. c 308. |
| 69.50.606 | Repealers. |
| 69.50.607 | Effective date—1971 ex.s. c 308. |
| 69.50.608 | State preemption. |
| 69.50.609 | Captions not law—1993 c 187. |

Drug nuisances—Injunctions: Chapter 7.43 RCW.

ARTICLE I DEFINITIONS

69.50.101 Definitions. Unless the context clearly requires otherwise, definitions of terms shall be as indicated where used in this chapter:

(a) "Administer" means to apply a controlled substance, whether by injection, inhalation, ingestion, or any other means, directly to the body of a patient or research subject by:

- (1) a practitioner authorized to prescribe (or, by the practitioner's authorized agent); or
- (2) the patient or research subject at the direction and in the presence of the practitioner.

(b) "Agent" means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor, or dispenser. It does not include a common or contract carrier, public warehouseperson, or employee of the carrier or warehouseperson.

(c) "Board" means the state board of pharmacy.

(d) "Controlled substance" means a drug, substance, or immediate precursor included in Schedules I through V as set forth in federal or state laws, or federal or board rules.

(e)(1) "Controlled substance analog" means a substance the chemical structure of which is substantially similar to the chemical structure of a controlled substance in Schedule I or II and:

(i) that has a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II; or

(ii) with respect to a particular individual, that the individual represents or intends to have a stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central nervous system of a controlled substance included in Schedule I or II.

(2) The term does not include:

(i) a controlled substance;

(ii) a substance for which there is an approved new drug application;

(iii) a substance with respect to which an exemption is in effect for investigational use by a particular person under Section 505 of the federal Food, Drug and Cosmetic Act, 21 U.S.C. Sec. 355, to the extent conduct with respect to the substance is pursuant to the exemption; or

(iv) any substance to the extent not intended for human consumption before an exemption takes effect with respect to the substance.

(f) "Deliver" or "delivery," means the actual or constructive transfer from one person to another of a substance, whether or not there is an agency relationship.

(g) "Department" means the department of health.

(h) "Dispense" means the interpretation of a prescription or order for a controlled substance and, pursuant to that prescription or order, the proper selection, measuring, compounding, labeling, or packaging necessary to prepare that prescription or order for delivery.

(i) "Dispenser" means a practitioner who dispenses.

(j) "Distribute" means to deliver other than by administering or dispensing a controlled substance.

(k) "Distributor" means a person who distributes.

(l) "Drug" means (1) a controlled substance recognized as a drug in the official United States pharmacopoeia/national formulary or the official homeopathic pharmacopoeia of the United States, or any supplement to them; (2) controlled substances intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in individuals or animals; (3) controlled substances (other than food) intended to affect the structure or any function of the body of individuals or animals; and (4) controlled substances intended for use as a component of any article specified in (1), (2), or (3) of this subsection. The term does not include devices or their components, parts, or accessories.

(m) "Drug enforcement administration" means the drug enforcement administration in the United States Department of Justice, or its successor agency.

(n) "Immediate precursor" means a substance:

(1) that the state board of pharmacy has found to be and by rule designates as being the principal compound com-

monly used, or produced primarily for use, in the manufacture of a controlled substance;

(2) that is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance; and

(3) the control of which is necessary to prevent, curtail, or limit the manufacture of the controlled substance.

(o) "Isomer" means an optical isomer, but in RCW 69.50.101(r)(5), 69.50.204(a) (12) and (34), and 69.50.206(a)(4), the term includes any geometrical isomer; in RCW 69.50.204(a) (8) and (42), and 69.50.210(c) the term includes any positional isomer; and in RCW 69.50.204(a)(35), 69.50.204(c), and 69.50.208(a) the term includes any positional or geometric isomer.

(p) "Manufacture" means the production, preparation, propagation, compounding, conversion, or processing of a controlled substance, either directly or indirectly or by extraction from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container. The term does not include the preparation, compounding, packaging, repackaging, labeling, or relabeling of a controlled substance:

(1) by a practitioner as an incident to the practitioner's administering or dispensing of a controlled substance in the course of the practitioner's professional practice; or

(2) by a practitioner, or by the practitioner's authorized agent under the practitioner's supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for sale.

(q) "Marijuana" or "marihuana" means all parts of the plant *Cannabis*, whether growing or not; the seeds thereof; the resin extracted from any part of the plant; and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds or resin. The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or cake made from the seeds of the plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of the plant which is incapable of germination.

(r) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

(1) Opium, opium derivative, and any derivative of opium or opium derivative, including their salts, isomers, and salts of isomers, whenever the existence of the salts, isomers, and salts of isomers is possible within the specific chemical designation. The term does not include the isoquinoline alkaloids of opium.

(2) Synthetic opiate and any derivative of synthetic opiate, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of the isomers, esters, ethers, and salts is possible within the specific chemical designation.

(3) Poppy straw and concentrate of poppy straw.

(4) Coca leaves, except coca leaves and extracts of coca leaves from which cocaine, ecgonine, and derivatives or ecgonine or their salts have been removed.

(5) Cocaine, or any salt, isomer, or salt of isomer thereof.

(6) Cocaine base.

(7) Ecgonine, or any derivative, salt, isomer, or salt of isomer thereof.

(8) Any compound, mixture, or preparation containing any quantity of any substance referred to in subparagraphs (1) through (7).

(s) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. The term includes opium, substances derived from opium (opium derivatives), and synthetic opiates. The term does not include, unless specifically designated as controlled under RCW 69.50.201, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). The term includes the racemic and levorotatory forms of dextromethorphan.

(t) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.

(u) "Person" means individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(v) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.

(w) "Practitioner" means:

(1) A physician under chapter 18.71 RCW, a physician assistant under chapter 18.71A RCW, an osteopathic physician and surgeon under chapter 18.57 RCW, an optometrist licensed under chapter 18.53 RCW who is certified by the optometry board under RCW 18.53.010 subject to any limitations in RCW 18.53.010, a dentist under chapter 18.32 RCW, a podiatric physician and surgeon under chapter 18.22 RCW, a veterinarian under chapter 18.92 RCW, a registered nurse, advanced registered nurse practitioner, or licensed practical nurse under chapter 18.79 RCW, a pharmacist under chapter 18.64 RCW or a scientific investigator under this chapter, licensed, registered or otherwise permitted insofar as is consistent with those licensing laws to distribute, dispense, conduct research with respect to or administer a controlled substance in the course of their professional practice or research in this state.

(2) A pharmacy, hospital or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of professional practice or research in this state.

(3) A physician licensed to practice medicine and surgery, a physician licensed to practice osteopathic medicine and surgery, a dentist licensed to practice dentistry, a podiatric physician and surgeon licensed to practice podiatric medicine and surgery, or a veterinarian licensed to practice veterinary medicine in any state of the United States.

(x) "Prescription" means an order for controlled substances issued by a practitioner duly authorized by law or rule in the state of Washington to prescribe controlled substances within the scope of his or her professional practice for a legitimate medical purpose.

(y) "Production" includes the manufacturing, planting, cultivating, growing, or harvesting of a controlled substance.

(z) "Secretary" means the secretary of health or the secretary's designee.

(aa) "State," unless the context otherwise requires, means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a territory or insular possession subject to the jurisdiction of the United States.

(bb) "Ultimate user" means an individual who lawfully possesses a controlled substance for the individual's own use or for the use of a member of the individual's household or for administering to an animal owned by the individual or by a member of the individual's household.

(cc) "Electronic communication of prescription information" means the communication of prescription information by computer, or the transmission of an exact visual image of a prescription by facsimile, or other electronic means for original prescription information or prescription refill information for a Schedule III-V controlled substance between an authorized practitioner and a pharmacy or the transfer of prescription information for a controlled substance from one pharmacy to another pharmacy. [2003 c 142 § 4; 1998 c 222 § 3; 1996 c 178 § 18; 1994 sp.s. c 9 § 739; 1993 c 187 § 1. Prior: 1990 c 248 § 1; 1990 c 219 § 3; 1990 c 196 § 8; 1989 1st ex.s. c 9 § 429; 1987 c 144 § 2; 1986 c 124 § 1; 1984 c 153 § 18; 1980 c 71 § 2; 1973 2nd ex.s. c 38 § 1; 1971 ex.s. c 308 § 69.50.101.]

Severability—2003 c 142: See note following RCW 18.53.010.

Effective date—1996 c 178: See note following RCW 18.35.110.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Finding—1990 c 219: See note following RCW 69.41.030.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1973 2nd ex.s. c 38: "If any of the provisions of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the amendatory act, or the application of the provision to other persons or circumstances, or the act prior to its amendment is not affected." [1973 2nd ex.s. c 38 § 3.]

69.50.102 Drug paraphernalia—Definitions. (a) As used in this chapter, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. It includes, but is not limited to:

(1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing, or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;

(2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing, or preparing controlled substances;

(3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;

(4) Testing equipment used, intended for use, or designed for use in identifying or in analyzing the strength, effectiveness, or purity of controlled substances;

(5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;

(6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose, and lactose, used, intended for use, or designed for use in cutting controlled substances;

(7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marihuana;

(8) Blenders, bowls, containers, spoons, and mixing devices used, intended for use, or designed for use in compounding controlled substances;

(9) Capsules, balloons, envelopes, and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;

(10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;

(11) Hypodermic syringes, needles, and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;

(12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marihuana, cocaine, hashish, or hashish oil into the human body, such as:

(i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(ii) Water pipes;

(iii) Carburetion tubes and devices;

(iv) Smoking and carburetion masks;

(v) Roach clips: Meaning objects used to hold burning material, such as a marihuana cigarette, that has become too small or too short to be held in the hand;

(vi) Miniature cocaine spoons, and cocaine vials;

(vii) Chamber pipes;

(viii) Carburetor pipes;

(ix) Electric pipes;

(x) Air-driven pipes;

(xi) Chillums;

(xii) Bongs; and

(xiii) Ice pipes or chillers.

(b) In determining whether an object is drug paraphernalia under this section, a court or other authority should consider, in addition to all other logically relevant factors, the following:

(1) Statements by an owner or by anyone in control of the object concerning its use;

(2) Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;

(3) The proximity of the object, in time and space, to a direct violation of this chapter;

(4) The proximity of the object to controlled substances;

(5) The existence of any residue of controlled substances on the object;

(6) Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend

to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended or designed for use as drug paraphernalia;

(7) Instructions, oral or written, provided with the object concerning its use;

(8) Descriptive materials accompanying the object which explain or depict its use;

(9) National and local advertising concerning its use;

(10) The manner in which the object is displayed for sale;

(11) Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;

(12) Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;

(13) The existence and scope of legitimate uses for the object in the community; and

(14) Expert testimony concerning its use. [1981 c 48 § 1.]

Severability—1981 c 48: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 c 48 § 4.]

ARTICLE II STANDARDS AND SCHEDULES

69.50.201 Enforcement of chapter—Authority to change schedules of controlled substances. (a) The state board of pharmacy shall enforce this chapter and may add substances to or delete or reschedule substances listed in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, or 69.50.212 pursuant to the procedures of chapter 34.05 RCW.

(1) In making a determination regarding a substance, the board shall consider the following:

(i) the actual or relative potential for abuse;

(ii) the scientific evidence of its pharmacological effect, if known;

(iii) the state of current scientific knowledge regarding the substance;

(iv) the history and current pattern of abuse;

(v) the scope, duration, and significance of abuse;

(vi) the risk to the public health;

(vii) the potential of the substance to produce psychic or physiological dependence liability; and

(viii) whether the substance is an immediate precursor of a controlled substance.

(2) The board may consider findings of the federal Food and Drug Administration or the Drug Enforcement Administration as prima facie evidence relating to one or more of the determinative factors.

(b) After considering the factors enumerated in subsection (a) of this section, the board shall make findings with respect thereto and adopt and cause to be published a rule controlling the substance upon finding the substance has a potential for abuse.

(c) The board, without regard to the findings required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211 or the procedures prescribed by subsections (a) and (b) of this section, may place an immediate precursor in the same schedule in which the controlled substance of which it is an immediate precursor is placed or in any other schedule. If the board designates a substance as an immediate precursor, substances that are precursors of the controlled precursor are not subject to control solely because they are precursors of the controlled precursor.

(d) If a substance is designated, rescheduled, or deleted as a controlled substance under federal law, the board shall similarly control the substance under this chapter after the expiration of thirty days from the date of publication in the federal register of a final order designating the substance as a controlled substance or rescheduling or deleting the substance or from the date of issuance of an order of temporary scheduling under Section 508 of the federal Dangerous Drug Diversion Control Act of 1984, 21 U.S.C. Sec. 811(h), unless within that thirty-day period, the board or an interested party objects to inclusion, rescheduling, temporary scheduling, or deletion. If no objection is made, the board shall adopt and cause to be published, without the necessity of making determinations or findings as required by subsection (a) of this section or RCW 69.50.203, 69.50.205, 69.50.207, 69.50.209, and 69.50.211, a final rule, for which notice of proposed rule making is omitted, designating, rescheduling, temporarily scheduling, or deleting the substance. If an objection is made, the board shall make a determination with respect to the designation, rescheduling, or deletion of the substance as provided by subsection (a) of this section. Upon receipt of an objection to inclusion, rescheduling, or deletion under this chapter by the board, the board shall publish notice of the receipt of the objection, and control under this chapter is stayed until the board adopts a rule as provided by subsection (a) of this section.

(e) The board, by rule and without regard to the requirements of subsection (a) of this section, may schedule a substance in Schedule I regardless of whether the substance is substantially similar to a controlled substance in Schedule I or II if the board finds that scheduling of the substance on an emergency basis is necessary to avoid an imminent hazard to the public safety and the substance is not included in any other schedule or no exemption or approval is in effect for the substance under Section 505 of the federal Food, Drug, and Cosmetic Act, 21 U.S.C. Sec. 355. Upon receipt of notice under RCW 69.50.214, the board shall initiate scheduling of the controlled substance analog on an emergency basis pursuant to this subsection. The scheduling of a substance under this subsection expires one year after the adoption of the scheduling rule. With respect to the finding of an imminent hazard to the public safety, the board shall consider whether the substance has been scheduled on a temporary basis under federal law or factors set forth in subsection (a)(1)(iv), (v), and (vi) of this section, and may also consider clandestine importation, manufacture, or distribution, and, if available, information concerning the other factors set forth in subsection (a)(1) of this section. A rule may not be adopted under this subsection until the board initiates a rule-making proceeding under subsection (a) of this section with respect to

the substance. A rule adopted under this subsection must be vacated upon the conclusion of the rule-making proceeding initiated under subsection (a) of this section with respect to the substance.

(g) [(f)] Authority to control under this section does not extend to distilled spirits, wine, malt beverages, or tobacco as those terms are defined or used in Titles 66 and 26 RCW. [1998 c 245 § 108; 1993 c 187 § 2; 1989 1st ex.s. c 9 § 430; 1986 c 124 § 2; 1971 ex.s. c 308 § 69.50.201.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.202 Nomenclature. The controlled substances listed or to be listed in the schedules in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 are included by whatever official, common, usual, chemical, or trade name designated. [1971 ex.s. c 308 § 69.50.202.]

69.50.203 Schedule I tests. (a) The state board of pharmacy shall place a substance in Schedule I upon finding that the substance:

- (1) has high potential for abuse;
- (2) has no currently accepted medical use in treatment in the United States; and
- (3) lacks accepted safety for use in treatment under medical supervision.

(b) The board may place a substance in Schedule I without making the findings required by subsection (a) of this section if the substance is controlled under Schedule I of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 3; 1971 ex.s. c 308 § 69.50.203.]

69.50.204 Schedule I. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule I:

(a) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers whenever the existence of these isomers, esters, ethers, and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol;
- (5) Alphameprodine;
- (6) Alphamethadol;
- (7) Alpha-methylfentanyl (N-[1-(alpha-methyl-beta-phenyl) ethyl-4-piperidyl] propionanilide); (1-(1-methyl-2-phenylethyl)-4-(N-propanilido) piperidine);
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl some trade or other names: N-[1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl]-N-phenylpropanamide;

- (13) Betameprodine;
 - (14) Betamethadol;
 - (15) Betaprodine;
 - (16) Clonitazene;
 - (17) Dextromoramide;
 - (18) Diampromide;
 - (19) Diethylthiambutene;
 - (20) Difenoxin;
 - (21) Dimenoxadol;
 - (22) Dimepheptanol;
 - (23) Dimethylthiambutene;
 - (24) Dioxaphetyl butyrate;
 - (25) Dipipanone;
 - (26) Ethylmethylthiambutene;
 - (27) Etonitazene;
 - (28) Etoxidine;
 - (29) Furethidine;
 - (30) Hydroxypethidine;
 - (31) Ketobemidone;
 - (32) Levomoramide;
 - (33) Levophenacymorphan;
 - (34) 3-Methylfentanyl (N-[3-methyl-1-(2-phenylethyl)-4-piperidyl]-N-phenylprop anamide);
 - (35) 3-Methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
 - (36) Morpheridine;
 - (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
 - (38) Noracymethadol;
 - (39) Norlevorphanol;
 - (40) Normethadone;
 - (41) Norpipanone;
 - (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
 - (43) PEPAP(1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
 - (44) Phenadoxone;
 - (45) Phenampromide;
 - (46) Phenomorphan;
 - (47) Phenoperidine;
 - (48) Piritramide;
 - (49) Proheptazine;
 - (50) Properidine;
 - (51) Propiram;
 - (52) Racemoramide;
 - (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyl]-propanamide);
 - (54) Tilidine;
 - (55) Trimeperidine.
- (b) Opium derivatives. Unless specifically excepted or unless listed in another schedule, any of the following opium derivatives, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:
- (1) Acetorphine;
 - (2) Acetyldihydrocodeine;
 - (3) Benzylmorphine;
 - (4) Codeine methylbromide;
 - (5) Codeine-N-Oxide;
 - (6) Cyprenorphine;

(7) Desomorphine;

(8) 3,4-methylenedioxy-N-ethylamphetamine some trade or other names: N-ethyl- α -methyl-3,4(methylenedioxy)phenethylamine, N-ethyl MDA, MDE, MDEA;

(9) N-hydroxy-3,4-methylenedioxyamphetamine some trade or other names: N-hydroxy- α -methyl-3,4(methylenedioxy)phenethylamine, and N-hydroxy MDA;

(10) Dihydromorphine;

(11) Drotebanol;

(12) Etorphine, except hydrochloride salt;

(13) Heroin;

(14) Hydromorphanol;

(15) Methyldesorphine;

(16) Methyldihydromorphine;

(17) Morphine methylbromide;

(18) Morphine methylsulfonate;

(19) Morphine-N-Oxide;

(20) Myrophine;

(21) Nicocodeine;

(22) Nicomorphine;

(23) Normorphine;

(24) Pholcodine;

(25) Thebacon.

(c) Hallucinogenic substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following hallucinogenic substances, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) 4-bromo-2,5-dimethoxy-amphetamine: Some trade or other names: 4-bromo-2,5-dimethoxy- α -methylphenethylamine; 4-bromo-2,5-DMA;

(2) 2,5-dimethoxyamphetamine: Some trade or other names: 2,5-dimethoxy- α -methylphenethylamine; 2,5-DMA;

(3) 4-methoxyamphetamine: Some trade or other names: 4-methoxy- α -methylphenethylamine; paramethoxyamphetamine, PMA;

(4) 5-methoxy-3,4-methylenedioxy-amphetamine;

(5) 4-methyl-2,5-dimethoxy-amphetamine: Some trade and other names: 4-methyl-2,5-dimethoxy- α -methylphenethylamine; "DOM"; and "STP";

(6) 3,4-methylenedioxy amphetamine;

(7) 3,4-methylenedioxymethamphetamine (MDMA);

(8) 3,4,5-trimethoxy amphetamine;

(9) Bufotenine: Some trade or other names: 3-(β -Dimethylaminoethyl)-5-hydroxindole; 3-(2-dimethylaminoethyl)-5-indolol; N, N-dimethylserotonin; 5-hydroxy-N,N-dimethyltryptamine; mappine;

(10) Diethyltryptamine: Some trade or other names: N,N-Diethyltryptamine; DET;

(11) Dimethyltryptamine: Some trade or other names: DMT;

(12) Ibogaine: Some trade or other names: 7-Ethyl-6,6 beta,7,8,9,10,12,13,-octahydro-2-methoxy-6,9-methano-5H-pyrido (1',2' 1,2) azepino (5,4-b) indole; Tabernanthe iboga;

(13) Lysergic acid diethylamide;

(14) Marihuana or marijuana;

(15) Mescaline;

(16) Parahexyl-7374: Some trade or other names: 3-Hexyl-1-hydroxy-7, 8, 9, 10-tetrahydro-6, 6, 9-trimethyl-6H-dibenzo[b,d]pyran; synhexyl;

(17) Peyote, meaning all parts of the plant presently classified botanically as *Lophophora Williamsii* Lemaire, whether growing or not, the seeds thereof, any extract from any part of such plant, and every compound, manufacture, salts, derivative, mixture, or preparation of such plant, its seeds, or extracts; (interprets 21 U.S.C. Sec. 812 (c), Schedule I (c)(12));

(18) N-ethyl-3-piperidyl benzilate;

(19) N-methyl-3-piperidyl benzilate;

(20) Psilocybin;

(21) Psilocyn;

(22) Tetrahydrocannabinols, synthetic equivalents of the substances contained in the plant, or in the resinous extractives of *Cannabis*, species, and/or synthetic substances, derivatives, and their isomers with similar chemical structure and pharmacological activity such as the following:

(i) Delta 1 - cis - or trans tetrahydrocannabinol, and their optical isomers, excluding tetrahydrocannabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the United States Food and Drug Administration;

(ii) Delta 6 - cis - or trans tetrahydrocannabinol, and their optical isomers;

(iii) Delta 3,4 - cis - or trans tetrahydrocannabinol, and its optical isomers;

(Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions covered.)

(23) Ethylamine analog of phencyclidine: Some trade or other names: N-ethyl-1phenylcyclohexylamine, (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl)ethylamine; cyclohexamine; PCE;

(24) Pyrrolidine analog of phencyclidine: Some trade or other names: 1-(1-phenylcyclohexyl)pyrrolidine; PCPy; PHP;

(25) Thiophene analog of phencyclidine: Some trade or other names: 1-(1-[2-thenyl]-cyclohexyl)-piperidine; 2-thienyl analog of phencyclidine; TPCP; TCP;

(26) 1-[1-(2-thienyl)cyclohexyl]pyrrolidine: A trade or other name is TCPy.

(d) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation.

(1) Mecloqualone;

(2) Methaqualone.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Fenethylamine;

(2) (+-)-cis-4-methylaminorex ((+)-cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine);

(3) N-ethylamphetamine;

(4) N,N-dimethylamphetamine: Some trade or other names: N,N-alpha-trimethyl-benzeneethanamine; N,N-alpha-trimethylphenoethylene.

The controlled substances in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 4; 1986 c 124 § 3; 1980 c 138 § 1; 1971 ex.s. c 308 § 69.50.204.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.205 Schedule II tests. (a) The state board of pharmacy shall place a substance in Schedule II upon finding that:

- (1) the substance has high potential for abuse;
- (2) the substance has currently accepted medical use in treatment in the United States, or currently accepted medical use with severe restrictions; and
- (3) the abuse of the substance may lead to severe psychological or physical dependence.

(b) The state board of pharmacy may place a substance in Schedule II without making the findings required by subsection (a) of this section if the substance is controlled under Schedule II of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 5; 1971 ex.s. c 308 § 69.50.205.]

69.50.206 Schedule II. (a) The drugs and other substances listed in this section, by whatever official name, common or usual name, chemical name, or brand name designated, are included in Schedule II.

(b) Substances. (Vegetable origin or chemical synthesis.) Unless specifically excepted, any of the following substances, except those listed in other schedules, whether produced directly or indirectly by extraction from substances of vegetable origin, or independently by means of chemical synthesis, or by combination of extraction and chemical synthesis:

(1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate, excluding apomorphine, dextrorphan, nalbuphine, nalmefene, naloxone, and naltrexone, and their respective salts, but including the following:

- (i) Raw opium;
- (ii) Opium extracts;
- (iii) Opium fluid;
- (iv) Powdered opium;
- (v) Granulated opium;
- (vi) Tincture of opium;
- (vii) Codeine;
- (viii) Ethylmorphine;
- (ix) Etorphine hydrochloride;
- (x) Hydrocodone;
- (xi) Hydromorphone;
- (xii) Metopon;
- (xiii) Morphine;
- (xiv) Oxycodone;
- (xv) Oxymorphone; and
- (xvi) Thebaine.

(2) Any salt, compound, isomer, derivative, or preparation thereof that is chemically equivalent or identical with

any of the substances referred to in subsection (b)(1) of this section, but not including the isoquinoline alkaloids of opium.

(3) Opium poppy and poppy straw.

(4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves including cocaine and ecgonine, and their salts, isomers, derivatives, and salts of isomers and derivatives, and any salt, compound, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.

(5) Methylbenzoylecgonine (cocaine — its salts, optical isomers, and salts of optical isomers).

(6) Concentrate of poppy straw (The crude extract of poppy straw in either liquid, solid, or powder form which contains the phenanthrene alkaloids of the opium poppy.)

(c) Opiates. Unless specifically excepted or unless in another schedule, any of the following synthetic opiates, including its isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, whenever the existence of such isomers, esters, ethers, and salts is possible within the specific chemical designation, dextrorphan and levopropoxyphene excepted:

- (1) Alfentanil;
- (2) Alphaprodine;
- (3) Anileridine;
- (4) Bezitramide;
- (5) Bulk dextropropoxyphene (nondosage forms);
- (6) Carfentanil;
- (7) Dihydrocodeine;
- (8) Diphenoxylate;
- (9) Fentanyl;
- (10) Isomethadone;
- (11) Levomethorphan;
- (12) Levorphanol;
- (13) Metazocine;
- (14) Methadone;
- (15) Methadone—Intermediate, 4-cyano-2-dimethylamino-4, 4-diphenyl butane;
- (16) Moramide—Intermediate, 2-methyl-3-morpholino-1, 1-diphenylpropane-carboxylic acid;
- (17) Pethidine (meperidine);
- (18) Pethidine—Intermediate-A, 4-cyano-1-methyl-4-phenylpiperidine;
- (19) Pethidine—Intermediate-B, ethyl-4-phenylpiperidine-4-carboxylate;
- (20) Pethidine—Intermediate-C, 1-methyl-4-phenylpiperidine-4-carboxylic acid;
- (21) Phenazocine;
- (22) Piminodine;
- (23) Racemethorphan;
- (24) Racemorphan;
- (25) Sufentanil.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system:

(1) Amphetamine, its salts, optical isomers, and salts of its optical isomers;

(2) Methamphetamine, its salts, isomers, and salts of its isomers;

(3) Phenmetrazine and its salts;

(4) Methylphenidate.

(e) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Amobarbital;

(2) Glutethimide;

(3) Pentobarbital;

(4) Phencyclidine;

(5) Secobarbital.

(f) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in a United States Food and Drug Administration approved drug product. (Some other names for dronabinol [6aR-trans]-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo[b,d]pyran-i-ol, or (-)-delta-9-(trans)-tetrahydrocannabinol.)

(2) Nabilone: Some trade or other names are (±)-trans-3-(1,1-dimethylheptyl)-6,6a,7,8,10,10a-hexahydro-1-hydroxy-6,6-dimethyl-9H-dibenzol[b,d]pyran-9-one.

(g) Immediate precursors. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances:

(1) Immediate precursor to amphetamine and methamphetamine:

(i) Phenylacetone: Some trade or other names phenyl-2-propanone, P2P, benzyl methyl ketone, methyl benzyl ketone.

(2) Immediate precursors to phencyclidine (PCP):

(i) 1-phenylcyclohexylamine;

(ii) 1-piperidinocyclohexanecarbonitrile (PCC).

The controlled substances in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 6; 1986 c 124 § 4; 1980 c 138 § 2; 1971 ex.s. c 308 § 69.50.206.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.207 Schedule III tests. (a) The state board of pharmacy shall place a substance in Schedule III upon finding that:

(1) the substance has a potential for abuse less than the substances included in Schedules I and II;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to moderate or low physical dependence or high psychological dependence.

(b) The state board of pharmacy may place a substance in Schedule III without making the findings required by subsection (a) of this section if the substance is controlled under Schedule III of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 7; 1971 ex.s. c 308 § 69.50.207.]

(2004 Ed.)

69.50.208 Schedule III. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule III:

(a) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Any compound, mixture, or preparation in dosage unit form containing any stimulant substance included in Schedule II and which was listed as an excepted compound on August 25, 1971, pursuant to the federal Controlled Substances Act, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except for containing a lesser quantity of controlled substances;

(2) Benzphetamine;

(3) Chlorphentermine;

(4) Clortermine;

(5) Phendimetrazine.

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system:

(1) Any compound, mixture, or preparation containing:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

or any salt thereof and one or more other active medicinal ingredients which are not listed in any schedule;

(2) Any suppository dosage form containing:

(i) Amobarbital;

(ii) Secobarbital;

(iii) Pentobarbital;

or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository;

(3) Any substance which contains any quantity of a derivative of barbituric acid, or any salt of a derivative of barbituric acid;

(4) Chlorhexadol;

(5) Lysergic acid;

(6) Lysergic acid amide;

(7) Methyprylon;

(8) Sulfondiethylmethane;

(9) Sulfonethylmethane;

(10) Sulfonmethane;

(11) Tiletamine and zolazepam or any of their salts—some trade or other names for a tiletamine-zolazepam combination product: Telazol, some trade or other names for tiletamine: 2-(ethylamino)-2-(2-thienyl) cyclohexanone, some trade or other names for zolazepam: 4-(2-fluorophenyl)-6,8-dihydro-1,3,8-trimethylpyrazolo-[3,4-e][1,4]- diazepin-7(1H)-one flupyrzapon.

(c) Nalorphine.

(d) Anabolic steroids. The term "anabolic steroid" means any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens,

progestins, and corticosteroids) that promotes muscle growth, and includes:

- (1) Boldenone;
- (2) Chlorotestosterone;
- (3) Clostebol;
- (4) Dehydrochlormethyltestosterone;
- (5) Dihydrotestosterone;
- (6) Drostanolone;
- (7) Ethylestrenol;
- (8) Fluoxymesterone;
- (9) Formebolone;
- (10) Mesterolone;
- (11) Methandienone;
- (12) Methandranone;
- (13) Methandriol;
- (14) Methandrostenolone;
- (15) Methenolone;
- (16) Methyltestosterone;
- (17) Mibolerone;
- (18) Nanrolone [nandrolone];
- (19) Norethandrolone;
- (20) Oxandrolone;
- (21) Oxymesterone;
- (22) Oxymetholone;
- (23) Stanolone;
- (24) Stanozolol;
- (25) Testolactone;
- (26) Testosterone;
- (27) Trenbolone; and

(28) Any salt, ester, or isomer of a drug or substance described or listed in this subsection, if that salt, ester, or isomer promotes muscle growth. Except such term does not include an anabolic steroid which is expressly intended for administration through implants to cattle or other nonhuman species and which has been approved by the secretary of health and human services for such administration. If any person prescribes, dispenses, or distributes such steroid for human use such person shall be considered to have prescribed, dispensed, or distributed an anabolic steroid within the meaning of this subsection.

(e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this subsection:

(1) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;

(2) Not more than 1.8 grams of codeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(3) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;

(4) Not more than 300 milligrams of dihydrocodeinone per 100 milliliters or not more than 15 milligrams per dosage

unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(5) Not more than 1.8 grams of dihydrocodeine per 100 milliliters or not more than 90 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(6) Not more than 300 milligrams of ethylmorphine per 100 milliliters or not more than 15 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(7) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one or more active, nonnarcotic ingredients in recognized therapeutic amounts;

(8) Not more than 50 milligrams of morphine per 100 milliliters or per 100 grams with one or more active, nonnarcotic ingredients in recognized therapeutic amounts.

The state board of pharmacy may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsection (a)(1) and (2) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a stimulant or depressant effect on the central nervous system.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 8; 1986 c 124 § 5; 1980 c 138 § 3; 1971 ex.s. c 308 § 69.50.208.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.209 Schedule IV tests. (a) The state board of pharmacy shall place a substance in Schedule IV upon finding that:

(1) the substance has a low potential for abuse relative to substances in Schedule III;

(2) the substance has currently accepted medical use in treatment in the United States; and

(3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule III.

(b) The state board of pharmacy may place a substance in Schedule IV without making the findings required by subsection (a) of this section if the substance is controlled under Schedule IV of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 9; 1971 ex.s. c 308 § 69.50.209.]

69.50.210 Schedule IV. Unless specifically excepted by state or federal law or regulation or more specifically included in another schedule, the following controlled substances are listed in Schedule IV:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) Not more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1,2-diphenyl-3-methyl-2-propionoxybutane).

(b) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a depressant effect on the central nervous system, including their salts, isomers, and salts of isomers whenever the existence of those salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Alprazolam;
- (2) Barbitol;
- (3) Bromazepam;
- (4) Camazepam;
- (5) Chloral betaine;
- (6) Chloral hydrate;
- (7) Chlordiazepoxide;
- (8) Clobazam;
- (9) Clonazepam;
- (10) Clorazepate;
- (11) Clotiazepam;
- (12) Cloxazolam;
- (13) Delorazepam;
- (14) Diazepam;
- (15) Estazolam;
- (16) Ethchlorvynol;
- (17) Ethinamate;
- (18) Ethyl loflazepate;
- (19) Fludiazepam;
- (20) Flunitrazepam;
- (21) Flurazepam;
- (22) Halazepam;
- (23) Haloxazolam;
- (24) Ketazolam;
- (25) Loprazolam;
- (26) Lorazepam;
- (27) Lormetazepam;
- (28) Mebutamate;
- (29) Medazepam;
- (30) Meprobamate;
- (31) Methohexital;
- (32) Methylphenobarbital (mephobarbital);
- (33) Midazolam;
- (34) Nimetazepam;
- (35) Nitrazepam;
- (36) Nordiazepam;
- (37) Oxazepam;
- (38) Oxazolam;
- (39) Paraldehyde;
- (40) Petrichloral;
- (41) Phenobarbital;
- (42) Pinazepam;
- (43) Prazepam;
- (44) Quazepam;
- (45) Temazepam;
- (46) Tetrazepam;
- (47) Triazolam.

(c) Any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts, isomers, and salts of such isomers, whenever the

existence of such salts, isomers, and salts of isomers is possible: Fenfluramine.

(d) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers:

- (1) Cathine((+)norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Mazindol;
- (6) Mefenorex;
- (7) Pemoline (including organometallic complexes and chelates thereof);
- (8) Phentermine;
- (9) Pipradrol;
- (10) SPA ((-)-1-dimethylamino-1, 2-dephenylethane).

(e) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any quantity of the following substance, including its salts:

- (1) Pentazocine.

The state board of pharmacy may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (b) of this section from the application of all or any part of this chapter if the compound, mixture, or preparation contains one or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances having a depressant effect on the central nervous system.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 10; 1986 c 124 § 6; 1981 c 147 § 2; 1980 c 138 § 4; 1971 ex.s. c 308 § 69.50.210.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.211 Schedule V tests. (a) The state board of pharmacy shall place a substance in Schedule V upon finding that:

- (1) the substance has low potential for abuse relative to the controlled substances included in Schedule IV;
- (2) the substance has currently accepted medical use in treatment in the United States; and
- (3) abuse of the substance may lead to limited physical dependence or psychological dependence relative to the substances included in Schedule IV.

(b) The state board of pharmacy may place a substance in Schedule V without being required to make the findings required by subsection (a) of this section if the substance is controlled under Schedule V of the federal Controlled Substances Act by a federal agency as the result of an international treaty, convention, or protocol. [1993 c 187 § 11; 1971 ex.s. c 308 § 69.50.211.]

69.50.212 Schedule V. Unless specifically excepted by state or federal law or regulation or more specifically

included in another schedule, the following controlled substances are listed in Schedule V:

(a) Any material, compound, mixture, or preparation containing any of the following narcotic drug and its salts: Buprenorphine.

(b) Any compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth in this subsection, which also contains one or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(c) Any material, compound, mixture, or preparation containing any quantity of the following substances having a stimulant effect on the central nervous system, including their salts, isomers, and salts of isomers: Pyrovalerone.

The controlled substances listed in this section may be rescheduled or deleted as provided for in RCW 69.50.201. [1993 c 187 § 12; 1986 c 124 § 7; 1980 c 138 § 5; 1971 ex.s. c 308 § 69.50.212.]

State board of pharmacy may change schedules of controlled substances: RCW 69.50.201.

69.50.213 Republishing of schedules. The state board of pharmacy shall publish updated schedules annually. Failure to publish updated schedules is not a defense in any administrative or judicial proceeding under this chapter. [1993 c 187 § 13; 1971 ex.s. c 308 § 69.50.213.]

69.50.214 Controlled substance analog. A controlled substance analog, to the extent intended for human consumption, shall be treated, for the purposes of this chapter, as a substance included in Schedule I. Within thirty days after the initiation of prosecution with respect to a controlled substance analog by indictment or information, the prosecuting attorney shall notify the state board of pharmacy of information relevant to emergency scheduling as provided for in *RCW 69.50.201(f). After final determination that the controlled substance analog should not be scheduled, no prosecution relating to that substance as a controlled substance analog may continue or take place. [1993 c 187 § 14.]

*Reviser's note: RCW 69.50.201 was amended by 1998 c 245 § 108, changing subsection (f) to subsection (e).

ARTICLE III REGULATION OF MANUFACTURE, DISTRIBUTION, AND DISPENSING OF CONTROLLED SUBSTANCES

69.50.301 Rules—Fees. The board may adopt rules and the department may charge reasonable fees, relating to the registration and control of the manufacture, distribution, and dispensing of controlled substances within this state. [1993 c 187 § 15; 1991 c 229 § 9; 1989 1st ex.s. c 9 § 431; 1971 ex.s. c 308 § 69.50.301.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.302 Registration requirements. (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, shall obtain annually a registration issued by the department in accordance with the board's rules.

(b) A person registered by the department under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by the registration and in conformity with this Article.

(c) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) an agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if the agent or employee is acting in the usual course of business or employment. This exemption shall not include any agent or employee distributing sample controlled substances to practitioners without an order;

(2) a common or contract carrier or warehouseman, or an employee thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) an ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a substance included in Schedule V.

(d) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers upon finding it consistent with the public health and safety. Personal practitioners licensed or registered in the state of Washington under the respective professional licensing acts shall not be required to be registered under this chapter unless the specific exemption is denied pursuant to RCW 69.50.305 for violation of any provisions of this chapter.

(e) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(f) The department may inspect the establishment of a registrant or applicant for registration in accordance with rules adopted by the board. [1993 c 187 § 16; 1989 1st ex.s. c 9 § 432; 1971 ex.s. c 308 § 69.50.302.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.303 Registration. (a) The department shall register an applicant to manufacture or distribute controlled sub-

stances included in RCW 69.50.204, 69.50.206, 69.50.208, 69.50.210, and 69.50.212 unless the board determines that the issuance of that registration would be inconsistent with the public interest. In determining the public interest, the board shall consider the following factors:

(1) maintenance of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

(2) compliance with applicable state and local law;

(3) promotion of technical advances in the art of manufacturing controlled substances and the development of new substances;

(4) any convictions of the applicant under any laws of another country or federal or state laws relating to any controlled substance;

(5) past experience in the manufacture or distribution of controlled substances, and the existence in the applicant's establishment of effective controls against diversion of controlled substances into other than legitimate medical, scientific, research, or industrial channels;

(6) furnishing by the applicant of false or fraudulent material in any application filed under this chapter;

(7) suspension or revocation of the applicant's federal registration to manufacture, distribute, or dispense controlled substances as authorized by federal law; and

(8) any other factors relevant to and consistent with the public health and safety.

(b) Registration under subsection (a) of this section does not entitle a registrant to manufacture or distribute controlled substances included in Schedule I or II other than those specified in the registration.

(c) Practitioners must be registered, or exempted under RCW 69.50.302(d), to dispense any controlled substances or to conduct research with controlled substances included in Schedules II through V if they are authorized to dispense or conduct research under the law of this state. The board need not require separate registration under this Article for practitioners engaging in research with nonnarcotic substances included in Schedules II through V where the registrant is already registered under this Article in another capacity. Practitioners registered under federal law to conduct research with substances included in Schedule I may conduct research with substances included in Schedule I within this state upon furnishing the board evidence of that federal registration.

(d) A manufacturer or distributor registered under the federal Controlled Substances Act, 21 U.S.C. Sec. 801 et seq., may submit a copy of the federal application as an application for registration as a manufacturer or distributor under this section. The board may require a manufacturer or distributor to submit information in addition to the application for registration under the federal act. [1993 c 187 § 17; 1989 1st ex.s. c 9 § 433; 1971 ex.s. c 308 § 69.50.303.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.304 Revocation and suspension of registration—Seizure or placement under seal of controlled substances. (a) A registration, or exemption from registration, under RCW 69.50.303 to manufacture, distribute, or dispense a controlled substance may be suspended or revoked by the state board of pharmacy upon finding that the registrant has:

(1) furnished false or fraudulent material information in any application filed under this chapter;

(2) been convicted of a felony under any state or federal law relating to any controlled substance;

(3) had the registrant's federal registration suspended or revoked and is no longer authorized by federal law to manufacture, distribute, or dispense controlled substances; or

(4) committed acts that would render registration under RCW 69.50.303 inconsistent with the public interest as determined under that section.

(b) The board may limit revocation or suspension of a registration to the particular controlled substance or schedule of controlled substances, with respect to which grounds for revocation or suspension exist.

(c) If the board suspends or revokes a registration, all controlled substances owned or possessed by the registrant at the time of suspension or the effective date of the revocation order may be placed under seal. No disposition may be made of substances under seal until the time for taking an appeal has elapsed or until all appeals have been concluded unless a court, upon application, orders the sale of perishable substances and the deposit of the proceeds of the sale with the court. Upon a revocation order becoming final, all controlled substances may be forfeited to the state.

(d) The department may seize or place under seal any controlled substance owned or possessed by a registrant whose registration has expired or who has ceased to practice or do business in the manner contemplated by the registration. The controlled substance must be held for the benefit of the registrant or the registrant's successor in interest. The department shall notify a registrant, or the registrant's successor in interest, who has any controlled substance seized or placed under seal, of the procedures to be followed to secure the return of the controlled substance and the conditions under which it will be returned. The department may not dispose of any controlled substance seized or placed under seal under this subsection until the expiration of one hundred eighty days after the controlled substance was seized or placed under seal. The costs incurred by the department in seizing, placing under seal, maintaining custody, and disposing of any controlled substance under this subsection may be recovered from the registrant, any proceeds obtained from the disposition of the controlled substance, or from both. Any balance remaining after the costs have been recovered from the proceeds of any disposition must be delivered to the registrant or the registrant's successor in interest.

(e) The department shall promptly notify the drug enforcement administration of all orders restricting, suspending, or revoking registration and all forfeitures of controlled substances. [1993 c 187 § 18; 1989 1st ex.s. c 9 § 434; 1986 c 124 § 8; 1971 ex.s. c 308 § 69.50.304.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.305 Procedure for denial, suspension, or revocation of registration. (a) Any registration, or exemption from registration, issued pursuant to the provisions of this chapter shall not be denied, suspended, or revoked unless the board denies, suspends, or revokes such registration, or exemption from registration, by proceedings consistent with the administrative procedure act, chapter 34.05 RCW.

(b) The board may suspend any registration simultaneously with the institution of proceedings under RCW 69.50.304, or where renewal of registration is refused, if it finds that there is an imminent danger to the public health or safety which warrants this action. The suspension shall continue in effect until the conclusion of the proceedings, including judicial review thereof, unless sooner withdrawn by the board or dissolved by a court of competent jurisdiction. [1971 ex.s. c 308 § 69.50.305.]

69.50.306 Records of registrants. Persons registered, or exempted from registration under RCW 69.50.302(d), to manufacture, distribute, dispense, or administer controlled substances under this chapter shall keep records and maintain inventories in conformance with the record-keeping and inventory requirements of federal law and with any additional rules the state board of pharmacy issues. [1971 ex.s. c 308 § 69.50.306.]

69.50.308 Prescriptions. (a) A controlled substance may be dispensed only as provided in this section.

(b) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule II may not be dispensed without the written prescription of a practitioner.

(1) Schedule II narcotic substances may be dispensed by a pharmacy pursuant to a facsimile prescription under the following circumstances:

(i) The facsimile prescription is transmitted by a practitioner to the pharmacy; and

(ii) The facsimile prescription is for a patient in a long-term care facility. "Long-term care facility" means nursing homes licensed under chapter 18.51 RCW, boarding homes licensed under chapter 18.20 RCW, and adult family homes licensed under chapter 70.128 RCW; or

(iii) The facsimile prescription is for a patient of a hospice program certified or paid for by medicare under Title XVIII; or

(iv) The facsimile prescription is for a patient of a hospice program licensed by the state; and

(v) The practitioner or the practitioner's agent notes on the facsimile prescription that the patient is a long-term care or hospice patient.

(2) Injectable Schedule II narcotic substances that are to be compounded for patient use may be dispensed by a pharmacy pursuant to a facsimile prescription if the facsimile prescription is transmitted by a practitioner to the pharmacy.

(3) Under (1) and (2) of this subsection the facsimile prescription shall serve as the original prescription and shall be maintained as other Schedule II narcotic substances prescriptions.

(c) In emergency situations, as defined by rule of the state board of pharmacy, a substance included in Schedule II may be dispensed upon oral prescription of a practitioner, reduced promptly to writing and filed by the pharmacy. Prescriptions shall be retained in conformity with the requirements of RCW 69.50.306. A prescription for a substance included in Schedule II may not be refilled.

(d) Except when dispensed directly by a practitioner authorized to prescribe or administer a controlled substance, other than a pharmacy, to an ultimate user, a substance included in Schedule III or IV, which is a prescription drug as determined under RCW 69.04.560, may not be dispensed without a written or oral prescription of a practitioner. Any oral prescription must be promptly reduced to writing. The prescription shall not be filled or refilled more than six months after the date thereof or be refilled more than five times, unless renewed by the practitioner.

(e) A valid prescription or lawful order of a practitioner, in order to be effective in legalizing the possession of controlled substances, must be issued in good faith for a legitimate medical purpose by one authorized to prescribe the use of such controlled substance. An order purporting to be a prescription not in the course of professional treatment is not a valid prescription or lawful order of a practitioner within the meaning and intent of this chapter; and the person who knows or should know that the person is filling such an order, as well as the person issuing it, can be charged with a violation of this chapter.

(f) A substance included in Schedule V must be distributed or dispensed only for a medical purpose.

(g) A practitioner may dispense or deliver a controlled substance to or for an individual or animal only for medical treatment or authorized research in the ordinary course of that practitioner's profession. Medical treatment includes dispensing or administering a narcotic drug for pain, including intractable pain.

(h) No administrative sanction, or civil or criminal liability, authorized or created by this chapter may be imposed on a pharmacist for action taken in reliance on a reasonable belief that an order purporting to be a prescription was issued by a practitioner in the usual course of professional treatment or in authorized research.

(i) An individual practitioner may not dispense a substance included in Schedule II, III, or IV for that individual practitioner's personal use. [2001 c 248 § 1; 1993 c 187 § 19; 1971 ex.s. c 308 § 69.50.308.]

69.50.309 Containers. A person to whom or for whose use any controlled substance has been prescribed, sold, or dispensed by a practitioner, and the owner of any animal for which such controlled substance has been prescribed, sold, or dispensed may lawfully possess it only in the container in which it was delivered to him by the person selling or dispensing the same. [1971 ex.s. c 308 § 69.50.309.]

69.50.310 Sodium pentobarbital—Registration of humane societies and animal control agencies for use in animal control. On and after September 21, 1977, a humane society and animal control agency may apply to the department for registration pursuant to the applicable provisions of this chapter for the sole purpose of being authorized to purchase, possess, and administer sodium pentobarbital to euthanize injured, sick, homeless, or unwanted domestic pets and animals. Any agency so registered shall not permit a person to administer sodium pentobarbital unless such person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering this drug.

The department may issue a limited registration to carry out the provisions of this section. The board shall promulgate such rules as it deems necessary to insure strict compliance with the provisions of this section. The board may suspend or revoke registration upon determination that the person administering sodium pentobarbital has not demonstrated adequate knowledge as herein provided. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [1989 1st ex.s. c 9 § 435; 1977 ex.s. c 197 § 1.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.311 Triplicate prescription form program—Compliance by health care practitioners. Any licensed health care practitioner with prescription or dispensing authority shall, as a condition of licensure and as directed by the practitioner's disciplinary board, consent to the requirement, if imposed, of complying with a triplicate prescription form program as may be established by rule by the department of health. [1989 1st ex.s. c 9 § 436; 1984 c 153 § 20.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.312 Electronic communication of prescription information—Board may adopt rules. (1) Information concerning an original prescription or information concerning a prescription refill for a controlled substance may be electronically communicated to a pharmacy of the patient's choice pursuant to the provisions of this chapter if the electronically communicated prescription information complies with the following:

(a) Electronically communicated prescription information must comply with all applicable statutes and rules regarding the form, content, recordkeeping, and processing of a prescription for a legend drug;

(b) The system used for transmitting electronically communicated prescription information and the system used for receiving electronically communicated prescription information must be approved by the board. This subsection does not apply to currently used facsimile equipment transmitting an exact visual image of the prescription. The board shall maintain and provide, upon request, a list of systems used for electronically communicating prescription information currently approved by the board;

(c) An explicit opportunity for practitioners must be made to indicate their preference on whether a therapeutically equivalent generic drug may be substituted;

(d) Prescription drug orders are confidential health information, and may be released only to the patient or the patient's authorized representative, the prescriber or other authorized practitioner then caring for the patient, or other persons specifically authorized by law to receive such information;

(e) To maintain confidentiality of prescription records, the electronic system shall have adequate security and systems safeguards designed to prevent and detect unauthorized access, modification, or manipulation of these records. The pharmacist in charge shall establish or verify the existence of policies and procedures which ensure the integrity and confidentiality of prescription information transmitted to the phar-

(2004 Ed.)

macy by electronic means. All managers, employees, and agents of the pharmacy are required to read, sign, and comply with the established policies and procedures; and

(f) The pharmacist shall exercise professional judgment regarding the accuracy, validity, and authenticity of the prescription drug order received by way of electronic transmission, consistent with federal and state laws and rules and guidelines of the board.

(2) The board may adopt rules implementing this section. [1998 c 222 § 4.]

69.50.320 Registration of department of fish and wildlife for use in chemical capture programs—Rules.

The department of fish and wildlife may apply to the department of health for registration pursuant to the applicable provisions of this chapter to purchase, possess, and administer controlled substances for use in chemical capture programs. The department of fish and wildlife must not permit a person to administer controlled substances unless the person has demonstrated adequate knowledge of the potential hazards and proper techniques to be used in administering controlled substances.

The department of health may issue a limited registration to carry out the provisions of this section. The board may adopt rules to ensure strict compliance with the provisions of this section. The board, in consultation with the department of fish and wildlife, must by rule add or remove additional controlled substances for use in chemical capture programs. The board shall suspend or revoke registration upon determination that the person administering controlled substances has not demonstrated adequate knowledge as required by this section. This authority is granted in addition to any other power to suspend or revoke registration as provided by law. [2003 c 175 § 2.]

Findings—2003 c 175: "The legislature finds that the department of fish and wildlife is responsible for the proper management of the state's diverse wildlife resources. Wildlife management often requires the department of fish and wildlife to immobilize individual animals in order for the animals to be moved, treated, examined, or for other legitimate purposes. The legislature finds that it is often necessary for the department to use certain controlled substances to accomplish these purposes. Therefore, the legislature finds that the department of fish and wildlife, in coordination with the board of pharmacy, must be enabled to use approved controlled substances in order to accomplish its legitimate wildlife management goals." [2003 c 175 § 1.]

ARTICLE IV
OFFENSES AND PENALTIES

69.50.401 Prohibited acts: A—Penalties. (1) Except as authorized by this chapter, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance.

(2) Any person who violates this section with respect to:

(a) A controlled substance classified in Schedule I or II which is a narcotic drug or flunitrazepam classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred

thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine;

(b) Amphetamine or methamphetamine, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, or (i) fined not more than twenty-five thousand dollars if the crime involved less than two kilograms of the drug, or both such imprisonment and fine; or (ii) if the crime involved two or more kilograms of the drug, then fined not more than one hundred thousand dollars for the first two kilograms and not more than fifty dollars for each gram in excess of two kilograms, or both such imprisonment and fine. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost;

(c) Any other controlled substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A substance classified in Schedule IV, except flunitrazepam, is guilty of a class C felony punishable according to chapter 9A.20 RCW; or

(e) A substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 331. Prior: 1998 c 290 § 1; 1998 c 82 § 2; 1997 c 71 § 2; 1996 c 205 § 2; 1989 c 271 § 104; 1987 c 458 § 4; 1979 c 67 § 1; 1973 2nd ex.s. c 2 § 1; 1971 ex.s. c 308 § 69.50.401.]

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

Application—1998 c 290: "This act applies to crimes committed on or after July 1, 1998." [1998 c 290 § 9.]

Effective date—1998 c 290: "This act takes effect July 1, 1998." [1998 c 290 § 10.]

Severability—1998 c 290: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 290 § 11.]

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

Severability—1987 c 458: See note following RCW 48.21.160.

Serious drug offenders, notice of release or escape: RCW 9.94A.610.

69.50.4011 Counterfeit substances—Penalties. (1) Except as authorized by this chapter, it is unlawful for any person to create, deliver, or possess a counterfeit substance.

(2) Any person who violates this section with respect to:

(a) A counterfeit substance classified in Schedule I or II which is a narcotic drug, or flunitrazepam classified in Schedule IV, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(b) A counterfeit substance which is methamphetamine, is guilty of a class B felony and upon conviction may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both;

(c) Any other counterfeit substance classified in Schedule I, II, or III, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(d) A counterfeit substance classified in Schedule IV, except flunitrazepam, is guilty of a class C felony punishable according to chapter 9A.20 RCW;

(e) A counterfeit substance classified in Schedule V, is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 332.]

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

69.50.4012 Delivery of substance in lieu of controlled substance—Penalty. (1) It is unlawful, except as authorized in this chapter and chapter 69.41 RCW, for any person to offer, arrange, or negotiate for the sale, gift, delivery, dispensing, distribution, or administration of a controlled substance to any person and then sell, give, deliver, dispense, distribute, or administer to that person any other liquid, substance, or material in lieu of such controlled substance.

(2) Any person who violates this section is guilty of a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 333.]

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

69.50.4013 Possession of controlled substance—Penalty. (1) It is unlawful for any person to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this chapter.

(2) Except as provided in RCW 69.50.4014, any person who violates this section is guilty of a class C felony punishable under chapter 9A.20 RCW. [2003 c 53 § 334.]

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

69.50.4014 Possession of forty grams or less of marijuana—Penalty. Except as provided in RCW 69.50.401(2)(c), any person found guilty of possession of forty grams or less of marijuana is guilty of a misdemeanor. [2003 c 53 § 335.]

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

69.50.4015 Involving a person under eighteen in unlawful controlled substance transaction—Penalty. (1) It is unlawful to compensate, threaten, solicit, or in any other manner involve a person under the age of eighteen years in a transaction unlawfully to manufacture, sell, or deliver a controlled substance.

(2) A violation of this section is a class C felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 336.]

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

69.50.4016 Provisions not applicable to offenses under RCW 69.50.410. RCW 69.50.401 through 69.50.4015 shall not apply to offenses defined and punish-

able under the provisions of RCW 69.50.410. [2003 c 53 § 337.]

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

69.50.402 Prohibited acts: B—Penalties. (1) It is unlawful for any person:

(a) Who is subject to Article III to distribute or dispense a controlled substance in violation of RCW 69.50.308;

(b) Who is a registrant, to manufacture a controlled substance not authorized by his or her registration, or to distribute or dispense a controlled substance not authorized by his or her registration to another registrant or other authorized person;

(c) Who is a practitioner, to prescribe, order, dispense, administer, supply, or give to any person:

(i) Any amphetamine, including its salts, optical isomers, and salts of optical isomers classified as a schedule II controlled substance by the board of pharmacy pursuant to chapter 34.05 RCW; or

(ii) Any nonnarcotic stimulant classified as a schedule II controlled substance and designated as a nonnarcotic stimulant by the board of pharmacy pursuant to chapter 34.05 RCW;

except for the treatment of narcolepsy or for the treatment of hyperkinesis, or for the treatment of drug-induced brain dysfunction, or for the treatment of epilepsy, or for the differential diagnostic psychiatric evaluation of depression, or for the treatment of depression shown to be refractory to other therapeutic modalities, or for the clinical investigation of the effects of such drugs or compounds, in which case an investigative protocol therefor shall have been submitted to and reviewed and approved by the state board of pharmacy before the investigation has been begun: PROVIDED, That the board of pharmacy, in consultation with the medical quality assurance commission and the osteopathic disciplinary board, may establish by rule, pursuant to chapter 34.05 RCW, disease states or conditions in addition to those listed in this subsection for the treatment of which Schedule II nonnarcotic stimulants may be prescribed, ordered, dispensed, administered, supplied, or given to patients by practitioners: AND PROVIDED, FURTHER, That investigations by the board of pharmacy of abuse of prescriptive authority by physicians, licensed pursuant to chapter 18.71 RCW, pursuant to subsection (1)(c) of this section shall be done in consultation with the medical quality assurance commission;

(d) To refuse or fail to make, keep or furnish any record, notification, order form, statement, invoice, or information required under this chapter;

(e) To refuse an entry into any premises for any inspection authorized by this chapter; or

(f) Knowingly to keep or maintain any store, shop, warehouse, dwelling, building, vehicle, boat, aircraft, or other structure or place, which is resorted to by persons using controlled substances in violation of this chapter for the purpose of using these substances, or which is used for keeping or selling them in violation of this chapter.

(2) Any person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand

(2004 Ed.)

dollars, or both. [2003 c 53 § 338; 1994 sp.s. c 9 § 740; 1980 c 138 § 6; 1979 ex.s. c 119 § 1; 1971 ex.s. c 308 § 69.50.402.]

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

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

69.50.403 Prohibited acts: C—Penalties. (1) It is unlawful for any person knowingly or intentionally:

(a) To distribute as a registrant a controlled substance classified in Schedules I or II, except pursuant to an order form as required by *RCW 69.50.307;

(b) To use in the course of the manufacture, distribution, or dispensing of a controlled substance, or to use for the purpose of acquiring or obtaining a controlled substance, a registration number which is fictitious, revoked, suspended, or issued to another person;

(c) To obtain or attempt to obtain a controlled substance, or procure or attempt to procure the administration of a controlled substance, (i) by fraud, deceit, misrepresentation, or subterfuge; or (ii) by forgery or alteration of a prescription or any written order; or (iii) by the concealment of material fact; or (iv) by the use of a false name or the giving of a false address;

(d) To falsely assume the title of, or represent herself or himself to be, a manufacturer, wholesaler, pharmacist, physician, dentist, veterinarian, or other authorized person for the purpose of obtaining a controlled substance;

(e) To make or utter any false or forged prescription or false or forged written order;

(f) To affix any false or forged label to a package or receptacle containing controlled substances;

(g) To furnish false or fraudulent material information in, or omit any material information from, any application, report, or other document required to be kept or filed under this chapter, or any record required to be kept by this chapter;

(h) To possess a false or fraudulent prescription with intent to obtain a controlled substance; or

(i) To attempt to illegally obtain controlled substances by providing more than one name to a practitioner when obtaining a prescription for a controlled substance. If a person's name is legally changed during the time period that he or she is receiving health care from a practitioner, the person shall inform all providers of care so that the medical and pharmacy records for the person may be filed under a single name identifier.

(2) Information communicated to a practitioner in an effort unlawfully to procure a controlled substance or unlawfully to procure the administration of such substance, shall not be deemed a privileged communication.

(3) A person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, or fined not more than two thousand dollars, or both. [2003 c 53 § 339; 1996 c 255 § 1; 1993 c 187 § 21; 1971 ex.s. c 308 § 69.50.403.]

***Reviser's note:** RCW 69.50.307 was repealed by 2001 c 248 § 2.

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

69.50.404 Penalties under other laws. Any penalty imposed for violation of this chapter is in addition to, and not

in lieu of, any civil or administrative penalty or sanction otherwise authorized by law. [1971 ex.s. c 308 § 69.50.404.]

69.50.405 Bar to prosecution. If a violation of this chapter is a violation of a federal law or the law of another state, a conviction or acquittal under federal law or the law of another state for the same act is a bar to prosecution in this state. [1971 ex.s. c 308 § 69.50.405.]

69.50.406 Distribution to persons under age eighteen.

(1) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing a controlled substance listed in Schedules I or II which is a narcotic drug or methamphetamine, or flunitrazepam listed in Schedule IV, to a person under eighteen years of age is guilty of a class A felony punishable by the fine authorized by RCW 69.50.401(2) (a) or (b), by a term of imprisonment of up to twice that authorized by RCW 69.50.401(2) (a) or (b), or by both.

(2) Any person eighteen years of age or over who violates RCW 69.50.401 by distributing any other controlled substance listed in Schedules I, II, III, IV, and V to a person under eighteen years of age who is at least three years his or her junior is guilty of a class B felony punishable by the fine authorized by RCW 69.50.401(2) (c), (d), or (e), by a term of imprisonment up to twice that authorized by RCW 69.50.401(2) (c), (d), or (e), or both. [2003 c 53 § 340; 1998 c 290 § 2; 1996 c 205 § 7; 1987 c 458 § 5; 1971 ex.s. c 308 § 69.50.406.]

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

Application—Effective date—Severability—1998 c 290: See notes following RCW 69.50.401.

Severability—1987 c 458: See note following RCW 48.21.160.

69.50.407 Conspiracy. Any person who attempts or conspires to commit any offense defined in this chapter is punishable by imprisonment or fine or both which may not exceed the maximum punishment prescribed for the offense, the commission of which was the object of the attempt or conspiracy. [1971 ex.s. c 308 § 69.50.407.]

69.50.408 Second or subsequent offenses.

(1) Any person convicted of a second or subsequent offense under this chapter may be imprisoned for a term up to twice the term otherwise authorized, fined an amount up to twice that otherwise authorized, or both.

(2) For purposes of this section, an offense is considered a second or subsequent offense, if, prior to his or her conviction of the offense, the offender has at any time been convicted under this chapter or under any statute of the United States or of any state relating to narcotic drugs, marijuana, depressant, stimulant, or hallucinogenic drugs.

(3) This section does not apply to offenses under RCW 69.50.4013. [2003 c 53 § 341; 1989 c 8 § 3; 1971 ex.s. c 308 § 69.50.408.]

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

69.50.410 Prohibited acts: D—Penalties. (1) Except as authorized by this chapter it is a class C felony for any per-

son to sell for profit any controlled substance or counterfeit substance classified in Schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana.

For the purposes of this section only, the following words and phrases shall have the following meanings:

(a) "To sell" means the passing of title and possession of a controlled substance from the seller to the buyer for a price whether or not the price is paid immediately or at a future date.

(b) "For profit" means the obtaining of anything of value in exchange for a controlled substance.

(c) "Price" means anything of value.

(2)(a) Any person convicted of a violation of subsection (1) of this section shall receive a sentence of not more than five years in a correctional facility of the department of social and health services for the first offense.

(b) Any person convicted on a second or subsequent cause, the sale having transpired after prosecution and conviction on the first cause, of subsection (1) of this section shall receive a mandatory sentence of five years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for the second or subsequent violation of subsection (1) of this section.

(3)(a) Any person convicted of a violation of subsection (1) of this section by selling heroin shall receive a mandatory sentence of two years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for such violation.

(b) Any person convicted on a second or subsequent sale of heroin, the sale having transpired after prosecution and conviction on the first cause of the sale of heroin shall receive a mandatory sentence of ten years in a correctional facility of the department of social and health services and no judge of any court shall suspend or defer the sentence imposed for this second or subsequent violation: PROVIDED, That the indeterminate sentence review board under RCW 9.95.040 shall not reduce the minimum term imposed for a violation under this subsection.

(4) Whether or not a mandatory minimum term has expired, an offender serving a sentence under this section may be granted an extraordinary medical placement when authorized under RCW 9.94A.728(4).

(5) In addition to the sentences provided in subsection (2) of this section, any person convicted of a violation of subsection (1) of this section shall be fined in an amount calculated to at least eliminate any and all proceeds or profits directly or indirectly gained by such person as a result of sales of controlled substances in violation of the laws of this or other states, or the United States, up to the amount of five hundred thousand dollars on each count.

(6) Any person, addicted to the use of controlled substances, who voluntarily applies to the department of social and health services for the purpose of participating in a rehabilitation program approved by the department for addicts of controlled substances shall be immune from prosecution for subsection (1) offenses unless a filing of an information or indictment against such person for a violation of subsection (1) of this section is made prior to his or her voluntary participation in the program of the department of social and health

services. All applications for immunity under this section shall be sent to the department of social and health services in Olympia. It shall be the duty of the department to stamp each application received pursuant to this section with the date and time of receipt.

(7) This section shall not apply to offenses defined and punishable under the provisions of RCW 69.50.401 through 69.50.4015. [2003 c 53 § 342; 1999 c 324 § 6; 1975-'76 2nd ex.s. c 103 § 1; 1973 2nd ex.s. c 2 § 2.]

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

69.50.412 Prohibited acts: E—Penalties. (1) It is unlawful for any person to use drug paraphernalia to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(2) It is unlawful for any person to deliver, possess with intent to deliver, or manufacture with intent to deliver drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it will be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale, or otherwise introduce into the human body a controlled substance. Any person who violates this subsection is guilty of a misdemeanor.

(3) Any person eighteen years of age or over who violates subsection (2) of this section by delivering drug paraphernalia to a person under eighteen years of age who is at least three years his junior is guilty of a gross misdemeanor.

(4) It is unlawful for any person to place in any newspaper, magazine, handbill, or other publication any advertisement, knowing, or under circumstances where one reasonably should know, that the purpose of the advertisement, in whole or in part, is to promote the sale of objects designed or intended for use as drug paraphernalia. Any person who violates this subsection is guilty of a misdemeanor.

(5) It is lawful for any person over the age of eighteen to possess sterile hypodermic syringes and needles for the purpose of reducing bloodborne diseases. [2002 c 213 § 1; 1981 c 48 § 2.]

Severability—1981 c 48: See note following RCW 69.50.102.

69.50.4121 Drug paraphernalia—Selling or giving—Penalty. (1) Every person who sells or gives, or permits to be sold or given to any person any drug paraphernalia in any form commits a class I civil infraction under chapter 7.80 RCW. For purposes of this subsection, "drug paraphernalia" means all equipment, products, and materials of any kind which are used, intended for use, or designed for use in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance. Drug paraphernalia includes, but is not limited to objects used, intended for use, or designed for use in ingest-

ing, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

(a) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;

(b) Water pipes;

(c) Carburetion tubes and devices;

(d) Smoking and carburetion masks;

(e) Roach clips: Meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;

(f) Miniature cocaine spoons and cocaine vials;

(g) Chamber pipes;

(h) Carburetor pipes;

(i) Electric pipes;

(j) Air-driven pipes;

(k) Chillums;

(l) Bongs; and

(m) Ice pipes or chillers.

(2) It shall be no defense to a prosecution for a violation of this section that the person acted, or was believed by the defendant to act, as agent or representative of another.

(3) Nothing in subsection (1) of this section prohibits legal distribution of injection syringe equipment through public health and community based HIV prevention programs, and pharmacies. [2002 c 213 § 2; 1998 c 317 § 1.]

69.50.413 Health care practitioners—Suspension of license for violation of chapter. The license of any licensed health care practitioner shall be suspended for any violation of this chapter. The suspension shall run concurrently with, and not less than, the term of the sentence for the violation. [1984 c 153 § 21.]

69.50.414 Sale or transfer of controlled substance to minor—Cause of action by parent—Damages. The parent or legal guardian of any minor to whom a controlled substance, as defined in RCW 69.50.101, is sold or transferred, shall have a cause of action against the person who sold or transferred the controlled substance for all damages to the minor or his or her parent or legal guardian caused by such sale or transfer. Damages shall include: (a) Actual damages, including the cost for treatment or rehabilitation of the minor child's drug dependency, (b) forfeiture to the parent or legal guardian of the cash value of any proceeds received from such sale or transfer of a controlled substance, and (c) reasonable attorney fees.

This section shall not apply to a practitioner, as defined in *RCW 69.50.101(t), who sells or transfers a controlled substance to a minor pursuant to a valid prescription or order. [1986 c 124 § 10.]

***Reviser's note:** The reference to RCW 69.50.101(t) is erroneous. "Practitioner" is defined in (w) of that section.

69.50.415 Controlled substances homicide—Penalty. (1) A person who unlawfully delivers a controlled substance in violation of RCW 69.50.401(2) (a), (b), or (c) which controlled substance is subsequently used by the person to whom it was delivered, resulting in the death of the user, is guilty of controlled substances homicide.

(2) Controlled substances homicide is a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 343; 1996 c 205 § 8; 1987 c 458 § 2.]

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

Severability—1987 c 458: See note following RCW 48.21.160.

69.50.416 Counterfeit substances prohibited—Penalties. (1) It is unlawful for any person knowingly or intentionally to manufacture, deliver, or possess with intent to manufacture or deliver, a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, of a manufacturer, distributor, or dispenser, other than the person who in fact manufactured, distributed, or dispensed the substance.

(2) It is unlawful for any person knowingly or intentionally to make, distribute, or possess a punch, die, plate, stone, or other thing designed to print, imprint, or reproduce the trademark, trade name, or other identifying mark, imprint, or device of another or any likeness of any of the foregoing upon any drug or container or labeling thereof.

(3) A person who violates this section is guilty of a class C felony and upon conviction may be imprisoned for not more than two years, fined not more than two thousand dollars, or both. [2003 c 53 § 344; 1993 c 187 § 22.]

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

69.50.420 Violations—Juvenile driving privileges.

(1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.52 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 120; 1988 c 148 § 5.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

69.50.425 Misdemeanor violations—Minimum penalties. A person who is convicted of a misdemeanor violation of any provision of this chapter shall be punished by imprisonment for not less than twenty-four consecutive

hours, and by a fine of not less than two hundred fifty dollars. On a second or subsequent conviction, the fine shall not be less than five hundred dollars. These fines shall be in addition to any other fine or penalty imposed. Unless the court finds that the imposition of the minimum imprisonment will pose a substantial risk to the defendant's physical or mental well-being or that local jail facilities are in an overcrowded condition, the minimum term of imprisonment shall not be suspended or deferred. If the court finds such risk or overcrowding exists, it shall sentence the defendant to a minimum of forty hours of community restitution. If a minimum term of imprisonment is suspended or deferred, the court shall state in writing the reason for granting the suspension or deferral and the facts upon which the suspension or deferral is based. Unless the court finds the person to be indigent, the minimum fine shall not be suspended or deferred. [2002 c 175 § 44; 1989 c 271 § 105.]

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

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.430 Additional fine for certain felony violations. (1) Every person convicted of a felony violation of RCW 69.50.401 through 69.50.4013, 69.50.4015, 69.50.402, 69.50.403, 69.50.406, 69.50.407, 69.50.410, or 69.50.415 shall be fined one thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court.

(2) On a second or subsequent conviction for violation of any of the laws listed in subsection (1) of this section, the person shall be fined two thousand dollars in addition to any other fine or penalty imposed. Unless the court finds the person to be indigent, this additional fine shall not be suspended or deferred by the court. [2003 c 53 § 345; 1989 c 271 § 106.]

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

Application—1989 c 271 §§ 101-111: See note following RCW 9.94A.510.

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.435 Violations committed in or on certain public places or facilities—Additional penalty—Defenses—Construction—Definitions. (1) Any person who violates RCW 69.50.401 by manufacturing, selling, delivering, or possessing with the intent to manufacture, sell, or deliver a controlled substance listed under RCW 69.50.401 or who violates RCW 69.50.410 by selling for profit any controlled substance or counterfeit substance classified in schedule I, RCW 69.50.204, except leaves and flowering tops of marijuana to a person:

- (a) In a school;
- (b) On a school bus;
- (c) Within one thousand feet of a school bus route stop designated by the school district;
- (d) Within one thousand feet of the perimeter of the school grounds;
- (e) In a public park;
- (f) In a public housing project designated by a local governing authority as a drug-free zone;

(g) On a public transit vehicle;

(h) In a public transit stop shelter;

(i) At a civic center designated as a drug-free zone by the local governing authority; or

(j) Within one thousand feet of the perimeter of a facility designated under (i) of this subsection, if the local governing authority specifically designates the one thousand foot perimeter

may be punished by a fine of up to twice the fine otherwise authorized by this chapter, but not including twice the fine authorized by RCW 69.50.406, or by imprisonment of up to twice the imprisonment otherwise authorized by this chapter, but not including twice the imprisonment authorized by RCW 69.50.406, or by both such fine and imprisonment. The provisions of this section shall not operate to more than double the fine or imprisonment otherwise authorized by this chapter for an offense.

(2) It is not a defense to a prosecution for a violation of this section that the person was unaware that the prohibited conduct took place while in a school or school bus or within one thousand feet of the school or school bus route stop, in a public park, in a public housing project designated by a local governing authority as a drug-free zone, on a public transit vehicle, in a public transit stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (1)(i) of this section, if the local governing authority specifically designates the one thousand foot perimeter.

(3) It is not a defense to a prosecution for a violation of this section or any other prosecution under this chapter that persons under the age of eighteen were not present in the school, the school bus, the public park, the public housing project designated by a local governing authority as a drug-free zone, or the public transit vehicle, or at the school bus route stop, the public transit vehicle stop shelter, at a civic center designated as a drug-free zone by the local governing authority, or within one thousand feet of the perimeter of a facility designated under subsection (1)(i) of this section, if the local governing authority specifically designates the one thousand foot perimeter at the time of the offense or that school was not in session.

(4) It is an affirmative defense to a prosecution for a violation of this section that the prohibited conduct took place entirely within a private residence, that no person under eighteen years of age or younger was present in such private residence at any time during the commission of the offense, and that the prohibited conduct did not involve delivering, manufacturing, selling, or possessing with the intent to manufacture, sell, or deliver any controlled substance in RCW 69.50.401 for profit. The affirmative defense established in this section shall be proved by the defendant by a preponderance of the evidence. This section shall not be construed to establish an affirmative defense with respect to a prosecution for an offense defined in any other section of this chapter.

(5) In a prosecution under this section, a map produced or reproduced by any municipality, school district, county, transit authority engineer, or public housing authority for the purpose of depicting the location and boundaries of the area on or within one thousand feet of any property used for a school, school bus route stop, public park, public housing

project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or a civic center designated as a drug-free zone by a local governing authority, or a true copy of such a map, shall under proper authentication, be admissible and shall constitute prima facie evidence of the location and boundaries of those areas if the governing body of the municipality, school district, county, or transit authority has adopted a resolution or ordinance approving the map as the official location and record of the location and boundaries of the area on or within one thousand feet of the school, school bus route stop, public park, public housing project designated by a local governing authority as a drug-free zone, public transit vehicle stop shelter, or civic center designated as a drug-free zone by a local governing authority. Any map approved under this section or a true copy of the map shall be filed with the clerk of the municipality or county, and shall be maintained as an official record of the municipality or county. This section shall not be construed as precluding the prosecution from introducing or relying upon any other evidence or testimony to establish any element of the offense. This section shall not be construed as precluding the use or admissibility of any map or diagram other than the one which has been approved by the governing body of a municipality, school district, county, transit authority, or public housing authority if the map or diagram is otherwise admissible under court rule.

(6) As used in this section the following terms have the meanings indicated unless the context clearly requires otherwise:

(a) "School" has the meaning under RCW 28A.150.010 or 28A.150.020. The term "school" also includes a private school approved under RCW 28A.195.010;

(b) "School bus" means a school bus as defined by the superintendent of public instruction by rule which is owned and operated by any school district and all school buses which are privately owned and operated under contract or otherwise with any school district in the state for the transportation of students. The term does not include buses operated by common carriers in the urban transportation of students such as transportation of students through a municipal transportation system;

(c) "School bus route stop" means a school bus stop as designated by a school district;

(d) "Public park" means land, including any facilities or improvements on the land, that is operated as a park by the state or a local government;

(e) "Public transit vehicle" means any motor vehicle, street car, train, trolley vehicle, or any other device, vessel, or vehicle which is owned or operated by a transit authority and which is used for the purpose of carrying passengers on a regular schedule;

(f) "Transit authority" means a city, county, or state transportation system, transportation authority, public transportation benefit area, public transit authority, or metropolitan municipal corporation within the state that operates public transit vehicles;

(g) "Stop shelter" means a passenger shelter designated by a transit authority;

(h) "Civic center" means a publicly owned or publicly operated place or facility used for recreational, educational, or cultural activities;

(i) "Public housing project" means the same as "housing project" as defined in RCW 35.82.020. [2003 c 53 § 346. Prior: 1997 c 30 § 2; 1997 c 23 § 1; 1996 c 14 § 2; 1991 c 32 § 4; prior: 1990 c 244 § 1; 1990 c 33 § 588; 1989 c 271 § 112.]

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

Findings—Intent—1997 c 30: "The legislature finds that a large number of illegal drug transactions occur in or near public housing projects. The legislature also finds that this activity places the families and children residing in these housing projects at risk for drug-related crimes and increases the general level of fear among the residents of the housing project and the areas surrounding these projects. The intent of the legislature is to allow local governments to designate public housing projects as drug-free zones." [1997 c 30 § 1.]

Findings—Intent—1996 c 14: "The legislature finds that a large number of illegal drug transactions occur in or near publicly owned places used for recreational, educational, and cultural purposes. The legislature also finds that this activity places the people using these facilities at risk for drug-related crimes, discourages the use of recreational, educational, and cultural facilities, blights the economic development around these facilities, and increases the general level of fear among the residents of the areas surrounding these facilities. The intent of the legislature is to allow local governments to designate a perimeter of one thousand feet around publicly owned places used primarily for recreation, education, and cultural activities as drug-free zones." [1996 c 14 § 1.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.440 Possession with intent to manufacture—Penalty. (1) It is unlawful for any person to possess ephedrine or any of its salts or isomers or salts of isomers, pseudoephedrine or any of its salts or isomers or salts of isomers, pressurized ammonia gas, or pressurized ammonia gas solution with intent to manufacture methamphetamine.

(2) Any person who violates this section is guilty of a class B felony and may be imprisoned for not more than ten years, fined not more than twenty-five thousand dollars, or both. Three thousand dollars of the fine may not be suspended. As collected, the first three thousand dollars of the fine must be deposited with the law enforcement agency having responsibility for cleanup of laboratories, sites, or substances used in the manufacture of the methamphetamine. The fine moneys deposited with that law enforcement agency must be used for such clean-up cost. [2003 c 53 § 347; 2002 c 134 § 1; 2000 c 225 § 4; 1997 c 71 § 3; 1996 c 205 § 1.]

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

Effective date—2002 c 134: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002]." [2002 c 134 § 5.]

Severability—2000 c 225: See note following RCW 69.55.010.

ARTICLE V ENFORCEMENT AND ADMINISTRATIVE PROVISIONS

69.50.500 Powers of enforcement personnel. (a) It is hereby made the duty of the state board of pharmacy, the department, and their officers, agents, inspectors and representatives, and all law enforcement officers within the state, and of all prosecuting attorneys, to enforce all provisions of this chapter, except those specifically delegated, and to coop-

erate with all agencies charged with the enforcement of the laws of the United States, of this state, and all other states, relating to controlled substances as defined in this chapter.

(b) Employees of the department of health, who are so designated by the board as enforcement officers are declared to be peace officers and shall be vested with police powers to enforce the drug laws of this state, including this chapter. [1989 1st ex.s. c 9 § 437; 1971 ex.s. c 308 § 69.50.500.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.50.501 Administrative inspections. The state board of pharmacy may make administrative inspections of controlled premises in accordance with the following provisions:

(1) For purposes of this section only, "controlled premises" means:

(a) places where persons registered or exempted from registration requirements under this chapter are required to keep records; and

(b) places including factories, warehouses, establishments, and conveyances in which persons registered or exempted from registration requirements under this chapter are permitted to hold, manufacture, compound, process, sell, deliver, or otherwise dispose of any controlled substance.

(2) When authorized by an administrative inspection warrant issued pursuant to RCW 69.50.502 an officer or employee designated by the board, upon presenting the warrant and appropriate credentials to the owner, operator, or agent in charge, may enter controlled premises for the purpose of conducting an administrative inspection.

(3) When authorized by an administrative inspection warrant, an officer or employee designated by the board may:

(a) inspect and copy records required by this chapter to be kept;

(b) inspect, within reasonable limits and in a reasonable manner, controlled premises and all pertinent equipment, finished and unfinished material, containers and labeling found therein, and, except as provided in subsection (5) of this section, all other things therein, including records, files, papers, processes, controls, and facilities bearing on violation of this chapter; and

(c) inventory any stock of any controlled substance therein and obtain samples thereof;

(4) This section does not prevent the inspection without a warrant of books and records pursuant to an administrative subpoena issued in accordance with chapter 34.05 RCW, nor does it prevent entries and administrative inspections, including seizures of property, without a warrant:

(a) if the owner, operator, or agent in charge of the controlled premises consents;

(b) in situations presenting imminent danger to health or safety;

(c) in situations involving inspection of conveyances if there is reasonable cause to believe that the mobility of the conveyance makes it impracticable to obtain a warrant;

(d) in any other exceptional or emergency circumstance where time or opportunity to apply for a warrant is lacking; or,

(e) in all other situations in which a warrant is not constitutionally required;

(5) An inspection authorized by this section shall not extend to financial data, sales data, other than shipment data, or pricing data unless the owner, operator, or agent in charge of the controlled premises consents in writing. [1971 ex.s. c 308 § 69.50.501.]

69.50.502 Warrants for administrative inspections.

Issuance and execution of administrative inspection warrants shall be as follows:

(1) A judge of a superior court, or a judge of a district court within his jurisdiction, and upon proper oath or affirmation showing probable cause, may issue warrants for the purpose of conducting administrative inspections authorized by this chapter or rules hereunder, and seizures of property appropriate to the inspections. For purposes of the issuance of administrative inspection warrants, probable cause exists upon showing a valid public interest in the effective enforcement of this chapter or rules hereunder, sufficient to justify administrative inspection of the area, premises, building or conveyance in the circumstances specified in the application for the warrant;

(2) A warrant shall issue only upon an affidavit of a designated officer or employee having knowledge of the facts alleged, sworn to before the judge and establishing the grounds for issuing the warrant. If the judge is satisfied that grounds for the application exist or that there is probable cause to believe they exist, he shall issue a warrant identifying the area, premises, building, or conveyance to be inspected, the purpose of the inspection, and, if appropriate, the type of property to be inspected, if any. The warrant shall:

(a) state the grounds for its issuance and the name of each person whose affidavit has been taken in support thereof;

(b) be directed to a person authorized by RCW 69.50.500 to execute it;

(c) command the person to whom it is directed to inspect the area, premises, building, or conveyance identified for the purpose specified and, if appropriate, direct the seizure of the property specified;

(d) identify the item or types of property to be seized, if any;

(e) direct that it be served during normal business hours and designate the judge to whom it shall be returned;

(3) A warrant issued pursuant to this section must be executed and returned within ten days of its date unless, upon a showing of a need for additional time, the court orders otherwise. If property is seized pursuant to a warrant, a copy shall be given to the person from whom or from whose premises the property is taken, together with a receipt for the property taken. The return of the warrant shall be made promptly, accompanied by a written inventory of any property taken. The inventory shall be made in the presence of the person executing the warrant and of the person from whose possession or premises the property was taken, if present, or in the presence of at least one credible person other than the person executing the warrant. A copy of the inventory shall be delivered to the person from whom or from whose premises the property was taken and to the applicant for the warrant;

(4) The judge who has issued a warrant shall attach thereto a copy of the return and all papers returnable in con-

nection therewith and file them with the clerk of the court in which the inspection was made. [1971 ex.s. c 308 § 69.50.502.]

69.50.503 Injunctions. (a) The superior courts of this state have jurisdiction to restrain or enjoin violations of this chapter.

(b) The defendant may demand trial by jury for an alleged violation of an injunction or restraining order under this section. [1971 ex.s. c 308 § 69.50.503.]

69.50.504 Cooperative arrangements. The state board of pharmacy shall cooperate with federal and other state agencies in discharging its responsibilities concerning traffic in controlled substances and in suppressing the abuse of controlled substances. [1971 ex.s. c 308 § 69.50.504.]

69.50.505 Seizure and forfeiture. (1) The following are subject to seizure and forfeiture and no property right exists in them:

(a) All controlled substances which have been manufactured, distributed, dispensed, acquired, or possessed in violation of this chapter or chapter 69.41 or 69.52 RCW, and all hazardous chemicals, as defined in RCW 64.44.010, used or intended to be used in the manufacture of controlled substances;

(b) All raw materials, products, and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW;

(c) All property which is used, or intended for use, as a container for property described in (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, in any manner to facilitate the sale, delivery, or receipt of property described in (a) or (b) of this subsection, except that:

(i) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter or chapter 69.41 or 69.52 RCW;

(ii) No conveyance is subject to forfeiture under this section by reason of any act or omission established by the owner thereof to have been committed or omitted without the owner's knowledge or consent;

(iii) No conveyance is subject to forfeiture under this section if used in the receipt of only an amount of marijuana for which possession constitutes a misdemeanor under RCW 69.50.4014;

(iv) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party neither had knowledge of nor consented to the act or omission; and

(v) When the owner of a conveyance has been arrested under this chapter or chapter 69.41 or 69.52 RCW the conveyance in which the person is arrested may not be subject to

forfeiture unless it is seized or process is issued for its seizure within ten days of the owner's arrest;

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter or chapter 69.41 or 69.52 RCW;

(f) All drug paraphernalia;

(g) All moneys, negotiable instruments, securities, or other tangible or intangible property of value furnished or intended to be furnished by any person in exchange for a controlled substance in violation of this chapter or chapter 69.41 or 69.52 RCW, all tangible or intangible personal property, proceeds, or assets acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, and all moneys, negotiable instruments, and securities used or intended to be used to facilitate any violation of this chapter or chapter 69.41 or 69.52 RCW. A forfeiture of money, negotiable instruments, securities, or other tangible or intangible property encumbered by a bona fide security interest is subject to the interest of the secured party if, at the time the security interest was created, the secured party neither had knowledge of nor consented to the act or omission. No personal property may be forfeited under this subsection (1)(g), to the extent of the interest of an owner, by reason of any act or omission which that owner establishes was committed or omitted without the owner's knowledge or consent; and

(h) All real property, including any right, title, and interest in the whole of any lot or tract of land, and any appurtenances or improvements which are being used with the knowledge of the owner for the manufacturing, compounding, processing, delivery, importing, or exporting of any controlled substance, or which have been acquired in whole or in part with proceeds traceable to an exchange or series of exchanges in violation of this chapter or chapter 69.41 or 69.52 RCW, if such activity is not less than a class C felony and a substantial nexus exists between the commercial production or sale of the controlled substance and the real property. However:

(i) No property may be forfeited pursuant to this subsection (1)(h), to the extent of the interest of an owner, by reason of any act or omission committed or omitted without the owner's knowledge or consent;

(ii) The bona fide gift of a controlled substance, legend drug, or imitation controlled substance shall not result in the forfeiture of real property;

(iii) The possession of marijuana shall not result in the forfeiture of real property unless the marijuana is possessed for commercial purposes, the amount possessed is five or more plants or one pound or more of marijuana, and a substantial nexus exists between the possession of marijuana and the real property. In such a case, the intent of the offender shall be determined by the preponderance of the evidence, including the offender's prior criminal history, the amount of marijuana possessed by the offender, the sophistication of the activity or equipment used by the offender, and other evidence which demonstrates the offender's intent to engage in commercial activity;

(iv) The unlawful sale of marijuana or a legend drug shall not result in the forfeiture of real property unless the sale was forty grams or more in the case of marijuana or one

hundred dollars or more in the case of a legend drug, and a substantial nexus exists between the unlawful sale and the real property; and

(v) A forfeiture of real property encumbered by a bona fide security interest is subject to the interest of the secured party if the secured party, at the time the security interest was created, neither had knowledge of nor consented to the act or omission.

(2) Real or personal property subject to forfeiture under this chapter may be seized by any board inspector or law enforcement officer of this state upon process issued by any superior court having jurisdiction over the property. Seizure of real property shall include the filing of a lis pendens by the seizing agency. Real property seized under this section shall not be transferred or otherwise conveyed until ninety days after seizure or until a judgment of forfeiture is entered, whichever is later: PROVIDED, That real property seized under this section may be transferred or conveyed to any person or entity who acquires title by foreclosure or deed in lieu of foreclosure of a security interest. Seizure of personal property without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

(c) A board inspector or law enforcement officer has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The board inspector or law enforcement officer has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) In the event of seizure pursuant to subsection (2) of this section, proceedings for forfeiture shall be deemed commenced by the seizure. The law enforcement agency under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the property seized and the person in charge thereof and any person having any known right or interest therein, including any community property interest, of the seizure and intended forfeiture of the seized property. Service of notice of seizure of real property shall be made according to the rules of civil procedure. However, the state may not obtain a default judgment with respect to real property against a party who is served by substituted service absent an affidavit stating that a good faith effort has been made to ascertain if the defaulted party is incarcerated within the state, and that there is no present basis to believe that the party is incarcerated within the state. Notice of seizure in the case of property subject to a security interest that has been perfected by filing a financing statement in accordance with chapter 62A.9A RCW, or a certificate of title, shall be made by service upon the secured party or the secured party's assignee at the address shown on the financing statement or the certificate of title. The notice of seizure in other cases may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen day period following the seizure.

(4) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(d), (g), or (h) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the item seized shall be deemed forfeited. The community property interest in real property of a person whose spouse committed a violation giving rise to seizure of the real property may not be forfeited if the person did not participate in the violation.

(5) If any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section within forty-five days of the seizure in the case of personal property and ninety days in the case of real property, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement officer of the seizing agency or the chief law enforcement officer's designee, except where the seizing agency is a state agency as defined in RCW 34.12.020(4), the hearing shall be before the chief law enforcement officer of the seizing agency or an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction. Removal of any matter involving personal property may only be accomplished according to the rules of civil procedure. The person seeking removal of the matter must serve process against the state, county, political subdivision, or municipality that operates the seizing agency, and any other party of interest, in accordance with RCW 4.28.080 or 4.92.020, within forty-five days after the person seeking removal has notified the seizing law enforcement agency of the person's claim of ownership or right to possession. The court to which the matter is to be removed shall be the district court when the aggregate value of personal property is within the jurisdictional limit set forth in RCW 3.66.020. A hearing before the seizing agency and any appeal therefrom shall be under Title 34 RCW. In all cases, the burden of proof is upon the law enforcement agency to establish, by a preponderance of the evidence, that the property is subject to forfeiture.

The seizing law enforcement agency shall promptly return the article or articles to the claimant upon a determination by the administrative law judge or court that the claimant is the present lawful owner or is lawfully entitled to possession thereof of items specified in subsection (1)(b), (c), (d), (e), (f), (g), or (h) of this section.

(6) In any proceeding to forfeit property under this title, where the claimant substantially prevails, the claimant is entitled to reasonable attorneys' fees reasonably incurred by the claimant. In addition, in a court hearing between two or more claimants to the article or articles involved, the prevailing party is entitled to a judgment for costs and reasonable attorneys' fees.

(7) When property is forfeited under this chapter the board or seizing law enforcement agency may:

(a) Retain it for official use or upon application by any law enforcement agency of this state release such property to such agency for the exclusive use of enforcing the provisions of this chapter;

(b) Sell that which is not required to be destroyed by law and which is not harmful to the public;

(c) Request the appropriate sheriff or director of public safety to take custody of the property and remove it for disposition in accordance with law; or

(d) Forward it to the drug enforcement administration for disposition.

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

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

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

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

(9)(a) By January 31st of each year, each seizing agency shall remit to the state treasurer an amount equal to ten percent of the net proceeds of any property forfeited during the preceding calendar year. Money remitted shall be deposited in the violence reduction and drug enforcement account under RCW 69.50.520.

(b) The net proceeds of forfeited property is the value of the forfeitable interest in the property after deducting the cost of satisfying any bona fide security interest to which the property is subject at the time of seizure; and in the case of sold property, after deducting the cost of sale, including reasonable fees or commissions paid to independent selling agents, and the cost of any valid landlord's claim for damages under subsection (15) of this section.

(c) The value of sold forfeited property is the sale price. The value of retained forfeited property is the fair market value of the property at the time of seizure, determined when possible by reference to an applicable commonly used index, such as the index used by the department of licensing for valuation of motor vehicles. A seizing agency may use, but need not use, an independent qualified appraiser to determine the value of retained property. If an appraiser is used, the value of the property appraised is net of the cost of the appraisal. The value of destroyed property and retained firearms or illegal property is zero.

(10) Forfeited property and net proceeds not required to be paid to the state treasurer shall be retained by the seizing law enforcement agency exclusively for the expansion and improvement of controlled substances related law enforcement activity. Money retained under this section may not be used to supplant preexisting funding sources.

(11) Controlled substances listed in Schedule I, II, III, IV, and V that are possessed, transferred, sold, or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, II, III, IV, and V, which are seized or come into the possession of the board, the owners of which are unknown, are contraband and shall be summarily forfeited to the board.

(12) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the board.

(13) The failure, upon demand by a board inspector or law enforcement officer, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored to produce an appropriate registration or proof that he or she is the holder thereof constitutes authority for the seizure and forfeiture of the plants.

(14) Upon the entry of an order of forfeiture of real property, the court shall forward a copy of the order to the assessor of the county in which the property is located. Orders for the forfeiture of real property shall be entered by the superior court, subject to court rules. Such an order shall be filed by the seizing agency in the county auditor's records in the county in which the real property is located.

(15) A landlord may assert a claim against proceeds from the sale of assets seized and forfeited under subsection (7)(b) of this section, only if:

(a) A law enforcement officer, while acting in his or her official capacity, directly caused damage to the complaining landlord's property while executing a search of a tenant's residence; and

(b) The landlord has applied any funds remaining in the tenant's deposit, to which the landlord has a right under chapter 59.18 RCW, to cover the damage directly caused by a law enforcement officer prior to asserting a claim under the provisions of this section;

(i) Only if the funds applied under (b) of this subsection are insufficient to satisfy the damage directly caused by a law enforcement officer, may the landlord seek compensation for the damage by filing a claim against the governmental entity under whose authority the law enforcement agency operates within thirty days after the search;

(ii) Only if the governmental entity denies or fails to respond to the landlord's claim within sixty days of the date of filing, may the landlord collect damages under this subsection by filing within thirty days of denial or the expiration of the sixty-day period, whichever occurs first, a claim with the seizing law enforcement agency. The seizing law enforcement agency must notify the landlord of the status of the claim by the end of the thirty-day period. Nothing in this section requires the claim to be paid by the end of the sixty-day or thirty-day period.

(c) For any claim filed under (b) of this subsection, the law enforcement agency shall pay the claim unless the agency provides substantial proof that the landlord either:

(i) Knew or consented to actions of the tenant in violation of this chapter or chapter 69.41 or 69.52 RCW; or

(ii) Failed to respond to a notification of the illegal activity, provided by a law enforcement agency under RCW 59.18.075, within seven days of receipt of notification of the illegal activity.

(16) The landlord's claim for damages under subsection (15) of this section may not include a claim for loss of business and is limited to:

(a) Damage to tangible property and clean-up costs;

(b) The lesser of the cost of repair or fair market value of the damage directly caused by a law enforcement officer;

(c) The proceeds from the sale of the specific tenant's property seized and forfeited under subsection (7)(b) of this section; and

(d) The proceeds available after the seizing law enforcement agency satisfies any bona fide security interest in the tenant's property and costs related to sale of the tenant's property as provided by subsection (9)(b) of this section.

(17) Subsections (15) and (16) of this section do not limit any other rights a landlord may have against a tenant to collect for damages. However, if a law enforcement agency satisfies a landlord's claim under subsection (15) of this section, the rights the landlord has against the tenant for damages directly caused by a law enforcement officer under the terms of the landlord and tenant's contract are subrogated to the law enforcement agency. [2003 c 53 § 348; 2001 c 168 § 1; 1993 c 487 § 1; 1992 c 211 § 1. Prior: (1992 c 210 § 5 repealed by 1992 c 211 § 2); 1990 c 248 § 2; 1990 c 213 § 12; 1989 c 271 § 212; 1988 c 282 § 2; 1986 c 124 § 9; 1984 c 258 § 333; 1983 c 2 § 15; prior: 1982 c 189 § 6; 1982 c 171 § 1; prior: 1981 c 67 § 32; 1981 c 48 § 3; 1977 ex.s. c 77 § 1; 1971 ex.s. c 308 § 69.50.505.]

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

Severability—2001 c 168: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 168 § 5.]

Effective date—1990 c 213 §§ 2 and 12: See note following RCW 64.44.010.

Severability—1990 c 213: See RCW 64.44.901.

Findings—1989 c 271: "The legislature finds that: Drug offenses and crimes resulting from illegal drug use are destructive to society; the nature of drug trafficking results in many property crimes and crimes of violence; state and local governmental agencies incur immense expenses in the investigation, prosecution, adjudication, incarceration, and treatment of drug-related offenders and the compensation of their victims; drug-related offenses are difficult to eradicate because of the profits derived from the criminal activities, which can be invested in legitimate assets and later used for further criminal activities; and the forfeiture of real assets where a substantial nexus exists between the commercial production or sale of the substances and the real property will provide a significant deterrent to crime by removing the profit incentive of drug trafficking, and will provide a revenue source that will partially defray the large costs incurred by government as a result of these crimes. The legislature recognizes that seizure of real property is a very powerful tool and should not be applied in cases in which a manifest injustice would occur as a result of forfeiture of an innocent spouse's community property interest." [1989 c 271 § 211.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Severability—1988 c 282: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 282 § 3.]

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

Intent—1984 c 258: See note following RCW 3.46.120.

Severability—1983 c 2: See note following RCW 18.71.030.

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—Effective date—1982 c 171: See RCW 69.52.900 and 69.52.901.

Severability—1981 c 48: See note following RCW 69.50.102.

69.50.506 Burden of proof; liabilities. (a) It is not necessary for the state to negate any exemption or exception in this chapter in any complaint, information, indictment or other pleading or in any trial, hearing, or other proceeding

under this chapter. The burden of proof of any exemption or exception is upon the person claiming it.

(b) In the absence of proof that a person is the duly authorized holder of an appropriate registration or order form issued under this chapter, he is presumed not to be the holder of the registration or form. The burden of proof is upon him to rebut the presumption.

(c) No liability is imposed by this chapter upon any authorized state, county or municipal officer, engaged in the lawful performance of his duties. [1971 ex.s. c 308 § 69.50.506.]

69.50.507 Judicial review. All final determinations, findings and conclusions of the state board of pharmacy under this chapter are final and conclusive decisions of the matters involved. Any person aggrieved by the decision may obtain review of the decision in the superior court wherein he resides or in the superior court of Thurston county, such review to be in conformity with the administrative procedure act, chapter 34.05 RCW. [1971 ex.s. c 308 § 69.50.507.]

69.50.508 Education and research. (a) The state board of pharmacy may carry out educational programs designed to prevent and deter misuse and abuse of controlled substances. In connection with these programs it may:

(1) promote better recognition of the problems of misuse and abuse of controlled substances within the regulated industry and among interested groups and organizations;

(2) assist the regulated industry and interested groups and organizations in contributing to the reduction of misuse and abuse of controlled substances;

(3) consult with interested groups and organizations to aid them in solving administrative and organizational problems;

(4) evaluate procedures, projects, techniques, and controls conducted or proposed as part of educational programs on misuse and abuse of controlled substances;

(5) disseminate the results of research on misuse and abuse of controlled substances to promote a better public understanding of what problems exist and what can be done to combat them; and

(6) assist in the education and training of state and local law enforcement officials in their efforts to control misuse and abuse of controlled substances.

(b) The board may encourage research on misuse and abuse of controlled substances. In connection with the research, and in furtherance of the enforcement of this chapter, it may:

(1) establish methods to assess accurately the effects of controlled substances and identify and characterize those with potential for abuse;

(2) make studies and undertake programs of research to:

(i) develop new or improved approaches, techniques, systems, equipment and devices to strengthen the enforcement of this chapter;

(ii) determine patterns of misuse and abuse of controlled substances and the social effects thereof; and,

(iii) improve methods for preventing, predicting, understanding and dealing with the misuse and abuse of controlled substances; and,

(3) enter into contracts with public agencies, institutions of higher education, and private organizations or individuals for the purpose of conducting research, demonstrations, or special projects which bear directly on misuse and abuse of controlled substances.

(c) The board may enter into contracts for educational and research activities without performance bonds.

(d) The board may authorize persons engaged in research on the use and effects of controlled substances to withhold the names and other identifying characteristics of individuals who are the subjects of the research. Persons who obtain this authorization are not compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was obtained.

(e) The board may authorize the possession and distribution of controlled substances by persons engaged in research. Persons who obtain this authorization are exempt from state prosecution for possession and distribution of controlled substances to the extent of the authorization. [1971 ex.s. c 308 § 69.50.508.]

69.50.509 Search and seizure of controlled substances. If, upon the sworn complaint of any person, it shall be made to appear to any judge of the superior court, district court, or municipal court that there is probable cause to believe that any controlled substance is being used, manufactured, sold, bartered, exchanged, administered, dispensed, delivered, distributed, produced, possessed, given away, furnished or otherwise disposed of or kept in violation of the provisions of this chapter, such judge shall, with or without the approval of the prosecuting attorney, issue a warrant directed to any law enforcement officer of the state, commanding him or her to search the premises designated and described in such complaint and warrant, and to seize all controlled substances there found, together with the vessels in which they are contained, and all implements, furniture and fixtures used or kept for the illegal manufacture, sale, barter, exchange, administering, dispensing, delivering, distributing, producing, possessing, giving away, furnishing or otherwise disposing of such controlled substances, and to safely keep the same, and to make a return of said warrant within three days, showing all acts and things done thereunder, with a particular statement of all articles seized and the name of the person or persons in whose possession the same were found, if any, and if no person be found in the possession of said articles, the returns shall so state. The provisions of RCW 10.31.030 as now or hereafter amended shall apply to actions taken pursuant to this chapter. [1987 c 202 § 228; 1971 ex.s. c 308 § 69.50.509.]

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

69.50.510 Search and seizure at rental premises—Notification of landlord. Whenever a controlled substance which is manufactured, distributed, dispensed, or acquired in violation of this chapter is seized at rental premises, the law enforcement agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known by the law enforcement

agency, of the seizure and the location of the seizure. [1988 c 150 § 9.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.50.511 Clean-up of hazardous substances at illegal drug manufacturing facility—Rules. Law enforcement agencies who during the official investigation or enforcement of any illegal drug manufacturing facility come in contact with or are aware of any substances suspected of being hazardous as defined in *RCW 70.105D.020(5), shall notify the department of ecology for the purpose of securing a contractor to identify, clean-up, store, and dispose of suspected hazardous substances, except for those random and representative samples obtained for evidentiary purposes. Whenever possible, a destruct order covering hazardous substances which may be described in general terms shall be obtained concurrently with a search warrant. Materials that have been photographed, fingerprinted, and subsampled by police shall be destroyed as soon as practical. The department of ecology shall make every effort to recover costs from the parties responsible for the suspected hazardous substance. All recoveries shall be deposited in the account or fund from which contractor payments are made.

The department of ecology may adopt rules to carry out its responsibilities under this section. The department of ecology shall consult with law enforcement agencies prior to adopting any rule or policy relating to this section. [1990 c 213 § 13; 1989 c 271 § 228.]

***Reviser's note:** RCW 70.105D.020 was amended by 1994 c 254 § 2, changing subsection (5) to subsection (6); and was subsequently amended by 1995 c 70 § 1, changing subsection (6) to subsection (7).

Severability—1990 c 213: See RCW 64.44.901.

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.520 Violence reduction and drug enforcement account. The violence reduction and drug enforcement account is created in the state treasury. All designated receipts from RCW 9.41.110(8), 66.24.210(4), 66.24.290(2), 69.50.505(9)(a), 82.08.150(5), 82.24.020(2), 82.64.020, and section 420, chapter 271, Laws of 1989 shall be deposited into the account. Expenditures from the account may be used only for funding services and programs under chapter 271, Laws of 1989 and chapter 7, Laws of 1994 sp. sess., including state incarceration costs. Funds from the account may also be appropriated to reimburse local governments for costs associated with implementing criminal justice legislation including chapter 338, Laws of 1997. During the 2003-2005 biennium, funds from the account may also be used for costs associated with providing grants to local governments in accordance with chapter 338, Laws of 1997, funding drug offender treatment services in accordance with RCW 70.96A.350, maintenance and operating costs of the Washington association of sheriffs and police chiefs jail reporting system, maintenance and operating costs of the juvenile rehabilitation administration's client activity tracking system, civil indigent legal representation, multijurisdictional narcotics task forces, and grants to community networks under chapter 70.190 RCW by the family policy council. [2004 c 276 § 912; 2003 1st sp.s. c 25 § 930; 2002 c 371 § 920. Prior: 2001 2nd sp.s. c 7 § 920; 2001 c 168 § 3; 2000 2nd sp.s. c 1 §

917; 1999 c 309 § 922; 1998 c 346 § 909; prior: 1997 c 451 § 2; 1997 c 338 § 69; 1997 c 149 § 912; 1995 2nd sp.s. c 18 § 919; 1994 sp.s. c 7 § 910; 1989 c 271 § 401.]

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

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

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—2001 c 168: See note following RCW 69.50.505.

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Construction—Severability—Effective date—1998 c 346: See notes following RCW 50.24.014.

Effective date—1997 c 451: See note following RCW 66.24.290.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Severability—Effective date—1997 c 149: See notes following RCW 43.08.250.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

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

Captions not law—1989 c 271: "Part, subpart, and section headings and the index as used in this act do not constitute any part of the law." [1989 c 271 § 605.]

Severability—1989 c 271: See note following RCW 9.94A.510.

69.50.525 Diversion prevention and control—Report. (a) As used in this section, "diversion" means the transfer of any controlled substance from a licit to an illicit channel of distribution or use.

(b) The department shall regularly prepare and make available to other state regulatory, licensing, and law enforcement agencies a report on the patterns and trends of actual distribution, diversion, and abuse of controlled substances.

(c) The department shall enter into written agreements with local, state, and federal agencies for the purpose of improving identification of sources of diversion and to improve enforcement of and compliance with this chapter and other laws and regulations pertaining to unlawful conduct involving controlled substances. An agreement must specify the roles and responsibilities of each agency that has information or authority to identify, prevent, and control drug diversion and drug abuse. The department shall convene periodic meetings to coordinate a state diversion prevention and control program. The department shall arrange for cooperation and exchange of information among agencies and with neighboring states and the federal government. [1998 c 245 § 109; 1993 c 187 § 20.]

ARTICLE VI MISCELLANEOUS

69.50.601 Pending proceedings. (a) Prosecution for any violation of law occurring prior to May 21, 1971 is not

affected or abated by this chapter. If the offense being prosecuted is similar to one set out in Article IV of this chapter, then the penalties under Article IV apply if they are less than those under prior law.

(b) Civil seizures or forfeitures and injunctive proceedings commenced prior to May 21, 1971 are not affected by this chapter.

(c) All administrative proceedings pending under prior laws which are superseded by this chapter shall be continued and brought to a final determination in accord with the laws and rules in effect prior to May 21, 1971. Any substance controlled under prior law which is not listed within Schedules I through V, is automatically controlled without further proceedings and shall be listed in the appropriate schedule.

(d) The state board of pharmacy shall initially permit persons to register who own or operate any establishment engaged in the manufacture, distribution, or dispensing of any controlled substance prior to May 21, 1971 and who are registered or licensed by the state.

(e) This chapter applies to violations of law, seizures and forfeiture, injunctive proceedings, administrative proceedings and investigations which occur following May 21, 1971. [1971 ex.s. c 308 § 69.50.601.]

69.50.602 Continuation of rules. Any orders and rules promulgated under any law affected by this chapter and in effect on May 21, 1971 and not in conflict with it continue in effect until modified, superseded or repealed. [1971 ex.s. c 308 § 69.50.602.]

69.50.603 Uniformity of interpretation. This chapter shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this chapter among those states which enact it. [1971 ex.s. c 308 § 69.50.603.]

69.50.604 Short title. This chapter may be cited as the Uniform Controlled Substances Act. [1971 ex.s. c 308 § 69.50.604.]

69.50.605 Severability—1971 ex.s. c 308. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1971 ex.s. c 308 § 69.50.605.]

69.50.606 Repealers. The laws specified below are repealed except with respect to rights and duties which matured, penalties which were incurred and proceedings which were begun before the effective date of this act:

(1) Section 2072, Code of 1881, section 418, chapter 249, Laws of 1909, section 4, chapter 205, Laws of 1963 and RCW 9.91.030;

(2) Section 69.33.220, chapter 27, Laws of 1959, section 7, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.220;

(3) Sections 69.33.230 through 69.33.280, chapter 27, Laws of 1959 and RCW 69.33.230 through 69.33.280;

(2004 Ed.)

(4) Section 69.33.290, chapter 27, Laws of 1959, section 1, chapter 97, Laws of 1959 and RCW 69.33.290;

(5) Section 69.33.300, chapter 27, Laws of 1959, section 8, chapter 256, Laws of 1969 ex. sess. and RCW 69.33.300;

(6) Sections 69.33.310 through 69.33.400, chapter 27, Laws of 1959 and RCW 69.33.310 through 69.33.400;

(7) Section 69.33.410, chapter 27, Laws of 1959, section 20, chapter 38, Laws of 1963 and RCW 69.33.410;

(8) Sections 69.33.420 through 69.33.440, 69.33.900 through 69.33.950, chapter 27, Laws of 1959 and RCW 69.33.420 through 69.33.440, 69.33.900 through 69.33.950;

(9) Section 255, chapter 249, Laws of 1909 and RCW 69.40.040;

(10) Section 1, chapter 6, Laws of 1939, section 1, chapter 29, Laws of 1939, section 1, chapter 57, Laws of 1945, section 1, chapter 24, Laws of 1955, section 1, chapter 49, Laws of 1961, section 1, chapter 71, Laws of 1967, section 9, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.060;

(11) Section 1, chapter 23, Laws of 1955, section 2, chapter 49, Laws of 1961, section 2, chapter 71, Laws of 1967 and RCW 69.40.061;

(12) Section 21, chapter 38, Laws of 1963 and RCW 69.40.063;

(13) Section 2, chapter 6, Laws of 1939, section 23, chapter 38, Laws of 1963, section 10, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.070;

(14) Section 12, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.075;

(15) Section 1, chapter 205, Laws of 1963 and RCW 69.40.080;

(16) Section 2, chapter 205, Laws of 1963 and RCW 69.40.090;

(17) Section 3, chapter 205, Laws of 1963 and RCW 69.40.100;

(18) Section 11, chapter 256, Laws of 1969 ex. sess. and RCW 69.40.110;

(19) Section 1, chapter 33, Laws of 1970 ex. sess. and RCW 69.40.120; and

(20) Section 1, chapter 80, Laws of 1970 ex. sess. [1971 ex.s. c 308 § 69.50.606.]

69.50.607 Effective date—1971 ex.s. c 308. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1971 ex.s. c 308 § 69.50.607.]

69.50.608 State preemption. The state of Washington fully occupies and preempts the entire field of setting penalties for violations of the controlled substances act. Cities, towns, and counties or other municipalities may enact only those laws and ordinances relating to controlled substances that are consistent with this chapter. Such local ordinances shall have the same penalties as provided for by state law. Local laws and ordinances that are inconsistent with the requirements of state law shall not be enacted and are preempted and repealed, regardless of the nature of the code, charter, or home rule status of the city, town, county, or municipality. [1989 c 271 § 601.]

69.50.609 Captions not law—1993 c 187. Section captions as used in this act constitute no part of the law. [1993 c 187 § 23.]

Chapter 69.51 RCW

CONTROLLED SUBSTANCES THERAPEUTIC RESEARCH ACT

Sections

| | |
|-----------|--|
| 69.51.010 | Short title. |
| 69.51.020 | Legislative purpose. |
| 69.51.030 | Definitions. |
| 69.51.040 | Controlled substances therapeutic research program. |
| 69.51.050 | Patient qualification review committee. |
| 69.51.060 | Sources and distribution of marijuana. |
| 69.51.080 | Cannabis and related products considered Schedule II substances. |

69.51.010 Short title. This chapter may be cited as the Controlled Substances Therapeutic Research Act. [1979 c 136 § 1.]

69.51.020 Legislative purpose. The legislature finds that recent research has shown that the use of marijuana may alleviate the nausea and ill effects of cancer chemotherapy and radiology, and, additionally, may alleviate the ill effects of glaucoma. The legislature further finds that there is a need for further research and experimentation regarding the use of marijuana under strictly controlled circumstances. It is for this purpose that the Controlled Substances Therapeutic Research Act is hereby enacted. [1979 c 136 § 2.]

69.51.030 Definitions. As used in this chapter:

- (1) "Board" means the state board of pharmacy;
- (2) "Department" means the department of health.
- (3) "Marijuana" means all parts of the plant of the genus *Cannabis* L., whether growing or not, the seeds thereof, the resin extracted from any part of the plant, and every compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin; and
- (4) "Practitioner" means a physician licensed pursuant to chapter 18.71 or 18.57 RCW. [1989 1st ex.s. c 9 § 438; 1979 c 136 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.51.040 Controlled substances therapeutic research program. (1) There is established in the board the controlled substances therapeutic research program. The program shall be administered by the department. The board shall promulgate rules necessary for the proper administration of the Controlled Substances Therapeutic Research Act. In such promulgation, the board shall take into consideration those pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse.

(2) Except as provided in RCW 69.51.050(4), the controlled substances therapeutic research program shall be limited to cancer chemotherapy and radiology patients and glaucoma patients, who are certified to the patient qualification review committee by a practitioner as being involved in a life-threatening or sense-threatening situation. No patient

may be admitted to the controlled substances therapeutic research program without full disclosure by the practitioner of the experimental nature of this program and of the possible risks and side effects of the proposed treatment in accordance with the informed consent provisions of chapter 7.70 RCW.

(3) The board shall provide by rule for a program of registration with the department of bona fide controlled substance therapeutic research projects. [1989 1st ex.s. c 9 § 439; 1979 c 136 § 4.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

69.51.050 Patient qualification review committee. (1) The board shall appoint a patient qualification review committee to serve at its pleasure. The patient qualification review committee shall be comprised of:

(a) A physician licensed to practice medicine in Washington state and specializing in the practice of ophthalmology;

(b) A physician licensed to practice medicine in Washington state and specializing in the subspecialty of medical oncology;

(c) A physician licensed to practice medicine in Washington state and specializing in the practice of psychiatry; and

(d) A physician licensed to practice medicine in Washington state and specializing in the practice of radiology.

Members of the committee shall be compensated at the rate of fifty dollars per day for each day spent in the performance of their official duties, and shall receive reimbursement for their travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) The patient qualification review committee shall review all applicants for the controlled substance therapeutic research program and their licensed practitioners and certify their participation in the program.

(3) The patient qualification review committee and the board shall insure that the privacy of individuals who participate in the controlled substance therapeutic research program is protected by withholding from all persons not connected with the conduct of the research the names and other identifying characteristics of such individuals. Persons authorized to engage in research under the controlled substance therapeutic research program may not be compelled in any civil, criminal, administrative, legislative, or other proceeding to identify the individuals who are the subjects of research for which the authorization was granted, except to the extent necessary to permit the board to determine whether the research is being conducted in accordance with the authorization.

(4) The patient qualification review committee may include other disease groups for participation in the controlled substances therapeutic research program after pertinent medical data have been presented by a practitioner to both the committee and the board, and after approval for such participation has been granted pursuant to pertinent rules promulgated by the United States drug enforcement agency, the food and drug administration, and the national institute on drug abuse. [1979 c 136 § 5.]

69.51.060 Sources and distribution of marijuana. (1) The board shall obtain marijuana through whatever means it deems most appropriate and consistent with regulations pro-

mulgated by the United States food and drug administration, the drug enforcement agency, and the national institute on drug abuse, and pursuant to the provisions of this chapter.

(2) The board may use marijuana which has been confiscated by local or state law enforcement agencies and has been determined to be free from contamination.

(3) The board shall distribute the analyzed marijuana to approved practitioners and/or institutions in accordance with rules promulgated by the board. [1979 c 136 § 6.]

69.51.080 Cannabis and related products considered Schedule II substances. (1) The enumeration of tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols in RCW 69.50.204 as a Schedule I controlled substance does not apply to the use of cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols by certified patients pursuant to the provisions of this chapter.

(2) Cannabis, tetrahydrocannabinols, or a chemical derivative of tetrahydrocannabinols shall be considered Schedule II substances as enumerated in RCW 69.50.206 only for the purposes enumerated in this chapter. [1979 c 136 § 8.]

**Chapter 69.51A RCW
MEDICAL MARIJUANA**

Sections

| | |
|------------|--|
| 69.51A.005 | Purpose and intent. |
| 69.51A.010 | Definitions. |
| 69.51A.020 | Construction of chapter. |
| 69.51A.030 | Physicians excepted from state's criminal laws. |
| 69.51A.040 | Qualifying patients' affirmative defense. |
| 69.51A.050 | Medical marijuana, lawful possession—State not liable. |
| 69.51A.060 | Crimes—Limitations of chapter. |
| 69.51A.070 | Addition of medical conditions. |
| 69.51A.900 | Short title—1999 c 2. |
| 69.51A.901 | Severability—1999 c 2. |
| 69.51A.902 | Captions not law—1999 c 2. |

69.51A.005 Purpose and intent. The people of Washington state find that some patients with terminal or debilitating illnesses, under their physician's care, may benefit from the medical use of marijuana. Some of the illnesses for which marijuana appears to be beneficial include chemotherapy-related nausea and vomiting in cancer patients; AIDS wasting syndrome; severe muscle spasms associated with multiple sclerosis and other spasticity disorders; epilepsy; acute or chronic glaucoma; and some forms of intractable pain.

The people find that humanitarian compassion necessitates that the decision to authorize the medical use of marijuana by patients with terminal or debilitating illnesses is a personal, individual decision, based upon their physician's professional medical judgment and discretion.

Therefore, the people of the state of Washington intend that:

Qualifying patients with terminal or debilitating illnesses who, in the judgment of their physicians, would benefit from the medical use of marijuana, shall not be found guilty of a crime under state law for their possession and limited use of marijuana;

Persons who act as primary caregivers to such patients shall also not be found guilty of a crime under state law for assisting with the medical use of marijuana; and

Physicians also be excepted from liability and prosecution for the authorization of marijuana use to qualifying patients for whom, in the physician's professional judgment, medical marijuana may prove beneficial. [1999 c 2 § 2 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Medical use of marijuana" means the production, possession, or administration of marijuana, as defined in RCW 69.50.101(q), for the exclusive benefit of a qualifying patient in the treatment of his or her terminal or debilitating illness.

(2) "Primary caregiver" means a person who:

(a) Is eighteen years of age or older;

(b) Is responsible for the housing, health, or care of the patient;

(c) Has been designated in writing by a patient to perform the duties of primary caregiver under this chapter.

(3) "Qualifying patient" means a person who:

(a) Is a patient of a physician licensed under chapter 18.71 or 18.57 RCW;

(b) Has been diagnosed by that physician as having a terminal or debilitating medical condition;

(c) Is a resident of the state of Washington at the time of such diagnosis;

(d) Has been advised by that physician about the risks and benefits of the medical use of marijuana; and

(e) Has been advised by that physician that they may benefit from the medical use of marijuana.

(4) "Terminal or debilitating medical condition" means:

(a) Cancer, human immunodeficiency virus (HIV), multiple sclerosis, epilepsy or other seizure disorder, or spasticity disorders; or

(b) Intractable pain, limited for the purpose of this chapter to mean pain unrelieved by standard medical treatments and medications; or

(c) Glaucoma, either acute or chronic, limited for the purpose of this chapter to mean increased intraocular pressure unrelieved by standard treatments and medications; or

(d) Any other medical condition duly approved by the Washington state medical quality assurance board [commission] as directed in this chapter.

(5) "Valid documentation" means:

(a) A statement signed by a qualifying patient's physician, or a copy of the qualifying patient's pertinent medical records, which states that, in the physician's professional opinion, the potential benefits of the medical use of marijuana would likely outweigh the health risks for a particular qualifying patient; and

(b) Proof of identity such as a Washington state driver's license or identicard, as defined in RCW 46.20.035. [1999 c 2 § 6 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.020 Construction of chapter. Nothing in this chapter shall be construed to supersede Washington state law prohibiting the acquisition, possession, manufacture, sale, or

use of marijuana for nonmedical purposes. [1999 c 2 § 3 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.030 Physicians excepted from state's criminal laws. A physician licensed under chapter 18.71 or 18.57 RCW shall be excepted from the state's criminal laws and shall not be penalized in any manner, or denied any right or privilege, for:

(1) Advising a qualifying patient about the risks and benefits of medical use of marijuana or that the qualifying patient may benefit from the medical use of marijuana where such use is within a professional standard of care or in the individual physician's medical judgment; or

(2) Providing a qualifying patient with valid documentation, based upon the physician's assessment of the qualifying patient's medical history and current medical condition, that the potential benefits of the medical use of marijuana would likely outweigh the health risks for the particular qualifying patient. [1999 c 2 § 4 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.040 Qualifying patients' affirmative defense.

(1) If charged with a violation of state law relating to marijuana, any qualifying patient who is engaged in the medical use of marijuana, or any designated primary caregiver who assists a qualifying patient in the medical use of marijuana, will be deemed to have established an affirmative defense to such charges by proof of his or her compliance with the requirements provided in this chapter. Any person meeting the requirements appropriate to his or her status under this chapter shall be considered to have engaged in activities permitted by this chapter and shall not be penalized in any manner, or denied any right or privilege, for such actions.

(2) The qualifying patient, if eighteen years of age or older, shall:

(a) Meet all criteria for status as a qualifying patient;

(b) Possess no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply; and

(c) Present his or her valid documentation to any law enforcement official who questions the patient regarding his or her medical use of marijuana.

(3) The qualifying patient, if under eighteen years of age, shall comply with subsection (2)(a) and (c) of this section. However, any possession under subsection (2)(b) of this section, as well as any production, acquisition, and decision as to dosage and frequency of use, shall be the responsibility of the parent or legal guardian of the qualifying patient.

(4) The designated primary caregiver shall:

(a) Meet all criteria for status as a primary caregiver to a qualifying patient;

(b) Possess, in combination with and as an agent for the qualifying patient, no more marijuana than is necessary for the patient's personal, medical use, not exceeding the amount necessary for a sixty-day supply;

(c) Present a copy of the qualifying patient's valid documentation required by this chapter, as well as evidence of designation to act as primary caregiver by the patient, to any law enforcement official requesting such information;

(d) Be prohibited from consuming marijuana obtained for the personal, medical use of the patient for whom the individual is acting as primary caregiver; and

(e) Be the primary caregiver to only one patient at any one time. [1999 c 2 § 5 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.050 Medical marijuana, lawful possession—State not liable. (1) The lawful possession or manufacture of medical marijuana as authorized by this chapter shall not result in the forfeiture or seizure of any property.

(2) No person shall be prosecuted for constructive possession, conspiracy, or any other criminal offense solely for being in the presence or vicinity of medical marijuana or its use as authorized by this chapter.

(3) The state shall not be held liable for any deleterious outcomes from the medical use of marijuana by any qualifying patient. [1999 c 2 § 7 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.060 Crimes—Limitations of chapter. (1) It shall be a misdemeanor to use or display medical marijuana in a manner or place which is open to the view of the general public.

(2) Nothing in this chapter requires any health insurance provider to be liable for any claim for reimbursement for the medical use of marijuana.

(3) Nothing in this chapter requires any physician to authorize the use of medical marijuana for a patient.

(4) Nothing in this chapter requires any accommodation of any medical use of marijuana in any place of employment, in any school bus or on any school grounds, or in any youth center.

(5) It is a class C felony to fraudulently produce any record purporting to be, or tamper with the content of any record for the purpose of having it accepted as, valid documentation under RCW 69.51A.010(5)(a).

(6) No person shall be entitled to claim the affirmative defense provided in RCW 69.51A.040 for engaging in the medical use of marijuana in a way that endangers the health or well-being of any person through the use of a motorized vehicle on a street, road, or highway. [1999 c 2 § 8 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.070 Addition of medical conditions. The Washington state medical quality assurance board [commission], or other appropriate agency as designated by the governor, shall accept for consideration petitions submitted by physicians or patients to add terminal or debilitating conditions to those included in this chapter. In considering such petitions, the Washington state medical quality assurance board [commission] shall include public notice of, and an opportunity to comment in a public hearing upon, such petitions. The Washington state medical quality assurance board [commission] shall, after hearing, approve or deny such petitions within one hundred eighty days of submission. The approval or denial of such a petition shall be considered a final agency action, subject to judicial review. [1999 c 2 § 9 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.900 Short title—1999 c 2. This chapter may be known and cited as the Washington state medical use of marijuana act. [1999 c 2 § 1 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.901 Severability—1999 c 2. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1999 c 2 § 10 (Initiative Measure No. 692, approved November 3, 1998).]

69.51A.902 Captions not law—1999 c 2. Captions used in this chapter are not any part of the law. [1999 c 2 § 11 (Initiative Measure No. 692, approved November 3, 1998).]

Chapter 69.52 RCW

IMITATION CONTROLLED SUBSTANCES

Sections

| | |
|-----------|---|
| 69.52.010 | Legislative findings. |
| 69.52.020 | Definitions. |
| 69.52.030 | Violations—Exceptions. |
| 69.52.040 | Seizure of contraband. |
| 69.52.045 | Seizure at rental premises—Notification of landlord. |
| 69.52.050 | Injunctive action by attorney general authorized. |
| 69.52.060 | Injunctive or other legal action by manufacturer of controlled substances authorized. |
| 69.52.070 | Violations—Juvenile driving privileges. |
| 69.52.900 | Severability—1982 c 171. |
| 69.52.901 | Effective date—1982 c 171. |

Drug nuisances—Injunctions: Chapter 7.43 RCW.

69.52.010 Legislative findings. The legislature finds that imitation controlled substances are being manufactured to imitate the appearance of the dosage units of controlled substances for sale to school age youths and others to facilitate the fraudulent sale of controlled substances. The legislature further finds that manufacturers are endeavoring to profit from the manufacture of these imitation controlled substances while avoiding liability by accurately labeling the containers or packaging which contain these imitation controlled substances. The close similarity of appearance between dosage units of imitation controlled substances and controlled substances is indicative of a deliberate and wilful attempt to profit by deception without regard to the tragic human consequences. The use of imitation controlled substances is responsible for a growing number of injuries and deaths, and the legislature hereby declares that this chapter is necessary for the protection and preservation of the public health and safety. [1982 c 171 § 2.]

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

(1) "Controlled substance" means a substance as that term is defined in chapter 69.50 RCW.

(2) "Distribute" means the actual or constructive transfer (or attempted transfer) or delivery or dispensing to another of an imitation controlled substance.

(3) "Imitation controlled substance" means a substance that is not a controlled substance, but which by appearance or

(2004 Ed.)

representation would lead a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

(a) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;

(b) Statements made to the recipient that the substance may be resold for inordinate profit; or

(c) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(4) "Manufacture" means the production, preparation, compounding, processing, encapsulating, packaging or repackaging, or labeling or relabeling of an imitation controlled substance. [1982 c 171 § 3.]

69.52.030 Violations—Exceptions. (1) It is unlawful for any person to manufacture, distribute, or possess with intent to distribute, an imitation controlled substance. Any person who violates this subsection shall, upon conviction, be guilty of a class C felony.

(2) Any person eighteen years of age or over who violates subsection (1) of this section by distributing an imitation controlled substance to a person under eighteen years of age is guilty of a class B felony.

(3) It is unlawful for any person to cause to be placed in any newspaper, magazine, handbill, or other publication, or to post or distribute in any public place, any advertisement or solicitation offering for sale imitation controlled substances. Any person who violates this subsection is guilty of a class C felony.

(4) No civil or criminal liability shall be imposed by virtue of this chapter on any person registered under the Uniform Controlled Substances Act pursuant to RCW 69.50.301 or 69.50.303 who manufactures, distributes, or possesses an imitation controlled substance for use as a placebo or other use by a registered practitioner, as defined in *RCW 69.50.101(t), in the course of professional practice or research.

(5) No prosecution under this chapter shall be dismissed solely by reason of the fact that the dosage units were contained in a bottle or other container with a label accurately describing the ingredients of the imitation controlled substance dosage units. The good faith of the defendant shall be an issue of fact for the trier of fact. [1983 1st ex.s. c 4 § 5; 1982 c 171 § 4.]

***Reviser's note:** The reference to RCW 69.50.101(t) is erroneous. "Practitioner" is defined in (w) of that section.

Severability—1983 1st ex.s. c 4: See note following RCW 9A.48.070.

69.52.040 Seizure of contraband. Imitation controlled substances shall be subject to seizure, forfeiture, and disposition in the same manner as are controlled substances under RCW 69.50.505. [1982 c 171 § 5.]

69.52.045 Seizure at rental premises—Notification of landlord. Whenever an imitation controlled substance which is manufactured, distributed, or possessed in violation of this chapter is seized at rental premises, the law enforce-

ment agency shall make a reasonable attempt to discover the identity of the landlord and shall notify the landlord in writing, at the last address listed in the property tax records and at any other address known to the law enforcement agency, of the seizure and the location of the seizure. [1988 c 150 § 10.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

69.52.050 Injunctive action by attorney general authorized. The attorney general is authorized to apply for injunctive action against a manufacturer or distributor of imitation controlled substances in this state. [1982 c 171 § 6.]

69.52.060 Injunctive or other legal action by manufacturer of controlled substances authorized. Any manufacturer of controlled substances licensed or registered in a state requiring such licensure or registration, may bring injunctive or other action against a manufacturer or distributor of imitation controlled substances in this state. [1982 c 171 § 7.]

69.52.070 Violations—Juvenile driving privileges. (1) If a juvenile thirteen years of age or older and under the age of twenty-one is found by a court to have committed any offense that is a violation of this chapter, the court shall notify the department of licensing within twenty-four hours after entry of the judgment.

(2) Except as otherwise provided in subsection (3) of this section, upon petition of a juvenile whose privilege to drive has been revoked pursuant to RCW 46.20.265, the court may at any time the court deems appropriate notify the department of licensing to reinstate the juvenile's privilege to drive.

(3) If the conviction is for the juvenile's first violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of ninety days after the date the juvenile turns sixteen or ninety days after the judgment was entered. If the conviction was for the juvenile's second or subsequent violation of this chapter or chapter 66.44, 69.41, or 69.50 RCW, the juvenile may not petition the court for reinstatement of the juvenile's privilege to drive revoked pursuant to RCW 46.20.265 until the later of the date the juvenile turns seventeen or one year after the date judgment was entered. [1989 c 271 § 121; 1988 c 148 § 6.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Legislative finding—Severability—1988 c 148: See notes following RCW 13.40.265.

69.52.900 Severability—1982 c 171. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1982 c 171 § 8.]

69.52.901 Effective date—1982 c 171. This act shall take effect on July 1, 1982. [1982 c 171 § 10.]

Chapter 69.53 RCW

USE OF BUILDINGS FOR UNLAWFUL DRUGS

Sections

| | |
|-----------|---|
| 69.53.010 | Unlawful use of building for drug purposes—Liability of owner or manager—Penalty. |
| 69.53.020 | Unlawful fortification of building for drug purposes—Penalty. |
| 69.53.030 | Unlawful use of fortified building—Penalty. |

69.53.010 Unlawful use of building for drug purposes—Liability of owner or manager—Penalty. (1) It is unlawful for any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, to knowingly rent, lease, or make available for use, with or without compensation, the building, room, space, or enclosure for the purpose of unlawfully manufacturing, delivering, selling, storing, or giving away any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) It shall be a defense for an owner, manager, or other person in control pursuant to subsection (1) of this section to, in good faith, notify a law enforcement agency of suspected drug activity pursuant to subsection (1) of this section, or to process an unlawful detainer action for drug-related activity against the tenant or occupant.

(3) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1988 c 150 § 13; 1987 c 458 § 7.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1987 c 458: See note following RCW 48.21.160.

69.53.020 Unlawful fortification of building for drug purposes—Penalty. (1) It is unlawful for any person who has under his or her management or control any building, room, space, or enclosure, either as an owner, lessee, agent, employee, or mortgagee, to knowingly allow the building, room, space, or enclosure to be fortified to suppress law enforcement entry in order to further the unlawful manufacture, delivery, sale, storage, or gift of any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) It shall be a defense for an owner, manager, or other person in control pursuant to subsection (1) of this section to, in good faith, notify a law enforcement agency of suspected drug activity pursuant to subsection (1) of this section, or to process an unlawful detainer action for drug-related activity against the tenant or occupant.

(3) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1988 c 150 § 14; 1987 c 458 § 8.]

Legislative findings—Severability—1988 c 150: See notes following RCW 59.18.130.

Severability—1987 c 458: See note following RCW 48.21.160.

69.53.030 Unlawful use of fortified building—Penalty. (1) It is unlawful for any person to use a building, room, space, or enclosure specifically designed to suppress law enforcement entry in order to unlawfully manufacture,

deliver, sell, store, or give away any controlled substance under chapter 69.50 RCW, legend drug under chapter 69.41 RCW, or imitation controlled substance under chapter 69.52 RCW.

(2) A violation of this section is a class C felony punishable under chapter 9A.20 RCW. [1987 c 458 § 9.]

Severability—1987 c 458: See note following RCW 48.21.160.

Chapter 69.55 RCW

AMMONIA

(Formerly: Anhydrous ammonia)

Sections

| | |
|-----------|------------------------------|
| 69.55.010 | Theft of ammonia. |
| 69.55.020 | Unlawful storage of ammonia. |
| 69.55.030 | Damages—Liability. |

69.55.010 Theft of ammonia. (1) A person who, with intent to deprive the owner or owner's agent, wrongfully obtains pressurized ammonia gas or pressurized ammonia gas solution, is guilty of theft of ammonia.

(2) Theft of ammonia is a class C felony. [2002 c 133 § 1; 2000 c 225 § 1.]

Effective date—2002 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 26, 2002]." [2002 c 133 § 5.]

Severability—2000 c 225: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 225 § 8.]

69.55.020 Unlawful storage of ammonia. A person is guilty of the crime of unlawful storage of ammonia if the person possesses, transports, or delivers pressurized ammonia gas or pressurized ammonia gas solution in a container that (1) is not approved by the United States department of transportation to hold ammonia, or (2) was not constructed to meet state and federal industrial health and safety standards for holding ammonia. Violation of this section is a class C felony.

This section does not apply to public employees or private contractors authorized to clean up and dispose of hazardous waste or toxic substances under chapter 70.105 or 70.105D RCW or to solid waste haulers and their employees who unknowingly possess, transport, or deliver pressurized ammonia gas or pressurized ammonia gas solution during the course of the performance of their duties. [2002 c 133 § 2; 2000 c 225 § 2.]

Effective date—2002 c 133: See note following RCW 69.55.010.

Severability—2000 c 225: See note following RCW 69.55.010.

69.55.030 Damages—Liability. Any damages arising out of the unlawful possession of, storage of, or tampering with pressurized ammonia gas or pressurized ammonia gas solution, or pressurized ammonia gas equipment or pressurized ammonia gas solution equipment, shall be the sole responsibility of the unlawful possessor, storer, or tamperer. In no case shall liability for damages arising out of the unlawful possession of, storage of, or tampering with pressurized ammonia gas or pressurized ammonia gas solution, or pressurized ammonia gas equipment or pressurized ammonia gas

(2004 Ed.)

solution equipment, extend to the lawful owner, installer, maintainer, designer, manufacturer, possessor, or seller of the pressurized ammonia gas or pressurized ammonia gas solution, or pressurized ammonia gas equipment or pressurized ammonia gas solution equipment, unless such damages arise out of the owner, installer, maintainer, designer, manufacturer, possessor, or seller's acts or omissions that constitute negligent misconduct to abide by the laws regarding pressurized ammonia gas or pressurized ammonia gas solution possession and storage. [2002 c 133 § 3; 2000 c 225 § 3.]

Effective date—2002 c 133: See note following RCW 69.55.010.

Severability—2000 c 225: See note following RCW 69.55.010.

Chapter 69.60 RCW

OVER-THE-COUNTER MEDICATIONS

Sections

| | |
|-----------|---|
| 69.60.010 | Legislative findings. |
| 69.60.020 | Definitions. |
| 69.60.030 | Identification required. |
| 69.60.040 | Imprint information—Publication—Availability. |
| 69.60.050 | Noncompliance—Contraband—Fine. |
| 69.60.060 | Rules. |
| 69.60.070 | Imprinting requirements—Retailers and wholesalers. |
| 69.60.080 | Exemptions—Application by manufacturer. |
| 69.60.090 | Implementation of federal system—Termination of state system. |
| 69.60.900 | Severability—1993 c 135. |
| 69.60.901 | Effective date—1993 c 135. |

69.60.010 Legislative findings. The legislature of the state of Washington finds that:

(1) Accidental and purposeful ingestions of solid medication forms continue to be the most frequent cause of poisoning in our state;

(2) Modern treatment is dependent upon knowing the ingredients of the ingestant;

(3) The imprinting of identifying characteristics on all tablets, capsules, and caplets of prescription medication forms, both trade name products and generic products, has been extremely beneficial in our state and was accomplished at trivial cost to the manufacturers and consumers;

(4) Although over-the-counter medications usually constitute a lower order of risk to ingestees, treatment after overdose is equally dependent upon knowing the ingredients involved, but there is no coding index uniformly used by this class of medication;

(5) Approximately seventy percent of over-the-counter medications in solid form already have some type of an identifier imprinted on their surfaces;

(6) While particular efforts are being instituted to prevent recurrent tampering with over-the-counter medications, the added benefit of rapid and prompt identification of all possible contaminated products, including over-the-counter medications, would make for a significant improvement in planning for appropriate tracking and monitoring programs;

(7) At the same time, health care professionals serving the elderly find it especially advantageous to be able to identify and confirm the ingredients of their multiple medications, including over-the-counter products, as are often consumed by such patients;

(8) The legislature supports and encourages efforts that are being made to establish a national, legally enforceable

system governing the imprinting of solid dosage form over-the-counter medications, which system is consistent with the requirements of this chapter. [1989 c 247 § 1.]

69.60.020 Definitions. The terms defined in this section shall have the meanings indicated when used in this chapter.

(1) "Solid dosage form" means capsules or tablets or similar over-the-counter medication products intended for administration and which could be ingested orally.

(2) "Over-the-counter medication" means a drug that can be obtained without a prescription and is not restricted to use by prescribing practitioners. For purposes of this chapter, over-the-counter medication does not include vitamins.

(3) "Board" means the state board of pharmacy.

(4) "Purveyor" means any corporation, person, or other entity that offers over-the-counter medications for wholesale, retail, or other type of sale. [1989 c 247 § 3.]

69.60.030 Identification required. (1) No over-the-counter medication in solid dosage form may be manufactured or commercially distributed within this state unless it has clearly marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer or distributor of the medication: PROVIDED, HOWEVER, That an over-the-counter medication which has clearly marked or imprinted on it a distinctive logo, symbol, product name, letters, or other identifying mark, or which by its color, shape, or size together with a distinctive logo, symbol, product name, letters, or other mark is identifiable, shall be deemed in compliance with the provisions of this chapter.

(2) No manufacturer may sell any over-the-counter medication in solid dosage form contained within a bottle, vial, carton, or other container, or in any way affixed or appended to or enclosed within a package of any kind designed or intended for delivery in such container or package to an ultimate consumer within this state unless such container or package has clearly and permanently marked or imprinted on it an individual symbol, number, company name, words, letters, marking, or national drug code number identifying the medication and the manufacturer, packer, or distributor of the medication. [1993 c 135 § 1; 1989 c 247 § 2.]

69.60.040 Imprint information—Publication—Availability. Each manufacturer shall publish and provide to the board printed material which will identify each current imprint used by the manufacturer and the board shall be notified of any change. This information shall be provided by the board to all pharmacies licensed in the state of Washington, poison control centers, and hospital emergency rooms. [1989 c 247 § 4.]

69.60.050 Noncompliance—Contraband—Fine. (1) Any over-the-counter medication prepared or manufactured or offered for sale in violation of this chapter or implementing rules shall be contraband and subject to seizure, in the same manner as contraband legend drugs under RCW 69.41.060.

(2) A purveyor who fails to comply with this chapter after one notice of noncompliance by the board is subject to a one thousand dollar civil fine for each instance of noncompliance. [1989 c 247 § 5.]

69.60.060 Rules. The board shall have authority to promulgate rules for the enforcement and implementation of this chapter. [1989 c 247 § 6.]

69.60.070 Imprinting requirements—Retailers and wholesalers. All over-the-counter medications manufactured in, received by, distributed to, or shipped to any retailer or wholesaler in this state after January 1, 1994, shall meet the requirements of this chapter. No over-the-counter medication may be sold to a consumer in this state after January 1, 1995, unless such over-the-counter medication complies with the imprinting requirements of this chapter. [1993 c 135 § 2; 1989 c 247 § 7.]

69.60.080 Exemptions—Application by manufacturer. The board, upon application of a manufacturer, may exempt an over-the-counter drug from the requirements of chapter 69.60 RCW on the grounds that imprinting is infeasible because of size, texture, or other unique characteristics. [1989 c 247 § 8.]

69.60.090 Implementation of federal system—Termination of state system. Before January 1, 1994, the board of pharmacy will consult with the state toxicologist to determine whether the federal government has established a legally enforceable system that is substantially equivalent to the requirements of this chapter that govern the imprinting of solid dosage form over-the-counter medication. To be substantially equivalent, the effective dates for implementation of the federal system for imprinting solid dosage form over-the-counter medication must be the same or earlier than the dates of implementation set out in the state system for imprinting solid dosage form over-the-counter medication. If the board determines that the federal system for imprinting solid dosage form over-the-counter medication is substantially equivalent to the state system for imprinting solid dosage form over-the-counter medication, this chapter will cease to exist on January 1, 1994. If the board determines that the federal system is substantially equivalent, except that the federal dates for implementation are later than the Washington state dates, this chapter will cease to exist when the federal system is implemented. [1993 c 135 § 3; 1989 c 247 § 9.]

69.60.900 Severability—1993 c 135. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 135 § 4.]

69.60.901 Effective date—1993 c 135. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993]. [1993 c 135 § 5.]

Chapter 69.80 RCW

FOOD DONATION AND
DISTRIBUTION—LIABILITY

Sections

| | |
|-----------|--|
| 69.80.010 | Purpose. |
| 69.80.020 | Definitions. |
| 69.80.031 | Good samaritan food donation act—Definitions—Collecting, distributing, gleaning—Liability. |
| 69.80.040 | Information and referral service for food donation program. |
| 69.80.050 | Inspection of donated food by state and local agencies—Variance. |
| 69.80.060 | Safe receipt, preparation, and handling of donated food—Rules—Educational materials. |
| 69.80.900 | Construction. |

69.80.010 Purpose. The purpose of this chapter is to promote the free distribution of food to needy persons, prevent waste of food products, and provide liability protection for persons and organizations donating or distributing such food products. [1983 c 241 § 1.]

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

(1) "Distributing organization" means a charitable nonprofit organization under section 501(c) of the federal internal revenue code which distributes food free of charge and includes any nonprofit organization that distributes food free of charge to other nonprofit organizations or to the public.

(2) "Donor" means a person, corporation, association, or other organization which donates food to a distributing organization. "Donor" includes, but is not limited to, farmers, processors, distributors, wholesalers, and retailers of food. "Donor" also includes persons who harvest agricultural crops or perishable foods which have been donated by the owner to a distributing organization.

(3) "Food" means food products for human consumption as defined in RCW 69.04.008. [1983 c 241 § 2.]

69.80.031 Good samaritan food donation act—Definitions—Collecting, distributing, gleaning—Liability. (1) This section may be cited as the "good samaritan food donation act."

(2) As used in this section:

(a) "Apparently fit grocery product" means a grocery product that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(b) "Apparently wholesome food" means food that meets all quality and labeling standards imposed by federal, state, and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

(c) "Donate" means to give without requiring anything of monetary value from the recipient, except that the term shall include giving by a nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(d) "Food" means a raw, cooked, processed, or prepared edible substance, ice, beverage, or ingredient used or intended for use in whole or in part for human consumption.

(e) "Gleaner" means a person who harvests for free distribution to the needy, or for donation to a nonprofit organization for ultimate distribution to the needy, an agricultural crop that has been donated by the owner.

(f) "Grocery product" means a nonfood grocery product, including a disposable paper or plastic product, household cleaning product, laundry detergent, cleaning product, or miscellaneous household item.

(g) "Gross negligence" means voluntary and conscious conduct by a person with knowledge, at the time of the conduct, that the conduct is likely to be harmful to the health or well-being of another person.

(h) "Intentional misconduct" means conduct by a person with knowledge, at the time of the conduct, that the conduct is harmful to the health or well-being of another person.

(i) "Nonprofit organization" means an incorporated or unincorporated entity that:

(i) Is operating for religious, charitable, or educational purposes; and

(ii) Does not provide net earnings to, or operate in any other manner that inures to the benefit of, any officer, employee, or shareholder of the entity.

(j) "Person" means an individual, corporation, partnership, organization, association, or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer, restaurant, caterer, farmer, and nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association, or governmental entity, the term includes an officer, director, partner, deacon, trustee, councilmember, or other elected or appointed individual responsible for the governance of the entity.

(3) A person or gleaner is not subject to civil or criminal liability arising from the nature, age, packaging, or condition of apparently wholesome food or an apparently fit grocery product that the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution to needy individuals, except that this subsection does not apply to an injury to or death of an ultimate user or recipient of the food or grocery product that results from an act or omission of the donor constituting gross negligence or intentional misconduct.

(4) A person who allows the collection or gleaning of donations on property owned or occupied by the person by gleaners, or paid or unpaid representatives of a nonprofit organization, for ultimate distribution to needy individuals is not subject to civil or criminal liability that arises due to the injury or death of the gleaner or representative, except that this subsection does not apply to an injury or death that results from an act or omission of the person constituting gross negligence or intentional misconduct.

(5) If some or all of the donated food and grocery products do not meet all quality and labeling standards imposed by federal, state, and local laws and regulations, the person or gleaner who donates the food and grocery products is not subject to civil or criminal liability in accordance with this section if the nonprofit organization that receives the donated food or grocery products:

(a) Is informed by the donor of the distressed or defective condition of the donated food or grocery products;

(b) Agrees to recondition the donated food or grocery products to comply with all the quality and labeling standards prior to distribution; and

(c) Is knowledgeable of the standards to properly recondition the donated food or grocery product.

(6) This section may not be construed to create liability. [1994 c 299 § 36.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

69.80.040 Information and referral service for food donation program. The department of agriculture shall maintain an information and referral service for persons and organizations that have notified the department of their desire to participate in the food donation program under this chapter. [1983 c 241 § 4.]

69.80.050 Inspection of donated food by state and local agencies—Variance. (1) Appropriate state and local agencies are authorized to inspect donated food items for wholesomeness and may establish procedures for the handling of food items.

(2) To facilitate the free distribution of food to needy persons, the local health officer, upon request from either a donor or distributing organization, may grant a variance to chapter 246-215 WAC covering physical facilities, equipment standards, and food source requirements when no known or expected health hazard would exist as a result of the action. [2002 c 217 § 3; 1983 c 241 § 6.]

Effective date—2002 c 217 § 3: "Section 3 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 217 § 4.]

Finding—Purpose—2002 c 217: "The legislature finds and declares that the distribution of food by donors to charitable organizations, such as shelters, churches, and fraternal organizations, serving communal meals to needy individuals can be done safely consistent with rules and recommended health and safety guidelines. The establishment of recommended donor guidelines by the department of health can educate the public about the preparation and handling of food donated to charitable organizations for distribution to homeless and other needy people. The purpose of this act is to authorize and facilitate the donation of food to needy persons in accordance with health and safety guidelines and rules, to assure that the donated food will not place needy recipients at risk, and to encourage businesses and individuals to donate surplus food to charitable organizations serving our state's needy population." [2002 c 217 § 1.]

69.80.060 Safe receipt, preparation, and handling of donated food—Rules—Educational materials. (1) No later than December 31, 2004, the state board of health shall promulgate rules for the safe receipt, preparation, and handling by distributing organizations of food accepted from donors in order to facilitate the donation of food, free of charge, and to protect the health and safety of needy people.

(2) No later than December 31, 2004, the department of health, in consultation with the state board of health, shall develop educational materials for donors containing recommended health and safety guidelines for the preparation and handling of food donated to distributing organizations. [2002 c 217 § 2.]

Finding—Purpose—2002 c 217: See note following RCW 69.80.050.

69.80.900 Construction. Nothing in this chapter may be construed to create any liability of, or penalty against a donor or distributing organization except as provided in RCW 69.80.031. [1994 c 299 § 38; 1983 c 241 § 5.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Chapter 69.90 RCW

KOSHER FOOD PRODUCTS

Sections

| | |
|-----------|---|
| 69.90.010 | Definitions. |
| 69.90.020 | Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations—Penalty. |
| 69.90.030 | Violation of chapter is violation of consumer protection act. |
| 69.90.900 | Short title. |

Organic food products: Chapter 15.86 RCW.

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

(1) "Food product" includes any article other than drugs, whether in raw or prepared form, liquid or solid, or packaged or unpackaged, and which is used for human consumption.

(2) "Kosher" means a food product which has been prepared, processed, manufactured, maintained, and sold in accordance with the requisites of traditional Jewish dietary law.

(3) "Person" includes individuals, partnerships, corporations, and associations. [1985 c 127 § 2.]

69.90.020 Sale of "kosher" and "kosher style" food products prohibited if not kosher—Representations—Penalty. (1) No person may knowingly sell or offer for sale any food product represented as "kosher" or "kosher style" when that person knows that the food product is not kosher and when the representation is likely to cause a prospective purchaser to believe that it is kosher. Such a representation can be made orally or in writing, or by display of a sign, mark, insignia, or simulation.

(2) A person violating this section is guilty of a gross misdemeanor. [2003 c 53 § 349; 1985 c 127 § 3.]

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

69.90.030 Violation of chapter is violation of consumer protection act. A violation of this chapter shall constitute a violation of the consumer protection act, chapter 19.86 RCW. [1985 c 127 § 4.]

69.90.900 Short title. This chapter shall be known as the sale of kosher food products act of 1985. [1985 c 127 § 1.]

Title 70

PUBLIC HEALTH AND SAFETY

| | | | |
|-----------------|--|---------|---|
| Chapters | | | |
| 70.01 | General provisions. | 70.95 | Solid waste management—Reduction and recycling. |
| 70.02 | Medical records—Health care information access and disclosure. | 70.95A | Pollution control—Municipal bonding authority. |
| 70.05 | Local health departments, boards, officers—Regulations. | 70.95B | Domestic waste treatment plants—Operators. |
| 70.08 | Combined city-county health departments. | 70.95C | Waste reduction. |
| 70.10 | Comprehensive community health centers. | 70.95D | Solid waste incinerator and landfill operators. |
| 70.12 | Public health funds. | 70.95E | Hazardous waste fees. |
| 70.14 | Health care services purchased by state agencies. | 70.95F | Labeling of plastics. |
| 70.22 | Mosquito control. | 70.95G | Packages containing metals. |
| 70.24 | Control and treatment of sexually transmitted diseases. | 70.95H | Clean Washington center. |
| 70.28 | Control of tuberculosis. | 70.95I | Used oil recycling. |
| 70.30 | Tuberculosis hospitals, facilities, and funding. | 70.95J | Municipal sewage sludge—Biosolids. |
| 70.37 | Health care facilities. | 70.95K | Biomedical waste. |
| 70.38 | Health planning and development. | 70.95L | Detergent phosphorus content. |
| 70.40 | Hospital and medical facilities survey and construction act. | 70.95M | Mercury. |
| 70.41 | Hospital licensing and regulation. | 70.96 | Alcoholism. |
| 70.42 | Medical test sites. | 70.96A | Treatment for alcoholism, intoxication, and drug addiction. |
| 70.43 | Hospital staff membership or privileges. | 70.98 | Nuclear energy and radiation. |
| 70.44 | Public hospital districts. | 70.99 | Radioactive waste storage and transportation act of 1980. |
| 70.45 | Acquisition of nonprofit hospitals. | 70.100 | Eye protection—Public and private educational institutions. |
| 70.46 | Health districts. | 70.102 | Hazardous substance information. |
| 70.47 | Basic health plan—Health care access act. | 70.103 | Lead-based paint. |
| 70.48 | City and county jails act. | 70.104 | Pesticides—Health hazards. |
| 70.48A | Jail improvement and construction—Bond issue. | 70.105 | Hazardous waste management. |
| 70.50 | State otologist. | 70.105A | Hazardous waste fees. |
| 70.54 | Miscellaneous health and safety provisions. | 70.105D | Hazardous waste cleanup—Model toxics control act. |
| 70.58 | Vital statistics. | 70.106 | Poison prevention—Labeling and packaging. |
| 70.62 | Transient accommodations—Licensing—Inspections. | 70.107 | Noise control. |
| 70.74 | Washington state explosives act. | 70.108 | Outdoor music festivals. |
| 70.75 | Fire fighting equipment—Standardization. | 70.110 | Flammable fabrics—Children's sleepwear. |
| 70.77 | State fireworks law. | 70.111 | Infant crib safety act. |
| 70.79 | Boilers and unfired pressure vessels. | 70.112 | Family medicine—Education and residency programs. |
| 70.82 | Cerebral palsy program. | 70.114 | Migrant labor housing. |
| 70.83 | Phenylketonuria and other preventable heritable disorders. | 70.114A | Temporary worker housing—Health and safety regulation. |
| 70.83C | Alcohol and drug use treatment associated with pregnancy—Fetal alcohol syndrome. | 70.115 | Drug injection devices. |
| 70.83E | Prenatal newborn screening for exposure to harmful drugs. | 70.116 | Public water system coordination act of 1977. |
| 70.84 | Blind, handicapped, and disabled persons—"White cane law." | 70.118 | On-site sewage disposal systems. |
| 70.85 | Emergency party line telephone calls—Limiting telephone communication in hostage situations. | 70.119 | Public water supply systems—Operators. |
| 70.86 | Earthquake standards for construction. | 70.119A | Public water systems—Penalties and compliance. |
| 70.87 | Elevators, lifting devices, and moving walks. | 70.120 | Motor vehicle emission control. |
| 70.90 | Water recreation facilities. | 70.121 | Mill tailings—Licensing and perpetual care. |
| 70.92 | Provisions in buildings for aged and handicapped persons. | 70.122 | Natural death act. |
| 70.93 | Waste reduction, recycling, and model litter control act. | 70.123 | Shelters for victims of domestic violence. |
| 70.94 | Washington clean air act. | 70.124 | Abuse of patients—Nursing homes, state hospitals. |
| | | 70.125 | Victims of sexual assault act. |
| | | 70.126 | Home health care and hospice care. |
| | | 70.127 | In-home services agencies. |
| | | 70.128 | Adult family homes. |
| | | 70.129 | Long-term care resident rights. |
| | | 70.132 | Beverage containers. |

- 70.136 Hazardous materials incidents.
 70.138 Incinerator ash residue.
 70.142 Chemical contaminants and water quality.
 70.146 Water pollution control facilities financing.
 70.148 Underground petroleum storage tanks.
 70.149 Heating oil pollution liability protection act.
 70.150 Water quality joint development act.
 70.155 Tobacco—Access to minors.
 70.157 National uniform tobacco settlement—Non-participating tobacco product manufacturers.
 70.158 Tobacco product manufacturers.
 70.160 Washington clean indoor air act.
 70.162 Indoor air quality in public buildings.
 70.164 Low-income residential weatherization program.
 70.168 Statewide trauma care system.
 70.170 Health data and charity care.
 70.175 Rural health system project.
 70.180 Rural health care.
 70.185 Rural and underserved areas—Health care professional recruitment and retention.
 70.190 Family policy council.
 70.195 Early intervention services—Birth to six.
 70.198 Early intervention services—Hearing loss.
 70.200 Donations for children.
 70.210 Investing in innovation grants program.

Asbestos, regulation of use: Chapter 49.26 RCW.

Autopsies, post mortems: Chapter 68.50 RCW.

Board of health and bureau of vital statistics authorized: State Constitution Art. 20 § 1.

Child labor: Chapter 49.12 RCW.

Civil defense: Chapter 38.52 RCW.

Control of pet animals infected with diseases communicable to humans: Chapter 16.70 RCW.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Dangerous caustic and corrosive substances: Chapter 69.36 RCW.

Department of social and health services: Chapter 43.20A RCW.

Electricians and electrical installations: Chapter 19.28 RCW.

Fire protection board, state: Chapter 48.48 RCW.

Food processing act: Chapter 69.07 RCW.

Health care service contractors: Chapter 48.44 RCW.

Health measures in public schools: Chapter 28A.210 RCW, RCW 28A.210.300.

Immunization program, local health department participation: RCW 28A.210.060 through 28A.210.170.

Industrial safety and health: Chapter 49.17 RCW.

Inhaling toxic fumes: Chapter 9.47A RCW.

Milk and milk products for animal food: Chapter 15.37 RCW.

Natural gas, regulations: RCW 80.28.210.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Regulation of passenger watercraft for hire: Chapter 88.04 RCW.

Rural public hospital districts: RCW 70.44.450.

Safety in coal mines: Title 78 RCW.

Safety with respect to electrical construction: Chapter 19.29 RCW.

Sale or gift of tobacco to minor is gross misdemeanor: RCW 26.28.080.

Sanitary control of shellfish: Chapter 69.30 RCW.

Social and health services, department of: Chapter 43.20A RCW.

State board of health: Chapter 43.20 RCW.

State coordinator of search and rescue operations: RCW 38.52.030.

State patrol: Chapter 43.43 RCW.

Water pollution control: Chapter 90.48 RCW.

Chapter 70.01 RCW GENERAL PROVISIONS

Sections

- 70.01.010 Cooperation with federal government—Construction.
 70.01.020 Donation of blood by person eighteen or over without parental consent authorized.

70.01.010 Cooperation with federal government—Construction. In furtherance of the policy of this state to cooperate with the federal government in the public health programs, the department of social and health services shall adopt such rules and regulations as may become necessary to entitle this state to participate in federal funds unless the same be expressly prohibited by law. Any section or provision of the public health laws of this state which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal funds for the various programs of public health. [1985 c 213 § 14; 1969 ex.s. c 25 § 1; 1967 ex.s. c 102 § 12.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

Severability—1967 ex.s. c 102: See note following RCW 43.70.130.

70.01.020 Donation of blood by person eighteen or over without parental consent authorized. Any person of the age of eighteen years or over shall be eligible to donate blood in any voluntary and noncompensatory blood program without the necessity of obtaining parental permission or authorization. [1969 c 51 § 1.]

Chapter 70.02 RCW MEDICAL RECORDS—HEALTH CARE INFORMATION ACCESS AND DISCLOSURE

Sections

- 70.02.005 Findings.
 70.02.010 Definitions.
 70.02.020 Disclosure by health care provider.
 70.02.030 Patient authorization of disclosure.
 70.02.040 Patient's revocation of authorization for disclosure.
 70.02.045 Third-party payor release of information.
 70.02.050 Disclosure without patient's authorization.
 70.02.060 Discovery request or compulsory process.
 70.02.070 Certification of record.
 70.02.080 Patient's examination and copying—Requirements.
 70.02.090 Patient's request—Denial of examination and copying.
 70.02.100 Correction or amendment of record.
 70.02.110 Correction or amendment or statement of disagreement—Procedure.
 70.02.120 Notice of information practices—Display conspicuously.
 70.02.130 Consent by others—Health care representatives.
 70.02.140 Representative of deceased patient.
 70.02.150 Security safeguards.
 70.02.160 Retention of record.
 70.02.170 Civil remedies.
 70.02.180 Licensees under chapter 18.225 RCW—Subject to chapter.
 70.02.900 Conflicting laws.
 70.02.901 Application and construction—1991 c 335.
 70.02.902 Short title.
 70.02.903 Severability—1991 c 335.
 70.02.904 Captions not law—1991 c 335.

Record retention by hospitals: RCW 70.41.190.

70.02.005 Findings. The legislature finds that:

(1) Health care information is personal and sensitive information that if improperly used or released may do significant harm to a patient's interests in privacy, health care, or other interests.

(2) Patients need access to their own health care information as a matter of fairness to enable them to make informed decisions about their health care and correct inaccurate or incomplete information about themselves.

(3) In order to retain the full trust and confidence of patients, health care providers have an interest in assuring that health care information is not improperly disclosed and in having clear and certain rules for the disclosure of health care information.

(4) Persons other than health care providers obtain, use, and disclose health record information in many different contexts and for many different purposes. It is the public policy of this state that a patient's interest in the proper use and disclosure of the patient's health care information survives even when the information is held by persons other than health care providers.

(5) The movement of patients and their health care information across state lines, access to and exchange of health care information from automated data banks, and the emergence of multistate health care providers creates a compelling need for uniform law, rules, and procedures governing the use and disclosure of health care information. [1991 c 335 § 101.]

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

(1) "Audit" means an assessment, evaluation, determination, or investigation of a health care provider by a person not employed by or affiliated with the provider to determine compliance with:

(a) Statutory, regulatory, fiscal, medical, or scientific standards;

(b) A private or public program of payments to a health care provider; or

(c) Requirements for licensing, accreditation, or certification.

(2) "Directory information" means information disclosing the presence, and for the purpose of identification, the name, residence, sex, and the general health condition of a particular patient who is a patient in a health care facility or who is currently receiving emergency health care in a health care facility.

(3) "General health condition" means the patient's health status described in terms of "critical," "poor," "fair," "good," "excellent," or terms denoting similar conditions.

(4) "Health care" means any care, service, or procedure provided by a health care provider:

(a) To diagnose, treat, or maintain a patient's physical or mental condition; or

(b) That affects the structure or any function of the human body.

(5) "Health care facility" means a hospital, clinic, nursing home, laboratory, office, or similar place where a health care provider provides health care to patients.

(6) "Health care information" means any information, whether oral or recorded in any form or medium, that identifies or can readily be associated with the identity of a patient and directly relates to the patient's health care, including a patient's deoxyribonucleic acid and identified sequence of chemical base pairs. The term includes any record of disclosures of health care information.

(7) "Health care provider" means a person who is licensed, certified, registered, or otherwise authorized by the law of this state to provide health care in the ordinary course of business or practice of a profession.

(8) "Institutional review board" means any board, committee, or other group formally designated by an institution, or authorized under federal or state law, to review, approve the initiation of, or conduct periodic review of research programs to assure the protection of the rights and welfare of human research subjects.

(9) "Maintain," as related to health care information, means to hold, possess, preserve, retain, store, or control that information.

(10) "Patient" means an individual who receives or has received health care. The term includes a deceased individual who has received health care.

(11) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(12) "Reasonable fee" means the charges for duplicating or searching the record, but shall not exceed sixty-five cents per page for the first thirty pages and fifty cents per page for all other pages. In addition, a clerical fee for searching and handling may be charged not to exceed fifteen dollars. These amounts shall be adjusted biennially in accordance with changes in the consumer price index, all consumers, for Seattle-Tacoma metropolitan statistical area as determined by the secretary of health. However, where editing of records by a health care provider is required by statute and is done by the provider personally, the fee may be the usual and customary charge for a basic office visit.

(13) "Third-party payor" means an insurer regulated under Title 48 RCW authorized to transact business in this state or other jurisdiction, including a health care service contractor, and health maintenance organization; or an employee welfare benefit plan; or a state or federal health benefit program. [2002 c 318 § 1; 1993 c 448 § 1; 1991 c 335 § 102.]

Reviser's note: For charges or fees under subsection (12) of this section as adjusted by the secretary of health, see chapter 246-08 WAC.

Effective date—1993 c 448: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 448 § 9.]

70.02.020 Disclosure by health care provider. Except as authorized in RCW 70.02.050, a health care provider, an individual who assists a health care provider in the delivery of health care, or an agent and employee of a health care provider may not disclose health care information about a patient to any other person without the patient's written authorization. A disclosure made under a patient's written authorization must conform to the authorization.

Health care providers or facilities shall chart all disclosures, except to third-party payors, of health care information, such as chartings to become part of the health care information. [1993 c 448 § 2; 1991 c 335 § 201.]

Effective date—1993 c 448: See note following RCW 70.02.010.

70.02.030 Patient authorization of disclosure. (1) A patient may authorize a health care provider to disclose the patient's health care information. A health care provider shall honor an authorization and, if requested, provide a copy of the recorded health care information unless the health care provider denies the patient access to health care information under RCW 70.02.090.

(2) A health care provider may charge a reasonable fee for providing the health care information and is not required to honor an authorization until the fee is paid.

(3) To be valid, a disclosure authorization to a health care provider shall:

- (a) Be in writing, dated, and signed by the patient;
- (b) Identify the nature of the information to be disclosed;
- (c) Identify the name, address, and institutional affiliation of the person to whom the information is to be disclosed;
- (d) Except for third-party payors, identify the provider who is to make the disclosure; and
- (e) Identify the patient.

(4) Except as provided by this chapter, the signing of an authorization by a patient is not a waiver of any rights a patient has under other statutes, the rules of evidence, or common law.

(5) A health care provider shall retain each authorization or revocation in conjunction with any health care information from which disclosures are made. This requirement shall not apply to disclosures to third-party payors.

(6) Except for authorizations given pursuant to an agreement with a treatment or monitoring program or disciplinary authority under chapter 18.71 or 18.130 RCW, when the patient is under the supervision of the department of corrections, or to provide information to third-party payors, an authorization may not permit the release of health care information relating to future health care that the patient receives more than ninety days after the authorization was signed. Patients shall be advised of the period of validity of their authorization on the disclosure authorization form. If the authorization does not contain an expiration date and the patient is not under the supervision of the department of corrections, it expires ninety days after it is signed.

(7) Where the patient is under the supervision of the department of corrections, an authorization signed pursuant to this section for health care information related to mental health or drug or alcohol treatment expires at the end of the term of supervision, unless the patient is part of a treatment program that requires the continued exchange of information until the end of the period of treatment. [2004 c 166 § 19; 1994 sp.s. c 9 § 741; 1993 c 448 § 3; 1991 c 335 § 202.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Effective date—1993 c 448: See note following RCW 70.02.010.

70.02.040 Patient's revocation of authorization for disclosure. A patient may revoke in writing a disclosure authorization to a health care provider at any time unless disclosure is required to effectuate payments for health care that has been provided or other substantial action has been taken in reliance on the authorization. A patient may not maintain an action against the health care provider for disclosures made in good-faith reliance on an authorization if the health care provider had no actual notice of the revocation of the authorization. [1991 c 335 § 203.]

70.02.045 Third-party payor release of information. Third-party payors shall not release health care information disclosed under this chapter, except to the extent that health care providers are authorized to do so under RCW 70.02.050. [2000 c 5 § 2.]

Intent—Purpose—2000 c 5: See RCW 48.43.005.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

70.02.050 Disclosure without patient's authorization. (1) A health care provider may disclose health care information about a patient without the patient's authorization to the extent a recipient needs to know the information, if the disclosure is:

(a) To a person who the provider reasonably believes is providing health care to the patient;

(b) To any other person who requires health care information for health care education, or to provide planning, quality assurance, peer review, or administrative, legal, financial, or actuarial services to the health care provider; or for assisting the health care provider in the delivery of health care and the health care provider reasonably believes that the person:

(i) Will not use or disclose the health care information for any other purpose; and

(ii) Will take appropriate steps to protect the health care information;

(c) To any other health care provider reasonably believed to have previously provided health care to the patient, to the extent necessary to provide health care to the patient, unless the patient has instructed the health care provider in writing not to make the disclosure;

(d) To any person if the health care provider reasonably believes that disclosure will avoid or minimize an imminent danger to the health or safety of the patient or any other individual, however there is no obligation under this chapter on the part of the provider to so disclose;

(e) Oral, and made to immediate family members of the patient, or any other individual with whom the patient is known to have a close personal relationship, if made in accordance with good medical or other professional practice, unless the patient has instructed the health care provider in writing not to make the disclosure;

(f) To a health care provider who is the successor in interest to the health care provider maintaining the health care information;

(g) For use in a research project that an institutional review board has determined:

(i) Is of sufficient importance to outweigh the intrusion into the privacy of the patient that would result from the disclosure;

(ii) Is impracticable without the use or disclosure of the health care information in individually identifiable form;

(iii) Contains reasonable safeguards to protect the information from redisclosure;

(iv) Contains reasonable safeguards to protect against identifying, directly or indirectly, any patient in any report of the research project; and

(v) Contains procedures to remove or destroy at the earliest opportunity, consistent with the purposes of the project, information that would enable the patient to be identified, unless an institutional review board authorizes retention of identifying information for purposes of another research project;

(h) To a person who obtains information for purposes of an audit, if that person agrees in writing to:

(i) Remove or destroy, at the earliest opportunity consistent with the purpose of the audit, information that would enable the patient to be identified; and

(ii) Not to disclose the information further, except to accomplish the audit or report unlawful or improper conduct involving fraud in payment for health care by a health care provider or patient, or other unlawful conduct by the health care provider;

(i) To an official of a penal or other custodial institution in which the patient is detained;

(j) To provide directory information, unless the patient has instructed the health care provider not to make the disclosure;

(k) In the case of a hospital or health care provider to provide, in cases reported by fire, police, sheriff, or other public authority, name, residence, sex, age, occupation, condition, diagnosis, or extent and location of injuries as determined by a physician, and whether the patient was conscious when admitted.

(2) A health care provider shall disclose health care information about a patient without the patient's authorization if the disclosure is:

(a) To federal, state, or local public health authorities, to the extent the health care provider is required by law to report health care information; when needed to determine compliance with state or federal licensure, certification or registration rules or laws; or when needed to protect the public health;

(b) To federal, state, or local law enforcement authorities to the extent the health care provider is required by law;

(c) To county coroners and medical examiners for the investigations of deaths;

(d) Pursuant to compulsory process in accordance with RCW 70.02.060.

(3) All state or local agencies obtaining patient health care information pursuant to this section shall adopt rules establishing their record acquisition, retention, and security policies that are consistent with this chapter. [1998 c 158 § 1; 1993 c 448 § 4; 1991 c 335 § 204.]

Effective date—1993 c 448: See note following RCW 70.02.010.

(2004 Ed.)

70.02.060 Discovery request or compulsory process.

(1) Before service of a discovery request or compulsory process on a health care provider for health care information, an attorney shall provide advance notice to the health care provider and the patient or the patient's attorney involved through service of process or first class mail, indicating the health care provider from whom the information is sought, what health care information is sought, and the date by which a protective order must be obtained to prevent the health care provider from complying. Such date shall give the patient and the health care provider adequate time to seek a protective order, but in no event be less than fourteen days since the date of service or delivery to the patient and the health care provider of the foregoing. Thereafter the request for discovery or compulsory process shall be served on the health care provider.

(2) Without the written consent of the patient, the health care provider may not disclose the health care information sought under subsection (1) of this section if the requestor has not complied with the requirements of subsection (1) of this section. In the absence of a protective order issued by a court of competent jurisdiction forbidding compliance, the health care provider shall disclose the information in accordance with this chapter. In the case of compliance, the request for discovery or compulsory process shall be made a part of the patient record.

(3) Production of health care information under this section, in and of itself, does not constitute a waiver of any privilege, objection, or defense existing under other law or rule of evidence or procedure. [1991 c 335 § 205.]

70.02.070 Certification of record. Upon the request of the person requesting the record, the health care provider or facility shall certify the record furnished and may charge for such certification in accordance with RCW 36.18.016(5). No record need be certified until the fee is paid. The certification shall be affixed to the record and disclose:

(1) The identity of the patient;

(2) The kind of health care information involved;

(3) The identity of the person to whom the information is being furnished;

(4) The identity of the health care provider or facility furnishing the information;

(5) The number of pages of the health care information;

(6) The date on which the health care information is furnished; and

(7) That the certification is to fulfill and meet the requirements of this section. [1995 c 292 § 20; 1991 c 335 § 206.]

70.02.080 Patient's examination and copying—Requirements. (1) Upon receipt of a written request from a patient to examine or copy all or part of the patient's recorded health care information, a health care provider, as promptly as required under the circumstances, but no later than fifteen working days after receiving the request shall:

(a) Make the information available for examination during regular business hours and provide a copy, if requested, to the patient;

(b) Inform the patient if the information does not exist or cannot be found;

(c) If the health care provider does not maintain a record of the information, inform the patient and provide the name and address, if known, of the health care provider who maintains the record;

(d) If the information is in use or unusual circumstances have delayed handling the request, inform the patient and specify in writing the reasons for the delay and the earliest date, not later than twenty-one working days after receiving the request, when the information will be available for examination or copying or when the request will be otherwise disposed of; or

(e) Deny the request, in whole or in part, under RCW 70.02.090 and inform the patient.

(2) Upon request, the health care provider shall provide an explanation of any code or abbreviation used in the health care information. If a record of the particular health care information requested is not maintained by the health care provider in the requested form, the health care provider is not required to create a new record or reformulate an existing record to make the health care information available in the requested form. The health care provider may charge a reasonable fee for providing the health care information and is not required to permit examination or copying until the fee is paid. [1993 c 448 § 5; 1991 c 335 § 301.]

Effective date—1993 c 448: See note following RCW 70.02.010.

70.02.090 Patient's request—Denial of examination and copying. (1) Subject to any conflicting requirement in the public disclosure act, chapter 42.17 RCW, a health care provider may deny access to health care information by a patient if the health care provider reasonably concludes that:

(a) Knowledge of the health care information would be injurious to the health of the patient;

(b) Knowledge of the health care information could reasonably be expected to lead to the patient's identification of an individual who provided the information in confidence and under circumstances in which confidentiality was appropriate;

(c) Knowledge of the health care information could reasonably be expected to cause danger to the life or safety of any individual;

(d) The health care information was compiled and is used solely for litigation, quality assurance, peer review, or administrative purposes; or

(e) Access to the health care information is otherwise prohibited by law.

(2) If a health care provider denies a request for examination and copying under this section, the provider, to the extent possible, shall segregate health care information for which access has been denied under subsection (1) of this section from information for which access cannot be denied and permit the patient to examine or copy the disclosable information.

(3) If a health care provider denies a patient's request for examination and copying, in whole or in part, under subsection (1)(a) or (c) of this section, the provider shall permit examination and copying of the record by another health care provider, selected by the patient, who is licensed, certified, registered, or otherwise authorized under the laws of this state to treat the patient for the same condition as the health

care provider denying the request. The health care provider denying the request shall inform the patient of the patient's right to select another health care provider under this subsection. The patient shall be responsible for arranging for compensation of the other health care provider so selected. [1991 c 335 § 302.]

70.02.100 Correction or amendment of record. (1) For purposes of accuracy or completeness, a patient may request in writing that a health care provider correct or amend its record of the patient's health care information to which a patient has access under RCW 70.02.080.

(2) As promptly as required under the circumstances, but no later than ten days after receiving a request from a patient to correct or amend its record of the patient's health care information, the health care provider shall:

(a) Make the requested correction or amendment and inform the patient of the action;

(b) Inform the patient if the record no longer exists or cannot be found;

(c) If the health care provider does not maintain the record, inform the patient and provide the patient with the name and address, if known, of the person who maintains the record;

(d) If the record is in use or unusual circumstances have delayed the handling of the correction or amendment request, inform the patient and specify in writing, the earliest date, not later than twenty-one days after receiving the request, when the correction or amendment will be made or when the request will otherwise be disposed of; or

(e) Inform the patient in writing of the provider's refusal to correct or amend the record as requested and the patient's right to add a statement of disagreement. [1991 c 335 § 401.]

70.02.110 Correction or amendment or statement of disagreement—Procedure. (1) In making a correction or amendment, the health care provider shall:

(a) Add the amending information as a part of the health record; and

(b) Mark the challenged entries as corrected or amended entries and indicate the place in the record where the corrected or amended information is located, in a manner practicable under the circumstances.

(2) If the health care provider maintaining the record of the patient's health care information refuses to make the patient's proposed correction or amendment, the provider shall:

(a) Permit the patient to file as a part of the record of the patient's health care information a concise statement of the correction or amendment requested and the reasons therefor; and

(b) Mark the challenged entry to indicate that the patient claims the entry is inaccurate or incomplete and indicate the place in the record where the statement of disagreement is located, in a manner practicable under the circumstances.

(3) A health care provider who receives a request from a patient to amend or correct the patient's health care information, as provided in RCW 70.02.100, shall forward any changes made in the patient's health care information or health record, including any statement of disagreement, to

any third-party payor or insurer to which the health care provider has disclosed the health care information that is the subject of the request. [2000 c 5 § 3; 1991 c 335 § 402.]

Intent—Purpose—2000 c 5: See RCW 48.43.005.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

70.02.120 Notice of information practices—Display conspicuously. (1) A health care provider who provides health care at a health care facility that the provider operates and who maintains a record of a patient's health care information shall create a "notice of information practices" that contains substantially the following:

NOTICE

"We keep a record of the health care services we provide you. You may ask us to see and copy that record. You may also ask us to correct that record. We will not disclose your record to others unless you direct us to do so or unless the law authorizes or compels us to do so. You may see your record or get more information about it at"

(2) The health care provider shall place a copy of the notice of information practices in a conspicuous place in the health care facility, on a consent form or with a billing or other notice provided to the patient. [1991 c 335 § 501.]

70.02.130 Consent by others—Health care representatives. (1) A person authorized to consent to health care for another may exercise the rights of that person under this chapter to the extent necessary to effectuate the terms or purposes of the grant of authority. If the patient is a minor and is authorized to consent to health care without parental consent under federal and state law, only the minor may exercise the rights of a patient under this chapter as to information pertaining to health care to which the minor lawfully consented. In cases where parental consent is required, a health care provider may rely, without incurring any civil or criminal liability for such reliance, on the representation of a parent that he or she is authorized to consent to health care for the minor patient regardless of whether:

(a) The parents are married, unmarried, or separated at the time of the representation;

(b) The consenting parent is, or is not, a custodial parent of the minor;

(c) The giving of consent by a parent is, or is not, full performance of any agreement between the parents, or of any order or decree in any action entered pursuant to chapter 26.09 RCW.

(2) A person authorized to act for a patient shall act in good faith to represent the best interests of the patient. [1991 c 335 § 601.]

70.02.140 Representative of deceased patient. A personal representative of a deceased patient may exercise all of the deceased patient's rights under this chapter. If there is no personal representative, or upon discharge of the personal representative, a deceased patient's rights under this chapter may be exercised by persons who would have been autho-

rized to make health care decisions for the deceased patient when the patient was living under RCW 7.70.065. [1991 c 335 § 602.]

70.02.150 Security safeguards. A health care provider shall effect reasonable safeguards for the security of all health care information it maintains.

Reasonable safeguards shall include affirmative action to delete outdated and incorrect facsimile transmission or other telephone transmittal numbers from computer, facsimile, or other data bases. When health care information is transmitted electronically to a recipient who is not regularly transmitted health care information from the health care provider, the health care provider shall verify that the number is accurate prior to transmission. [2001 c 16 § 2; 1991 c 335 § 701.]

70.02.160 Retention of record. A health care provider shall maintain a record of existing health care information for at least one year following receipt of an authorization to disclose that health care information under RCW 70.02.040, and during the pendency of a request for examination and copying under RCW 70.02.080 or a request for correction or amendment under RCW 70.02.100. [1991 c 335 § 702.]

70.02.170 Civil remedies. (1) A person who has complied with this chapter may maintain an action for the relief provided in this section against a health care provider or facility who has not complied with this chapter.

(2) The court may order the health care provider or other person to comply with this chapter. Such relief may include actual damages, but shall not include consequential or incidental damages. The court shall award reasonable attorneys' fees and all other expenses reasonably incurred to the prevailing party.

(3) Any action under this chapter is barred unless the action is commenced within two years after the cause of action is discovered.

(4) A violation of this chapter shall not be deemed a violation of the consumer protection act, chapter 19.86 RCW. [1991 c 335 § 801.]

70.02.180 Licensees under chapter 18.225 RCW—Subject to chapter. Mental health counselors, marriage and family therapists, and social workers licensed under chapter 18.225 RCW are subject to this chapter. [2001 c 251 § 34.]

Severability—2001 c 251: See RCW 18.225.900.

70.02.900 Conflicting laws. (1) This chapter does not restrict a health care provider, a third-party payor, or an insurer regulated under Title 48 RCW from complying with obligations imposed by federal or state health care payment programs or federal or state law.

(2) This chapter does not modify the terms and conditions of disclosure under Title 51 RCW and chapters 13.50, 26.09, 70.24, *70.39, 70.96A, 71.05, and 71.34 RCW and rules adopted under these provisions. [2000 c 5 § 4; 1991 c 335 § 901.]

***Reviser's note:** Chapter 70.39 RCW was repealed by 1982 c 223 § 10, effective June 30, 1990.

Intent—Purpose—2000 c 5: See RCW 48.43.005.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

70.02.901 Application and construction—1991 c 335.

This act shall be applied and construed to effectuate its general purpose to make uniform the law with respect to the subject of this act among states enacting it. [1991 c 335 § 903.]

70.02.902 Short title. This act may be cited as the uniform health care information act. [1991 c 335 § 904.]

70.02.903 Severability—1991 c 335. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 335 § 905.]

70.02.904 Captions not law—1991 c 335. As used in this act, captions constitute no part of the law. [1991 c 335 § 906.]

Chapter 70.05 RCW

LOCAL HEALTH DEPARTMENTS, BOARDS, OFFICERS—REGULATIONS

Sections

| | |
|-----------|--|
| 70.05.010 | Definitions. |
| 70.05.030 | Counties—Local health board—Jurisdiction. |
| 70.05.035 | Home rule charter—Local board of health. |
| 70.05.040 | Local board of health—Chair—Administrative officer—Vacancies. |
| 70.05.045 | Administrative officer—Responsibilities. |
| 70.05.050 | Local health officer—Qualifications—Employment of personnel—Salary and expenses. |
| 70.05.051 | Local health officer—Qualifications. |
| 70.05.053 | Provisionally qualified local health officers—Appointment—Term—Requirements. |
| 70.05.054 | Provisionally qualified local health officers—In-service public health orientation program. |
| 70.05.055 | Provisionally qualified local health officers—Interview—Evaluation as to qualification as local public health officer. |
| 70.05.060 | Powers and duties of local board of health. |
| 70.05.070 | Local health officer—Powers and duties. |
| 70.05.072 | Local health officer—Authority to grant waiver from on-site sewage system requirements. |
| 70.05.074 | On-site sewage system permits—Application—Limitation of alternative sewage systems. |
| 70.05.077 | Department of health—Training—On-site sewage systems—Application of the waiver authority—Topics—Availability. |
| 70.05.080 | Local health officer—Failure to appoint—Procedure. |
| 70.05.090 | Physicians to report diseases. |
| 70.05.100 | Determination of character of disease. |
| 70.05.110 | Local health officials and physicians to report contagious diseases. |
| 70.05.120 | Violations—Remedies—Penalties. |
| 70.05.125 | County public health account—Distribution to local public health jurisdictions. |
| 70.05.130 | Expenses of state, health district, or county in enforcing health laws and rules—Payment by county. |
| 70.05.135 | Treasurer—District funds—Contributions by counties and cities. |
| 70.05.140 | County to bear expense of providing public health services. |
| 70.05.150 | Contracts for sale or purchase of health services authorized. |
| 70.05.160 | Moratorium on water, sewer hookups, or septic systems—Public hearing—Limitation on length. |
| 70.05.170 | Child mortality review. |
| 70.05.180 | Infectious disease testing—Good samaritans—Rules. |

Health districts: Chapter 70.46 RCW.

State board of health: Chapter 43.20 RCW.

[Title 70 RCW—page 8]

70.05.010 Definitions. For the purposes of chapters 70.05 and 70.46 RCW and unless the context thereof clearly indicates to the contrary:

(1) "Local health departments" means the county or district which provides public health services to persons within the area.

(2) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the county or district public health department.

(3) "Local board of health" means the county or district board of health.

(4) "Health district" means all the territory consisting of one or more counties organized pursuant to the provisions of chapters 70.05 and 70.46 RCW.

(5) "Department" means the department of health. [1993 c 492 § 234; 1967 ex.s. c 51 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 ex.s. c 51 § 24.]

70.05.030 Counties—Local health board—Jurisdiction.

In counties without a home rule charter, the board of county commissioners shall constitute the local board of health, unless the county is part of a health district pursuant to chapter 70.46 RCW. The jurisdiction of the local board of health shall be coextensive with the boundaries of said county. The board of county commissioners may, at its discretion, adopt an ordinance expanding the size and composition of the board of health to include elected officials from cities and towns and persons other than elected officials as members so long as persons other than elected officials do not constitute a majority. An ordinance adopted under this section shall include provisions for the appointment, term, and compensation, or reimbursement of expenses. [1995 c 43 § 6; 1993 c 492 § 235; 1967 ex.s. c 51 § 3.]

Effective dates—Contingent effective dates—1995 c 43: "(1) Sections 15 and 16 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1995.

(2) Sections 1 through 5, 12, and 13 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995.

(3) Section 9 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 17, 1995].

(4) *Sections 6 through 8, 10, and 11 of this act take effect January 1, 1996, if funding of at least two million two hundred fifty thousand dollars, is provided by June 30, 1995, in the 1995 omnibus appropriations act or as a result of the passage of Senate Bill No. 6058, to implement the changes in public health governance as outlined in this act. If such funding is not provided, sections 6 through 8, 10, and 11 of this act shall take effect January 1, 1998." [1995 c 43 § 17.]

***Reviser's note:** The 1995 omnibus appropriations act, chapter 18, Laws of 1995 2nd sp. sess. provided two million two hundred fifty thousand dollars.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

(2004 Ed.)

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.035 Home rule charter—Local board of health.

In counties with a home rule charter, the county legislative authority shall establish a local board of health and may prescribe the membership and selection process for the board. The county legislative authority may appoint to the board of health elected officials from cities and towns and persons other than elected officials as members so long as persons other than elected officials do not constitute a majority. The county legislative authority shall specify the appointment, term, and compensation or reimbursement of expenses. The jurisdiction of the local board of health shall be coextensive with the boundaries of the county. The local health officer, as described in RCW 70.05.050, shall be appointed by the official designated under the provisions of the county charter. The same official designated under the provisions of the county charter may appoint an administrative officer, as described in RCW 70.05.045. [1995 c 43 § 7; 1993 c 492 § 237.]

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.040 Local board of health—Chair—Administrative officer—Vacancies. The local board of health shall elect a chair and may appoint an administrative officer. A local health officer shall be appointed pursuant to RCW 70.05.050. Vacancies on the local board of health shall be filled by appointment within thirty days and made in the same manner as was the original appointment. At the first meeting of the local board of health, the members shall elect a chair to serve for a period of one year. [1993 c 492 § 236; 1984 c 25 § 1; 1983 1st ex.s. c 39 § 1; 1967 ex.s. c 51 § 4.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.045 Administrative officer—Responsibilities. The administrative officer shall act as executive secretary and administrative officer for the local board of health, and shall be responsible for administering the operations of the board including such other administrative duties required by the local health board, except for duties assigned to the health officer as enumerated in RCW 70.05.070 and other applicable state law. [1984 c 25 § 2.]

70.05.050 Local health officer—Qualifications—Employment of personnel—Salary and expenses. The local health officer shall be an experienced physician licensed to practice medicine and surgery or osteopathic medicine and surgery in this state and who is qualified or provisionally qualified in accordance with the standards prescribed in RCW 70.05.051 through 70.05.055 to hold the

office of local health officer. No term of office shall be established for the local health officer but the local health officer shall not be removed until after notice is given, and an opportunity for a hearing before the board or official responsible for his or her appointment under this section as to the reason for his or her removal. The local health officer shall act as executive secretary to, and administrative officer for the local board of health and shall also be empowered to employ such technical and other personnel as approved by the local board of health except where the local board of health has appointed an administrative officer under RCW 70.05.040. The local health officer shall be paid such salary and allowed such expenses as shall be determined by the local board of health. In home rule counties that are part of a health district under this chapter and chapter 70.46 RCW the local health officer and administrative officer shall be appointed by the local board of health. [1996 c 178 § 19; 1995 c 43 § 8; 1993 c 492 § 238; 1984 c 25 § 5; 1983 1st ex.s. c 39 § 2; 1969 ex.s. c 114 § 1; 1967 ex.s. c 51 § 9.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.051 Local health officer—Qualifications. The following persons holding licenses as required by RCW 70.05.050 shall be deemed qualified to hold the position of local health officer:

(1) Persons holding the degree of master of public health or its equivalent;

(2) Persons not meeting the requirements of subsection (1) of this section, who upon August 11, 1969 are currently employed in this state as a local health officer and whom the secretary of social and health services recommends in writing to the local board of health as qualified; and

(3) Persons qualified by virtue of completing three years of service as a provisionally qualified officer pursuant to RCW 70.05.053 through 70.05.055. [1979 c 141 § 75; 1969 ex.s. c 114 § 2.]

70.05.053 Provisionally qualified local health officers—Appointment—Term—Requirements. A person holding a license required by RCW 70.05.050 but not meeting any of the requirements for qualification prescribed by RCW 70.05.051 may be appointed by the board or official responsible for appointing the local health officer under RCW 70.05.050 as a provisionally qualified local health officer for a maximum period of three years upon the following conditions and in accordance with the following procedures:

(1) He or she shall participate in an in-service orientation to the field of public health as provided in RCW 70.05.054, and

(2) He or she shall satisfy the secretary of health pursuant to the periodic interviews prescribed by RCW 70.05.055 that he or she has successfully completed such in-service orientation and is conducting such program of good health prac-

tices as may be required by the jurisdictional area concerned. [1991 c 3 § 305; 1983 1st ex.s. c 39 § 3; 1979 c 141 § 76; 1969 ex.s. c 114 § 3.]

70.05.054 Provisionally qualified local health officers—In-service public health orientation program. The secretary of health shall provide an in-service public health orientation program for the benefit of provisionally qualified local health officers.

Such program shall consist of—

(1) A three months course in public health training conducted by the secretary either in the state department of health, in a county and/or city health department, in a local health district, or in an institution of higher education; or

(2) An on-the-job, self-training program pursuant to a standardized syllabus setting forth the major duties of a local health officer including the techniques and practices of public health principles expected of qualified local health officers: PROVIDED, That each provisionally qualified local health officer may choose which type of training he or she shall pursue. [1991 c 3 § 306; 1979 c 141 § 77; 1969 ex.s. c 114 § 4.]

70.05.055 Provisionally qualified local health officers—Interview—Evaluation as to qualification as local public health officer. Each year, on a date which shall be as near as possible to the anniversary date of appointment as provisional local health officer, the secretary of health or his or her designee shall personally visit such provisional officer's office for a personal review and discussion of the activity, plans, and study being carried on relative to the provisional officer's jurisdictional area: PROVIDED, That the third such interview shall occur three months prior to the end of the three year provisional term. A standardized checklist shall be used for all such interviews, but such checklist shall not constitute a grading sheet or evaluation form for use in the ultimate decision of qualification of the provisional appointee as a public health officer.

Copies of the results of each interview shall be supplied to the provisional officer within two weeks following each such interview.

Following the third such interview, the secretary shall evaluate the provisional local health officer's in-service performance and shall notify such officer by certified mail of his or her decision whether or not to qualify such officer as a local public health officer. Such notice shall be mailed at least sixty days prior to the third anniversary date of provisional appointment. Failure to so mail such notice shall constitute a decision that such provisional officer is qualified. [1991 c 3 § 307; 1979 c 141 § 78; 1969 ex.s. c 114 § 5.]

70.05.060 Powers and duties of local board of health. Each local board of health shall have supervision over all matters pertaining to the preservation of the life and health of the people within its jurisdiction and shall:

(1) Enforce through the local health officer or the administrative officer appointed under RCW 70.05.040, if any, the public health statutes of the state and rules promulgated by the state board of health and the secretary of health;

(2) Supervise the maintenance of all health and sanitary measures for the protection of the public health within its jurisdiction;

(3) Enact such local rules and regulations as are necessary in order to preserve, promote and improve the public health and provide for the enforcement thereof;

(4) Provide for the control and prevention of any dangerous, contagious or infectious disease within the jurisdiction of the local health department;

(5) Provide for the prevention, control and abatement of nuisances detrimental to the public health;

(6) Make such reports to the state board of health through the local health officer or the administrative officer as the state board of health may require; and

(7) Establish fee schedules for issuing or renewing licenses or permits or for such other services as are authorized by the law and the rules of the state board of health: PROVIDED, That such fees for services shall not exceed the actual cost of providing any such services. [1991 c 3 § 308; 1984 c 25 § 6; 1979 c 141 § 79; 1967 ex.s. c 51 § 10.]

70.05.070 Local health officer—Powers and duties. The local health officer, acting under the direction of the local board of health or under direction of the administrative officer appointed under RCW 70.05.040 or 70.05.035, if any, shall:

(1) Enforce the public health statutes of the state, rules of the state board of health and the secretary of health, and all local health rules, regulations and ordinances within his or her jurisdiction including imposition of penalties authorized under RCW 70.119A.030, the confidentiality provisions in RCW 70.24.105 and rules adopted to implement those provisions, and filing of actions authorized by RCW 43.70.190;

(2) Take such action as is necessary to maintain health and sanitation supervision over the territory within his or her jurisdiction;

(3) Control and prevent the spread of any dangerous, contagious or infectious diseases that may occur within his or her jurisdiction;

(4) Inform the public as to the causes, nature, and prevention of disease and disability and the preservation, promotion and improvement of health within his or her jurisdiction;

(5) Prevent, control or abate nuisances which are detrimental to the public health;

(6) Attend all conferences called by the secretary of health or his or her authorized representative;

(7) Collect such fees as are established by the state board of health or the local board of health for the issuance or renewal of licenses or permits or such other fees as may be authorized by law or by the rules of the state board of health;

(8) Inspect, as necessary, expansion or modification of existing public water systems, and the construction of new public water systems, to assure that the expansion, modification, or construction conforms to system design and plans;

(9) Take such measures as he or she deems necessary in order to promote the public health, to participate in the establishment of health educational or training activities, and to authorize the attendance of employees of the local health department or individuals engaged in community health programs related to or part of the programs of the local health department. [1999 c 391 § 5; 1993 c 492 § 239; 1991 c 3 §

309; 1990 c 133 § 10; 1984 c 25 § 7; 1979 c 141 § 80; 1967 ex.s. c 51 § 12.]

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

70.05.072 Local health officer—Authority to grant waiver from on-site sewage system requirements. The local health officer may grant a waiver from specific requirements adopted by the state board of health for on-site sewage systems if:

(1) The on-site sewage system for which a waiver is requested is for sewage flows under three thousand five hundred gallons per day;

(2) The waiver request is evaluated by the local health officer on an individual, site-by-site basis;

(3) The local health officer determines that the waiver is consistent with the standards in, and the intent of, the state board of health rules; and

(4) The local health officer submits quarterly reports to the department regarding any waivers approved or denied.

Based on review of the quarterly reports, if the department finds that the waivers previously granted have not been consistent with the standards in, and intent of, the state board of health rules, the department shall provide technical assistance to the local health officer to correct the inconsistency, and may notify the local and state boards of health of the department's concerns.

If upon further review of the quarterly reports, the department finds that the inconsistency between the waivers granted and the state board of health standards has not been corrected, the department may suspend the authority of the local health officer to grant waivers under this section until such inconsistencies have been corrected. [1995 c 263 § 1.]

70.05.074 On-site sewage system permits—Application—Limitation of alternative sewage systems. (1) The local health officer must respond to the applicant for an on-site sewage system permit within thirty days after receiving a fully completed application. The local health officer must respond that the application is either approved, denied, or pending.

(2) If the local health officer denies an application to install an on-site sewage system, the denial must be for cause and based upon public health and environmental protection concerns, including concerns regarding the ability to operate and maintain the system, or conflicts with other existing laws, regulations, or ordinances. The local health officer must provide the applicant with a written justification for the denial, along with an explanation of the procedure for appeal.

(3) If the local health officer identifies the application as pending and subject to review beyond thirty days, the local health officer must provide the applicant with a written justification that the site-specific conditions or circumstances necessitate a longer time period for a decision on the application. The local health officer must include any specific infor-

mation necessary to make a decision and the estimated time required for a decision to be made.

(4) A local health officer may not limit the number of alternative sewage systems within his or her jurisdiction without cause. Any such limitation must be based upon public health and environmental protection concerns, including concerns regarding the ability to operate and maintain the system, or conflicts with other existing laws, regulations, or ordinances. If such a limitation is established, the local health officer must justify the limitation in writing, with specific reasons, and must provide an explanation of the procedure for appealing the limitation. [1997 c 447 § 2.]

Finding—Purpose—1997 c 447: "The legislature finds that improperly designed, installed, or maintained on-site sewage disposal systems are a major contributor to water pollution in this state. The legislature also recognizes that evolving technology has produced many viable alternatives to traditional on-site septic systems. It is the purpose of this act to help facilitate the siting of new alternative on-site septic systems and to assist local governments in promoting efficient operation of on-site septic *these systems." [1997 c 447 § 1.]

***Reviser's note:** Due to a drafting error, the word "these" was not removed when this sentence was rewritten.

Construction—1997 c 447 §§ 2-4: "Nothing in sections 2 through 4 of this act may be deemed to eliminate any requirements for approval from public health agencies under applicable law in connection with the siting, design, construction, and repair of on-site septic systems." [1997 c 447 § 6.]

70.05.077 Department of health—Training—On-site sewage systems—Application of the waiver authority—Topics—Availability. (1) The department of health, in consultation and cooperation with local environmental health officers, shall develop a one-day course to train local environmental health officers, health officers, and environmental health specialists and technicians to address the application of the waiver authority granted under RCW 70.05.072 as well as other existing statutory or regulatory flexibility for siting on-site sewage systems.

(2) The training course shall include the following topics:

(a) The statutory authority to grant waivers from the state on-site sewage system rules;

(b) The regulatory framework for the application of on-site sewage treatment and disposal technologies, with an emphasis on the differences between rules, standards, and guidance. The course shall include instruction on interpreting the intent of a rule rather than the strict reading of the language of a rule, and also discuss the liability assumed by a unit of local government when local rules, policies, or practices deviate from the state administrative code;

(c) The application of site evaluation and assessment methods to match the particular site and development plans with the on-site sewage treatment and disposal technology suitable to protect public health to at least the level provided by state rule; and

(d) Instruction in the concept and application of mitigation waivers.

(3) The training course shall be made available to all local health departments and districts in various locations in the state without fee. Updated guidance documents and materials shall be provided to all participants, including examples of the types of waivers and processes that other jurisdictions in the region have granted and used. The first training con-

ducted under this section shall take place by June 30, 1999. [1998 c 34 § 3.]

Intent—1998 c 34: "(1) The 1997 legislature directed the department of health to convene a work group for the purpose of making recommendations to the legislature for the development of a certification program for occupations related to on-site septic systems, including those who pump, install, design, perform maintenance, inspect, or regulate on-site septic systems. The work group was convened and studied issues relating to certification of people employed in these occupations, bonding levels, and other standards related to these occupations. In addition, the work group examined the application of a risk analysis pertaining to the installation and maintenance of different types of septic systems in different parts of the state. A written report containing the work group's findings and recommendations was submitted to the legislature as directed.

(2) The legislature recognizes that the recommendations of the work group must be phased-in over a time period in order to develop the necessary scope of work requirements, knowledge requirements, public protection requirements, and other criteria for the upgrading of these occupations. It is the intent of the legislature to start implementing the work group's recommendations by focusing first on the occupations that are considered to be the highest priority, and to address the other occupational recommendations in subsequent sessions." [1998 c 34 § 1.]

70.05.080 Local health officer—Failure to appoint—

Procedure. If the local board of health or other official responsible for appointing a local health officer under RCW 70.05.050 refuses or neglects to appoint a local health officer after a vacancy exists, the secretary of health may appoint a local health officer and fix the compensation. The local health officer so appointed shall have the same duties, powers and authority as though appointed under RCW 70.05.050. Such local health officer shall serve until a qualified individual is appointed according to the procedures set forth in RCW 70.05.050. The board or official responsible for appointing the local health officer under RCW 70.05.050 shall also be authorized to appoint an acting health officer to serve whenever the health officer is absent or incapacitated and unable to fulfill his or her responsibilities under the provisions of chapters 70.05 and 70.46 RCW. [1993 c 492 § 240; 1991 c 3 § 310; 1983 1st ex.s. c 39 § 4; 1979 c 141 § 81; 1967 ex.s. c 51 § 13.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.090 Physicians to report diseases. Whenever any physician shall attend any person sick with any dangerous contagious or infectious disease, or with any diseases required by the state board of health to be reported, he or she shall, within twenty-four hours, give notice thereof to the local health officer within whose jurisdiction such sick person may then be or to the state department of health in Olympia. [1991 c 3 § 311; 1979 c 141 § 82; 1967 ex.s. c 51 § 14.]

70.05.100 Determination of character of disease. In case of the question arising as to whether or not any person is affected or is sick with a dangerous, contagious or infectious disease, the opinion of the local health officer shall prevail until the state department of health can be notified, and then the opinion of the executive officer of the state department of health, or any physician he or she may appoint to examine such case, shall be final. [1991 c 3 § 312; 1979 c 141 § 83; 1967 ex.s. c 51 § 15.]

70.05.110 Local health officials and physicians to report contagious diseases. It shall be the duty of the local board of health, health authorities or officials, and of physicians in localities where there are no local health authorities or officials, to report to the state board of health, promptly upon discovery thereof, the existence of any one of the following diseases which may come under their observation, to wit: Asiatic cholera, yellow fever, smallpox, scarlet fever, diphtheria, typhus, typhoid fever, bubonic plague or leprosy, and of such other contagious or infectious diseases as the state board may from time to time specify. [1967 ex.s. c 51 § 16.]

70.05.120 Violations—Remedies—Penalties. (1) Any local health officer or administrative officer appointed under RCW 70.05.040, if any, who shall refuse or neglect to obey or enforce the provisions of chapters 70.05, 70.24, and 70.46 RCW or the rules, regulations or orders of the state board of health or who shall refuse or neglect to make prompt and accurate reports to the state board of health, may be removed as local health officer or administrative officer by the state board of health and shall not again be reappointed except with the consent of the state board of health. Any person may complain to the state board of health concerning the failure of the local health officer or administrative officer to carry out the laws or the rules and regulations concerning public health, and the state board of health shall, if a preliminary investigation so warrants, call a hearing to determine whether the local health officer or administrative officer is guilty of the alleged acts. Such hearings shall be held pursuant to the provisions of chapter 34.05 RCW, and the rules and regulations of the state board of health adopted thereunder.

(2) Any member of a local board of health who shall violate any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or refuse or neglect to obey or enforce any of the rules, regulations or orders of the state board of health made for the prevention, suppression or control of any dangerous contagious or infectious disease or for the protection of the health of the people of this state, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars.

(3) Any physician who shall refuse or neglect to report to the proper health officer or administrative officer within twelve hours after first attending any case of contagious or infectious disease or any diseases required by the state board of health to be reported or any case suspicious of being one of such diseases, is guilty of a misdemeanor, and upon conviction shall be fined not less than ten dollars nor more than two hundred dollars for each case that is not reported.

(4) Any person violating any of the provisions of chapters 70.05, 70.24, and 70.46 RCW or violating or refusing or neglecting to obey any of the rules, regulations or orders made for the prevention, suppression and control of dangerous contagious and infectious diseases by the local board of health or local health officer or administrative officer or state board of health, or who shall leave any isolation hospital or quarantined house or place without the consent of the proper health officer or who evades or breaks quarantine or conceals a case of contagious or infectious disease or assists in evading or breaking any quarantine or concealing any case of contagious or infectious disease, is guilty of a misdemeanor, and

upon conviction thereof shall be subject to a fine of not less than twenty-five dollars nor more than one hundred dollars or to imprisonment in the county jail not to exceed ninety days or to both fine and imprisonment. [2003 c 53 § 350; 1999 c 391 § 6; 1993 c 492 § 241; 1984 c 25 § 8; 1967 ex.s. c 51 § 17.]

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

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.125 County public health account—Distribution to local public health jurisdictions. (1) The county public health account is created in the state treasury. Funds deposited in the county public health account shall be distributed by the state treasurer to each local public health jurisdiction based upon amounts certified to it by the department of community, trade, and economic development in consultation with the Washington state association of counties. The account shall include funds distributed under RCW *82.44.110 and 82.14.200(8) and such funds as are appropriated to the account from the health services account under RCW 43.72.900, the public health services account under RCW 43.72.902, and such other funds as the legislature may appropriate to it.

(2)(a) The director of the department of community, trade, and economic development shall certify the amounts to be distributed to each local public health jurisdiction using 1995 as the base year of actual city contributions to local public health.

(b) Only if funds are available and in an amount no greater than available funds under RCW 82.14.200(8), the department of community, trade, and economic development shall adjust the amount certified under (a) of this subsection to compensate for any annexation of an area with fifty thousand residents or more to any city as a result of a petition during calendar year 1996 or 1997, or for any city that became newly incorporated as a result of an election during calendar year 1994 or 1995. The amount to be adjusted shall be equal to the amount which otherwise would have been lost to the health jurisdiction due to the annexation or incorporation as calculated using the jurisdiction's 1995 funding formula.

(c) The county treasurer shall certify the actual 1995 city contribution to the department. Funds in excess of the base shall be distributed proportionately among the health jurisdictions based on incorporated population figures as last determined by the office of financial management.

(3) Moneys distributed under this section shall be expended exclusively for local public health purposes. [1998 c 266 § 1; 1997 c 333 § 1; 1995 1st sp.s. c 15 § 1.]

***Reviser's note:** RCW 82.44.110 was repealed by 2003 c 1 § 5 (Initiative Measure No. 776, approved November 5, 2002).

Effective date—1998 c 266: "This act takes effect July 1, 1998." [1998 c 266 § 2.]

Effective date—1997 c 333: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 333 § 3.]

(2004 Ed.)

Effective date—1995 1st sp.s. c 15: "This act shall take effect January 1, 1996." [1995 1st sp.s. c 15 § 3.]

70.05.130 Expenses of state, health district, or county in enforcing health laws and rules—Payment by county. All expenses incurred by the state, health district, or county in carrying out the provisions of chapters 70.05 and 70.46 RCW or any other public health law, or the rules of the department of health enacted under such laws, shall be paid by the county and such expenses shall constitute a claim against the general fund as provided in this section. [1993 c 492 § 242; 1991 c 3 § 313; 1979 c 141 § 84; 1967 ex.s. c 51 § 18.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.135 Treasurer—District funds—Contributions by counties and cities. See RCW 70.46.080.

70.05.140 County to bear expense of providing public health services. See RCW 70.46.085.

70.05.150 Contracts for sale or purchase of health services authorized. In addition to powers already granted them, any county, district, or local health department may contract for either the sale or purchase of any or all health services from any local health department. Such contract shall require the approval of the state board of health. [1993 c 492 § 243; 1967 ex.s. c 51 § 22.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.05.160 Moratorium on water, sewer hookups, or septic systems—Public hearing—Limitation on length. A local board of health that adopts a moratorium affecting water hookups, sewer hookups, or septic systems without holding a public hearing on the proposed moratorium, shall hold a public hearing on the adopted moratorium within at least sixty days of its adoption. If the board does not adopt findings of fact justifying its action before this hearing, then the board shall do so immediately after this public hearing. A moratorium adopted under this section may be effective for not longer than six months, but may be effective for up to one year if a work plan is developed for related studies providing for such a longer period. A moratorium may be renewed for one or more six-month periods if a subsequent public hearing is held and findings of fact are made prior to each renewal. [1992 c 207 § 7.]

70.05.170 Child mortality review. (1)(a) The legislature finds that the mortality rate in Washington state among infants and children less than eighteen years of age is unacceptably high, and that such mortality may be preventable. The legislature further finds that, through the performance of child mortality reviews, preventable causes of child mortality can be identified and addressed, thereby reducing the infant and child mortality in Washington state.

(b) It is the intent of the legislature to encourage the performance of child death reviews by local health departments by providing necessary legal protections to the families of children whose deaths are studied, local health department officials and employees, and health care professionals participating in child mortality review committee activities.

(2) As used in this section, "child mortality review" means a process authorized by a local health department as such department is defined in RCW 70.05.010 for examining factors that contribute to deaths of children less than eighteen years of age. The process may include a systematic review of medical, clinical, and hospital records; home interviews of parents and caretakers of children who have died; analysis of individual case information; and review of this information by a team of professionals in order to identify modifiable medical, socioeconomic, public health, behavioral, administrative, educational, and environmental factors associated with each death.

(3) Local health departments are authorized to conduct child mortality reviews. In conducting such reviews, the following provisions shall apply:

(a) All medical records, reports, and statements procured by, furnished to, or maintained by a local health department pursuant to chapter 70.02 RCW for purposes of a child mortality review are confidential insofar as the identity of an individual child and his or her adoptive or natural parents is concerned. Such records may be used solely by local health departments for the purposes of the review. This section does not prevent a local health department from publishing statistical compilations and reports related to the child mortality review, if such compilations and reports do not identify individual cases and sources of information.

(b) Any records or documents supplied or maintained for the purposes of a child mortality review are not subject to discovery or subpoena in any administrative, civil, or criminal proceeding related to the death of a child reviewed. This provision shall not restrict or limit the discovery or subpoena from a health care provider of records or documents maintained by such health care provider in the ordinary course of business, whether or not such records or documents may have been supplied to a local health department pursuant to this section.

(c) Any summaries or analyses of records, documents, or records of interviews prepared exclusively for purposes of a child mortality review are not subject to discovery, subpoena, or introduction into evidence in any administrative, civil, or criminal proceeding related to the death of a child reviewed.

(d) No local health department official or employee, and no members of technical committees established to perform case reviews of selected child deaths may be examined in any administrative, civil, or criminal proceeding as to the existence or contents of documents assembled, prepared, or maintained for purposes of a child mortality review.

(e) This section shall not be construed to prohibit or restrict any person from reporting suspected child abuse or neglect under chapter 26.44 RCW nor to limit access to or use of any records, documents, information, or testimony in any civil or criminal action arising out of any report made pursuant to chapter 26.44 RCW. [1993 c 41 § 1; 1992 c 179 § 1.]

70.05.180 Infectious disease testing—Good samaritans—Rules. A person rendering emergency care or transportation, commonly known as a "Good Samaritan," as described in RCW 4.24.300 and 4.24.310, may request and receive appropriate infectious disease testing free of charge from the local health department of the county of her or his residence, if: (1) While rendering emergency care she or he came into contact with bodily fluids; and (2) she or he does not have health insurance that covers the testing. Nothing in this section requires a local health department to provide health care services beyond testing. The department shall adopt rules implementing this section.

The information obtained from infectious disease testing is subject to statutory confidentiality provisions, including those of chapters 70.24 and 70.05 RCW. [1999 c 391 § 2.]

Findings—Purpose—1999 c 391: "The legislature finds that citizens who assist individuals in emergency situations perform a needed and valuable role that deserves recognition and support. The legislature further finds that emergency assistance in the form of mouth to mouth resuscitation or other emergency medical procedures resulting in the exchange of bodily fluids significantly increases the odds of being exposed to a deadly infectious disease. Some of the more life-threatening diseases that can be transferred during an emergency procedure where bodily fluids are exchanged include hepatitis A, B, and C, and human immunodeficiency virus (HIV). Individuals infected by these diseases value confidentiality regarding this information. A number of good samaritans who perform life-saving emergency procedures such as cardiopulmonary resuscitation are unable to pay for the tests necessary for detecting infectious diseases that could have been transmitted during the emergency procedure. It is the purpose of this act to provide infectious disease testing at no cost to good samaritans who request testing for infectious diseases after rendering emergency assistance that has brought them into contact with a bodily fluid and to further protect the testing information once obtained through confidentiality provisions." [1999 c 391 § 1.]

Effective date—1999 c 391 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 18, 1999]." [1999 c 391 § 7.]

Chapter 70.08 RCW

COMBINED CITY-COUNTY HEALTH DEPARTMENTS

Sections

| | |
|-----------|---|
| 70.08.005 | Transfer of duties to the department of health. |
| 70.08.010 | Combined city-county health departments—Establishment. |
| 70.08.020 | Director of public health—Powers and duties. |
| 70.08.030 | Qualifications. |
| 70.08.040 | Director of public health—Appointment. |
| 70.08.050 | May act as health officer for other cities or towns. |
| 70.08.060 | Director of public health shall be registrar of vital statistics. |
| 70.08.070 | Employees may be included in civil service or retirement plans of city, county, or combined department. |
| 70.08.080 | Pooling of funds. |
| 70.08.090 | Other cities or agencies may contract for services. |
| 70.08.100 | Termination of agreement to operate combined city-county health department. |
| 70.08.110 | Prior expenditures in operating combined health department ratified. |
| 70.08.900 | Severability—1980 c 57. |

Control of cities and towns over water pollution: Chapter 35.88 RCW.

70.08.005 Transfer of duties to the department of health. The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 244.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.08.010 Combined city-county health departments—Establishment. Any city with one hundred thousand or more population and the county in which it is located, are authorized, as shall be agreed upon between the respective governing bodies of such city and said county, to establish and operate a combined city and county health department, and to appoint the director of public health. [1985 c 124 § 1; (1993 c 492 § 244 repealed by 1995 c 43 § 16); 1949 c 46 § 1; Rem. Supp. 1949 § 6099-30. Formerly RCW 70.05.037.]

70.08.020 Director of public health—Powers and duties. The director of public health is authorized to and shall exercise all powers and perform all duties by law vested in the local health officer. [1985 c 124 § 2; 1949 c 46 § 2; Rem. Supp. 1949 § 6099-31.]

70.08.030 Qualifications. Notwithstanding any provisions to the contrary contained in any city or county charter, the director of public health, under this chapter shall meet as a minimum one of the following standards of educational achievement and vocational experience to be qualified for appointment to the office:

(1) Bachelor's degree in business administration, public administration, hospital administration, management, nursing, environmental health, epidemiology, public health, or its equivalent and five years of experience in administration in a community-related field; or

(2) A graduate degree in any of the fields listed in subsection (1) of this section, or in medicine or osteopathic medicine and surgery, plus three years of administrative experience in a community-related field.

The director shall not engage in the private practice of the director's profession during such tenure of office and shall not be included in the classified civil service of the said city or the said county.

If the director of public health does not meet the qualifications of a health officer or a physician under RCW 70.05.050, the director shall employ a person so qualified to advise the director on medical or public health matters. [1996 c 178 § 20; 1985 c 124 § 3; 1984 c 25 § 3; 1949 c 46 § 3; Rem. Supp. 1949 § 6099-32.]

Effective date—1996 c 178: See note following RCW 18.35.110.

70.08.040 Director of public health—Appointment. Notwithstanding any provisions to the contrary contained in any city or county charter, where a combined department is established under this chapter, the director of public health under this chapter shall be appointed by the county executive of the county and the mayor of the city. The appointment shall be effective only upon a majority vote confirmation of the legislative authority of the county and the legislative authority of the city. The director may be removed by the county executive of the county, after consultation with the mayor of the city, upon filing a statement of reasons therefor with the legislative authorities of the county and the city. [1995 c 188 § 1; 1995 c 43 § 9; 1985 c 124 § 4; 1980 c 57 § 1; 1949 c 46 § 4; Rem. Supp. 1949 § 6099-33.]

Reviser's note: This section was amended by 1995 c 43 § 9 and by 1995 c 188 § 1, each without reference to the other. Both amendments are (2004 Ed.)

incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

70.08.050 May act as health officer for other cities or towns. Nothing in this chapter shall prohibit the director of public health as provided herein from acting as health officer for any other city or town within the county, nor from acting as health officer in any adjoining county or any city or town within such county having a contract or agreement as provided in RCW 70.08.090: PROVIDED, HOWEVER, That before being appointed health officer for such adjoining county, the secretary of health shall first give his or her approval thereto. [1991 c 3 § 314; 1979 c 141 § 85; 1949 c 46 § 8; Rem. Supp. 1949 § 6099-37.]

70.08.060 Director of public health shall be registrar of vital statistics. The director of public health under this chapter shall be registrar of vital statistics for all cities and counties under his jurisdiction and shall conduct such vital statistics work in accordance with the same laws and/or rules and regulations pertaining to vital statistics for a city of the first class. [1961 ex.s. c 5 § 4; 1949 c 46 § 9; Rem. Supp. 1949 § 6099-38.]

Vital statistics: Chapter 70.58 RCW.

70.08.070 Employees may be included in civil service or retirement plans of city, county, or combined department. Notwithstanding any provisions to the contrary contained in any city or county charter, and to the extent provided by the city and the county pursuant to appropriate legislative enactment, employees of the combined city and county health department may be included in the personnel system or civil service and retirement plans of the city or the county or a personnel system for the combined city and county health department that is separate from the personnel system or civil service of either county or city: PROVIDED, That residential requirements for such positions shall be coextensive with the county boundaries: PROVIDED FURTHER, That the city or county is authorized to pay such parts of the expense of operating and maintaining such personnel system or civil service and retirement system and to contribute to the retirement fund in behalf of employees such sums as may be agreed upon between the legislative authorities of such city and county. [1982 c 203 § 1; 1980 c 57 § 2; 1949 c 46 § 5; Rem. Supp. 1949 § 6099-34.]

70.08.080 Pooling of funds. The city by ordinance, and the county by appropriate legislative enactment, under this chapter may pool all or any part of their respective funds available for public health purposes, in the office of the city treasurer or the office of the county treasurer in a special pooling fund to be established in accordance with agreements between the legislative authorities of said city and county and which shall be expended for the combined health department. [1980 c 57 § 3; 1949 c 46 § 6; Rem. Supp. 1949 § 6099-35.]

70.08.090 Other cities or agencies may contract for services. Any other city in said county, other governmental

agency or any charitable or health agency may by contract or by agreement with the governing bodies of the combined health department receive public health services. [1949 c 46 § 7; Rem. Supp. 1949 § 6099-36.]

70.08.100 Termination of agreement to operate combined city-county health department. Agreement to operate a combined city and county health department made under this chapter may after two years from the date of such agreement, be terminated by either party at the end of any calendar year upon notice in writing given at least six months prior thereto. The termination of such agreement shall not relieve either party of any obligations to which it has been previously committed. [1949 c 46 § 10; Rem. Supp. 1949 § 6099-39.]

70.08.110 Prior expenditures in operating combined health department ratified. Any expenditures heretofore made by a city of one hundred thousand population or more, and by the county in which it is located, not made fraudulently and which were within the legal limits of indebtedness, towards the expense of maintenance and operation of a combined health department, are hereby legalized and ratified. [1949 c 46 § 11; Rem. Supp. 1949 § 6099-40.]

70.08.900 Severability—1980 c 57. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 57 § 4.]

Chapter 70.10 RCW

COMPREHENSIVE COMMUNITY HEALTH CENTERS

Sections

- 70.10.010 Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing.
- 70.10.020 "Comprehensive community health center" defined.
- 70.10.030 Authorization to apply for and administer federal or state funds.
- 70.10.040 Application for federal or state funds for construction of facility as part of or separate from health center—Processing and approval by administering agencies—Decision on use as part of comprehensive health center.
- 70.10.050 Application for federal or state funds for construction of facility as part of or separate from health center—Cooperation between agencies in standardizing application procedures and forms.
- 70.10.060 Adoption of rules and regulations—Liberal construction of chapter.

Community mental health services act: Chapter 71.24 RCW.

Mental health and retardation services, interstate contracts: RCW 71.28.010.

70.10.010 Declaration of policy—Combining health services—State authorized to cooperate with other entities in constructing. It is declared to be the policy of the legislature of the state of Washington that, wherever feasible, community health, mental health and mental retardation services shall be combined within single facilities in order to provide maximum utilization of available funds and personnel, and to assure the greatest possible coordination of such services for the benefit of those requiring them. It is further

declared to be the policy of the legislature to authorize the state to cooperate with counties, cities, and other municipal corporations in order to encourage them to take such steps as may be necessary to construct comprehensive community health centers in communities throughout the state. [1967 ex.s. c 4 § 1.]

70.10.020 "Comprehensive community health center" defined. The term "comprehensive community health center" as used in this chapter shall mean a health facility housing community health, mental health, and developmental disabilities services. [1977 ex.s. c 80 § 37; 1967 ex.s. c 4 § 2.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.030 Authorization to apply for and administer federal or state funds. The several agencies of the state authorized to administer within the state the various federal acts providing federal moneys to assist in the cost of establishing community health, mental health, and mental retardation facilities, are authorized to apply for and disburse federal grants, matching funds, or other funds, including gifts or donations from any source, available for use by counties, cities, other municipal corporations or nonprofit corporations. Upon application, these agencies shall also be authorized to distribute such state funds as may be appropriated by the legislature for such local construction projects: PROVIDED, That where state funds have been appropriated to assist in covering the cost of constructing a comprehensive community health center, or a community health, mental health, or mental retardation facility, and where any county, city, other municipal corporation or nonprofit corporation has submitted an approved application for such state funds, then, after any applicable federal grant has been deducted from the total cost of construction, the state agency or agencies in charge of each program may allocate to such applicant an amount not to exceed fifty percent of that particular program's contribution toward the balance of remaining construction costs. [1967 ex.s. c 4 § 3.]

70.10.040 Application for federal or state funds for construction of facility as part of or separate from health center—Processing and approval by administering agencies—Decision on use as part of comprehensive health center. Any application for federal or state funds to be used for construction of the community health, mental health, or developmental disabilities facility, which will be part of the comprehensive community health center as defined in RCW 70.10.020, shall be separately processed and approved by the state agency which has been designated to administer the particular federal or state program involved. Any application for federal or state funds for a construction project to establish a community health, mental health, or developmental disabilities facility not part of a comprehensive health center shall be processed by the state agency which is designated to administer the particular federal or state program involved. This agency shall also forward a copy of the application to the other agency or agencies designated to administer the program or programs providing funds for construction of the

facilities which make up a comprehensive health center. The agency or agencies receiving this copy of the application shall have a period of time not to exceed sixty days in which to file a statement with the agency to which the application has been submitted and to any statutory advisory council or committee which has been designated to advise the administering agency with regard to the program, stating that the proposed facility should or should not be part of a comprehensive health center. [1977 ex.s. c 80 § 38; 1967 ex.s. c 4 § 4.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.050 Application for federal or state funds for construction of facility as part of or separate from health center—Cooperation between agencies in standardizing application procedures and forms. The several state agencies processing applications for the construction of comprehensive health centers for community health, mental health, or developmental disability facilities shall cooperate to develop general procedures to be used in implementing the statute and to attempt to develop application forms and procedures which are as nearly standard as possible, after taking cognizance of the different information required in the various programs, to assist applicants in applying to various state agencies. [1977 ex.s. c 80 § 39; 1967 ex.s. c 4 § 5.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

70.10.060 Adoption of rules and regulations—Liberal construction of chapter. In furtherance of the legislative policy to authorize the state to cooperate with the federal government in facilitating the construction of comprehensive community health centers, the state agencies involved shall adopt such rules and regulations as may become necessary to entitle the state and local units of government to share in federal grants, matching funds, or other funds, unless the same be expressly prohibited by this chapter. Any section or provision of this chapter susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling the state and local units of government to receive federal grants, matching funds or other funds for the construction of comprehensive community health centers. [1967 ex.s. c 4 § 6.]

Chapter 70.12 RCW

PUBLIC HEALTH FUNDS

Sections

COUNTY FUNDS

- 70.12.015 Secretary may expend funds in counties.
70.12.025 County funds for public health.

PUBLIC HEALTH POOLING FUND

- 70.12.030 Public health pooling fund.
70.12.040 Fund, how maintained and disbursed.
70.12.050 Expenditures from fund.
70.12.060 Expenditures geared to budget.
70.12.070 Fund subject to audit and check by state.

(2004 Ed.)

COUNTY FUNDS

70.12.015 Secretary may expend funds in counties.

The secretary of health is hereby authorized to apportion and expend such sums as he or she shall deem necessary for public health work in the counties of the state, from the appropriations made to the state department of health for county public health work. [1991 c 3 § 315; 1979 c 141 § 86; 1939 c 191 § 2; RRS § 6001-1. Formerly RCW 70.12.080.]

70.12.025 County funds for public health. Each county legislative authority shall annually budget and appropriate a sum for public health work. [1975 1st ex.s. c 291 § 2.]

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

PUBLIC HEALTH POOLING FUND

70.12.030 Public health pooling fund. Any county, combined city-county health department, or health district is hereby authorized and empowered to create a "public health pooling fund", hereafter called the "fund", for the efficient management and control of all moneys coming to such county, combined department, or district for public health purposes. [1993 c 492 § 245; 1945 c 46 § 1; 1943 c 190 § 1; Rem. Supp. 1945 § 6099-1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.12.040 Fund, how maintained and disbursed. Any such fund may be established in the county treasurer's office or the city treasurer's office of a first class city according to the type of local health department organization existing.

In a district composed of more than one county, the county treasurer of the county having the largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of receipts and disbursements; and shall draw and the county treasurer shall honor and pay all such warrants.

Into any such fund so established may be paid:

- (1) All grants from any state fund for county public health work;
- (2) Any county current expense funds appropriated for the health department;
- (3) Any other money appropriated by the county for health work;
- (4) City funds appropriated for the health department;
- (5) All moneys received from any governmental agency, local, state or federal which may contribute to the local health department; and
- (6) Any contributions from any charitable or voluntary agency or contributions from any individual or estate.

Any school district may contract in writing for health services with the health department of the county, first class city or health district, and place such funds in the public health pooling fund in accordance with the contract. [1983 c 3 § 170; 1945 c 46 § 2; 1943 c 190 § 2; Rem. Supp. 1945 § 6099-2.]

[Title 70 RCW—page 17]

70.12.050 Expenditures from fund. All expenditures in connection with salaries, wages and operations incurred in carrying on the health department of the county, combined city-county health department, or health district shall be paid out of such fund. [1993 c 492 § 246; 1945 c 46 § 3; 1943 c 190 § 3; Rem. Supp. 1945 § 6099-3.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.12.060 Expenditures geared to budget. Any fund established as herein provided shall be expended so as to make the expenditures thereof agree with any respective appropriation period. Any accumulation in any such fund so established shall be taken into consideration when preparing any budget for the operations for the ensuing year. [1943 c 190 § 4; Rem. Supp. 1943 § 6099-4.]

70.12.070 Fund subject to audit and check by state. The public health pool fund shall be subject to audit by the state auditor and shall be subject to check by the state department of health. [1995 c 301 § 77; 1991 c 3 § 316; 1979 c 141 § 87; 1943 c 190 § 5; Rem. Supp. 1943 § 6099-5.]

Chapter 70.14 RCW

HEALTH CARE SERVICES PURCHASED BY STATE AGENCIES

Sections

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| 70.14.020 | State agencies to identify alternative health care providers. |
| 70.14.030 | Health care utilization review procedures. |
| 70.14.040 | Review of prospective rate setting methods. |
| 70.14.050 | Drug purchasing cost controls—Establishment of evidence-based prescription drug program. |

State health care cost containment policies: RCW 43.41.160.

70.14.020 State agencies to identify alternative health care providers. Each of the agencies listed in *RCW 70.14.010, with the exception of the department of labor and industries, which expends more than five hundred thousand dollars annually of state funds for purchase of health care shall identify the availability and costs of nonfee for service providers of health care, including preferred provider organizations, health maintenance organizations, managed health care or case management systems, or other nonfee for service alternatives. In each case where feasible in which an alternative health care provider arrangement, of similar scope and quality, is available at lower cost than fee for service providers, such state agencies shall make the services of the alternative provider available to clients, consumers, or employees for whom state dollars are spent to purchase health care. As consistent with other state and federal law, requirements for copayments, deductibles, the scope of available services, or other incentives shall be used to encourage clients, consumers, or employees to use the lowest cost providers, except that copayments or deductibles shall not be required where they might have the impact of denying access to necessary health care in a timely manner. [1986 c 303 § 7.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

Medical assistance—Agreements with managed health care systems: RCW 74.09.522.

70.14.030 Health care utilization review procedures. Plans for establishing or improving utilization review procedures for purchased health care services shall be developed by each agency listed in *RCW 70.14.010. The plans shall specifically address such utilization review procedures as prior authorization of services, hospital inpatient length of stay review, requirements for use of outpatient surgeries and the obtaining of second opinions for surgeries, review of invoices or claims submitted by service providers, and performance audit of providers. [1986 c 303 § 8.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

70.14.040 Review of prospective rate setting methods. The state agencies listed in *RCW 70.14.010 shall review the feasibility of establishing prospective payment approaches within their health care programs. Work plans or timetables shall be prepared for the development of prospective rates. The agencies shall identify legislative actions that may be necessary to facilitate the adoption of prospective rate setting methods. [1986 c 303 § 9.]

***Reviser's note:** RCW 70.14.010 was repealed by 1988 c 107 § 35, effective October 1, 1988.

70.14.050 Drug purchasing cost controls—Establishment of evidence-based prescription drug program. (1) Each agency administering a state purchased health care program as defined in RCW 41.05.011(2) shall, in cooperation with other agencies, take any necessary actions to control costs without reducing the quality of care when reimbursing for or purchasing drugs. To accomplish this purpose, participating agencies may establish an evidence-based prescription drug program.

(2) In developing the evidence-based prescription drug program authorized by this section, agencies:

(a) Shall prohibit reimbursement for drugs that are determined to be ineffective by the United States food and drug administration;

(b) Shall adopt rules in order to ensure that less expensive generic drugs will be substituted for brand name drugs in those instances where the quality of care is not diminished;

(c) Where possible, may authorize reimbursement for drugs only in economical quantities;

(d) May limit the prices paid for drugs by such means as negotiated discounts from pharmaceutical manufacturers, central purchasing, volume contracting, or setting maximum prices to be paid;

(e) Shall consider the approval of drugs with lower abuse potential in substitution for drugs with significant abuse potential;

(f) May take other necessary measures to control costs of drugs without reducing the quality of care; and

(g) Shall adopt rules governing practitioner endorsement and use of any list developed as part of the program authorized by this section.

(3) Agencies shall provide for reasonable exceptions, consistent with RCW 69.41.190, to any list developed as part of the program authorized by this section.

(4) Agencies shall establish an independent pharmacy and therapeutics committee to evaluate the effectiveness of prescription drugs in the development of the program authorized by this section. [2003 1st sp.s. c 29 § 9; 1986 c 303 § 10.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

Chapter 70.22 RCW MOSQUITO CONTROL

Sections

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| 70.22.005 | Transfer of duties to the department of health. |
| 70.22.010 | Declaration of purpose. |
| 70.22.020 | Secretary may make inspections, investigations, and determinations and provide for control. |
| 70.22.030 | Secretary to coordinate plans. |
| 70.22.040 | Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes. |
| 70.22.050 | Powers and duties of secretary. |
| 70.22.060 | Governmental entities to cooperate with secretary. |
| 70.22.900 | Severability—1961 c 283. |

70.22.005 Transfer of duties to the department of health. The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 246.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.22.010 Declaration of purpose. The purpose of this chapter is to establish a statewide program for the control or elimination of mosquitoes as a health hazard. [1961 c 283 § 1.]

Mosquito control districts: Chapter 17.28 RCW.

70.22.020 Secretary may make inspections, investigations, and determinations and provide for control. The secretary of health is hereby authorized and empowered to make or cause to be made such inspections, investigations, studies and determinations as he or she may from time to time deem advisable in order to ascertain the effect of mosquitoes as a health hazard, and, to the extent to which funds are available, to provide for the control or elimination thereof in any or all parts of the state. [1991 c 3 § 317; 1979 c 141 § 88; 1961 c 283 § 2.]

70.22.030 Secretary to coordinate plans. The secretary of health shall coordinate plans for mosquito control work which may be projected by any county, city or town, municipal corporation, taxing district, state department or agency, federal government agency, or any person, group or organization, and arrange for cooperation between any such districts, departments, agencies, persons, groups or organizations. [1991 c 3 § 318; 1979 c 141 § 89; 1961 c 283 § 3.]

70.22.040 Secretary may contract with, receive funds from entities and individuals—Authorization for governmental entities to contract, grant funds, levy taxes. The secretary of health is authorized and empowered to receive funds from any county, city or town, municipal corporation,

(2004 Ed.)

taxing district, the federal government, or any person, group or organization to carry out the purpose of this chapter. In connection therewith the secretary is authorized and empowered to contract with any such county, city, or town, municipal corporation, taxing district, the federal government, person, group or organization with respect to the construction and maintenance of facilities and other work for the purpose of effecting mosquito control or elimination, and any such county, city or town, municipal corporation, or taxing district obligated to carry out the provisions of any such contract entered into with the secretary is authorized, empowered and directed to appropriate, and if necessary, to levy taxes for and pay over such funds as its contract with the secretary may from time to time require. [1991 c 3 § 319; 1979 c 141 § 90; 1961 c 283 § 4.]

70.22.050 Powers and duties of secretary. To carry out the purpose of this chapter, the secretary of health may:

(1) Abate as nuisances breeding places for mosquitoes as defined in RCW 17.28.170;

(2) Acquire by gift, devise, bequest, lease, or purchase, real and personal property necessary or convenient for carrying out the purpose of this chapter;

(3) Make contracts, employ engineers, health officers, sanitarians, physicians, laboratory personnel, attorneys, and other technical or professional assistants;

(4) Publish information or literature; and

(5) Do any and all other things necessary to carry out the purpose of this chapter: PROVIDED, That no program shall be permitted nor any action taken in pursuance thereof which may be injurious to the life or health of game or fish. [1991 c 3 § 320; 1989 c 11 § 25; 1979 c 141 § 91; 1961 c 283 § 5.]

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

70.22.060 Governmental entities to cooperate with secretary. Each state department, agency, and political subdivision shall cooperate with the secretary of health in carrying out the purposes of this chapter. [1991 c 3 § 321; 1979 c 141 § 92; 1961 c 283 § 6.]

70.22.900 Severability—1961 c 283. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 283 § 7.]

Chapter 70.24 RCW

CONTROL AND TREATMENT OF SEXUALLY TRANSMITTED DISEASES

(Formerly: Control and treatment of venereal diseases)

Sections

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| 70.24.005 | Transfer of duties to the department of health. |
| 70.24.015 | Legislative finding. |
| 70.24.017 | Definitions. |
| 70.24.022 | Interviews, examination, counseling, or treatment of infected persons or persons believed to be infected—Dissemination of false information—Penalty. |
| 70.24.024 | Orders for examinations and counseling—Restrictive measures—Investigation—Issuance of order—Confidential notice and hearing—Exception. |
| 70.24.034 | Detention—Grounds—Order—Hearing. |

- 70.24.050 Diagnosis of sexually transmitted diseases—Confirmation—Anonymous prevalence reports.
- 70.24.070 Detention and treatment facilities.
- 70.24.080 Penalty.
- 70.24.084 Violations of chapter—Aggrieved persons—Right of action.
- 70.24.090 Pregnant women—Test for syphilis.
- 70.24.095 Pregnant women—Drug treatment program participants—AIDS counseling.
- 70.24.100 Syphilis laboratory tests.
- 70.24.105 Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information.
- 70.24.107 Rule-making authority—1997 c 345.
- 70.24.110 Minors—Treatment, consent, liability for payment for care.
- 70.24.120 Sexually transmitted disease case investigators—Authority to withdraw blood.
- 70.24.125 Reporting requirements for sexually transmitted diseases—Rules.
- 70.24.130 Adoption of rules.
- 70.24.140 Certain infected persons—Sexual intercourse unlawful without notification.
- 70.24.150 Immunity of certain public employees.
- 70.24.200 Information for the general public on sexually transmitted diseases—Emphasis.
- 70.24.210 Information for children on sexually transmitted diseases—Emphasis.
- 70.24.220 AIDS education in public schools—Finding.
- 70.24.240 Clearinghouse for AIDS educational materials.
- 70.24.250 Office on AIDS—Repository and clearinghouse for AIDS education and training material—University of Washington duties.
- 70.24.260 Emergency medical personnel—Rules for AIDS education and training.
- 70.24.270 Health professionals—Rules for AIDS education and training.
- 70.24.280 Board of pharmacy—Rules for AIDS education and training.
- 70.24.290 Public school employees—Rules for AIDS education and training.
- 70.24.300 State and local government employees—Determination of substantial likelihood of exposure—Rules for AIDS education and training.
- 70.24.310 Health care facility employees—Rules for AIDS education and training.
- 70.24.320 Counseling and testing—AIDS and HIV—Definitions.
- 70.24.325 Counseling and testing—Insurance requirements.
- 70.24.330 HIV testing—Consent, exceptions.
- 70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees' substantial exposure to bodily fluids—Procedure and court orders.
- 70.24.350 Prostitution and drug offenses—Voluntary testing and counseling.
- 70.24.360 Jail detainees—Testing and counseling of persons who present a possible risk.
- 70.24.370 Correction facility inmates—Counseling and testing of persons who present a possible risk—Training for administrators and superintendents—Procedure.
- 70.24.380 Board of health—Rules for counseling and testing.
- 70.24.400 Department to establish regional AIDS service networks—Funding—Lead counties—Regional plans—University of Washington, center for AIDS education.
- 70.24.410 AIDS advisory committee—Duties, review of insurance problems—Termination.
- 70.24.420 Additional local funding of treatment programs not required.
- 70.24.430 Application of chapter to persons subject to jurisdiction of department of corrections.
- 70.24.450 Confidentiality—Reports—Unauthorized disclosures.
- 70.24.900 Severability—1988 c 206.

Center for volunteerism and citizen service: RCW 43.150.050.

70.24.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services, the department of licensing, and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 247.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.24.015 Legislative finding. The legislature declares that sexually transmitted diseases constitute a serious and

sometimes fatal threat to the public and individual health and welfare of the people of the state. The legislature finds that the incidence of sexually transmitted diseases is rising at an alarming rate and that these diseases result in significant social, health, and economic costs, including infant and maternal mortality, temporary and lifelong disability, and premature death. The legislature further finds that sexually transmitted diseases, by their nature, involve sensitive issues of privacy, and it is the intent of the legislature that all programs designed to deal with these diseases afford patients privacy, confidentiality, and dignity. The legislature also finds that medical knowledge and information about sexually transmitted diseases are rapidly changing. It is therefore the intent of the legislature to provide a program that is sufficiently flexible to meet emerging needs, deals efficiently and effectively with reducing the incidence of sexually transmitted diseases, and provides patients with a secure knowledge that information they provide will remain private and confidential. [1988 c 206 § 901.]

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

(1) "Acquired immunodeficiency syndrome" or "AIDS" means the clinical syndrome of HIV-related illness as defined by the board of health by rule.

(2) "Board" means the state board of health.

(3) "Department" means the department of health, or any successor department with jurisdiction over public health matters.

(4) "Health care provider" means any person who is a member of a profession under RCW 18.130.040 or other person providing medical, nursing, psychological, or other health care services regulated by the department of health.

(5) "Health care facility" means a hospital, nursing home, neuropsychiatric or mental health facility, home health agency, hospice, child care agency, group care facility, family foster home, clinic, blood bank, blood center, sperm bank, laboratory, or other social service or health care institution regulated or operated by the department of health.

(6) "HIV-related condition" means any medical condition resulting from infection with HIV including, but not limited to, seropositivity for HIV.

(7) "Human immunodeficiency virus" or "HIV" means all HIV and HIV-related viruses which damage the cellular branch of the human immune or neurological systems and leave the infected person immunodeficient or neurologically impaired.

(8) "Test for a sexually transmitted disease" means a test approved by the board by rule.

(9) "Legal guardian" means a person appointed by a court to assume legal authority for another who has been found incompetent or, in the case of a minor, a person who has legal custody of the child.

(10) "Local public health officer" means the officer directing the county health department or his or her designee who has been given the responsibility and authority to protect the health of the public within his or her jurisdiction.

(11) "Person" includes any natural person, partnership, association, joint venture, trust, public or private corporation, or health facility.

(12) "Release of test results" means a written authorization for disclosure of any sexually transmitted disease test result which is signed, dated, and which specifies to whom disclosure is authorized and the time period during which the release is to be effective.

(13) "Sexually transmitted disease" means a bacterial, viral, fungal, or parasitic disease, determined by the board by rule to be sexually transmitted, to be a threat to the public health and welfare, and to be a disease for which a legitimate public interest will be served by providing for regulation and treatment. The board shall designate chancroid, gonorrhea, granuloma inguinale, lymphogranuloma venereum, genital herpes simplex, chlamydia, nongonococcal urethritis (NGU), trachomitis, genital human papilloma virus infection, syphilis, acquired immunodeficiency syndrome (AIDS), and human immunodeficiency virus (HIV) infection as sexually transmitted diseases, and shall consider the recommendations and classifications of the centers for disease control and other nationally recognized medical authorities in designating other diseases as sexually transmitted.

(14) "State public health officer" means the secretary of health or an officer appointed by the secretary. [2001 c 319 § 4; 1991 c 3 § 322; 1988 c 206 § 101.]

70.24.022 Interviews, examination, counseling, or treatment of infected persons or persons believed to be infected—Dissemination of false information—Penalty.

(1) The board shall adopt rules authorizing interviews and the state and local public health officers and their authorized representatives may interview, or cause to be interviewed, all persons infected with a sexually transmitted disease and all persons who, in accordance with standards adopted by the board by rule, are reasonably believed to be infected with such diseases for the purpose of investigating the source and spread of the diseases and for the purpose of ordering a person to submit to examination, counseling, or treatment as necessary for the protection of the public health and safety, subject to RCW 70.24.024.

(2) State and local public health officers or their authorized representatives shall investigate identified partners of persons infected with sexually transmitted diseases in accordance with procedures prescribed by the board.

(3) All information gathered in the course of contact investigation pursuant to this section shall be considered confidential.

(4) No person contacted under this section or reasonably believed to be infected with a sexually transmitted disease who reveals the name or names of sexual contacts during the course of an investigation shall be held liable in a civil action for such revelation, unless the revelation is made with a knowing or reckless disregard for the truth.

(5) Any person who knowingly or maliciously disseminates any false information or report concerning the existence of any sexually transmitted disease under this section is guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021. [1988 c 206 § 906.]

70.24.024 Orders for examinations and counseling—Restrictive measures—Investigation—Issuance of order—Confidential notice and hearing—Exception. (1)

(2004 Ed.)

Subject to the provisions of this chapter, the state and local public health officers or their authorized representatives may examine and counsel or cause to be examined and counseled persons reasonably believed to be infected with or to have been exposed to a sexually transmitted disease.

(2) Orders or restrictive measures directed to persons with a sexually transmitted disease shall be used as the last resort when other measures to protect the public health have failed, including reasonable efforts, which shall be documented, to obtain the voluntary cooperation of the person who may be subject to such an order. The orders and measures shall be applied serially with the least intrusive measures used first. The burden of proof shall be on the state or local public health officer to show that specified grounds exist for the issuance of the orders or restrictive measures and that the terms and conditions imposed are no more restrictive than necessary to protect the public health.

(3) When the state or local public health officer within his or her respective jurisdiction knows or has reason to believe, because of direct medical knowledge or reliable testimony of others in a position to have direct knowledge of a person's behavior, that a person has a sexually transmitted disease and is engaging in specified conduct, as determined by the board by rule based upon generally accepted standards of medical and public health science, that endangers the public health, he or she shall conduct an investigation in accordance with procedures prescribed by the board to evaluate the specific facts alleged, if any, and the reliability and credibility of the person or persons providing such information and, if satisfied that the allegations are true, he or she may issue an order according to the following priority to:

(a) Order a person to submit to a medical examination or testing, seek counseling, or obtain medical treatment for curable diseases, or any combination of these, within a period of time determined by the public health officer, not to exceed fourteen days.

(b) Order a person to immediately cease and desist from specified conduct which endangers the health of others by imposing such restrictions upon the person as are necessary to prevent the specified conduct that endangers the health of others only if the public health officer has determined that clear and convincing evidence exists to believe that such person has been ordered to report for counseling as provided in (a) of this subsection and continues to demonstrate behavior which endangers the health of others. Any restriction shall be in writing, setting forth the name of the person to be restricted and the initial period of time, not to exceed three months, during which the order shall remain effective, the terms of the restrictions, and such other conditions as may be necessary to protect the public health. Restrictions shall be imposed in the least-restrictive manner necessary to protect the public health.

(4)(a) Upon the issuance of any order by the state or local public health officer or an authorized representative pursuant to subsection (3) of this section or RCW 70.24.340(4), such public health officer shall give written notice promptly, personally, and confidentially to the person who is the subject of the order stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an

order, and notifying the person who is the subject of the order that, if he or she contests the order, he or she may appear at a judicial hearing on the enforceability of the order, to be held in superior court. He or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. The hearing shall be held within seventy-two hours of receipt of the notice, unless the person subject to the order agrees to comply. If the person contests the order, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to this subsection. If the person does not contest the order within seventy-two hours of receiving it, and the person does not comply with the order within the time period specified for compliance with the order, the state or local public health officer may request a warrant be issued by the superior court to insure appearance at the hearing. The hearing shall be within seventy-two hours of the expiration date of the time specified for compliance with the original order. The burden of proof shall be on the public health officer to show by clear and convincing evidence that the specified grounds exist for the issuance of the order and for the need for compliance and that the terms and conditions imposed therein are no more restrictive than necessary to protect the public health. Upon conclusion of the hearing, the court shall issue appropriate orders affirming, modifying, or dismissing the order.

(b) If the superior court dismisses the order of the public health officer, the fact that the order was issued shall be expunged from the records of the department or local department of health.

(5) Any hearing conducted pursuant to this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the order, in which case the hearing will be conducted in open court. Unless in open hearing, any transcripts or records relating thereto shall also be confidential and may be sealed by the order of the court. [1988 c 206 § 909.]

70.24.034 Detention—Grounds—Order—Hearing.

(1) When the procedures of RCW 70.24.024 have been exhausted and the state or local public health officer, within his or her respective jurisdiction, knows or has reason to believe, because of medical information, that a person has a sexually transmitted disease and that the person continues to engage in behaviors that present an imminent danger to the public health as defined by the board by rule based upon generally accepted standards of medical and public health science, the public health officer may bring an action in superior court to detain the person in a facility designated by the board for a period of time necessary to accomplish a program of counseling and education, excluding any coercive techniques or procedures, designed to get the person to adopt nondangerous behavior. In no case may the period exceed ninety days under each order. The board shall establish, by rule, standards for counseling and education under this subsection. The public health officer shall request the prosecuting attorney to file such action in superior court. During that period, reasonable efforts will be made in a noncoercive manner to get the person to adopt nondangerous behavior.

(2) If an action is filed as outlined in subsection (1) of this section, the superior court, upon the petition of the prosecuting attorney, shall issue other appropriate court orders

including, but not limited to, an order to take the person into custody immediately, for a period not to exceed seventy-two hours, and place him or her in a facility designated or approved by the board. The person who is the subject of the order shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual bases therefor, the evidence relied upon for proof of infection and dangerous behavior, and the likelihood of repetition of such behaviors in the absence of such an order, and notifying the person that if he or she refuses to comply with the order he or she may appear at a hearing to review the order and that he or she may have an attorney appear on his or her behalf in the hearing at public expense, if necessary. If the person contests testing or treatment, no invasive medical procedures shall be carried out prior to a hearing being held pursuant to subsection (3) of this section.

(3) The hearing shall be conducted no later than forty-eight hours after the receipt of the order. The person who is subject to the order has a right to be present at the hearing and may have an attorney appear on his or her behalf in the hearing, at public expense if necessary. If the order being contested includes detention for a period of fourteen days or longer, the person shall also have the right to a trial by jury upon request. Upon conclusion of the hearing or trial by jury, the court shall issue appropriate orders.

The court may continue the hearing upon the request of the person who is subject to the order for good cause shown for no more than five additional judicial days. If a trial by jury is requested, the court, upon motion, may continue the hearing for no more than ten additional judicial days. During the pendency of the continuance, the court may order that the person contesting the order remain in detention or may place terms and conditions upon the person which the court deems appropriate to protect public health.

(4) The burden of proof shall be on the state or local public health officer to show by clear and convincing evidence that grounds exist for the issuance of any court order pursuant to subsection (2) or (3) of this section. If the superior court dismisses the order, the fact that the order was issued shall be expunged from the records of the state or local department of health.

(5) Any hearing conducted by the superior court pursuant to subsection (2) or (3) of this section shall be closed and confidential unless a public hearing is requested by the person who is the subject of the order, in which case the hearing will be conducted in open court. Unless in open hearing, any transcripts or records relating thereto shall also be confidential and may be sealed by order of the court.

(6) Any order entered by the superior court pursuant to subsection (1) or (2) of this section shall impose terms and conditions no more restrictive than necessary to protect the public health. [1988 c 206 § 910.]

70.24.050 Diagnosis of sexually transmitted diseases—Confirmation—Anonymous prevalence reports.

Diagnosis of a sexually transmitted disease in every instance must be confirmed by laboratory tests or examinations in a laboratory approved or conducted in accordance with procedures and such other requirements as may be established by the board. Laboratories testing for HIV shall report anony-

mous HIV prevalence results to the department, for health statistics purposes, in a manner established by the board. [1988 c 206 § 907; 1919 c 114 § 6; RRS § 6105.]

70.24.070 Detention and treatment facilities. For the purpose of carrying out this chapter, the board shall have the power and authority to designate facilities for the detention and treatment of persons found to be infected with a sexually transmitted disease and to designate any such facility in any hospital or other public or private institution, other than a jail or correctional facility, having, or which may be provided with, such necessary detention, segregation, isolation, clinic and hospital facilities as may be required and prescribed by the board, and to enter into arrangements for the conduct of such facilities with the public officials or persons, associations, or corporations in charge of or maintaining and operating such institutions. [1988 c 206 § 908; 1919 c 114 § 8; RRS § 6107.]

70.24.080 Penalty. Any person who shall violate any of the provisions of this chapter or any lawful rule adopted by the board pursuant to the authority herein granted, or who shall fail or refuse to obey any lawful order issued by any state, county or municipal public health officer, pursuant to the authority granted in this chapter, shall be deemed guilty of a gross misdemeanor punishable as provided under RCW 9A.20.021. [1988 c 206 § 911; 1919 c 114 § 5; RRS § 6104.]

70.24.084 Violations of chapter—Aggrieved persons—Right of action. (1) Any person aggrieved by a violation of this chapter shall have a right of action in superior court and may recover for each violation:

(a) Against any person who negligently violates a provision of this chapter, one thousand dollars, or actual damages, whichever is greater, for each violation.

(b) Against any person who intentionally or recklessly violates a provision of this chapter, ten thousand dollars, or actual damages, whichever is greater, for each violation.

(c) Reasonable attorneys' fees and costs.

(d) Such other relief, including an injunction, as the court may deem appropriate.

(2) Any action under this chapter is barred unless the action is commenced within three years after the cause of action accrues.

(3) Nothing in this chapter limits the rights of the subject of a test for a sexually transmitted disease to recover damages or other relief under any other applicable law.

(4) Nothing in this chapter may be construed to impose civil liability or criminal sanction for disclosure of a test result for a sexually transmitted disease in accordance with any reporting requirement for a diagnosed case of sexually transmitted disease by the department or the centers for disease control of the United States public health service.

(5) It is a negligent violation of this chapter to cause an unauthorized communication of confidential sexually transmitted disease information by facsimile transmission or otherwise communicating the information to an unauthorized recipient when the sender knew or had reason to know the facsimile transmission telephone number or other transmittal

(2004 Ed.)

information was incorrect or outdated. [2001 c 16 § 1; 1999 c 391 § 4; 1988 c 206 § 914.]

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

70.24.090 Pregnant women—Test for syphilis. Every physician attending a pregnant woman in the state of Washington during gestation shall, in the case of each woman so attended, take or cause to be taken a sample of blood of such woman at the time of first examination, and submit such sample to an approved laboratory for a standard serological test for syphilis. If the pregnant woman first presents herself for examination after the fifth month of gestation the physician or other attendant shall in addition to the above, advise and urge the patient to secure a medical examination and blood test before the fifth month of any subsequent pregnancies. [1939 c 165 § 1; RRS § 6002-1.]

70.24.095 Pregnant women—Drug treatment program participants—AIDS counseling. (1) Every health care practitioner attending a pregnant woman or a person seeking treatment of a sexually transmitted disease shall insure that AIDS counseling of the patient is conducted.

(2) AIDS counseling shall be provided to each person in a drug treatment program under *chapter 69.54 RCW. [1988 c 206 § 705.]

*Reviser's note: Chapter 69.54 RCW was repealed by 1989 c 270 § 35.

70.24.100 Syphilis laboratory tests. A standard serological test shall be a laboratory test for syphilis approved by the secretary of health and shall be performed either by a laboratory approved by the secretary of health for the performance of the particular serological test used or by the state department of health, on request of the physician free of charge. [1991 c 3 § 323; 1979 c 141 § 95; 1939 c 165 § 2; RRS § 6002-2.]

70.24.105 Disclosure of HIV antibody test or testing or treatment of sexually transmitted diseases—Exchange of medical information. (1) No person may disclose or be compelled to disclose the identity of any person who has investigated, considered, or requested a test or treatment for a sexually transmitted disease, except as authorized by this chapter.

(2) No person may disclose or be compelled to disclose the identity of any person upon whom an HIV antibody test is performed, or the results of such a test, nor may the result of a test for any other sexually transmitted disease when it is positive be disclosed. This protection against disclosure of test subject, diagnosis, or treatment also applies to any information relating to diagnosis of or treatment for HIV infection and for any other confirmed sexually transmitted disease. The following persons, however, may receive such information:

(a) The subject of the test or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(b) Any person who secures a specific release of test results or information relating to HIV or confirmed diagnosis

of or treatment for any other sexually transmitted disease executed by the subject or the subject's legal representative for health care decisions in accordance with RCW 7.70.065, with the exception of such a representative of a minor child over fourteen years of age and otherwise competent;

(c) The state public health officer, a local public health officer, or the centers for disease control of the United States public health service in accordance with reporting requirements for a diagnosed case of a sexually transmitted disease;

(d) A health facility or health care provider that procures, processes, distributes, or uses: (i) A human body part, tissue, or blood from a deceased person with respect to medical information regarding that person; (ii) semen, including that provided prior to March 23, 1988, for the purpose of artificial insemination; or (iii) blood specimens;

(e) Any state or local public health officer conducting an investigation pursuant to RCW 70.24.024, provided that such record was obtained by means of court ordered HIV testing pursuant to RCW 70.24.340 or 70.24.024;

(f) A person allowed access to the record by a court order granted after application showing good cause therefor. In assessing good cause, the court shall weigh the public interest and the need for disclosure against the injury to the patient, to the physician-patient relationship, and to the treatment services. Upon the granting of the order, the court, in determining the extent to which any disclosure of all or any part of the record of any such test is necessary, shall impose appropriate safeguards against unauthorized disclosure. An order authorizing disclosure shall: (i) Limit disclosure to those parts of the patient's record deemed essential to fulfill the objective for which the order was granted; (ii) limit disclosure to those persons whose need for information is the basis for the order; and (iii) include any other appropriate measures to keep disclosure to a minimum for the protection of the patient, the physician-patient relationship, and the treatment services, including but not limited to the written statement set forth in subsection (5) of this section;

(g) *Local law enforcement agencies to the extent provided in RCW 70.24.034;

(h) Persons who, because of their behavioral interaction with the infected individual, have been placed at risk for acquisition of a sexually transmitted disease, as provided in RCW 70.24.022, if the health officer or authorized representative believes that the exposed person was unaware that a risk of disease exposure existed and that the disclosure of the identity of the infected person is necessary;

(i) A law enforcement officer, fire fighter, health care provider, health care facility staff person, department of correction's staff person, jail staff person, or other persons as defined by the board in rule pursuant to RCW 70.24.340(4), who has requested a test of a person whose bodily fluids he or she has been substantially exposed to, pursuant to RCW 70.24.340(4), if a state or local public health officer performs the test;

(j) Claims management personnel employed by or associated with an insurer, health care service contractor, health maintenance organization, self-funded health plan, state-administered health care claims payer, or any other payer of health care claims where such disclosure is to be used solely for the prompt and accurate evaluation and payment of medical or related claims. Information released under this subsec-

tion shall be confidential and shall not be released or available to persons who are not involved in handling or determining medical claims payment; and

(k) A department of social and health services worker, a child placing agency worker, or a guardian ad litem who is responsible for making or reviewing placement or case-planning decisions or recommendations to the court regarding a child, who is less than fourteen years of age, has a sexually transmitted disease, and is in the custody of the department of social and health services or a licensed child placing agency; this information may also be received by a person responsible for providing residential care for such a child when the department of social and health services or a licensed child placing agency determines that it is necessary for the provision of child care services.

(3) No person to whom the results of a test for a sexually transmitted disease have been disclosed pursuant to subsection (2) of this section may disclose the test results to another person except as authorized by that subsection.

(4) The release of sexually transmitted disease information regarding an offender or detained person, except as provided in subsection (2)(e) of this section, shall be governed as follows:

(a) The sexually transmitted disease status of a department of corrections offender who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by department of corrections health care providers and local public health officers to the department of corrections health care administrator or infection control coordinator of the facility in which the offender is housed. The information made available to the health care administrator or the infection control coordinator under this subsection (4)(a) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. The information may be submitted to transporting officers and receiving facilities, including facilities that are not under the department of corrections' jurisdiction according to the provisions of (d) and (e) of this subsection.

(b) The sexually transmitted disease status of a person detained in a jail who has had a mandatory test conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be made available by the local public health officer to a jail health care administrator or infection control coordinator. The information made available to a health care administrator under this subsection (4)(b) shall be used only for disease prevention or control and for protection of the safety and security of the staff, offenders, detainees, and the public. The information may be submitted to transporting officers and receiving facilities according to the provisions of (d) and (e) of this subsection.

(c) Information regarding the sexually transmitted disease status of an offender or detained person is confidential and may be disclosed by a correctional health care administrator or infection control coordinator or local jail health care administrator or infection control coordinator only as necessary for disease prevention or control and for protection of the safety and security of the staff, offenders, and the public. Unauthorized disclosure of this information to any person may result in disciplinary action, in addition to the penalties

prescribed in RCW 70.24.080 or any other penalties as may be prescribed by law.

(d) Notwithstanding the limitations on disclosure contained in (a), (b), and (c) of this subsection, whenever any member of a jail staff or department of corrections staff has been substantially exposed to the bodily fluids of an offender or detained person, then the results of any tests conducted pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370, shall be immediately disclosed to the staff person in accordance with the Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens. Disclosure must be accompanied by appropriate counseling for the staff member, including information regarding follow-up testing and treatment. Disclosure shall also include notice that subsequent disclosure of the information in violation of this chapter or use of the information to harass or discriminate against the offender or detainee may result in disciplinary action, in addition to the penalties prescribed in RCW 70.24.080, and imposition of other penalties prescribed by law.

(e) The staff member shall also be informed whether the offender or detained person had any other communicable disease, as defined in RCW 72.09.251(3), when the staff person was substantially exposed to the offender's or detainee's bodily fluids.

(f) The test results of voluntary and anonymous HIV testing or HIV-related condition may not be disclosed to a staff person except as provided in subsection (2)(i) of this section and RCW 70.24.340(4). A health care administrator or infection control coordinator may provide the staff member with information about how to obtain the offender's or detainee's test results under subsection (2)(i) of this section and RCW 70.24.340(4).

(5) Whenever disclosure is made pursuant to this section, except for subsections (2)(a) and (6) of this section, it shall be accompanied by a statement in writing which includes the following or substantially similar language: "This information has been disclosed to you from records whose confidentiality is protected by state law. State law prohibits you from making any further disclosure of it without the specific written consent of the person to whom it pertains, or as otherwise permitted by state law. A general authorization for the release of medical or other information is NOT sufficient for this purpose." An oral disclosure shall be accompanied or followed by such a notice within ten days.

(6) The requirements of this section shall not apply to the customary methods utilized for the exchange of medical information among health care providers in order to provide health care services to the patient, nor shall they apply within health care facilities where there is a need for access to confidential medical information to fulfill professional duties.

(7) Upon request of the victim, disclosure of test results under this section to victims of sexual offenses under chapter 9A.44 RCW shall be made if the result is negative or positive. The county prosecuting attorney shall notify the victim of the right to such disclosure. Such disclosure shall be accompanied by appropriate counseling, including information regarding follow-up testing. [1997 c 345 § 2; 1997 c 196 § 6; 1994 c 72 § 1; 1989 c 123 § 1; 1988 c 206 § 904.]

Reviser's note: *(1) The governor vetoed 1997 c 196 § 5, the amendment directing disclosure to local law enforcement agencies.

(2004 Ed.)

(2) This section was amended by 1997 c 196 § 6 and by 1997 c 345 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—1997 c 345: "(1) The legislature finds that department of corrections staff and jail staff perform essential public functions that are vital to our communities. The health and safety of these workers is often placed in jeopardy while they perform the responsibilities of their jobs. Therefore, the legislature intends that the results of any HIV tests conducted on an offender or detainee pursuant to RCW 70.24.340(1), 70.24.360, or 70.24.370 shall be disclosed to the health care administrator or infection control coordinator of the department of corrections facility or the local jail that houses the offender or detainee. The legislature intends that these test results also be disclosed to any corrections or jail staff who have been substantially exposed to the bodily fluids of the offender or detainee when the disclosure is provided by a licensed health care provider in accordance with Washington Administrative Code rules governing employees' occupational exposure to bloodborne pathogens.

(2) The legislature further finds that, through the efforts of health care professionals and corrections staff, offenders in department of corrections facilities and people detained in local jails are being encouraged to take responsibility for their health by requesting voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling. The legislature does not intend, through chapter 345, Laws of 1997, to mandate disclosure of the results of voluntary and anonymous tests. The legislature intends to continue to protect the confidential exchange of medical information related to voluntary and anonymous pretest counseling, HIV testing, posttest counseling, and AIDS counseling as provided by chapter 70.24 RCW." [1997 c 345 § 1.]

70.24.107 Rule-making authority—1997 c 345. The department of health and the department of corrections shall each adopt rules to implement chapter 345, Laws of 1997. The department of health and the department of corrections shall cooperate with local jail administrators to obtain the information from local jail administrators that is necessary to comply with this section. [1999 c 372 § 14; 1997 c 345 § 6.]

Findings—Intent—1997 c 345: See note following RCW 70.24.105.

70.24.110 Minors—Treatment, consent, liability for payment for care. A minor fourteen years of age or older who may have come in contact with any sexually transmitted disease or suspected sexually transmitted disease may give consent to the furnishing of hospital, medical and surgical care related to the diagnosis or treatment of such disease. Such consent shall not be subject to disaffirmance because of minority. The consent of the parent, parents, or legal guardian of such minor shall not be necessary to authorize hospital, medical and surgical care related to such disease and such parent, parents, or legal guardian shall not be liable for payment for any care rendered pursuant to this section. [1988 c 206 § 912; 1969 ex.s. c 164 § 1.]

70.24.120 Sexually transmitted disease case investigators—Authority to withdraw blood. Sexually transmitted disease case investigators, upon specific authorization from a physician, are hereby authorized to perform venipuncture or skin puncture on a person for the sole purpose of withdrawing blood for use in sexually transmitted disease tests.

The term "sexually transmitted disease case investigator" shall mean only those persons who:

- (1) Are employed by public health authorities; and
- (2) Have been trained by a physician in proper procedures to be employed when withdrawing blood in accordance with training requirements established by the department of health; and

(3) Possess a statement signed by the instructing physician that the training required by subsection (2) of this section has been successfully completed.

The term "physician" means any person licensed under the provisions of chapters 18.57 or 18.71 RCW. [1991 c 3 § 324; 1988 c 206 § 913; 1977 c 59 § 1.]

70.24.125 Reporting requirements for sexually transmitted diseases—Rules. The board shall establish reporting requirements for sexually transmitted diseases by rule. Reporting under this section may be required for such sexually transmitted diseases included under this chapter as the board finds appropriate. [1988 c 206 § 905.]

70.24.130 Adoption of rules. The board shall adopt such rules as are necessary to implement and enforce this chapter. Rules may also be adopted by the department of health for the purposes of this chapter. The rules may include procedures for taking appropriate action, in addition to any other penalty under this chapter, with regard to health care facilities or health care providers which violate this chapter or the rules adopted under this chapter. The rules shall prescribe stringent safeguards to protect the confidentiality of the persons and records subject to this chapter. The procedures set forth in chapter 34.05 RCW apply to the administration of this chapter, except that in case of conflict between chapter 34.05 RCW and this chapter, the provisions of this chapter shall control. [1991 c 3 § 325; 1988 c 206 § 915.]

70.24.140 Certain infected persons—Sexual intercourse unlawful without notification. It is unlawful for any person who has a sexually transmitted disease, except HIV infection, when such person knows he or she is infected with such a disease and when such person has been informed that he or she may communicate the disease to another person through sexual intercourse, to have sexual intercourse with any other person, unless such other person has been informed of the presence of the sexually transmitted disease. [1988 c 206 § 917.]

Effective date—1988 c 206 §§ 916, 917: See note following RCW 9A.36.021.

Criminal sanctions: RCW 9A.36.021.

70.24.150 Immunity of certain public employees. Members of the state board of health and local boards of health, public health officers, and employees of the department of health and local health departments are immune from civil action for damages arising out of the good faith performance of their duties as prescribed by this chapter, unless such performance constitutes gross negligence. [1991 c 3 § 326; 1988 c 206 § 918.]

70.24.200 Information for the general public on sexually transmitted diseases—Emphasis. Information directed to the general public and providing education regarding any sexually transmitted disease that is written, published, distributed, or used by any public entity, and all such information paid for, in whole or in part, with any public moneys shall give emphasis to the importance of sexual

abstinence, sexual fidelity, and avoidance of substance abuse in controlling disease. [1988 c 206 § 201.]

70.24.210 Information for children on sexually transmitted diseases—Emphasis. All material directed to children in grades kindergarten through twelve and providing education regarding any sexually transmitted disease that is written, published, distributed, or used by any public entity, and all such information paid for, in whole or in part, with any public moneys shall give emphasis to the importance of sexual abstinence outside lawful marriage and avoidance of substance abuse in controlling disease. [1988 c 206 § 202.]

Common school curriculum: RCW 28A.230.020.

70.24.220 AIDS education in public schools—Finding. The legislature finds that the public schools provide a unique and appropriate setting for educating young people about the pathology and prevention of acquired immunodeficiency syndrome (AIDS). The legislature recognizes that schools and communities vary throughout the state and that locally elected school directors should have a significant role in establishing a program of AIDS education in their districts. [1988 c 206 § 401.]

70.24.240 Clearinghouse for AIDS educational materials. The number of acquired immunodeficiency syndrome (AIDS) cases in the state may reach five thousand by 1991. This makes it necessary to provide our state's workforce with the resources and knowledge to deal with the epidemic. To ensure that accurate information is available to the state's work force, a clearinghouse for all technically correct educational materials related to AIDS should be created. [1988 c 206 § 601.]

70.24.250 Office on AIDS—Repository and clearinghouse for AIDS education and training material—University of Washington duties. There is established in the department an office on AIDS. If a department of health is created, the office on AIDS shall be transferred to the department of health, and its chief shall report directly to the secretary of health. The office on AIDS shall have as its chief a physician licensed under chapter 18.57 or 18.71 RCW or a person experienced in public health who shall report directly to the assistant secretary for health. This office shall be the repository and clearinghouse for all education and training material related to the treatment, transmission, and prevention of AIDS. The office on AIDS shall have the responsibility for coordinating all publicly funded education and service activities related to AIDS. The University of Washington shall provide the office on AIDS with appropriate training and educational materials necessary to carry out its duties. The office on AIDS shall assist state agencies with information necessary to carry out the purposes of this chapter. The department shall work with state and county agencies and specific employee and professional groups to provide information appropriate to their needs, and shall make educational materials available to private employers and encourage them to distribute this information to their employees. [1988 c 206 § 602.]

70.24.260 Emergency medical personnel—Rules for AIDS education and training. The department shall adopt rules that recommend appropriate education and training for licensed and certified emergency medical personnel under chapter 18.73 RCW on the prevention, transmission, and treatment of AIDS. The department shall require appropriate education or training as a condition of certification or license issuance or renewal. [1988 c 206 § 603.]

70.24.270 Health professionals—Rules for AIDS education and training. Each disciplining authority under chapter 18.130 RCW shall adopt rules that require appropriate education and training for licensees on the prevention, transmission, and treatment of AIDS. The disciplining authorities shall work with the office on AIDS under RCW 70.24.250 to develop the training and educational material necessary for health professionals. [1988 c 206 § 604.]

70.24.280 Board of pharmacy—Rules for AIDS education and training. The state board of pharmacy shall adopt rules that require appropriate education and training for licensees on the prevention, transmission, and treatment of AIDS. The board shall work with the office on AIDS under RCW 70.24.250 to develop the training and educational material necessary for health professionals. [1988 c 206 § 605.]

70.24.290 Public school employees—Rules for AIDS education and training. The superintendent of public instruction shall adopt rules that require appropriate education and training, to be included as part of their present continuing education requirements, for public school employees on the prevention, transmission, and treatment of AIDS. The superintendent of public instruction shall work with the office on AIDS under RCW 70.24.250 to develop the educational and training material necessary for school employees. [1988 c 206 § 606.]

70.24.300 State and local government employees—Determination of substantial likelihood of exposure—Rules for AIDS education and training. The Washington personnel resources board and each unit of local government shall determine whether any employees under their jurisdiction have a substantial likelihood of exposure in the course of their employment to the human immunodeficiency virus. If so, the agency or unit of government shall adopt rules requiring appropriate training and education for the employees on the prevention, transmission, and treatment of AIDS. The rules shall specifically provide for such training and education for law enforcement, correctional, and health care workers. The Washington personnel resources board and each unit of local government shall work with the office on AIDS under RCW 70.24.250 to develop the educational and training material necessary for employees. [1993 c 281 § 60; 1988 c 206 § 607.]

Effective date—1993 c 281: See note following RCW 41.06.022.

70.24.310 Health care facility employees—Rules for AIDS education and training. The department shall adopt rules requiring appropriate education and training of employ-

ees of state licensed or certified health care facilities. The education and training shall be on the prevention, transmission, and treatment of AIDS and shall not be required for employees who are covered by comparable rules adopted under other sections of this chapter. In adopting rules under this section, the department shall consider infection control standards and educational materials available from appropriate professional associations and professionally prepared publications. [1988 c 206 § 608.]

70.24.320 Counseling and testing—AIDS and HIV—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Pretest counseling" means counseling aimed at helping the individual understand ways to reduce the risk of HIV infection, the nature and purpose of the tests, the significance of the results, and the potential dangers of the disease, and to assess the individual's ability to cope with the results.

(2) "Posttest counseling" means further counseling following testing usually directed toward increasing the individual's understanding of the human immunodeficiency virus infection, changing the individual's behavior, and, if necessary, encouraging the individual to notify persons with whom there has been contact capable of spreading HIV.

(3) "AIDS counseling" means counseling directed toward increasing the individual's understanding of acquired immunodeficiency syndrome and changing the individual's behavior.

(4) "HIV testing" means a test indicative of infection with the human immunodeficiency virus as specified by the board of health by rule. [1988 c 206 § 701.]

70.24.325 Counseling and testing—Insurance requirements. (1) This section shall apply to counseling and consent for HIV testing administered as part of an application for coverage authorized under Title 48 RCW.

(2) Persons subject to regulation under Title 48 RCW who are requesting an insured, a subscriber, or a potential insured or subscriber to furnish the results of an HIV test for underwriting purposes as a condition for obtaining or renewing coverage under an insurance contract, health care service contract, or health maintenance organization agreement shall:

(a) Provide written information to the individual prior to being tested which explains:

(i) What an HIV test is;

(ii) Behaviors that place a person at risk for HIV infection;

(iii) That the purpose of HIV testing in this setting is to determine eligibility for coverage;

(iv) The potential risks of HIV testing; and

(v) Where to obtain HIV pretest counseling.

(b) Obtain informed specific written consent for an HIV test. The written informed consent shall include:

(i) An explanation of the confidential treatment of the test results which limits access to the results to persons involved in handling or determining applications for coverage or claims of the applicant or claimant and to those persons designated under (c)(iii) of this subsection; and

(ii) Requirements under (c)(iii) of this subsection.

(c) Establish procedures to inform an applicant of the following:

(i) That post-test counseling, as specified under WAC 248-100-209(4), is required if an HIV test is positive or indeterminate;

(ii) That post-test counseling occurs at the time a positive or indeterminate HIV test result is given to the tested individual;

(iii) That the applicant may designate a health care provider or health care agency to whom the insurer, the health care service contractor, or health maintenance organization will provide positive or indeterminate test results for interpretation and post-test counseling. When an applicant does not identify a designated health care provider or health care agency and the applicant's test results are either positive or indeterminate, the insurer, the health care service contractor, or health maintenance organization shall provide the test results to the local health department for interpretation and post-test counseling; and

(iv) That positive or indeterminate HIV test results shall not be sent directly to the applicant. [1989 c 387 § 1.]

70.24.330 HIV testing—Consent, exceptions. No person may undergo HIV testing without the person's consent except:

(1) Pursuant to RCW 7.70.065 for incompetent persons;

(2) In seroprevalence studies where neither the persons whose blood is being tested know the test results nor the persons conducting the tests know who is undergoing testing;

(3) If the department of labor and industries determines that it is relevant, in which case payments made under Title 51 RCW may be conditioned on the taking of an HIV antibody test; or

(4) As otherwise expressly authorized by this chapter. [1988 c 206 § 702.]

70.24.340 Convicted persons—Mandatory testing and counseling for certain offenses—Employees' substantial exposure to bodily fluids—Procedure and court orders. (1) Local health departments authorized under this chapter shall conduct or cause to be conducted pretest counseling, HIV testing, and posttest counseling of all persons:

(a) Convicted of a sexual offense under chapter 9A.44 RCW;

(b) Convicted of prostitution or offenses relating to prostitution under chapter 9A.88 RCW; or

(c) Convicted of drug offenses under chapter 69.50 RCW if the court determines at the time of conviction that the related drug offense is one associated with the use of hypodermic needles.

(2) Such testing shall be conducted as soon as possible after sentencing and shall be so ordered by the sentencing judge.

(3) This section applies only to offenses committed after March 23, 1988.

(4) A law enforcement officer, fire fighter, health care provider, health care facility staff person, department of corrections' staff person, jail staff person, or other categories of employment determined by the board in rule to be at risk of substantial exposure to HIV, who has experienced a substan-

tial exposure to another person's bodily fluids in the course of his or her employment, may request a state or local public health officer to order pretest counseling, HIV testing, and posttest counseling for the person whose bodily fluids he or she has been exposed to. If the state or local public health officer refuses to order counseling and testing under this subsection, the person who made the request may petition the superior court for a hearing to determine whether an order shall be issued. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review to determine whether the public health officer shall be required to issue the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The person who is subject to the state or local public health officer's order to receive counseling and testing shall be given written notice of the order promptly, personally, and confidentially, stating the grounds and provisions of the order, including the factual basis therefor. If the person who is subject to the order refuses to comply, the state or local public health officer may petition the superior court for a hearing. The hearing on the petition shall be held within seventy-two hours of filing the petition, exclusive of Saturdays, Sundays, and holidays. The standard of review for the order is whether substantial exposure occurred and whether that exposure presents a possible risk of transmission of the HIV virus as defined by the board by rule. Upon conclusion of the hearing, the court shall issue the appropriate order.

The state or local public health officer shall perform counseling and testing under this subsection if he or she finds that the exposure was substantial and presents a possible risk as defined by the board of health by rule or if he or she is ordered to do so by a court.

The counseling and testing required under this subsection shall be completed as soon as possible after the substantial exposure or after an order is issued by a court, but shall begin not later than seventy-two hours after the substantial exposure or an order is issued by the court. [1997 c 345 § 3; 1988 c 206 § 703.]

Findings—Intent—1997 c 345: See note following RCW 70.24.105.

70.24.350 Prostitution and drug offenses—Voluntary testing and counseling. Local health departments, in cooperation with the regional AIDS services networks, shall make available voluntary testing and counseling services to all persons arrested for prostitution offenses under chapter 9A.88 RCW and drug offenses under chapter 69.50 RCW. Services shall include educational materials that outline the seriousness of AIDS and encourage voluntary participation. [1988 c 206 § 704.]

70.24.360 Jail detainees—Testing and counseling of persons who present a possible risk. Jail administrators, with the approval of the local public health officer, may order pretest counseling, HIV testing, and posttest counseling for persons detained in the jail if the local public health officer determines that actual or threatened behavior presents a pos-

sible risk to the staff, general public, or other persons. Approval of the local public health officer shall be based on RCW 70.24.024(3) and may be contested through RCW 70.24.024(4). The administrator shall establish, pursuant to RCW 70.48.071, a procedure to document the possible risk which is the basis for the HIV testing. "Possible risk," as used in this section, shall be defined by the board in rule. Documentation of the behavior, or threat thereof, shall be reviewed with the person to try to assure that the person understands the basis for testing. [1988 c 206 § 706.]

70.24.370 Correction facility inmates—Counseling and testing of persons who present a possible risk—Training for administrators and superintendents—Procedure. (1) Department of corrections facility administrators may order pretest counseling, HIV testing, and posttest counseling for inmates if the secretary of corrections or the secretary's designee determines that actual or threatened behavior presents a possible risk to the staff, general public, or other inmates. The department of corrections shall establish a procedure to document the possible risk which is the basis for the HIV testing. "Possible risk," as used in this section, shall be defined by the department of corrections after consultation with the board. Possible risk, as used in the documentation of the behavior, or threat thereof, shall be reviewed with the inmate.

(2) Department of corrections administrators and superintendents who are authorized to make decisions about testing and dissemination of test information shall, at least annually, participate in training seminars on public health considerations conducted by the assistant secretary for public health or her or his designee.

(3) Administrative hearing requirements set forth in chapter 34.05 RCW do not apply to the procedure developed by the department of corrections pursuant to this section. This section shall not be construed as requiring any hearing process except as may be required under existing federal constitutional law.

(4) RCW 70.24.340 does not apply to the department of corrections or to inmates in its custody or subject to its jurisdiction. [1988 c 206 § 707.]

70.24.380 Board of health—Rules for counseling and testing. The board of health shall adopt rules establishing minimum standards for pretest counseling, HIV testing, posttest counseling, and AIDS counseling. [1988 c 206 § 709.]

70.24.400 Department to establish regional AIDS service networks—Funding—Lead counties—Regional plans—University of Washington, center for AIDS education. The department shall establish a statewide system of regional acquired immunodeficiency syndrome (AIDS) service networks as follows:

(1) The secretary of health shall direct that all state or federal funds, excluding those from federal Title XIX for services or other activities authorized in this chapter, shall be allocated to the office on AIDS established in RCW 70.24.250. The secretary shall further direct that all funds for services and activities specified in subsection (3) of this section shall be provided to lead counties through contractual

agreements based on plans developed as provided in subsection (2) of this section, unless direction of such funds is explicitly prohibited by federal law, federal regulation, or federal policy. The department shall deny funding allocations to lead counties only if the denial is based upon documented incidents of nonfeasance, misfeasance, or malfeasance. However, the department shall give written notice and thirty days for corrective action in incidents of misfeasance or nonfeasance before funding may be denied. The department shall designate six AIDS service network regions encompassing the state. In doing so, the department shall use the boundaries of the regional structures in place for the community services administration on January 1, 1988.

(2) The department shall request that a lead county within each region, which shall be the county with the largest population, prepare, through a cooperative effort of local health departments within the region, a regional organizational and service plan, which meets the requirements set forth in subsection (3) of this section. Efforts should be made to use existing plans, where appropriate. The plan should place emphasis on contracting with existing hospitals, major voluntary organizations, or health care organizations within a region that have in the past provided quality services similar to those mentioned in subsection (3) of this section and that have demonstrated an interest in providing any of the components listed in subsection (3) of this section. If any of the counties within a region do not participate, it shall be the lead county's responsibility to develop the part of the plan for the nonparticipating county or counties. If all of the counties within a region do not participate, the department shall assume the responsibility.

(3) The regional AIDS service network plan shall include the following components:

(a) A designated single administrative or coordinating agency;

(b) A complement of services to include:

(i) Voluntary and anonymous counseling and testing;

(ii) Mandatory testing and/or counseling services for certain individuals, as required by law;

(iii) Notification of sexual partners of infected persons, as required by law;

(iv) Education for the general public, health professionals, and high-risk groups;

(v) Intervention strategies to reduce the incidence of HIV infection among high-risk groups, possibly including needle sterilization and methadone maintenance;

(vi) Related community outreach services for runaway youth;

(vii) Case management;

(viii) Strategies for the development of volunteer networks;

(ix) Strategies for the coordination of related agencies within the network; and

(x) Other necessary information, including needs particular to the region;

(c) A service delivery model that includes:

(i) Case management services; and

(ii) A community-based continuum-of-care model encompassing both medical, mental health, and social services with the goal of maintaining persons with AIDS in a

home-like setting, to the extent possible, in the least-expensive manner; and

(d) Budget, caseload, and staffing projections.

(4) Efforts shall be made by both the counties and the department to use existing service delivery systems, where possible, in developing the networks.

(5) The University of Washington health science program, in cooperation with the office on AIDS may, within available resources, establish a center for AIDS education, which shall be linked to the networks. The center for AIDS education is not intended to engage in state-funded research related to HIV infection, AIDS, or HIV-related conditions. Its duties shall include providing the office on AIDS with the appropriate educational materials necessary to carry out that office's duties.

(6) The department shall implement this section, consistent with available funds, by October 1, 1988, by establishing six regional AIDS service networks whose combined jurisdictions shall include the entire state.

(a) Until June 30, 1991, available funding for each regional AIDS service network shall be allocated as follows:

(i) Seventy-five percent of the amount provided for regional AIDS service networks shall be allocated per capita based on the number of persons residing within each region, but in no case less than one hundred fifty thousand dollars for each regional AIDS service network per fiscal year. This amount shall be expended for testing, counseling, education, case management, notification of sexual partners of infected persons, planning, coordination, and other services required by law, except for those enumerated in (a)(ii) of this subsection.

(ii) Twenty-five percent of the amount provided for regional AIDS service networks shall be allocated for intervention strategies specifically addressing groups that are at a high risk of being infected with the human immunodeficiency virus. The allocation shall be made by the office on AIDS based on documented need as specified in regional AIDS network plans.

(b) After June 30, 1991, the funding shall be allocated as provided by law.

(7) The regional AIDS service networks shall be the official state regional agencies for AIDS information education and coordination of services. The state public health officer, as designated by the secretary of health, shall make adequate efforts to publicize the existence and functions of the networks.

(8) If the department is not able to establish a network by an agreement solely with counties, it may contract with non-profit agencies for any or all of the designated network responsibilities.

(9) The department, in establishing the networks, shall study mechanisms that could lead to reduced costs and/or increased access to services. The methods shall include capitation.

(10) The department shall reflect in its departmental biennial budget request the funds necessary to implement this section.

(11) The use of appropriate materials may be authorized by regional AIDS service networks in the prevention or control of HIV infection. [1998 c 245 § 126; 1991 c 3 § 327; 1988 c 206 § 801.]

70.24.410 AIDS advisory committee—Duties, review of insurance problems—Termination. To assist the secretary of health in the development and implementation of AIDS programs, the governor shall appoint an AIDS advisory committee. Among its duties shall be a review of insurance problems as related to persons with AIDS. The committee shall terminate on June 30, 1991. [1991 c 3 § 328; 1988 c 206 § 803.]

70.24.420 Additional local funding of treatment programs not required. Nothing in this chapter may be construed to require additional local funding of programs to treat communicable disease established as of March 23, 1988. [1988 c 206 § 919.]

70.24.430 Application of chapter to persons subject to jurisdiction of department of corrections. Nothing in this chapter is intended to create a state-mandated liberty interest of any nature for offenders or inmates confined in department of corrections facilities or subject to the jurisdiction of the department of corrections. [1988 c 206 § 920.]

70.24.450 Confidentiality—Reports—Unauthorized disclosures. (1) In order to assure compliance with the protections under this chapter and the rules of the board, and to assure public confidence in the confidentiality of reported information, the department shall:

(a) Report annually to the board any incidents of unauthorized disclosure by the department, local health departments, or their employees of information protected under RCW 70.24.105. The report shall include recommendations for preventing future unauthorized disclosures and improving the system of confidentiality for reported information; and

(b) Assist health care providers, facilities that conduct tests, local health departments, and other persons involved in disease reporting to understand, implement, and comply with this chapter and the rules of the board related to disease reporting.

(2) This section is exempt from RCW 70.24.084, 70.05.070, and 70.05.120. [1999 c 391 § 3.]

Findings—Purpose—1999 c 391: See note following RCW 70.05.180.

70.24.900 Severability—1988 c 206. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 206 § 1001.]

Chapter 70.28 RCW

CONTROL OF TUBERCULOSIS

Sections

| | |
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| 70.28.005 | Health officials, broad powers to protect public health. |
| 70.28.008 | Definitions. |
| 70.28.010 | Health care providers required to report cases. |
| 70.28.020 | Record of reports. |
| 70.28.025 | Secretary's administrative responsibility—Scope. |
| 70.28.031 | Powers and duties of health officers. |
| 70.28.032 | Due process standards for testing, treating, detaining—Reporting requirements—Training and scope for skin test administration. |

- 70.28.033 Treatment, isolation, or examination order of health officer—Violation—Penalty.
- 70.28.035 Order of health officer—Refusal to obey—Application for superior court order.
- 70.28.037 Superior court order for confinement of individuals having active tuberculosis.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.28.005 Health officials, broad powers to protect public health. (1) Tuberculosis has been and continues to be a threat to the public's health in the state of Washington.

(2) While it is important to respect the rights of individuals, the legitimate public interest in protecting the public health and welfare from the spread of a deadly infectious disease outweighs incidental curtailment of individual rights that may occur in implementing effective testing, treatment, and infection control strategies.

(3) To protect the public's health, it is the intent of the legislature that local health officials provide culturally sensitive and medically appropriate early diagnosis, treatment, education, and follow-up to prevent tuberculosis. Further, it is imperative that public health officials and their staff have the necessary authority and discretion to take actions as are necessary to protect the health and welfare of the public, subject to the constitutional protection required under the federal and state constitutions. Nothing in this chapter shall be construed as in any way limiting the broad powers of health officials to act as necessary to protect the public health. [1994 c 145 § 1.]

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

- (1) "Department" means the department of health;
- (2) "Secretary" means the secretary of the department of health or his or her designee;
- (3) "Tuberculosis control" refers to the procedures administered in the counties for the control, prevention, and treatment of tuberculosis. [1999 c 172 § 7; 1991 c 3 § 330; 1983 c 3 § 171; 1971 ex.s. c 277 § 15. Formerly RCW 70.33.010.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

70.28.010 Health care providers required to report cases. All practicing health care providers in the state are hereby required to report to the local health department cases of every person having tuberculosis who has been attended by, or who has come under the observation of, the health care provider within one day thereof. [1999 c 172 § 2; 1996 c 209 § 1; 1967 c 54 § 1; 1899 c 71 § 1; RRS § 6109.]

Finding—1999 c 172: "The legislature finds that current statutes relating to the reporting, treatment, and payment for tuberculosis are outdated, and not in concert with current clinical practice and tuberculosis care management. Updating reporting requirements for local health departments will benefit providers, local health, and individuals requiring treatment for tuberculosis." [1999 c 172 § 1.]

Severability—1999 c 172: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 172 § 13.]

(2004 Ed.)

Severability—1967 c 54: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 54 § 20.]

70.28.020 Record of reports. All local health departments in this state are hereby required to receive and keep a record, for a period of ten years from the date of the report, of the reports required by RCW 70.28.010 to be made to them; such records shall not be open to public inspection, but shall be submitted to the proper inspection of other local health departments and of the department of health alone, and such records shall not be published nor made public. [1999 c 172 § 3; 1967 c 54 § 2; 1899 c 71 § 2; RRS § 6110.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

70.28.025 Secretary's administrative responsibility—Scope. The secretary shall have responsibility for establishing standards for the control, prevention, and treatment of tuberculosis and hospitals approved to treat tuberculosis in the state operated under this chapter and chapter 70.30 RCW and for providing, either directly or through agreement, contract, or purchase, appropriate facilities and services for persons who are, or may be suffering from tuberculosis except as otherwise provided by RCW 70.30.061 or this section.

Under that responsibility, the secretary shall have the following powers and duties:

- (1) To develop and enter into such agreements, contracts, or purchase arrangements with counties and public and private agencies or institutions to provide for hospitalization, nursing home, or other appropriate facilities and services, including laboratory services, for persons who are or may be suffering from tuberculosis;
- (2) Adopt such rules as are necessary to assure effective patient care and treatment of tuberculosis. [1999 c 172 § 8; 1983 c 3 § 172; 1973 1st ex.s. c 213 § 2; 1971 ex.s. c 277 § 16. Formerly RCW 70.33.020.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

70.28.031 Powers and duties of health officers. Each health officer is hereby directed to use every available means to ascertain the existence of, and immediately to investigate, all reported or suspected cases of tuberculosis in the infectious stages within his or her jurisdiction and to ascertain the sources of such infections. In carrying out such investigations, each health officer is hereby invested with full powers of inspection, examination, treatment, and quarantine or isolation of all persons known to be infected with tuberculosis in an infectious stage or persons who have been previously diagnosed as having tuberculosis and who are under medical orders for treatment or periodic follow-up examinations and is hereby directed:

- (a) To make such examinations as are deemed necessary of persons reasonably suspected of having tuberculosis in an infectious stage and to isolate and treat or isolate, treat, and quarantine such persons, whenever deemed necessary for the protection of the public health.

(b) To make such examinations as deemed necessary of persons who have been previously diagnosed as having tuberculosis and who are under medical orders for periodic follow-up examinations.

(c) Follow local rules and regulations regarding examinations, treatment, quarantine, or isolation, and all rules, regulations, and orders of the state board and of the department in carrying out such examination, treatment, quarantine, or isolation.

(d) Whenever the health officer shall determine on reasonable grounds that an examination or treatment of any person is necessary for the preservation and protection of the public health, he or she shall make an examination order in writing, setting forth the name of the person to be examined, the time and place of the examination, the treatment, and such other terms and conditions as may be necessary to protect the public health. Nothing contained in this subdivision shall be construed to prevent any person whom the health officer determines should have an examination or treatment for infectious tuberculosis from having such an examination or treatment made by a physician of his or her own choice who is licensed to practice osteopathic medicine and surgery under chapter 18.57 RCW or medicine and surgery under chapter 18.71 RCW under such terms and conditions as the health officer shall determine on reasonable grounds to be necessary to protect the public health.

(e) Whenever the health officer shall determine that quarantine, treatment, or isolation in a particular case is necessary for the preservation and protection of the public health, he or she shall make an order to that effect in writing, setting forth the name of the person, the period of time during which the order shall remain effective, the place of treatment, isolation, or quarantine, and such other terms and conditions as may be necessary to protect the public health.

(f) Upon the making of an examination, treatment, isolation, or quarantine order as provided in this section, a copy of such order shall be served upon the person named in such order.

(g) Upon the receipt of information that any examination, treatment, quarantine, or isolation order, made and served as herein provided, has been violated, the health officer shall advise the prosecuting attorney of the county in which such violation has occurred, in writing, and shall submit to such prosecuting attorney the information in his or her possession relating to the subject matter of such examination, treatment, isolation, or quarantine order, and of such violation or violations thereof.

(h) Any and all orders authorized under this section shall be made by the health officer or his or her tuberculosis control officer.

(i) Nothing in this chapter shall be construed to abridge the right of any person to rely exclusively on spiritual means alone through prayer to treat tuberculosis in accordance with the tenets and practice of any well-recognized church or religious denomination, nor shall anything in this chapter be deemed to prohibit a person who is inflicted with tuberculosis from being isolated or quarantined in a private place of his own choice, provided, it is approved by the local health officer, and all laws, rules and regulations governing control, sanitation, isolation, and quarantine are complied with. [1996 c 209 § 2; 1996 c 178 § 21; 1967 c 54 § 4.]

Reviser's note: This section was amended by 1996 c 178 § 21 and by 1996 c 209 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1996 c 178: See note following RCW 18.35.110.

70.28.032 Due process standards for testing, treating, detaining—Reporting requirements—Training and scope for skin test administration. (1) The state board of health shall adopt rules establishing the requirements for:

(a) Reporting confirmed or suspected cases of tuberculosis by health care providers and reporting of laboratory results consistent with tuberculosis by medical test sites;

(b) Due process standards for health officers exercising their authority to involuntarily detain, test, treat, or isolate persons with suspected or confirmed tuberculosis under RCW 70.28.031 and 70.05.070 that provide for release from any involuntary detention, testing, treatment, or isolation as soon as the health officer determines the patient no longer represents a risk to the public's health;

(c) Training of persons to perform tuberculosis skin testing and to administer tuberculosis medications.

(2) Notwithstanding any other provision of law, persons trained under subsection (1)(c) of this section may perform skin testing and administer medications if doing so as part of a program established by a state or local health officer to control tuberculosis. [1996 c 209 § 3; 1994 c 145 § 2.]

70.28.033 Treatment, isolation, or examination order of health officer—Violation—Penalty. Inasmuch as the order provided for by RCW 70.28.031 is for the protection of the public health, any person who, after service upon him or her of an order of a health officer directing his or her treatment, isolation, or examination as provided for in RCW 70.28.031, violates or fails to comply with the same or any provision thereof, is guilty of a misdemeanor, and, upon conviction thereof, in addition to any and all other penalties which may be imposed by law upon such conviction, may be ordered by the court confined until such order of such health officer shall have been fully complied with or terminated by such health officer, but not exceeding six months from the date of passing judgment upon such conviction: **PROVIDED**, That the court, upon suitable assurances that such order of such health officer will be complied with, may place any person convicted of a violation of such order of such health officer upon probation for a period not to exceed two years, upon condition that the said order of said health officer be fully complied with: **AND PROVIDED FURTHER**, That upon any subsequent violation of such order of such health officer, such probation shall be terminated and confinement as herein provided ordered by the court. [1996 c 209 § 4; 1967 c 54 § 5.]

70.28.035 Order of health officer—Refusal to obey—Application for superior court order. In addition to the proceedings set forth in RCW 70.28.031, where a local health officer has reasonable cause to believe that an individual has tuberculosis as defined in the rules and regulations of the state board of health, and the individual refuses to obey the order of the local health officer to appear for an initial examination or a follow-up examination or an order for treatment,

isolation, or quarantine, the health officer may apply to the superior court for an order requiring the individual to comply with the order of the local health officer. [1996 c 209 § 5; 1967 c 54 § 6.]

70.28.037 Superior court order for confinement of individuals having active tuberculosis. Where it has been determined after an examination as prescribed in this chapter that an individual has active tuberculosis, upon application to the superior court by the local health officer, the superior court shall order the sheriff to transport the individual to a designated facility for isolation, treatment, and care until such time as the local health officer or designee determines that the patient's condition is such that it is safe for the patient to be discharged from the facility. [1999 c 172 § 4; 1967 c 54 § 7.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

Chapter 70.30 RCW

TUBERCULOSIS HOSPITALS, FACILITIES, AND FUNDING

(Formerly: Tuberculosis hospitals and facilities)

Sections

| | |
|-----------|---|
| 70.30.015 | Definitions. |
| 70.30.045 | Expenditures for tuberculosis control directed—Standards—Payment for treatment. |
| 70.30.055 | County budget for tuberculosis facilities. |
| 70.30.061 | Admissions to facility. |
| 70.30.081 | Annual inspections. |

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

County hospitals: Chapter 36.62 RCW.

Hospital's lien: Chapter 60.44 RCW.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

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

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of the department of health or his or her designee.

(3) "Tuberculosis control" refers to the procedures administered in the counties for the control, prevention, and treatment of tuberculosis. [1999 c 172 § 10.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

70.30.045 Expenditures for tuberculosis control directed—Standards—Payment for treatment. Tuberculosis is a communicable disease and tuberculosis prevention, treatment, control, and follow up of known cases of tuberculosis are the basic steps in the control of this major health problem. In order to carry on such work effectively in accordance with the standards set by the secretary under RCW 70.28.025, the legislative authority of each county shall budget a sum to be used for the control of tuberculosis, including case finding, prevention, treatment, and follow up of known cases of tuberculosis. Under no circumstances should this

(2004 Ed.)

section be construed to mean that the legislative authority of each county shall budget sums to provide tuberculosis treatment when the patient has the ability to pay for the treatment. Each patient's ability to pay for the treatment shall be assessed by the local health department. [1999 c 172 § 6; 1975 1st ex.s. c 291 § 3; 1973 1st ex.s. c 195 § 79; 1971 ex.s. c 277 § 21; 1970 ex.s. c 47 § 7; 1967 ex.s. c 110 § 11; 1959 c 117 § 1; 1945 c 66 § 1; 1943 c 162 § 1; Rem. Supp. 1945 § 6113-1. Formerly RCW 70.32.010.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

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

County budget for tuberculosis facilities: RCW 70.30.055.

County treasurer: Chapter 36.29 RCW.

70.30.055 County budget for tuberculosis facilities.

In order to maintain adequate facilities and services for the residents of the state of Washington who are or may be suffering from tuberculosis and to assure their proper care, the legislative authority of each county shall budget annually a sum to provide such services in the county.

The funds may be retained by the county for operating its own services for the prevention and treatment of tuberculosis. None of the counties shall be required to make any payments to the state or any other agency from these funds except as authorized by the local health department. However, if the counties do not comply with the adopted standards of the department, the secretary shall take action to provide the required services and to charge the affected county directly for the provision of these services by the state. [1999 c 172 § 9; 1975 1st ex.s. c 291 § 4. Prior: 1973 1st ex.s. c 213 § 4; 1973 1st ex.s. c 195 § 81; 1971 ex.s. c 277 § 18. Formerly RCW 70.33.040.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

Effective dates—Severability—1975 1st ex.s. c 291: See notes following RCW 82.04.050.

Expenditures for tuberculosis control directed—Standards—Payment for treatment: RCW 70.30.045.

70.30.061 Admissions to facility. Any person residing in the state and needing treatment for tuberculosis may apply in person to the local health officer or to any licensed physician, advanced registered nurse practitioner, or licensed physician assistant for examination and if that health care provider has reasonable cause to believe that the person is suffering from tuberculosis in any form he or she may apply to the local health officer or designee for admission of the person to an appropriate facility for the care and treatment of tuberculosis. [1999 c 172 § 5; 1973 1st ex.s. c 213 § 1; 1972 ex.s. c 143 § 2.]

Finding—Severability—1999 c 172: See notes following RCW 70.28.010.

70.30.081 Annual inspections. All hospitals established or maintained for the treatment of persons suffering from tuberculosis shall be subject to annual inspection, or more frequently if required by federal law, by agents of the

department of health, and the medical director shall admit such agents into every part of the facility and its buildings, and give them access on demand to all records, reports, books, papers, and accounts pertaining to the facility. [1991 c 3 § 329; 1972 ex.s. c 143 § 4.]

Chapter 70.37 RCW HEALTH CARE FACILITIES

Sections

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|-----------|---|
| 70.37.010 | Declaration of public policies—Purpose. |
| 70.37.020 | Definitions. |
| 70.37.030 | Washington health care facilities authority established—Members—Chairman—Terms—Quorum—Vacancies—Compensation and travel expenses. |
| 70.37.040 | Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds. |
| 70.37.050 | Requests for financing—Financing plan—Bond issue, special fund authorized. |
| 70.37.060 | Bond issues—Terms—Payment—Legal investment, etc. |
| 70.37.070 | Bond issues—Special trust fund—Payments—Status—Administration of fund. |
| 70.37.080 | Bond issues—Disposition of proceeds—Special fund. |
| 70.37.090 | Payment of authority for expenses incurred in investigating and financing projects. |
| 70.37.100 | Powers of authority. |
| 70.37.110 | Advancements and contributions by political subdivisions. |
| 70.37.900 | Severability—1974 ex.s. c 147. |

70.37.010 Declaration of public policies—Purpose.

The good health of the people of our state is a most important public concern. The state has a direct interest in seeing to it that health care facilities adequate for good public health are established and maintained in sufficient numbers and in proper locations. The rising costs of care of the infirm constitute a grave challenge not only to health care providers but to our state and the people of our state who will seek such care. It is hereby declared to be the public policy of the state of Washington to assist and encourage the building, providing and utilization of modern, well equipped and reasonably priced health care facilities, and the improvement, expansion and modernization of health care facilities in a manner that will minimize the capital costs of construction, financing and use thereof and thereby the costs to the public of the use of such facilities, and to contribute to improving the quality of health care available to our citizens. In order to accomplish these and related purposes this chapter is adopted and shall be liberally construed to carry out its purposes and objects. [1974 ex.s. c 147 § 1.]

70.37.020 Definitions. As used in this chapter, the following words and terms have the following meanings, unless the context indicates or requires another or different meaning or intent and the singular of any term shall encompass the plural and the plural the singular unless the context indicates otherwise:

(1) "Authority" means the Washington health care facilities authority created by RCW 70.37.030 or any board, body, commission, department or officer succeeding to the principal functions thereof or to whom the powers conferred upon the authority shall be given by law.

(2) "Bonds" mean bonds, notes or other evidences of indebtedness of the authority issued pursuant hereto.

(3) "Health care facility" means any land, structure, system, machinery, equipment or other real or personal property

or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services, and shall include research and support facilities of a comprehensive cancer center, but excluding, however, any facility which is maintained by a participant primarily for rental or lease to self-employed health care professionals or as an independent nursing home or other facility primarily offering domiciliary care.

(4) "Participant" means any city, county or other municipal corporation or agency or political subdivision of the state or any corporation, hospital, comprehensive cancer center, or health maintenance organization authorized by law to operate nonprofit health care facilities, or any affiliate, as defined by regulations promulgated by the director of the department of financial institutions pursuant to RCW 21.20.450, which is a nonprofit corporation acting for the benefit of any entity described in this subsection.

(5) "Project" means a specific health care facility or any combination of health care facilities, constructed, purchased, acquired, leased, used, owned or operated by a participant, and alterations, additions to, renovations, enlargements, betterments and reconstructions thereof. [1994 c 92 § 505; 1989 c 65 § 1; 1983 c 210 § 3; 1974 ex.s. c 147 § 2.]

70.37.030 Washington health care facilities authority established—Members—Chairman—Terms—Quorum—Vacancies—Compensation and travel expenses.

There is hereby established a public body corporate and politic, with perpetual corporate succession, to be known as the Washington health care facilities authority. The authority shall constitute a political subdivision of the state established as an instrumentality exercising essential governmental functions. The authority is a "public body" within the meaning of RCW 39.53.010. The authority shall consist of the governor who shall serve as chairman, the lieutenant governor, the insurance commissioner, the secretary of health, and one member of the public who shall be appointed by the governor, subject to confirmation by the senate, on the basis of the member's interest or expertise in health care delivery, for a term expiring on the fourth anniversary of the date of appointment. In the event that any of the offices referred to shall be abolished the resulting vacancy on the authority shall be filled by the officer who shall succeed substantially to the powers and duties thereof. The members of the authority shall be compensated in accordance with RCW 43.03.240 and shall be entitled to reimbursement, solely from the funds of the authority, for travel expenses incurred in the discharge of their duties under this chapter, subject to the provisions of RCW 43.03.050 and 43.03.060. A majority shall constitute a quorum.

The governor and the insurance commissioner each may designate an employee of his or her office to act on his or her behalf during the absence of the governor or the insurance commissioner at one or more of the meetings of the authority. The vote of the designee shall have the same effect as if cast by the governor or the insurance commissioner if the designee

nation is in writing and is presented to the person presiding at the meetings included within the designation.

The governor may designate a member to preside during the governor's absence. [2002 c 91 § 1; 1989 1st ex.s. c 9 § 261; 1984 c 287 § 103; 1983 c 210 § 1; 1975-'76 2nd ex.s. c 34 § 157; 1974 ex.s. c 147 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.37.040 Washington health care facilities authority—Powers—Special fund bonds—Revenue bonds. (1) The authority is hereby empowered to issue bonds for the construction, purchase, acquisition, rental, leasing or use by participants of projects for which bonds to provide funds therefor have been approved by the authority. Such bonds shall be issued in the name of the authority. They shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. They shall contain a recital on their face that their payment and the payment of interest thereon shall be a valid claim only as against the special fund relating thereto derived by the authority in whole or in part from the revenues received by the authority from the operation by the participant of the health care facilities for which the bonds are issued but that they shall constitute a prior charge over all other charges or claims whatever against such special fund. The lien of any such pledge on such revenues shall attach thereto immediately on their receipt by the authority and shall be valid and binding as against parties having claims of any kind in tort, contract or otherwise against the participant, without recordation thereof and whether or not they have notice thereof. For inclusion in such special funds and for other uses in or for such projects of participants the authority is empowered to accept and receive funds, grants, gifts, pledges, guarantees, mortgages, trust deeds and other security instruments, and property from the federal government or the state of Washington or other public body, entity or agency and from any public or private institution, association, corporation or organization, including participants, except that it shall not accept or receive from the state or any taxing agency any money derived from taxes save money to be devoted to the purposes of a project of the state or taxing agency.

(2) For the purposes outlined in subsection (1) of this section the authority is empowered to provide for the issuance of its special fund bonds and other limited obligation security instruments subordinate to the first and prior lien bonds, if any, relating to a project or projects of a participant and to create special funds relating thereto against which such subordinate securities shall be liens, but the authority shall not have power to incur general obligations with respect thereto.

(3) The authority may also issue special fund bonds to redeem or to fund or refund outstanding bonds or any part thereof at maturity, or before maturity if subject to prior redemption, with the right in the authority to include various series and issues of such outstanding special fund bonds in a

single issue of funding or refunding special fund bonds and to pay any redemption premiums out of the proceeds thereto. Such funding or refunding bonds shall be limited special fund bonds issued in accordance with the provisions of this chapter, including this section and shall not be general obligations of the authority.

(4) Such special fund bonds of either first lien or subordinate lien nature may also be issued by the authority, the proceeds of which may be used to refund already existing mortgages or other obligations on health care facilities already constructed and operating incurred by a participant in the construction, purchase or acquisition thereof.

(5) The authority may also lease to participants, lease to them with option to purchase, or sell to them, facilities which it has acquired by construction, purchase, devise, gift, or leasing: PROVIDED, That the terms thereof shall at least fully reimburse the authority for its costs with respect to such facilities, including costs of financing, and provide fully for the debt service on any bonds issued by the authority to finance acquisition by it of the facilities. To pay the cost of acquiring or improving such facilities or to refund any bonds issued for such purpose, the authority may issue its revenue bonds secured solely by revenues derived from the sale or lease of the facility, but which may additionally be secured by mortgage, lease, pledge or assignment, trust agreement or other security device. Such bonds and such security devices shall not be obligations of the state of Washington or general obligations of the authority but shall be payable only from the special funds created by the authority for their payment. Such health care facilities may be acquired, constructed, reconstructed, and improved and may be leased, sold or otherwise disposed of in the manner determined by the authority in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of the state, or any agency thereof, is not applicable to any action so taken by the authority. [1974 ex.s. c 147 § 4.]

70.37.050 Requests for financing—Financing plan—Bond issue, special fund authorized. The authority shall establish rules concerning its exercise of the powers authorized by this chapter. The authority shall receive from applicants requests for the providing of bonds for financing of health care facilities and shall investigate and determine the need and the feasibility of providing such bonds. Whenever the authority deems it necessary or advisable for the benefit of the public health to provide financing for a health care facility, it shall adopt a financing plan therefor and shall declare the estimated cost thereof, as near as may be, including as part of such cost funds necessary for the expenses incurred in the financing as well as in the construction or purchase or other acquisition or in connection with the rental or other payment for the use thereof, interest during construction, reserve funds and any funds necessary for initial start-up costs, and shall issue and sell its bonds for the purposes of carrying out the proposed financing plan: PROVIDED, That if a certificate of need is required for the proposed project, no such financing plan shall be adopted until such certificate has been issued pursuant to chapter 70.38 RCW by the secretary of the department of social and health services. The authority

shall have power as a part of such plan to create a special fund or funds for the purpose of defraying the cost of such project and for other projects of the same participant subsequently or at the same time approved by it and for their maintenance, improvement, reconstruction, remodeling and rehabilitation, into which special fund or funds it shall obligate and bind the participant to set aside and pay from the gross revenues of the project or from other sources an amount sufficient to pay the principal and interest of the bonds being issued, reserves and other requirements of the special fund and to issue and sell bonds payable as to both principal and interest out of such fund or funds relating to the project or projects of such participant.

Such bonds shall bear such date or dates, mature at such time or times, be in such denominations, be in such form, either coupon or registered, or both, as provided in RCW 39.46.030, carry such registration privileges, be made transferable, exchangeable, and interchangeable, be payable in such medium of payment, at such place or places, be subject to such terms of redemption, bear such fixed or variable rate or rates of interest, and be sold in such manner, at such price, as the authority shall determine. Such bonds shall be executed by the chairman, by either its duly elected secretary or its executive director, and by the trustee if the authority determines to utilize a trustee for the bonds. Execution of the bonds may be by manual or facsimile signature: PROVIDED, That at least one signature placed thereon shall be manually subscribed. Any interest coupons appurtenant to the bonds shall be executed by facsimile or manual signature or signatures, as the authority shall determine. [1983 c 210 § 2; 1983 c 167 § 171; 1981 c 121 § 1; 1974 ex.s. c 147 § 5.]

Reviser's note: This section was amended by 1983 c 167 § 171 and by 1983 c 210 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

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

70.37.060 Bond issues—Terms—Payment—Legal investment, etc. The bonds of the authority shall be subject to such terms, conditions and covenants and protective provisions as shall be found necessary or desirable by the authority, which may include but shall not be limited to provisions for the establishment and maintenance by the participant of rates for health services of the project, fees and other charges of every kind and nature sufficient in amount and adequate, over and above costs of operation and maintenance and all other costs other than costs and expenses of capital, associated with the project, to pay the principal of and interest on the bonds payable out of the special fund or funds of the project, to set aside and maintain reserves as determined by the authority to secure the payment of such principal and interest, to set aside and maintain reserves for repairs and replacement, to maintain coverage which may be agreed upon over and above the requirements of payment of principal and interest, and for other needs found by the authority to be required for the security of the bonds. When issuing bonds the authority may provide for the future issuance of additional bonds on a parity with outstanding bonds, and the terms and conditions of their issuance.

All bonds issued under the authority of this chapter shall constitute legal investments for trustees and other fiduciaries and for savings and loan associations, banks, and insurance companies doing business in this state. All such bonds and all coupons appertaining thereto shall be negotiable instruments within the meaning of and for all purposes of the negotiable instruments law of this state. [1974 ex.s. c 147 § 6.]

70.37.070 Bond issues—Special trust fund—Payments—Status—Administration of fund. All revenues received by the authority from a participant derived from a particular project of such participant to be applied on principal and interest of bonds or for other bond requirements such as reserves and all other funds for the bond requirements of a particular project received from contributions or grants or in any other form shall be deposited by the authority in qualified public depositories to the credit of a special trust fund to be designated as the authority special bond fund for the particular project or projects producing such revenue or to which the contribution or grant relates. Such fund shall not be or constitute funds of the state of Washington but at all times shall be kept segregated and set apart from other funds. From such funds, the authority shall make payment of principal and interest of the bonds of the particular project or projects; and the authority may set up subaccounts in the bond fund for reserve accounts for payment of principal and interest, for repairs and replacement and for other special requirements of the bonds of the project or projects as determined by the authority. In lieu of itself receiving and handling these moneys as here outlined the authority may appoint trustees, depositories and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the bondholders. [1974 ex.s. c 147 § 7.]

70.37.080 Bond issues—Disposition of proceeds—Special fund. Proceeds from the sale of all bonds of a project issued under the provisions of this chapter received by the authority shall be deposited forthwith by the authority in qualified public depositories in a special fund for the particular project for which the bonds were issued and sold, which money shall not be funds of the state of Washington. Such fund shall at all times be segregated and set apart from all other funds and in trust for the purposes of purchase, construction, acquisition, leasing, or use of a project or projects, and for other special needs of the project declared by the authority, including the manner of disposition of any money not finally needed in the construction, purchase, or other acquisition. Money other than bond sale proceeds received by the authority for these same purposes, such as contributions from a participant or a grant from the federal government may be deposited in the same project fund. Proceeds received from the sale of the bonds may also be used to defray the expenses of the authority in connection with and incidental to the issuance and sale of bonds for the project, as well as expenses for studies, surveys, estimates, inspections and examinations of or relating to the particular project, and other costs advanced therefor by the participant or by the authority. In lieu of itself receiving and handling these moneys in the manner here outlined the authority may appoint trustees,

depositories and paying agents to perform the functions outlined and to receive, hold, disburse, invest and reinvest such funds on its behalf and for the protection of the participants and of bondholders. [1974 ex.s. c 147 § 8.]

70.37.090 Payment of authority for expenses incurred in investigating and financing projects. The authority shall have power to require persons applying for its assistance in connection with the investigation and financing of projects to pay fees and charges to provide the authority with funds for investigation, financial feasibility studies, expenses of issuance and sale of bonds and other charges for services provided by the authority in connection with such projects. All other expenses of the authority including compensation of its employees and consultants, expenses of administration and conduct of its work and business and other expenses shall be paid out of such fees and charges, out of contributions and grants to it, out of the proceeds of bonds issued for projects of participants or out of revenues of such projects; none by the state of Washington. The authority shall have power to establish special funds into which such money shall be received and out of which it may be disbursed by the persons and with the procedure and in the manner established by the authority. [1974 ex.s. c 147 § 9.]

70.37.100 Powers of authority. The authority may make contracts, employ or engage engineers, architects, attorneys, an executive director, and other technical or professional assistants, and such other personnel as are necessary. It may delegate to the executive director or other appropriate persons the power to execute legal instruments on its behalf. It may enter into contracts with the United States, accept gifts for its purposes, and exercise any other power reasonably required to implement the principal powers granted in this chapter. No provision of this chapter shall be construed so as to limit the power of the authority to provide bond financing to more than one participant and/or project by means of a single issue of revenue bonds utilizing a single bond fund and/or a single special fund into which proceeds of such bonds are deposited. The authority shall have no power to levy any taxes of any kind or nature and no power to incur obligations on behalf of the state of Washington. [1982 c 10 § 14. Prior: 1981 c 121 § 2; 1981 c 31 § 1; 1974 ex.s. c 147 § 10.]

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

70.37.110 Advancements and contributions by political subdivisions. Any city, county or other political subdivision of this state and any public health care facility is hereby authorized to advance or contribute to the authority real property, money, and other personal property of any kind towards the expense of preliminary surveys and studies and other preliminary expenses of projects which they are by other statutes of this state authorized to own or operate which are a part of a plan or system which has been submitted by them and is under consideration by the authority for assistance under the provisions of this chapter. [1974 ex.s. c 147 § 11.]

(2004 Ed.)

70.37.900 Severability—1974 ex.s. c 147. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 147 § 12.]

Chapter 70.38 RCW

HEALTH PLANNING AND DEVELOPMENT

Sections

| | |
|-----------|---|
| 70.38.015 | Declaration of public policy. |
| 70.38.025 | Definitions. |
| 70.38.095 | Public disclosure. |
| 70.38.105 | Health services and facilities requiring certificate of need—Fees. |
| 70.38.111 | Certificates of need—Exemptions. |
| 70.38.115 | Certificates of need—Procedures—Rules—Criteria for review—Conditional certificates of need—Concurrent review—Review periods—Hearing—Adjudicative proceeding—Amended certificates of need. |
| 70.38.118 | Certificates of need—Applications submitted by hospice agencies. |
| 70.38.125 | Certificates of need—Issuance—Duration—Penalties for violations. |
| 70.38.135 | Services and surveys—Rules. |
| 70.38.155 | Certificates of need—Savings—1979 ex.s. c 161. |
| 70.38.156 | Certificates of need—Savings—1980 c 139. |
| 70.38.157 | Certificates of need—Savings—1983 c 235. |
| 70.38.158 | Certificates of need—Savings—1989 1st ex.s. c 9 §§ 601 through 607. |
| 70.38.220 | Ethnic minorities—Nursing home beds that reflect cultural differences. |
| 70.38.230 | Residential hospice care centers—Defined—Change in bed capacity—Applicability of chapter. |
| 70.38.250 | Redistribution and addition of beds—Determination. |
| 70.38.905 | Conflict with federal law—Construction. |
| 70.38.910 | Severability—1983 c 235; 1979 ex.s. c 161. |
| 70.38.911 | Severability—1980 c 139. |
| 70.38.912 | Severability—1989 1st ex.s. c 9. |
| 70.38.914 | Pending certificates of need—1983 c 235. |
| 70.38.915 | Effective dates—Pending certificates of need—1979 ex.s. c 161. |
| 70.38.916 | Effective date—1980 c 139. |
| 70.38.917 | Effective date—1989 1st ex.s. c 9. |
| 70.38.918 | Effective dates—Pending certificates of need—1989 1st ex.s. c 9. |
| 70.38.919 | Effective date—State health plan—1989 1st ex.s. c 9. |
| 70.38.920 | Short title. |

70.38.015 Declaration of public policy. It is declared to be the public policy of this state:

(1) That health planning to promote, maintain, and assure the health of all citizens in the state, to provide accessible health services, health manpower, health facilities, and other resources while controlling excessive increases in costs, and to recognize prevention as a high priority in health programs, is essential to the health, safety, and welfare of the people of the state. Health planning should be responsive to changing health and social needs and conditions. Involvement in health planning from both consumers and providers throughout the state should be encouraged;

(2) That the development of health services and resources, including the construction, modernization, and conversion of health facilities, should be accomplished in a planned, orderly fashion, consistent with identified priorities and without unnecessary duplication or fragmentation;

(3) That the development and maintenance of adequate health care information, statistics and projections of need for health facilities and services is essential to effective health planning and resources development;

(4) That the development of nonregulatory approaches to health care cost containment should be considered, including the strengthening of price competition; and

(5) That health planning should be concerned with public health and health care financing, access, and quality, recognizing their close interrelationship and emphasizing cost control of health services, including cost-effectiveness and cost-benefit analysis. [1989 1st ex.s. c 9 § 601; 1983 c 235 § 1; 1980 c 139 § 1; 1979 ex.s. c 161 § 1.]

70.38.025 Definitions. When used in this chapter, the terms defined in this section shall have the meanings indicated.

(1) "Board of health" means the state board of health created pursuant to chapter 43.20 RCW.

(2) "Capital expenditure" is an expenditure, including a force account expenditure (i.e., an expenditure for a construction project undertaken by a nursing home facility as its own contractor) which, under generally accepted accounting principles, is not properly chargeable as an expense of operation or maintenance. Where a person makes an acquisition under lease or comparable arrangement, or through donation, which would have required review if the acquisition had been made by purchase, such expenditure shall be deemed a capital expenditure. Capital expenditures include donations of equipment or facilities to a nursing home facility which if acquired directly by such facility would be subject to certificate of need review under the provisions of this chapter and transfer of equipment or facilities for less than fair market value if a transfer of the equipment or facilities at fair market value would be subject to such review. The cost of any studies, surveys, designs, plans, working drawings, specifications, and other activities essential to the acquisition, improvement, expansion, or replacement of any plant or equipment with respect to which such expenditure is made shall be included in determining the amount of the expenditure.

(3) "Continuing care retirement community" means an entity which provides shelter and services under continuing care contracts with its members and which sponsors or includes a health care facility or a health service. A "continuing care contract" means a contract to provide a person, for the duration of that person's life or for a term in excess of one year, shelter along with nursing, medical, health-related, or personal care services, which is conditioned upon the transfer of property, the payment of an entrance fee to the provider of such services, or the payment of periodic charges for the care and services involved. A continuing care contract is not excluded from this definition because the contract is mutually terminable or because shelter and services are not provided at the same location.

(4) "Department" means the department of health.

(5) "Expenditure minimum" means, for the purposes of the certificate of need program, one million dollars adjusted by the department by rule to reflect changes in the United States department of commerce composite construction cost index; or a lesser amount required by federal law and established by the department by rule.

(6) "Health care facility" means hospices, hospice care centers, hospitals, psychiatric hospitals, nursing homes, kidney disease treatment centers, ambulatory surgical facilities,

and home health agencies, and includes such facilities when owned and operated by a political subdivision or instrumentality of the state and such other facilities as required by federal law and implementing regulations, but does not include any health facility or institution conducted by and for those who rely exclusively upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or any health facility or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy. In addition, the term does not include any nonprofit hospital: (a) Which is operated exclusively to provide health care services for children; (b) which does not charge fees for such services; and (c) if not contrary to federal law as necessary to the receipt of federal funds by the state.

(7) "Health maintenance organization" means a public or private organization, organized under the laws of the state, which:

(a) Is a qualified health maintenance organization under Title XIII, section 1310(d) of the Public Health Services Act; or

(b)(i) Provides or otherwise makes available to enrolled participants health care services, including at least the following basic health care services: Usual physician services, hospitalization, laboratory, x-ray, emergency, and preventive services, and out-of-area coverage; (ii) is compensated (except for copayments) for the provision of the basic health care services listed in (b)(i) to enrolled participants by a payment which is paid on a periodic basis without regard to the date the health care services are provided and which is fixed without regard to the frequency, extent, or kind of health service actually provided; and (iii) provides physicians' services primarily (A) directly through physicians who are either employees or partners of such organization, or (B) through arrangements with individual physicians or one or more groups of physicians (organized on a group practice or individual practice basis).

(8) "Health services" means clinically related (i.e., preventive, diagnostic, curative, rehabilitative, or palliative) services and includes alcoholism, drug abuse, and mental health services and as defined in federal law.

(9) "Health service area" means a geographic region appropriate for effective health planning which includes a broad range of health services.

(10) "Person" means an individual, a trust or estate, a partnership, a corporation (including associations, joint stock companies, and insurance companies), the state, or a political subdivision or instrumentality of the state, including a municipal corporation or a hospital district.

(11) "Provider" generally means a health care professional or an organization, institution, or other entity providing health care but the precise definition for this term shall be established by rule of the department, consistent with federal law.

(12) "Public health" means the level of well-being of the general population; those actions in a community necessary to preserve, protect, and promote the health of the people for which government is responsible; and the governmental system developed to guarantee the preservation of the health of the people.

(13) "Secretary" means the secretary of health or the secretary's designee.

(14) "Tertiary health service" means a specialized service that meets complicated medical needs of people and requires sufficient patient volume to optimize provider effectiveness, quality of service, and improved outcomes of care.

(15) "Hospital" means any health care institution which is required to qualify for a license under *RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW. [2000 c 175 § 22; 1997 c 210 § 2; 1991 c 158 § 1; 1989 1st ex.s. c 9 § 602; 1988 c 20 § 1; 1983 1st ex.s. c 41 § 43; 1983 c 235 § 2; 1982 c 119 § 1; 1980 c 139 § 2; 1979 ex.s. c 161 § 2.]

*Reviser's note: RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4).

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

70.38.095 Public disclosure. Public accessibility to records shall be accorded by health systems agencies pursuant to Public Law 93-641 and RCW 42.17.250 through 42.17.340. A health systems agency shall be considered a "public agency" for the sole purpose of complying with the "Open Public Meetings Act of 1971", chapter 42.30 RCW. [1979 ex.s. c 161 § 9.]

70.38.105 Health services and facilities requiring certificate of need—Fees. (1) The department is authorized and directed to implement the certificate of need program in this state pursuant to the provisions of this chapter.

(2) There shall be a state certificate of need program which is administered consistent with the requirements of federal law as necessary to the receipt of federal funds by the state.

(3) No person shall engage in any undertaking which is subject to certificate of need review under subsection (4) of this section without first having received from the department either a certificate of need or an exception granted in accordance with this chapter.

(4) The following shall be subject to certificate of need review under this chapter:

(a) The construction, development, or other establishment of a new health care facility;

(b) The sale, purchase, or lease of part or all of any existing hospital as defined in RCW 70.38.025;

(c) Any capital expenditure for the construction, renovation, or alteration of a nursing home which substantially changes the services of the facility after January 1, 1981, provided that the substantial changes in services are specified by the department in rule;

(d) Any capital expenditure for the construction, renovation, or alteration of a nursing home which exceeds the expenditure minimum as defined by RCW 70.38.025. However, a capital expenditure which is not subject to certificate of need review under (a), (b), (c), or (e) of this subsection and which is solely for any one or more of the following is not subject to certificate of need review:

(i) Communications and parking facilities;

(ii) Mechanical, electrical, ventilation, heating, and air conditioning systems;

(iii) Energy conservation systems;

(iv) Repairs to, or the correction of, deficiencies in existing physical plant facilities which are necessary to maintain state licensure, however, other additional repairs, remodeling, or replacement projects that are not related to one or more deficiency citations and are not necessary to maintain state licensure are not exempt from certificate of need review except as otherwise permitted by (d)(vi) of this subsection or RCW 70.38.115(13);

(v) Acquisition of equipment, including data processing equipment, which is not or will not be used in the direct provision of health services;

(vi) Construction or renovation at an existing nursing home which involves physical plant facilities, including administrative, dining areas, kitchen, laundry, therapy areas, and support facilities, by an existing licensee who has operated the beds for at least one year;

(vii) Acquisition of land; and

(viii) Refinancing of existing debt;

(e) A change in bed capacity of a health care facility which increases the total number of licensed beds or redistributes beds among acute care, nursing home care, and boarding home care if the bed redistribution is to be effective for a period in excess of six months, or a change in bed capacity of a rural health care facility licensed under RCW 70.175.100 that increases the total number of nursing home beds or redistributes beds from acute care or boarding home care to nursing home care if the bed redistribution is to be effective for a period in excess of six months. A health care facility certified as a critical access hospital under 42 U.S.C. 1395i-4 may increase its total number of licensed beds to the total number of beds permitted under 42 U.S.C. 1395i-4 for acute care and may redistribute beds permitted under 42 U.S.C. 1395i-4 among acute care and nursing home care without being subject to certificate of need review. If there is a nursing home licensed under chapter 18.51 RCW within twenty-seven miles of the critical access hospital, the critical access hospital is subject to certificate of need review except for:

(i) Critical access hospitals which had designated beds to provide nursing home care, in excess of five swing beds, prior to December 31, 2003; or

(ii) Up to five swing beds.

Critical access hospital beds not subject to certificate of need review under this subsection (4)(e) will not be counted as either acute care or nursing home care for certificate of need review purposes. If a health care facility ceases to be certified as a critical access hospital under 42 U.S.C. 1395i-4, the hospital may revert back to the type and number of licensed hospital beds as it had when it requested critical access hospital designation;

(f) Any new tertiary health services which are offered in or through a health care facility or rural health care facility licensed under RCW 70.175.100, and which were not offered on a regular basis by, in, or through such health care facility or rural health care facility within the twelve-month period prior to the time such services would be offered;

(g) Any expenditure for the construction, renovation, or alteration of a nursing home or change in nursing home services in excess of the expenditure minimum made in preparation for any undertaking under subsection (4) of this section and any arrangement or commitment made for financing such

undertaking. Expenditures of preparation shall include expenditures for architectural designs, plans, working drawings, and specifications. The department may issue certificates of need permitting predevelopment expenditures, only, without authorizing any subsequent undertaking with respect to which such predevelopment expenditures are made; and

(h) Any increase in the number of dialysis stations in a kidney disease center.

(5) The department is authorized to charge fees for the review of certificate of need applications and requests for exemptions from certificate of need review. The fees shall be sufficient to cover the full cost of review and exemption, which may include the development of standards, criteria, and policies.

(6) No person may divide a project in order to avoid review requirements under any of the thresholds specified in this section. [2004 c 261 § 6; 1996 c 50 § 1; 1992 c 27 § 1; 1991 sp.s. c 8 § 4; 1989 1st ex.s. c 9 § 603; 1984 c 288 § 21; 1983 c 235 § 7; 1982 c 119 § 2; 1980 c 139 § 7; 1979 ex.s. c 161 § 10.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Severability—1984 c 288: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 288 § 27.]

Effective date—1980 c 139: See RCW 70.38.916.

Effective dates—1979 ex.s. c 161: See RCW 70.38.915.

70.38.111 Certificates of need—Exemptions. (1) The department shall not require a certificate of need for the offering of an inpatient tertiary health service by:

(a) A health maintenance organization or a combination of health maintenance organizations if (i) the organization or combination of organizations has, in the service area of the organization or the service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (ii) the facility in which the service will be provided is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination;

(b) A health care facility if (i) the facility primarily provides or will provide inpatient health services, (ii) the facility is or will be controlled, directly or indirectly, by a health maintenance organization or a combination of health maintenance organizations which has, in the service area of the organization or service areas of the organizations in the combination, an enrollment of at least fifty thousand individuals, (iii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iv) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization or organizations in the combination; or

(c) A health care facility (or portion thereof) if (i) the facility is or will be leased by a health maintenance organization or combination of health maintenance organizations which has, in the service area of the organization or the service areas of the organizations in the combination, an enroll-

ment of at least fifty thousand individuals and, on the date the application is submitted under subsection (2) of this section, at least fifteen years remain in the term of the lease, (ii) the facility is or will be geographically located so that the service will be reasonably accessible to such enrolled individuals, and (iii) at least seventy-five percent of the patients who can reasonably be expected to receive the tertiary health service will be individuals enrolled with such organization; if, with respect to such offering or obligation by a nursing home, the department has, upon application under subsection (2) of this section, granted an exemption from such requirement to the organization, combination of organizations, or facility.

(2) A health maintenance organization, combination of health maintenance organizations, or health care facility shall not be exempt under subsection (1) of this section from obtaining a certificate of need before offering a tertiary health service unless:

(a) It has submitted at least thirty days prior to the offering of services reviewable under RCW 70.38.105(4)(d) an application for such exemption; and

(b) The application contains such information respecting the organization, combination, or facility and the proposed offering or obligation by a nursing home as the department may require to determine if the organization or combination meets the requirements of subsection (1) of this section or the facility meets or will meet such requirements; and

(c) The department approves such application. The department shall approve or disapprove an application for exemption within thirty days of receipt of a completed application. In the case of a proposed health care facility (or portion thereof) which has not begun to provide tertiary health services on the date an application is submitted under this subsection with respect to such facility (or portion), the facility (or portion) shall meet the applicable requirements of subsection (1) of this section when the facility first provides such services. The department shall approve an application submitted under this subsection if it determines that the applicable requirements of subsection (1) of this section are met.

(3) A health care facility (or any part thereof) with respect to which an exemption was granted under subsection (1) of this section may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired and a health care facility described in (1)(c) which was granted an exemption under subsection (1) of this section may not be used by any person other than the lessee described in (1)(c) unless:

(a) The department issues a certificate of need approving the sale, lease, acquisition, or use; or

(b) The department determines, upon application, that (i) the entity to which the facility is proposed to be sold or leased, which intends to acquire the controlling interest, or which intends to use the facility is a health maintenance organization or a combination of health maintenance organizations which meets the requirements of (1)(a)(i), and (ii) with respect to such facility, meets the requirements of (1)(a)(ii) or (iii) or the requirements of (1)(b)(i) and (ii).

(4) In the case of a health maintenance organization, an ambulatory care facility, or a health care facility, which ambulatory or health care facility is controlled, directly or indirectly, by a health maintenance organization or a combi-

nation of health maintenance organizations, the department may under the program apply its certificate of need requirements only to the offering of inpatient tertiary health services and then only to the extent that such offering is not exempt under the provisions of this section.

(5)(a) The department shall not require a certificate of need for the construction, development, or other establishment of a nursing home, or the addition of beds to an existing nursing home, that is owned and operated by a continuing care retirement community that:

- (i) Offers services only to contractual members;
- (ii) Provides its members a contractually guaranteed range of services from independent living through skilled nursing, including some assistance with daily living activities;
- (iii) Contractually assumes responsibility for the cost of services exceeding the member's financial responsibility under the contract, so that no third party, with the exception of insurance purchased by the retirement community or its members, but including the medicaid program, is liable for costs of care even if the member depletes his or her personal resources;
- (iv) Has offered continuing care contracts and operated a nursing home continuously since January 1, 1988, or has obtained a certificate of need to establish a nursing home;
- (v) Maintains a binding agreement with the state assuring that financial liability for services to members, including nursing home services, will not fall upon the state;
- (vi) Does not operate, and has not undertaken a project that would result in a number of nursing home beds in excess of one for every four living units operated by the continuing care retirement community, exclusive of nursing home beds; and
- (vii) Has obtained a professional review of pricing and long-term solvency within the prior five years which was fully disclosed to members.

(b) A continuing care retirement community shall not be exempt under this subsection from obtaining a certificate of need unless:

- (i) It has submitted an application for exemption at least thirty days prior to commencing construction of, is submitting an application for the licensure of, or is commencing operation of a nursing home, whichever comes first; and
- (ii) The application documents to the department that the continuing care retirement community qualifies for exemption.

(c) The sale, lease, acquisition, or use of part or all of a continuing care retirement community nursing home that qualifies for exemption under this subsection shall require prior certificate of need approval to qualify for licensure as a nursing home unless the department determines such sale, lease, acquisition, or use is by a continuing care retirement community that meets the conditions of (a) of this subsection.

(6) A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of beds licensed under chapter 70.41 RCW, increase the number of licensed beds to no more than the previously licensed number without being subject to the provisions of this chapter.

(7) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under chapter 70.41 RCW may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be subject to the requirements of RCW 70.38.105(4)(a) as the construction, development, or other establishment of a new hospital, provided there is no increase in the number of beds previously licensed under chapter 70.41 RCW and there is no redistribution in the number of beds used for acute care or long-term care, the rural health care facility has been in continuous operation, and the rural health care facility has not been purchased or leased.

(8)(a) A nursing home that voluntarily reduces the number of its licensed beds to provide assisted living, licensed boarding home care, adult day care, adult day health, respite care, hospice, outpatient therapy services, congregate meals, home health, or senior wellness clinic, or to reduce to one or two the number of beds per room or to otherwise enhance the quality of life for residents in the nursing home, may convert the original facility or portion of the facility back, and thereby increase the number of nursing home beds to no more than the previously licensed number of nursing home beds without obtaining a certificate of need under this chapter, provided the facility has been in continuous operation and has not been purchased or leased. Any conversion to the original licensed bed capacity, or to any portion thereof, shall comply with the same life and safety code requirements as existed at the time the nursing home voluntarily reduced its licensed beds; unless waivers from such requirements were issued, in which case the converted beds shall reflect the conditions or standards that then existed pursuant to the approved waivers.

(b) To convert beds back to nursing home beds under this subsection, the nursing home must:

- (i) Give notice of its intent to preserve conversion options to the department of health no later than thirty days after the effective date of the license reduction; and
- (ii) Give notice to the department of health and to the department of social and health services of the intent to convert beds back. If construction is required for the conversion of beds back, the notice of intent to convert beds back must be given, at a minimum, one year prior to the effective date of license modification reflecting the restored beds; otherwise, the notice must be given a minimum of ninety days prior to the effective date of license modification reflecting the restored beds. Prior to any license modification to convert beds back to nursing home beds under this section, the licensee must demonstrate that the nursing home meets the certificate of need exemption requirements of this section.

The term "construction," as used in (b)(ii) of this subsection, is limited to those projects that are expected to equal or exceed the expenditure minimum amount, as determined under this chapter.

(c) Conversion of beds back under this subsection must be completed no later than four years after the effective date of the license reduction. However, for good cause shown, the four-year period for conversion may be extended by the department of health for one additional four-year period.

(d) Nursing home beds that have been voluntarily reduced under this section shall be counted as available nursing home beds for the purpose of evaluating need under RCW

70.38.115(2) (a) and (k) so long as the facility retains the ability to convert them back to nursing home use under the terms of this section.

(e) When a building owner has secured an interest in the nursing home beds, which are intended to be voluntarily reduced by the licensee under (a) of this subsection, the applicant shall provide the department with a written statement indicating the building owner's approval of the bed reduction. [1997 c 210 § 1; 1995 1st sp.s. c 18 § 71; 1993 c 508 § 5; 1992 c 27 § 2; 1991 c 158 § 2; 1989 1st ex.s. c 9 § 604; 1982 c 119 § 3; 1980 c 139 § 9.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Section captions—Severability—Effective date—1993 c 508: See RCW 74.39A.900 through 74.39A.903.

70.38.115 Certificates of need—Procedures—Rules—Criteria for review—Conditional certificates of need—Concurrent review—Review periods—Hearing—Adjudicative proceeding—Amended certificates of need.

(1) Certificates of need shall be issued, denied, suspended, or revoked by the designee of the secretary in accord with the provisions of this chapter and rules of the department which establish review procedures and criteria for the certificate of need program.

(2) Criteria for the review of certificate of need applications, except as provided in subsection (3) of this section for health maintenance organizations, shall include but not be limited to consideration of the following:

(a) The need that the population served or to be served by such services has for such services;

(b) The availability of less costly or more effective alternative methods of providing such services;

(c) The financial feasibility and the probable impact of the proposal on the cost of and charges for providing health services in the community to be served;

(d) In the case of health services to be provided, (i) the availability of alternative uses of project resources for the provision of other health services, (ii) the extent to which such proposed services will be accessible to all residents of the area to be served, and (iii) the need for and the availability in the community of services and facilities for osteopathic physicians and surgeons and allopathic physicians and their patients. The department shall consider the application in terms of its impact on existing and proposed institutional training programs for doctors of osteopathic medicine and surgery and medicine at the student, internship, and residency training levels;

(e) In the case of a construction project, the costs and methods of the proposed construction, including the cost and methods of energy provision, and the probable impact of the construction project reviewed (i) on the cost of providing health services by the person proposing such construction project and (ii) on the cost and charges to the public of providing health services by other persons;

(f) The special needs and circumstances of osteopathic hospitals, nonallopathic services and children's hospitals;

(g) Improvements or innovations in the financing and delivery of health services which foster cost containment and serve to promote quality assurance and cost-effectiveness;

(h) In the case of health services proposed to be provided, the efficiency and appropriateness of the use of existing services and facilities similar to those proposed;

(i) In the case of existing services or facilities, the quality of care provided by such services or facilities in the past;

(j) In the case of hospital certificate of need applications, whether the hospital meets or exceeds the regional average level of charity care, as determined by the secretary; and

(k) In the case of nursing home applications:

(i) The availability of other nursing home beds in the planning area to be served; and

(ii) The availability of other services in the community to be served. Data used to determine the availability of other services will include but not be limited to data provided by the department of social and health services.

(3) A certificate of need application of a health maintenance organization or a health care facility which is controlled, directly or indirectly, by a health maintenance organization, shall be approved by the department if the department finds:

(a) Approval of such application is required to meet the needs of the members of the health maintenance organization and of the new members which such organization can reasonably be expected to enroll; and

(b) The health maintenance organization is unable to provide, through services or facilities which can reasonably be expected to be available to the organization, its health services in a reasonable and cost-effective manner which is consistent with the basic method of operation of the organization and which makes such services available on a long-term basis through physicians and other health professionals associated with it.

A health care facility, or any part thereof, with respect to which a certificate of need was issued under this subsection may not be sold or leased and a controlling interest in such facility or in a lease of such facility may not be acquired unless the department issues a certificate of need approving the sale, acquisition, or lease.

(4) Until the final expiration of the state health plan as provided under RCW 70.38.919, the decision of the department on a certificate of need application shall be consistent with the state health plan in effect, except in emergency circumstances which pose a threat to the public health. The department in making its final decision may issue a conditional certificate of need if it finds that the project is justified only under specific circumstances. The conditions shall directly relate to the project being reviewed. The conditions may be released if it can be substantiated that the conditions are no longer valid and the release of such conditions would be consistent with the purposes of this chapter.

(5) Criteria adopted for review in accordance with subsection (2) of this section may vary according to the purpose for which the particular review is being conducted or the type of health service reviewed.

(6) The department shall specify information to be required for certificate of need applications. Within fifteen days of receipt of the application, the department shall request additional information considered necessary to the application or start the review process. Applicants may decline to submit requested information through written notice to the department, in which case review starts on the

date of receipt of the notice. Applications may be denied or limited because of failure to submit required and necessary information.

(7) Concurrent review is for the purpose of comparative analysis and evaluation of competing or similar projects in order to determine which of the projects may best meet identified needs. Categories of projects subject to concurrent review include at least new health care facilities, new services, and expansion of existing health care facilities. The department shall specify time periods for the submission of applications for certificates of need subject to concurrent review, which shall not exceed ninety days. Review of concurrent applications shall start fifteen days after the conclusion of the time period for submission of applications subject to concurrent review. Concurrent review periods shall be limited to one hundred fifty days, except as provided for in rules adopted by the department authorizing and limiting amendment during the course of the review, or for an unresolved pivotal issue declared by the department.

(8) Review periods for certificate of need applications other than those subject to concurrent review shall be limited to ninety days. Review periods may be extended up to thirty days if needed by a review agency, and for unresolved pivotal issues the department may extend up to an additional thirty days. A review may be extended in any case if the applicant agrees to the extension.

(9) The department or its designee, shall conduct a public hearing on a certificate of need application if requested unless the review is expedited or subject to emergency review. The department by rule shall specify the period of time within which a public hearing must be requested and requirements related to public notice of the hearing, procedures, record-keeping and related matters.

(10)(a) Any applicant denied a certificate of need or whose certificate of need has been suspended or revoked has the right to an adjudicative proceeding. The proceeding is governed by chapter 34.05 RCW, the Administrative Procedure Act.

(b) Any health care facility or health maintenance organization that: (i) Provides services similar to the services provided by the applicant and under review pursuant to this subsection; (ii) is located within the applicant's health service area; and (iii) testified or submitted evidence at a public hearing held pursuant to subsection (9) of this section, shall be provided an opportunity to present oral or written testimony and argument in a proceeding under this subsection: PROVIDED, That the health care facility or health maintenance organization had, in writing, requested to be informed of the department's decisions.

(c) If the department desires to settle with the applicant prior to the conclusion of the adjudicative proceeding, the department shall so inform the health care facility or health maintenance organization and afford them an opportunity to comment, in advance, on the proposed settlement.

(11) An amended certificate of need shall be required for the following modifications of an approved project:

- (a) A new service requiring review under this chapter;
- (b) An expansion of a service subject to review beyond that originally approved;
- (c) An increase in bed capacity;

(d) A significant reduction in the scope of a nursing home project without a commensurate reduction in the cost of the nursing home project, or a cost increase (as represented in bids on a nursing home construction project or final cost estimates acceptable to the person to whom the certificate of need was issued) if the total of such increases exceeds twelve percent or fifty thousand dollars, whichever is greater, over the maximum capital expenditure approved. The review of reductions or cost increases shall be restricted to the continued conformance of the nursing home project with the review criteria pertaining to financial feasibility and cost containment.

(12) An application for a certificate of need for a nursing home capital expenditure which is determined by the department to be required to eliminate or prevent imminent safety hazards or correct violations of applicable licensure and accreditation standards shall be approved.

(13)(a) Replacement of existing nursing home beds in the same planning area by an existing licensee who has operated the beds for at least one year shall not require a certificate of need under this chapter. The licensee shall give written notice of its intent to replace the existing nursing home beds to the department and shall provide the department with information as may be required pursuant to rule. Replacement of the beds by a party other than the licensee is subject to certificate of need review under this chapter, except as otherwise permitted by subsection (14) of this section.

(b) When an entire nursing home ceases operation, the licensee or any other party who has secured an interest in the beds may reserve his or her interest in the beds for eight years or until a certificate of need to replace them is issued, whichever occurs first. However, the nursing home, licensee, or any other party who has secured an interest in the beds must give notice of its intent to retain the beds to the department of health no later than thirty days after the effective date of the facility's closure. Certificate of need review shall be required for any party who has reserved the nursing home beds except that the need criteria shall be deemed met when the applicant is the licensee who had operated the beds for at least one year, who has operated the beds for at least one year immediately preceding the reservation of the beds, and who is replacing the beds in the same planning area.

(14) In the event that a licensee, who has provided the department with notice of his or her intent to replace nursing home beds under subsection (13)(a) of this section, engages in unprofessional conduct or becomes unable to practice with reasonable skill and safety by reason of mental or physical condition, pursuant to chapter 18.130 RCW, or dies, the building owner shall be permitted to complete the nursing home bed replacement project, provided the building owner has secured an interest in the beds. [1996 c 178 § 22; 1995 1st sp.s. c 18 § 72; 1993 c 508 § 6. Prior: 1989 1st ex.s. c 9 § 605; 1989 c 175 § 126; 1984 c 288 § 22; 1983 c 235 § 8; 1980 c 139 § 8; 1979 ex.s. c 161 § 11.]

Effective date—1996 c 178: See note following RCW 18.35.110.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Section captions—Severability—Effective date—1993 c 508: See RCW 74.39A.900 through 74.39A.903.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1984 c 288: See note following RCW 70.38.105.

Effective date—1980 c 139: See RCW 70.38.916.

Effective dates—1979 ex.s. c 161: See RCW 70.38.915.

70.38.118 Certificates of need—Applications submitted by hospice agencies. All certificate of need applications submitted by hospice agencies for the construction, development, or other establishment of a facility to be licensed as either a hospital under chapter 70.41 RCW or as a nursing home under chapter 18.51 RCW, for the purpose of operating the functional equivalent of a hospice care center shall not require a separate certificate of need for a hospice care center provided the certificate of need application was declared complete prior to July 1, 2001, the applicant has been issued a certificate of need, and has applied for and received an in-home services agency license by July 1, 2002. [2000 c 175 § 23.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.38.125 Certificates of need—Issuance—Duration—Penalties for violations. (1) A certificate of need shall be valid for two years. One six-month extension may be made if it can be substantiated that substantial and continuing progress toward commencement of the project has been made as defined by regulations to be adopted pursuant to this chapter.

(2) A project for which a certificate of need has been issued shall be commenced during the validity period for the certificate of need.

(3) The department shall monitor the approved projects to assure conformance with certificates of need that have been issued. Rules and regulations adopted shall specify when changes in the project require reevaluation of the project. The department may require applicants to submit periodic progress reports on approved projects or other information as may be necessary to effectuate its monitoring responsibilities.

(4) The secretary, in the case of a new health facility, shall not issue any license unless and until a prior certificate of need shall have been issued by the department for the offering or development of such new health facility.

(5) Any person who engages in any undertaking which requires certificate of need review without first having received from the department either a certificate of need or an exception granted in accordance with this chapter shall be liable to the state in an amount not to exceed one hundred dollars a day for each day of such unauthorized offering or development. Such amounts of money shall be recoverable in an action brought by the attorney general on behalf of the state in the superior court of any county in which the unauthorized undertaking occurred. Any amounts of money so recovered by the attorney general shall be deposited in the state general fund.

(6) The department may bring any action to enjoin a violation or the threatened violation of the provisions of this chapter or any rules and regulations adopted pursuant to this chapter, or may bring any legal proceeding authorized by law, including but not limited to the special proceedings authorized in Title 7 RCW, in the superior court in the county in which such violation occurs or is about to occur, or in the superior court of Thurston county. [1989 1st ex.s. c 9 § 606; 1983 c 235 § 9; 1980 c 139 § 10; 1979 ex.s. c 161 § 12.]

Effective date—1980 c 139: See RCW 70.38.916.

Effective date—1979 ex.s. c 161: See RCW 70.38.915.

70.38.135 Services and surveys—Rules. The secretary shall have authority to:

(1) Provide when needed temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee-for-service basis;

(2) Make or cause to be made such on-site surveys of health care or medical facilities as may be necessary for the administration of the certificate of need program;

(3) Upon review of recommendations, if any, from the board of health:

(a) Promulgate rules under which health care facilities providers doing business within the state shall submit to the department such data related to health and health care as the department finds necessary to the performance of its functions under this chapter;

(b) Promulgate rules pertaining to the maintenance and operation of medical facilities which receive federal assistance under the provisions of Title XVI;

(c) Promulgate rules in implementation of the provisions of this chapter, including the establishment of procedures for public hearings for predecisions and post-decisions on applications for certificate of need;

(d) Promulgate rules providing circumstances and procedures of expedited certificate of need review if there has not been a significant change in existing health facilities of the same type or in the need for such health facilities and services;

(4) Grant allocated state funds to qualified entities, as defined by the department, to fund not more than seventy-five percent of the costs of regional planning activities, excluding costs related to review of applications for certificates of need, provided for in this chapter or approved by the department; and

(5) Contract with and provide reasonable reimbursement for qualified entities to assist in determinations of certificates of need. [1989 1st ex.s. c 9 § 607; 1983 c 235 § 10; 1979 ex.s. c 161 § 13.]

70.38.155 Certificates of need—Savings—1979 ex.s. c 161. The enactment of this chapter shall not have the effect of terminating, or in any way modifying the validity of any certificate of need which shall already have been issued prior to *the effective date of this act. [1979 ex.s. c 161 § 15.]

***Reviser's note:** For "the effective date of this act," see RCW 70.38.915.

70.38.156 Certificates of need—Savings—1980 c 139. The enactment of this chapter as amended shall not have the effect of terminating, or in any way modifying the validity of any certificate of need which shall already have been issued prior to *the effective date of this 1980 act. [1980 c 139 § 11.]

***Reviser's note:** For "the effective date of this 1980 act," see RCW 70.38.916.

70.38.157 Certificates of need—Savings—1983 c 235. The enactment of amendments to chapter 70.38 RCW by

chapter 235, Laws of 1983 shall not have the effect of terminating or in any way modifying the validity of a certificate of need which was issued prior to *the effective date of this 1983 act. [1983 c 235 § 11.]

***Reviser's note:** "the effective date of this 1983 act" [1983 c 235] for sections 16 and 17 of that act was May 17, 1983. For all other sections of that act the effective date was July 24, 1983.

70.38.158 Certificates of need—Savings—1989 1st ex.s. c 9 §§ 601 through 607. The enactment of *sections 601 through 607 of this act shall not have the effect of terminating, or in any way modifying, the validity of any certificate of need which shall already have been issued prior to July 1, 1989. [1989 1st ex.s. c 9 § 608.]

***Reviser's note:** "Sections 601 through 607 of this act" consist of the 1989 1st ex.s. c 9 amendments to RCW 70.38.015, 70.38.025, 70.38.105, 70.38.111, 70.38.115, 70.38.125, and 70.38.135.

70.38.220 Ethnic minorities—Nursing home beds that reflect cultural differences. (1) The legislature recognizes that in this state ethnic minorities currently use nursing home care at a lower rate than the general population. The legislature also recognizes and supports the federal mandate that nursing homes receiving federal funds provide residents with a homelike environment. The legislature finds that certain ethnic minorities have special cultural, language, dietary, and other needs not generally met by existing nursing homes which are intended to serve the general population. Accordingly, the legislature further finds that there is a need to foster the development of nursing homes designed to serve the special cultural, language, dietary, and other needs of ethnic minorities.

(2) The department shall establish a separate pool of no more than two hundred fifty beds for nursing homes designed to serve the special needs of ethnic minorities. The pool shall be made up of nursing home beds that become available on or after March 15, 1991, due to:

(a) Loss of license or reduction in licensed bed capacity if the beds are not otherwise obligated for replacement; or

(b) Expiration of a certificate of need.

(3) The department shall develop procedures for the fair and efficient award of beds from the special pool. In making its decisions regarding the award of beds from the pool, the department shall consider at least the following:

(a) The relative degree to which the long-term care needs of an ethnic minority are not otherwise being met;

(b) The percentage of low-income persons who would be served by the proposed nursing home;

(c) The financial feasibility of the proposed nursing home; and

(d) The impact of the proposal on the area's total need for nursing home beds.

(4) To be eligible to apply for or receive an award of beds from the special pool, an application must be to build a new nursing home, or add beds to a nursing home, that:

(a) Will be owned and operated by a nonprofit corporation, and at least fifty percent of the board of directors of the corporation are members of the ethnic minority the nursing home is intended to serve;

(b) Will be designed, managed, and administered to serve the special cultural, language, dietary, and other needs of an ethnic minority; and

(c) Will not discriminate in admissions against persons who are not members of the ethnic minority whose special needs the nursing home is designed to serve.

(5) If a nursing home or portion of a nursing home that is built as a result of an award from the special pool is sold or leased within ten years to a party not eligible under subsection (4) of this section:

(a) The purchaser or lessee may not operate those beds as nursing home beds without first obtaining a certificate of need for new beds under this chapter; and

(b) The beds that had been awarded from the special pool shall be returned to the special pool.

(6) The department shall initially award up to one hundred beds before that number of beds are actually in the special pool, provided that the number of beds so awarded are subtracted from the total of two hundred fifty beds that can be awarded from the special pool. [1991 c 271 § 1.]

70.38.230 Residential hospice care centers—Defined—Change in bed capacity—Applicability of chapter. (1) A change in bed capacity at a residential hospice care center shall not be subject to certificate of need review under this chapter if the department determined prior to June 1994 that the construction, development, or other establishment of the residential hospice care center was not subject to certificate of need review under this chapter.

(2) For purposes of this section, a "residential hospice care center" means any building, facility, place, or equivalent that opened in December 1996 and is organized, maintained, and operated specifically to provide beds, accommodations, facilities, and services over a continuous period of twenty-four hours or more for palliative care of two or more individuals, not related to the operator, who are diagnosed as being in the latter stages of an advanced disease that is expected to lead to death. [1998 c 322 § 50.]

Severability—1998 c 322: See RCW 74.46.907.

70.38.250 Redistribution and addition of beds—Determination. (1) The need for projects identified in *RCW 70.38.240 shall be determined using the individual planning area's estimated nursing home bed need ratio and includes but is not limited to the following criteria:

(a) The current capacity of nursing homes and other long-term care services;

(b) The occupancy rates of nursing homes and other long-term care services over the previous two-year period; and

(c) The ability of the other long-term care services to serve all people regardless of payor source.

(2) For the purposes of this section, nursing home beds include long-term care units or distinct part long-term care units located in a hospital that is licensed under chapter 70.41 RCW. [1999 c 376 § 2.]

***Reviser's note:** RCW 70.38.240 expired June 30, 2004.

Effective date—1999 c 376: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1999." [1999 c 376 § 4.]

70.38.905 Conflict with federal law—Construction.

In any case where the provisions of this chapter may directly conflict with federal law, or regulations promulgated thereunder, the federal law shall supersede and be paramount as necessary to the receipt of federal funds by the state. [1983 c 235 § 12; 1979 ex.s. c 161 § 16.]

70.38.910 Severability—1983 c 235; 1979 ex.s. c 161.

If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter or the application of the provision to other persons or circumstances is not affected. [1983 c 235 § 13; 1979 ex.s. c 161 § 17.]

70.38.911 Severability—1980 c 139. If any provision of this 1980 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 139 § 12.]

70.38.912 Severability—1989 1st ex.s. c 9. See RCW 43.70.920.

70.38.914 Pending certificates of need—1983 c 235.

A certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to *the effective date of this act, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to *the effective date of this act, and the rules adopted thereunder. [1983 c 235 § 14.]

***Reviser's note:** For "the effective date of this act," see note following RCW 70.38.157.

70.38.915 Effective dates—Pending certificates of need—1979 ex.s. c 161. (1) *Sections 10, 11, 12, and 21 shall take effect on January 1, 1980.

(2) Any certificate of need application which was submitted and declared complete, but upon which final action had not been taken prior to January 1, 1980, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to **the effective date of this 1979 act, and the regulations adopted thereunder. [1979 ex.s. c 161 § 19.]

Reviser's note: *(1) Sections 10, 11, and 12 are codified as RCW 70.38.105, 70.38.115, and 70.38.125. Section 21 was a repealer which repealed RCW 70.38.020, 70.38.110 through 70.38.190, and 70.38.210.

** (2) The effective date of those remaining sections of 1979 ex.s. c 161 which do not have a specific effective date indicated in this section is September 1, 1979.

70.38.916 Effective date—1980 c 139. *Sections 7, 8, and 10 of this 1980 act shall take effect January 1, 1981. [1980 c 139 § 14.]

Reviser's note: *(1) "Sections 7, 8, and 10 of this 1980 act" consist of amendments to RCW 70.38.105, 70.38.115, and 70.38.125.

(2) The effective date of those remaining sections of 1980 c 139 is June 12, 1980.

70.38.917 Effective date—1989 1st ex.s. c 9. See RCW 43.70.910.

70.38.918 Effective dates—Pending certificates of need—1989 1st ex.s. c 9. Any certificate of need application

which was submitted and declared complete, but upon which final action had not been taken prior to July 1, 1989, shall be reviewed and action taken based on chapter 70.38 RCW, as in effect prior to July 1, 1989, and the rules adopted thereunder. [1989 1st ex.s. c 9 § 609.]

70.38.919 Effective date—State health plan—1989

1st ex.s. c 9. For the purpose of supporting the certificate of need process, the state health plan developed in accordance with *RCW 70.38.065 and in effect on July 1, 1989, shall remain effective until June 30, 1990, or until superseded by rules adopted by the department of health for this purpose. The governor may amend the state health plan, as the governor finds appropriate, until the final expiration of the plan. [1989 1st ex.s. c 9 § 610.]

***Reviser's note:** RCW 70.38.065 was repealed by 1989 1st ex.s. c 9 § 819, effective July 1, 1989.

70.38.920 Short title. This act may be cited as the "State Health Planning and Resources Development Act". [1979 ex.s. c 161 § 22.]

Chapter 70.40 RCW**HOSPITAL AND MEDICAL FACILITIES SURVEY AND CONSTRUCTION ACT**

Sections

| | |
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| 70.40.005 | Transfer of duties to the department of health. |
| 70.40.010 | Short title. |
| 70.40.020 | Definitions. |
| 70.40.030 | Section of hospital and medical facility survey and construction established—Duties. |
| 70.40.040 | General duties of the secretary. |
| 70.40.060 | Development of program for construction of facilities needed. |
| 70.40.070 | Distribution of facilities. |
| 70.40.080 | Federal funds—Application for—Deposit, use. |
| 70.40.090 | State plan—Publication—Hearing—Approval by surgeon general—Modifications. |
| 70.40.100 | Plan shall provide for construction in order of relative needs. |
| 70.40.110 | Minimum standards for maintenance and operation. |
| 70.40.120 | Applications for construction projects—Diagnostic, treatment centers. |
| 70.40.130 | Hearing—Approval. |
| 70.40.140 | Inspection of project under construction—Certification as to federal funds due. |
| 70.40.150 | Hospital and medical facility construction fund—Deposits, use. |
| 70.40.900 | Severability—1949 c 197. |

70.40.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services and the secretary of social and health services under this chapter shall be performed by the department of health and the secretary of health. [1989 1st ex.s. c 9 § 248.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.40.010 Short title. This chapter may be cited as the "Washington Hospital and Medical Facilities Survey and Construction Act." [1959 c 252 § 1; 1949 c 197 § 1; Rem. Supp. 1949 § 6090-60.]

70.40.020 Definitions. As used in this chapter:

(1) "Secretary" means the secretary of the state department of health;

(2) "The federal act" means Title VI of the public health service act, as amended, or as hereafter amended by congress;

(3) "The surgeon general" means the surgeon general of the public health service of the United States;

(4) "Hospital" includes public health centers and general, tuberculosis, mental, chronic disease, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home and training facilities, and central service facilities operated in connection with hospitals;

(5) "Public health center" means a publicly owned facility for the provision of public health services, including related facilities such as laboratories, clinics, and administrative offices operated in connection with public health centers;

(6) "Nonprofit hospital" and "nonprofit medical facility" means any hospital or medical facility owned and operated by a corporation or association, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual;

(7) "Medical facilities" means diagnostic or diagnostic and treatment centers, rehabilitation facilities and nursing homes as those terms are defined in the federal act. [1991 c 3 § 331; 1979 c 141 § 96; 1959 c 252 § 2; 1949 c 197 § 2; Rem. Supp. 1949 § 6090-61.]

70.40.030 Section of hospital and medical facility survey and construction established—Duties. There is hereby established in the state department of health a "section of hospital and medical facility survey and construction" which shall be administered by a full time salaried head under the supervision and direction of the secretary. The state department of health, through such section, shall constitute the sole agency of the state for the purpose of:

(1) Making an inventory of existing hospitals and medical facilities, surveying the need for construction of hospitals and medical facilities, and developing a program of hospital and medical facility construction; and

(2) Developing and administering a state plan for the construction of public and other nonprofit hospitals and medical facilities as provided in this chapter. [1991 c 3 § 332; 1979 c 141 § 97; 1959 c 252 § 3; 1949 c 197 § 3; Rem. Supp. 1949 § 6090-62.]

70.40.040 General duties of the secretary. In carrying out the purposes of the chapter the secretary is authorized and directed:

(1) To require such reports, make such inspections and investigations and prescribe such regulations as he deems necessary;

(2) To provide such methods of administration, appoint a head and other personnel of the section and take such other action as may be necessary to comply with the requirements of the federal act and the regulations thereunder;

(3) To procure in his discretion the temporary or intermittent services of experts or consultants or organizations thereof, by contract, when such services are to be performed on a part time or fee for service basis and do not involve the performance of administrative duties;

(4) To the extent that he considers desirable to effectuate the purposes of this chapter, to enter into agreements for the

(2004 Ed.)

utilization of the facilities and services of other departments, agencies, and institutions public or private;

(5) To accept on behalf of the state and to deposit with the state treasurer, any grant, gift, or contribution made to assist in meeting the cost of carrying out the purposes of this chapter, and to expend the same for such purpose; and

(6) To make an annual report to the governor on activities pursuant to this chapter, including recommendations for such additional legislation as the secretary considers appropriate to furnish adequate hospital and medical facilities to the people of this state. [1979 c 141 § 98; 1977 c 75 § 83; 1959 c 252 § 4; 1949 c 197 § 4; Rem. Supp. 1949 § 6090-63.]

70.40.060 Development of program for construction of facilities needed. The secretary is authorized and directed to make an inventory of existing hospitals and medical facilities, including public nonprofit and proprietary hospitals and medical facilities, to survey the need for construction of hospitals and medical facilities, and, on the basis of such inventory and survey, to develop a program for the construction of such public and other nonprofit hospitals and medical facilities as will, in conjunction with existing facilities, afford the necessary physical facilities for furnishing adequate hospital and medical facility services to all the people of the state. [1979 c 141 § 99; 1959 c 252 § 6; 1949 c 197 § 6; Rem. Supp. 1949 § 6090-65.]

70.40.070 Distribution of facilities. The construction program shall provide, in accordance with regulations prescribed under the federal act, for adequate hospital and medical facilities for the people residing in this state and insofar as possible shall provide for their distribution throughout the state in such manner as to make all types of hospital and medical facility service reasonably accessible to all persons in the state. [1959 c 252 § 7; 1949 c 197 § 7; Rem. Supp. 1949 § 6090-66.]

70.40.080 Federal funds—Application for—Deposit, use. The secretary is authorized to make application to the surgeon general for federal funds to assist in carrying out the survey and planning activities herein provided. Such funds shall be deposited with the state treasurer and shall be available to the secretary for expenditure in carrying out the purposes of this part. Any such funds received and not expended for such purposes shall be repaid to the treasurer of the United States. [1979 c 141 § 100; 1949 c 197 § 8; Rem. Supp. 1949 § 6090-67.]

70.40.090 State plan—Publication—Hearing—Approval by surgeon general—Modifications. The secretary shall prepare and submit to the surgeon general a state plan which shall include the hospital and medical facility construction program developed under this chapter and which shall provide for the establishment, administration, and operation of hospital and medical facility construction activities in accordance with the requirements of the federal act and the regulations thereunder. The secretary shall, prior to the submission of such plan to the surgeon general, give adequate publicity to a general description of all the provisions proposed to be included therein, and hold a public hear-

ing at which all persons or organizations with a legitimate interest in such plan may be given an opportunity to express their views. After approval of the plan by the surgeon general, the secretary shall publish a general description of the provisions thereof in at least one newspaper having general circulation in the state, and shall make the plan, or a copy thereof, available upon request to all interested persons or organizations. The secretary shall from time to time review the hospital and medical facility construction program and submit to the surgeon general any modifications thereof which he may find necessary and may submit to the surgeon general such modifications of the state plan, not inconsistent with the requirements of the federal act, as he may deem advisable. [1979 c 141 § 101; 1959 c 252 § 8; 1949 c 197 § 9; Rem. Supp. 1949 § 6090-68.]

70.40.100 Plan shall provide for construction in order of relative needs. The state plan shall set forth the relative need for the several projects included in the construction program determined in accordance with regulations prescribed pursuant to the federal act, and provide for the construction, insofar as financial resources available therefor and for maintenance and operations make possible, in the order of such relative need. [1949 c 197 § 11; Rem. Supp. 1949 § 6090-70.]

70.40.110 Minimum standards for maintenance and operation. The secretary shall by regulation prescribe minimum standards for the maintenance and operation of hospitals and medical facilities which receive federal aid for construction under the state plan. [1979 c 141 § 102; 1959 c 252 § 9; 1949 c 197 § 10; Rem. Supp. 1949 § 6090-69.]

70.40.120 Applications for construction projects—Diagnostic, treatment centers. Applications for hospital and medical facility construction projects for which federal funds are requested shall be submitted to the secretary and may be submitted by the state or any political subdivision thereof or by any public or nonprofit agency authorized to construct and operate a hospital or medical facility: PROVIDED, That except as may be permitted by federal law no application for a diagnostic or treatment center shall be approved unless the applicant is (1) a state, political subdivision, or public agency, or (2) a corporation or association which owns and operates a nonprofit hospital. Each application for a construction project shall conform to federal and state requirements. [1979 c 141 § 103; 1959 c 252 § 10; 1949 c 197 § 12; Rem. Supp. 1949 § 6090-71.]

70.40.130 Hearing—Approval. The secretary shall afford to every applicant for a construction project an opportunity for a fair hearing. If the secretary, after affording reasonable opportunity for development and presentation of applications in the order of relative need, finds that a project application complies with the requirements of RCW 70.40.120 and is otherwise in conformity with the state plan, he shall approve such application and shall recommend and forward it to the surgeon general. [1979 c 141 § 104; 1949 c 197 § 13; Rem. Supp. 1949 § 6090-72.]

70.40.140 Inspection of project under construction—Certification as to federal funds due. From time to time the secretary shall inspect each construction project approved by the surgeon general, and, if the inspection so warrants, the secretary shall certify to the surgeon general that work has been performed upon the project, or purchases have been made, in accordance with the approved plans and specifications, and that payment of an installment of federal funds is due to the applicant. [1979 c 141 § 105; 1949 c 197 § 14; Rem. Supp. 1949 § 6090-73.]

70.40.150 Hospital and medical facility construction fund—Deposits, use. The secretary is hereby authorized to receive federal funds in behalf of, and transmit them to, such applicants or to approve applicants for federal funds and authorize the payment of such funds directly to such applicants as may be allowed by federal law. To achieve that end there is hereby established, separate and apart from all public moneys and funds of this state, a trust fund to be known as the "hospital and medical facility construction fund", of which the state treasurer shall ex officio be custodian. Moneys received from the federal government for construction projects approved by the surgeon general shall be deposited to the credit of this fund, shall be used solely for payments due applicants for work performed, or purchases made, in carrying out approved projects. Vouchers covering all payments from the hospital and medical facility construction fund shall be prepared by the department of health and shall bear the signature of the secretary or his or her duly authorized agent for such purpose, and warrants therefor shall be signed by the state treasurer. [1991 c 3 § 333; 1973 c 106 § 31; 1959 c 252 § 11; 1949 c 197 § 15; Rem. Supp. 1949 § 6090-74.]

70.40.900 Severability—1949 c 197. If any provision of this chapter or the application thereof to any person or circumstance shall be held invalid, such invalidity shall not affect the provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of the chapter are declared to be severable. [1949 c 197 § 16; no RRS.]

Chapter 70.41 RCW

HOSPITAL LICENSING AND REGULATION

Sections

| | |
|-----------|--|
| 70.41.005 | Transfer of duties to the department of health. |
| 70.41.010 | Declaration of purpose. |
| 70.41.020 | Definitions. |
| 70.41.030 | Standards and rules. |
| 70.41.040 | Enforcement of chapter—Personnel—Merit system. |
| 70.41.045 | Hospital surveys or audits—Frequent problems to be posted on agency web sites—Hospital evaluation of survey or audit, form—Notice. |
| 70.41.080 | Fire protection. |
| 70.41.090 | Hospital license required—Certificate of need required. |
| 70.41.100 | Applications for licenses and renewals—Fees. |
| 70.41.110 | Licenses, provisional licenses—Issuance, duration, assignment, posting. |
| 70.41.120 | Inspection of hospitals—Alterations or additions, new facilities—Coordination with state and local agencies—Notice of inspection. |
| 70.41.122 | Exemption from RCW 70.41.120 for hospitals accredited by the joint commission on the accreditation of health care organizations or the American osteopathic association. |

- 70.41.125 Hospital construction review process—Coordination with state and local agencies.
- 70.41.130 Denial, suspension, revocation, modification of license—Procedure.
- 70.41.150 Denial, suspension, revocation of license—Disclosure of information.
- 70.41.155 Duty to investigate patient well-being.
- 70.41.160 Remedies available to department—Duty of attorney general.
- 70.41.170 Operating or maintaining unlicensed hospital or unapproved tertiary health service—Penalty.
- 70.41.180 Physicians' services.
- 70.41.190 Medical records of patients—Retention and preservation.
- 70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing.
- 70.41.210 Duty to report restrictions on physicians' privileges based on unprofessional conduct—Penalty.
- 70.41.220 Duty to keep records of restrictions on practitioners' privileges—Penalty.
- 70.41.230 Duty of hospital to request information on physicians granted privileges.
- 70.41.235 Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited.
- 70.41.240 Information regarding conversion of hospitals to nonhospital health care facilities.
- 70.41.250 Cost disclosure to health care providers.
- 70.41.300 Long-term care—Definitions.
- 70.41.310 Long-term care—Program information to be provided to hospitals—Information on options to be provided to patients.
- 70.41.320 Long-term care—Patient discharge requirements for hospitals and acute care facilities—Pilot projects.
- 70.41.330 Hospital complaint toll-free telephone number.
- 70.41.340 Investigation of hospital complaints—Rules.
- 70.41.350 Emergency care provided to victims of sexual assault—Development of informational materials on emergency contraception—Rules.
- 70.41.360 Emergency care provided to victims of sexual assault—Department to respond to violations—Task force.
- 70.41.370 Investigation of complaints of violations concerning nursing technicians.
- 70.41.900 Severability—1955 c 267.

Actions for negligence against hospitals, evidence and proof required to prevail: RCW 4.24.290.

Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.

Hospitals, hospital personnel, actions against, limitation of: RCW 4.16.350.

Identification of potential anatomical parts donors—Hospital procedures: RCW 68.50.500.

Immunity from civil liability for certain types of medical care: RCW 4.24.300, 18.71.220.

Labor regulations, collective bargaining—Health care activities: Chapter 49.66 RCW.

Records of hospital committee or board, immunity from process: RCW 4.24.250.

Standards and procedures for hospital staff membership or privileges: Chapter 70.43 RCW.

70.41.005 Transfer of duties to the department of health. The powers and duties of the department of social and health services under this chapter shall be performed by the department of health. [1989 1st ex.s. c 9 § 249.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.41.010 Declaration of purpose. The primary purpose of this chapter is to promote safe and adequate care of individuals in hospitals through the development, establishment and enforcement of minimum hospital standards for maintenance and operation. To accomplish these purposes, this chapter provides for:

- (1) The licensing and inspection of hospitals;

- (2) The establishment of a Washington state hospital advisory council;

- (3) The establishment by the department of standards, rules and regulations for the construction, maintenance and operation of hospitals;

- (4) The enforcement by the department of the standards, rules, and regulations established under this chapter. [1985 c 213 § 15; 1979 c 141 § 106; 1955 c 267 § 1.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.020 Definitions. Unless the context clearly indicates otherwise, the following terms, whenever used in this chapter, shall be deemed to have the following meanings:

- (1) "Department" means the Washington state department of health.

- (2) "Emergency care to victims of sexual assault" means medical examinations, procedures, and services provided by a hospital emergency room to a victim of sexual assault following an alleged sexual assault.

- (3) "Emergency contraception" means any health care treatment approved by the food and drug administration that prevents pregnancy, including but not limited to administering two increased doses of certain oral contraceptive pills within seventy-two hours of sexual contact.

- (4) "Hospital" means any institution, place, building, or agency which provides accommodations, facilities and services over a continuous period of twenty-four hours or more, for observation, diagnosis, or care, of two or more individuals not related to the operator who are suffering from illness, injury, deformity, or abnormality, or from any other condition for which obstetrical, medical, or surgical services would be appropriate for care or diagnosis. "Hospital" as used in this chapter does not include hotels, or similar places furnishing only food and lodging, or simply domiciliary care; nor does it include clinics, or physician's offices where patients are not regularly kept as bed patients for twenty-four hours or more; nor does it include nursing homes, as defined and which come within the scope of chapter 18.51 RCW; nor does it include birthing centers, which come within the scope of chapter 18.46 RCW; nor does it include psychiatric hospitals, which come within the scope of chapter 71.12 RCW; nor any other hospital, or institution specifically intended for use in the diagnosis and care of those suffering from mental illness, mental retardation, convulsive disorders, or other abnormal mental condition. Furthermore, nothing in this chapter or the rules adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any hospital conducted for those who rely primarily upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well recognized church or religious denominations.

- (5) "Person" means any individual, firm, partnership, corporation, company, association, or joint stock association, and the legal successor thereof.

- (6) "Secretary" means the secretary of health.

- (7) "Sexual assault" has the same meaning as in RCW 70.125.030.

- (8) "Victim of sexual assault" means a person who alleges or is alleged to have been sexually assaulted and who

presents as a patient. [2002 c 116 § 2; 1991 c 3 § 334; 1985 c 213 § 16; 1971 ex.s. c 189 § 8; 1955 c 267 § 2.]

Findings—2002 c 116: See note following RCW 70.41.350.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.030 Standards and rules. The department shall establish and adopt such minimum standards and rules pertaining to the construction, maintenance, and operation of hospitals, and rescind, amend, or modify such rules from time to time, as are necessary in the public interest, and particularly for the establishment and maintenance of standards of hospitalization required for the safe and adequate care and treatment of patients. To the extent possible, the department shall endeavor to make such minimum standards and rules consistent in format and general content with the applicable hospital survey standards of the joint commission on the accreditation of health care organizations. The department shall adopt standards that are at least equal to recognized applicable national standards pertaining to medical gas piping systems. [1995 c 282 § 1; 1989 c 175 § 127; 1985 c 213 § 17; 1971 ex.s. c 189 § 9; 1955 c 267 § 3.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.040 Enforcement of chapter—Personnel—Merit system. The enforcement of the provisions of this chapter and the standards, rules and regulations established under this chapter, shall be the responsibility of the department which shall cooperate with the joint commission on the accreditation of health care organizations. The department shall advise on the employment of personnel and the personnel shall be under the merit system or its successor. [1995 c 282 § 3; 1985 c 213 § 18; 1955 c 267 § 4.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.045 Hospital surveys or audits—Frequent problems to be posted on agency web sites—Hospital evaluation of survey or audit, form—Notice. (1) Unless the context clearly requires otherwise, the definitions in this subsection apply throughout this section.

(a) "Agency" means a department of state government created under RCW 43.17.010 and the office of the state auditor.

(b) "Audit" means an examination of records or financial accounts to evaluate accuracy and monitor compliance with statutory or regulatory requirements.

(c) "Hospital" means a hospital licensed under chapter 70.41 RCW.

(d) "Survey" means an inspection, examination, or site visit conducted by an agency to evaluate and monitor the compliance of a hospital or hospital services or facilities with statutory or regulatory requirements.

(2) By July 1, 2004, each state agency which conducts hospital surveys or audits shall post to its agency web site a list of the most frequent problems identified in its hospital surveys or audits along with information on how to avoid or address the identified problems, and a person within the

agency that a hospital may contact with questions or for further assistance.

(3) By July 1, 2004, the department of health, in cooperation with other state agencies which conduct hospital surveys or audits, shall develop an instrument, to be provided to every hospital upon completion of a state survey or audit, which allows the hospital to anonymously evaluate the survey or audit process in terms of quality, efficacy, and the extent to which it supported improved patient care and compliance with state law without placing an unnecessary administrative burden on the hospital. The evaluation may be returned to the department of health for distribution to the appropriate agency. The department of health shall annually compile the evaluations in a report to the legislature.

(4) Except when responding to complaints or immediate public health and safety concerns or when such prior notice would conflict with other state or federal law, any state agency that provides notice of a hospital survey or audit must provide such notice to the hospital no less than four weeks prior to the date of the survey or audit. [2004 c 261 § 2.]

70.41.080 Fire protection. Standards for fire protection and the enforcement thereof, with respect to all hospitals to be licensed hereunder shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt, after approval by the department, such recognized standards as may be applicable to hospitals for the protection of life against the cause and spread of fire and fire hazards. Such standards shall be consistent with the standards adopted by the federal centers for medicare and medicaid services for hospitals that care for medicare or medicaid beneficiaries. The department upon receipt of an application for a license, shall submit to the director of fire protection in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make an inspection of the hospital to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as adopted pursuant to this chapter, he or she shall promptly make a written report to the hospital and to the department listing the corrective actions required and the time allowed for accomplishing such corrections. The applicant or licensee shall notify the chief of the Washington state patrol, through the director of fire protection, upon completion of any corrections required by him or her, and the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, shall make a reinspection of such premises. Whenever the hospital to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department a written report approving the hospital with respect to fire protection, and such report is required before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such hospitals at least once a year.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire pro-

tection, to be equal to the minimum standards of the code for hospitals adopted by the chief of the Washington state patrol, through the director of fire protection, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the chief of the Washington state patrol, through the director of fire protection, or his or her deputy and they shall jointly approve the premises before a full license can be issued. [2004 c 261 § 3; 1995 c 369 § 40; 1986 c 266 § 94; 1985 c 213 § 19; 1955 c 267 § 8.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

State fire protection: Chapter 48.48 RCW.

70.41.090 Hospital license required—Certificate of need required. (1) No person or governmental unit of the state of Washington, acting separately or jointly with any other person or governmental unit, shall establish, maintain, or conduct a hospital in this state, or use the word "hospital" to describe or identify an institution, without a license under this chapter: PROVIDED, That the provisions of this section shall not apply to state mental institutions and psychiatric hospitals which come within the scope of chapter 71.12 RCW.

(2) After June 30, 1989, no hospital shall initiate a tertiary health service as defined in RCW 70.38.025(14) unless it has received a certificate of need as provided in RCW 70.38.105 and 70.38.115.

(3) A rural health care facility licensed under RCW 70.175.100 formerly licensed as a hospital under this chapter may, within three years of the effective date of the rural health care facility license, apply to the department for a hospital license and not be required to meet certificate of need requirements under chapter 70.38 RCW as a new health care facility and not be required to meet new construction requirements as a new hospital under this chapter. These exceptions are subject to the following: The facility at the time of initial conversion was considered by the department to be in compliance with the hospital licensing rules and the condition of the physical plant and equipment is equal to or exceeds the level of compliance that existed at the time of conversion to a rural health care facility. The department shall inspect and determine compliance with the hospital rules prior to reissuing a hospital license.

A rural hospital, as defined by the department, reducing the number of licensed beds to become a rural primary care hospital under the provisions of Part A Title XVIII of the Social Security Act Section 1820, 42 U.S.C., 1395c et seq. may, within three years of the reduction of licensed beds, increase the number of beds licensed under this chapter to no more than the previously licensed number of beds without being subject to the provisions of chapter 70.38 RCW and without being required to meet new construction requirements under this chapter. These exceptions are subject to the following: The facility at the time of the reduction in licensed beds was considered by the department to be in compliance with the hospital licensing rules and the condition of the physical plant and equipment is equal to or exceeds the

level of compliance that existed at the time of the reduction in licensed beds. The department may inspect and determine compliance with the hospital rules prior to increasing the hospital license. [1992 c 27 § 3; 1989 1st ex.s. c 9 § 611; 1955 c 267 § 9.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.41.100 Applications for licenses and renewals—Fees. An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires which may include affirmative evidence of ability to comply with the standards, rules, and regulations as are lawfully prescribed hereunder. An application for renewal of license shall be made to the department upon forms provided by it and submitted thirty days prior to the date of expiration of the license. Each application for a license or renewal thereof by a hospital as defined by this chapter shall be accompanied by a fee as established by the department under RCW 43.20B.110. [1987 c 75 § 8; 1982 c 201 § 9; 1955 c 267 § 10.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

70.41.110 Licenses, provisional licenses—Issuance, duration, assignment, posting. Upon receipt of an application for license and the license fee, the department shall issue a license or a provisional license if the applicant and the hospital facilities meet the requirements of this chapter and the standards, rules and regulations established by the department. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department: PROVIDED, That no license issued pursuant to this chapter shall exceed thirty-six months in duration. Each license shall be issued only for the premises and persons named in the application, and no license shall be transferable or assignable except with the written approval of the department. Licenses shall be posted in a conspicuous place on the licensed premises.

If there be a failure to comply with the provisions of this chapter or the standards, rules and regulations promulgated pursuant thereto, the department may in its discretion issue to an applicant for a license, or for the renewal of a license, a provisional license which will permit the operation of the hospital for a period to be determined by the department. [1985 c 213 § 20; 1982 c 201 § 12; 1971 ex.s. c 247 § 3; 1955 c 267 § 11.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.120 Inspection of hospitals—Alterations or additions, new facilities—Coordination with state and local agencies—Notice of inspection. The department shall make or cause to be made at least yearly an inspection of all hospitals. Every inspection of a hospital may include an inspection of every part of the premises. The department may make an examination of all phases of the hospital operation necessary to determine compliance with the law and the standards, rules and regulations adopted thereunder. Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities shall, before com-

mencing such alteration, addition or new construction, comply with the regulations prescribed by the department.

No hospital licensed pursuant to the provisions of this chapter shall be required to be inspected or licensed under other state laws or rules and regulations promulgated thereunder, or local ordinances, relative to hotels, restaurants, lodging houses, boarding houses, places of refreshment, nursing homes, maternity homes, or psychiatric hospitals.

To avoid unnecessary duplication in inspections, the department shall coordinate with the department of social and health services, the office of the state fire marshal, and local agencies when inspecting facilities over which each agency has jurisdiction, the facilities including but not necessarily being limited to hospitals with both acute care and skilled nursing or psychiatric nursing functions. The department shall notify the office of the state fire marshal and the relevant local agency at least four weeks prior to any inspection conducted under this section and invite their attendance at the inspection, and shall provide a copy of its inspection report to each agency upon completion. [2004 c 261 § 4; 1995 c 282 § 4; 1985 c 213 § 21; 1955 c 267 § 12.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.122 Exemption from RCW 70.41.120 for hospitals accredited by the joint commission on the accreditation of health care organizations or the American osteopathic association. Notwithstanding RCW 70.41.120, a hospital accredited by the joint commission on the accreditation of health care organizations or the American osteopathic association is not subject to the annual inspection provided for in RCW 70.41.120 if:

(1) The department determines that the applicable survey standards of the joint commission on the accreditation of health care organizations or the American osteopathic association are substantially equivalent to its own;

(2) It has been inspected by the joint commission on the accreditation of health care organizations or the American osteopathic association within the previous twelve months; and

(3) The department receives directly from the joint commission on the accreditation of health care organizations, the American osteopathic association, or the hospital itself copies of the survey reports prepared by the joint commission on the accreditation of health care organizations or the American osteopathic association demonstrating that the hospital meets applicable standards. [1999 c 41 § 1; 1995 c 282 § 6.]

70.41.125 Hospital construction review process—Coordination with state and local agencies. (1) The department shall coordinate its hospital construction review process with other state and local agencies having similar review responsibilities, including the department of labor and industries, the office of the state fire marshal, and local building and fire officials. Inconsistencies or conflicts among the agencies shall be identified and eliminated. The department shall provide local agencies with relevant information derived from its construction review process.

(2) By September 1, 2004, the department shall report to the legislature regarding its implementation of subsection (1) of this section. [2004 c 261 § 5.]

70.41.130 Denial, suspension, revocation, modification of license—Procedure. The department is authorized to deny, suspend, revoke, or modify a license or provisional license in any case in which it finds that there has been a failure or refusal to comply with the requirements of this chapter or the standards or rules adopted under this chapter. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [1991 c 3 § 335; 1989 c 175 § 128; 1985 c 213 § 22; 1955 c 267 § 13.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.150 Denial, suspension, revocation of license—Disclosure of information. Information received by the department through filed reports, inspection, or as otherwise authorized under this chapter, may be disclosed publicly, as permitted under chapter 42.17 RCW, subject to the following provisions:

(1) Licensing inspections, or complaint investigations regardless of findings, shall, as requested, be disclosed no sooner than three business days after the hospital has received the resulting assessment report;

(2) Information regarding administrative action against the license shall, as requested, be disclosed after the hospital has received the documents initiating the administrative action;

(3) Information about complaints that did not warrant an investigation shall not be disclosed except to notify the hospital and the complainant that the complaint did not warrant an investigation. If requested, the individual complainant shall receive information on other like complaints that have been reported against the hospital; and

(4) Information disclosed pursuant to this section shall not disclose individual names. [2000 c 6 § 1; 1985 c 213 § 24; 1955 c 267 § 15.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.155 Duty to investigate patient well-being. Any complaint against a hospital and event notification required by the department that concerns patient well-being shall be investigated. [2000 c 6 § 2.]

70.41.160 Remedies available to department—Duty of attorney general. Notwithstanding the existence or pursuit of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a hospital without a license under this law. [1985 c 213 § 25; 1955 c 267 § 16.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.170 Operating or maintaining unlicensed hospital or unapproved tertiary health service—Penalty. Any person operating or maintaining a hospital without a

license under this chapter, or, after June 30, 1989, initiating a tertiary health service as defined in RCW 70.38.025(14) that is not approved under RCW 70.38.105 and 70.38.115, shall be guilty of a misdemeanor, and each day of operation of an unlicensed hospital or unapproved tertiary health service, shall constitute a separate offense. [1989 1st ex.s. c 9 § 612; 1955 c 267 § 17.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.41.180 Physicians' services. Nothing contained in this chapter shall in any way authorize the department to establish standards, rules and regulations governing the professional services rendered by any physician. [1985 c 213 § 26; 1955 c 267 § 18.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

70.41.190 Medical records of patients—Retention and preservation. Unless specified otherwise by the department, a hospital shall retain and preserve all medical records which relate directly to the care and treatment of a patient for a period of no less than ten years following the most recent discharge of the patient; except the records of minors, which shall be retained and preserved for a period of no less than three years following attainment of the age of eighteen years, or ten years following such discharge, whichever is longer.

If a hospital ceases operations, it shall make immediate arrangements, as approved by the department, for preservation of its records.

The department shall by regulation define the type of records and the information required to be included in the medical records to be retained and preserved under this section; which records may be retained in photographic form pursuant to chapter 5.46 RCW. [1985 c 213 § 27; 1975 1st ex.s. c 175 § 1.]

Savings—Effective date—1985 c 213: See notes following RCW 43.20.050.

Medical records, disclosure: Chapter 70.02 RCW.

70.41.200 Quality improvement and medical malpractice prevention program—Quality improvement committee—Sanction and grievance procedures—Information collection, reporting, and sharing. (1) Every hospital shall maintain a coordinated quality improvement program for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The program shall include at least the following:

(a) The establishment of a quality improvement committee with the responsibility to review the services rendered in the hospital, both retrospectively and prospectively, in order to improve the quality of medical care of patients and to prevent medical malpractice. The committee shall oversee and coordinate the quality improvement and medical malpractice prevention program and shall ensure that information gathered pursuant to the program is used to review and to revise hospital policies and procedures;

(b) A medical staff privileges sanction procedure through which credentials, physical and mental capacity, and

competence in delivering health care services are periodically reviewed as part of an evaluation of staff privileges;

(c) The periodic review of the credentials, physical and mental capacity, and competence in delivering health care services of all persons who are employed or associated with the hospital;

(d) A procedure for the prompt resolution of grievances by patients or their representatives related to accidents, injuries, treatment, and other events that may result in claims of medical malpractice;

(e) The maintenance and continuous collection of information concerning the hospital's experience with negative health care outcomes and incidents injurious to patients, patient grievances, professional liability premiums, settlements, awards, costs incurred by the hospital for patient injury prevention, and safety improvement activities;

(f) The maintenance of relevant and appropriate information gathered pursuant to (a) through (e) of this subsection concerning individual physicians within the physician's personnel or credential file maintained by the hospital;

(g) Education programs dealing with quality improvement, patient safety, medication errors, injury prevention, staff responsibility to report professional misconduct, the legal aspects of patient care, improved communication with patients, and causes of malpractice claims for staff personnel engaged in patient care activities; and

(h) Policies to ensure compliance with the reporting requirements of this section.

(2) Any person who, in substantial good faith, provides information to further the purposes of the quality improvement and medical malpractice prevention program or who, in substantial good faith, participates on the quality improvement committee shall not be subject to an action for civil damages or other relief as a result of such activity. Any person or entity participating in a coordinated quality improvement program that, in substantial good faith, shares information or documents with one or more other programs, committees, or boards under subsection (8) of this section is not subject to an action for civil damages or other relief as a result of the activity. For the purposes of this section, sharing information is presumed to be in substantial good faith. However, the presumption may be rebutted upon a showing of clear, cogent, and convincing evidence that the information shared was knowingly false or deliberately misleading.

(3) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowl-

edge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(4) Each quality improvement committee shall, on at least a semiannual basis, report to the governing board of the hospital in which the committee is located. The report shall review the quality improvement activities conducted by the committee, and any actions taken as a result of those activities.

(5) The department of health shall adopt such rules as are deemed appropriate to effectuate the purposes of this section.

(6) The medical quality assurance commission or the board of osteopathic medicine and surgery, as appropriate, may review and audit the records of committee decisions in which a physician's privileges are terminated or restricted. Each hospital shall produce and make accessible to the commission or board the appropriate records and otherwise facilitate the review and audit. Information so gained shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section. Failure of a hospital to comply with this subsection is punishable by a civil penalty not to exceed two hundred fifty dollars.

(7) The department, the joint commission on accreditation of health care organizations, and any other accrediting organization may review and audit the records of a quality improvement committee or peer review committee in connection with their inspection and review of hospitals. Information so obtained shall not be subject to the discovery process, and confidentiality shall be respected as required by subsection (3) of this section. Each hospital shall produce and make accessible to the department the appropriate records and otherwise facilitate the review and audit.

(8) A coordinated quality improvement program may share information and documents, including complaints and incident reports, created specifically for, and collected and maintained by a quality improvement committee or a peer review committee under RCW 4.24.250 with one or more other coordinated quality improvement programs maintained in accordance with this section or with RCW 43.70.510 or a peer review committee under RCW 4.24.250, for the improvement of the quality of health care services rendered to patients and the identification and prevention of medical malpractice. The privacy protections of chapter 70.02 RCW and the federal health insurance portability and accountability act of 1996 and its implementing regulations apply to the sharing of individually identifiable patient information held by a coordinated quality improvement program. Any rules necessary to implement this section shall meet the requirements of applicable federal and state privacy laws. Information and documents disclosed by one coordinated quality improvement program to another coordinated quality improvement program or a peer review committee under

RCW 4.24.250 and any information and documents created or maintained as a result of the sharing of information and documents shall not be subject to the discovery process and confidentiality shall be respected as required by subsection (3) of this section and RCW 4.24.250.

(9) Violation of this section shall not be considered negligence per se. [2004 c 145 § 3; 2000 c 6 § 3; 1994 sp.s. c 9 § 742; 1993 c 492 § 415; 1991 c 3 § 336; 1987 c 269 § 5; 1986 c 300 § 4.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.174.

Board of osteopathic medicine and surgery: Chapter 18.57 RCW.

Medical quality assurance commission: Chapter 18.71 RCW.

70.41.210 Duty to report restrictions on physicians' privileges based on unprofessional conduct—Penalty.

The chief administrator or executive officer of a hospital shall report to the medical quality assurance commission when a physician's clinical privileges are terminated or are restricted based on a determination, in accordance with an institution's bylaws, that a physician has either committed an act or acts which may constitute unprofessional conduct. The officer shall also report if a physician accepts voluntary termination in order to foreclose or terminate actual or possible hospital action to suspend, restrict, or terminate a physician's clinical privileges. Such a report shall be made within sixty days of the date action was taken by the hospital's peer review committee or the physician's acceptance of voluntary termination or restriction of privileges. Failure of a hospital to comply with this section is punishable by a civil penalty not to exceed two hundred fifty dollars. [1994 sp.s. c 9 § 743; 1986 c 300 § 7.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.174.

Medical quality assurance commission: Chapter 18.71 RCW.

70.41.220 Duty to keep records of restrictions on practitioners' privileges—Penalty.

Each hospital shall keep written records of decisions to restrict or terminate privileges of practitioners. Copies of such records shall be made available to the board within thirty days of a request and all information so gained shall remain confidential in accordance with RCW 70.41.200 and 70.41.230 and shall be protected from the discovery process. Failure of a hospital to comply with this section is punishable by [a] civil penalty not to exceed two hundred fifty dollars. [1986 c 300 § 8.]

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.174.

70.41.230 Duty of hospital to request information on physicians granted privileges.

(1) Prior to granting or renewing clinical privileges or association of any physician or hiring a physician, a hospital or facility approved pursuant

to this chapter shall request from the physician and the physician shall provide the following information:

(a) The name of any hospital or facility with or at which the physician had or has any association, employment, privileges, or practice;

(b) If such association, employment, privilege, or practice was discontinued, the reasons for its discontinuation;

(c) Any pending professional medical misconduct proceedings or any pending medical malpractice actions in this state or another state, the substance of the allegations in the proceedings or actions, and any additional information concerning the proceedings or actions as the physician deems appropriate;

(d) The substance of the findings in the actions or proceedings and any additional information concerning the actions or proceedings as the physician deems appropriate;

(e) A waiver by the physician of any confidentiality provisions concerning the information required to be provided to hospitals pursuant to this subsection; and

(f) A verification by the physician that the information provided by the physician is accurate and complete.

(2) Prior to granting privileges or association to any physician or hiring a physician, a hospital or facility approved pursuant to this chapter shall request from any hospital with or at which the physician had or has privileges, was associated, or was employed, the following information concerning the physician:

(a) Any pending professional medical misconduct proceedings or any pending medical malpractice actions, in this state or another state;

(b) Any judgment or settlement of a medical malpractice action and any finding of professional misconduct in this state or another state by a licensing or disciplinary board; and

(c) Any information required to be reported by hospitals pursuant to RCW 18.71.0195.

(3) The medical quality assurance commission shall be advised within thirty days of the name of any physician denied staff privileges, association, or employment on the basis of adverse findings under subsection (1) of this section.

(4) A hospital or facility that receives a request for information from another hospital or facility pursuant to subsections (1) and (2) of this section shall provide such information concerning the physician in question to the extent such information is known to the hospital or facility receiving such a request, including the reasons for suspension, termination, or curtailment of employment or privileges at the hospital or facility. A hospital, facility, or other person providing such information in good faith is not liable in any civil action for the release of such information.

(5) Information and documents, including complaints and incident reports, created specifically for, and collected, and maintained by a quality improvement committee are not subject to discovery or introduction into evidence in any civil action, and no person who was in attendance at a meeting of such committee or who participated in the creation, collection, or maintenance of information or documents specifically for the committee shall be permitted or required to testify in any civil action as to the content of such proceedings or the documents and information prepared specifically for the committee. This subsection does not preclude: (a) In any civil action, the discovery of the identity of persons involved

in the medical care that is the basis of the civil action whose involvement was independent of any quality improvement activity; (b) in any civil action, the testimony of any person concerning the facts which form the basis for the institution of such proceedings of which the person had personal knowledge acquired independently of such proceedings; (c) in any civil action by a health care provider regarding the restriction or revocation of that individual's clinical or staff privileges, introduction into evidence information collected and maintained by quality improvement committees regarding such health care provider; (d) in any civil action, disclosure of the fact that staff privileges were terminated or restricted, including the specific restrictions imposed, if any and the reasons for the restrictions; or (e) in any civil action, discovery and introduction into evidence of the patient's medical records required by regulation of the department of health to be made regarding the care and treatment received.

(6) Hospitals shall be granted access to information held by the medical quality assurance commission and the board of osteopathic medicine and surgery pertinent to decisions of the hospital regarding credentialing and recredentialing of practitioners.

(7) Violation of this section shall not be considered negligence per se. [1994 sp.s. c 9 § 744; 1993 c 492 § 416; 1991 c 3 § 337; 1987 c 269 § 6; 1986 c 300 § 11.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Legislative findings—Severability—1986 c 300: See notes following RCW 18.57.174.

Medical quality assurance commission: Chapter 18.71 RCW.

70.41.235 Doctor of osteopathic medicine and surgery—Discrimination based on board certification is prohibited. A hospital that provides health care services to the general public may not discriminate against a qualified doctor of osteopathic medicine and surgery licensed under chapter 18.57 RCW, who has applied to practice with the hospital, solely because that practitioner was board certified or eligible under an approved osteopathic certifying board instead of board certified or eligible respectively under an approved medical certifying board. [1995 c 64 § 3.]

70.41.240 Information regarding conversion of hospitals to nonhospital health care facilities. The department of health shall compile and make available to the public information regarding medicare health care facility certification options available to hospitals licensed under this title that desire to convert to nonhospital health care facilities. The information provided shall include standards and requirements for certification and procedures for acquiring certification. [1991 c 3 § 338; 1988 c 207 § 3.]

Resources and staffing—1988 c 207: "The department of community development, department of trade and economic development, department of employment security, and department of social and health services are expected to use their present resources and staffing to carry out the requirements of this act." [1988 c 207 § 4.]

70.41.250 Cost disclosure to health care providers.

(1) The legislature finds that the spiraling costs of health care continue to surmount efforts to contain them, increasing at approximately twice the inflationary rate. The causes of this phenomenon are complex. By making physicians and other health care providers with hospital admitting privileges more aware of the cost consequences of health care services for consumers, these providers may be inclined to exercise more restraint in providing only the most relevant and cost-beneficial hospital services, with a potential for reducing the utilization of those services. The requirement of the hospital to inform physicians and other health care providers of the charges of the health care services that they order may have a positive effect on containing health costs. Further, the option of the physician or other health care provider to inform the patient of these charges may strengthen the necessary dialogue in the provider-patient relationship that tends to be diminished by intervening third-party payers.

(2) The chief executive officer of a hospital licensed under this chapter and the superintendent of a state hospital shall establish and maintain a procedure for disclosing to physicians and other health care providers with admitting privileges the charges of all health care services ordered for their patients. Copies of hospital charges shall be made available to any physician and/or other health care provider ordering care in hospital inpatient/outpatient services. The physician and/or other health care provider may inform the patient of these charges and may specifically review them. Hospitals are also directed to study methods for making daily charges available to prescribing physicians through the use of interactive software and/or computerized information thereby allowing physicians and other health care providers to review not only the costs of present and past services but also future contemplated costs for additional diagnostic studies and therapeutic medications. [1993 c 492 § 265.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.41.300 Long-term care—Definitions. "Cost-effective care" and "long-term care services," where used in RCW 70.41.310 and 70.41.320, shall have the same meaning as that given in *RCW 74.39A.008. [1995 1st sp.s. c 18 § 4.]

*Reviser's note: RCW 74.39A.008 was repealed by 1997 c 392 § 530.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.41.310 Long-term care—Program information to be provided to hospitals—Information on options to be provided to patients. (1)(a) The department of social and health services, in consultation with hospitals and acute care facilities, shall promote the most appropriate and cost-effective use of long-term care services by developing and distributing to hospitals and other appropriate health care settings information on the various chronic long-term care programs that it administers directly or through contract. The information developed by the department of social and health services shall, at a minimum, include the following:

(i) An identification and detailed description of each long-term care service available in the state;

(ii) Functional, cognitive, and medicaid eligibility criteria that may be required for placement or admission to each long-term care service; and

(iii) A long-term care services resource manual for each hospital, that identifies the long-term care services operating within each hospital's patient service area. The long-term care services resource manual shall, at a minimum, identify the name, address, and telephone number of each entity known to be providing long-term care services; a brief description of the programs or services provided by each of the identified entities; and the name or names of a person or persons who may be contacted for further information or assistance in accessing the programs or services at each of the identified entities.

(b) The information required in (a) of this subsection shall be periodically updated and distributed to hospitals by the department of social and health services so that the information reflects current long-term care service options available within each hospital's patient service area.

(2) To the extent that a patient will have continuing care needs, once discharged from the hospital setting, hospitals shall, during the course of the patient's hospital stay, promote each patient's family member's and/or legal representative's understanding of available long-term care service discharge options by, at a minimum:

(a) Discussing the various and relevant long-term care services available, including eligibility criteria;

(b) Making available, to patients, their family members, and/or legal representative, a copy of the most current long-term care services resource manual;

(c) Responding to long-term care questions posed by patients, their family members, and/or legal representative;

(d) Assisting the patient, their family members, and/or legal representative in contacting appropriate persons or entities to respond to the question or questions posed; and

(e) Linking the patient and family to the local, state-designated aging and long-term care network to ensure effective transitions to appropriate levels of care and ongoing support. [1995 1st sp.s. c 18 § 3.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.41.320 Long-term care—Patient discharge requirements for hospitals and acute care facilities—Pilot projects. (1) Hospitals and acute care facilities shall:

(a) Work cooperatively with the department of social and health services, area agencies on aging, and local long-term care information and assistance organizations in the planning and implementation of patient discharges to long-term care services.

(b) Establish and maintain a system for discharge planning and designate a person responsible for system management and implementation.

(c) Establish written policies and procedures to:

(i) Identify patients needing further nursing, therapy, or supportive care following discharge from the hospital;

(ii) Develop a documented discharge plan for each identified patient, including relevant patient history, specific care requirements, and date such follow-up care is to be initiated;

(iii) Coordinate with patient, family, caregiver, and appropriate members of the health care team;

(iv) Provide any patient, regardless of income status, written information and verbal consultation regarding the array of long-term care options available in the community, including the relative cost, eligibility criteria, location, and contact persons;

(v) Promote an informed choice of long-term care services on the part of patients, family members, and legal representatives; and

(vi) Coordinate with the department and specialized case management agencies, including area agencies on aging and other appropriate long-term care providers, as necessary, to ensure timely transition to appropriate home, community residential, or nursing facility care.

(d) Work in cooperation with the department which is responsible for ensuring that patients eligible for medicaid long-term care receive prompt assessment and appropriate service authorization.

(2) In partnership with selected hospitals, the department of social and health services shall develop and implement pilot projects in up to three areas of the state with the goal of providing information about appropriate in-home and community services to individuals and their families early during the individual's hospital stay.

The department shall not delay hospital discharges but shall assist and support the activities of hospital discharge planners. The department also shall coordinate with home health and hospice agencies whenever appropriate. The role of the department is to assist the hospital and to assist patients and their families in making informed choices by providing information regarding home and community options.

In conducting the pilot projects, the department shall:

(a) Assess and offer information regarding appropriate in-home and community services to individuals who are medicaid clients or applicants; and

(b) Offer assessment and information regarding appropriate in-home and community services to individuals who are reasonably expected to become medicaid recipients within one hundred eighty days of admission to a nursing facility. [1998 c 245 § 127; 1995 1st sp.s. c 18 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.41.330 Hospital complaint toll-free telephone number. Every hospital shall post in conspicuous locations a notice of the department's hospital complaint toll-free telephone number. The form of the notice shall be approved by the department. [2000 c 6 § 4.]

70.41.340 Investigation of hospital complaints—Rules. The department is authorized to adopt rules necessary to implement RCW 70.41.150, 70.41.155, and 70.41.330. [2000 c 6 § 6.]

70.41.350 Emergency care provided to victims of sexual assault—Development of informational materials on emergency contraception—Rules. (1) Every hospital providing emergency care to a victim of sexual assault shall:

(a) Provide the victim with medically and factually accurate and unbiased written and oral information about emergency contraception;

(2004 Ed.)

(b) Orally inform each victim of sexual assault of her option to be provided emergency contraception at the hospital; and

(c) If not medically contraindicated, provide emergency contraception immediately at the hospital to each victim of sexual assault who requests it.

(2) The secretary, in collaboration with community sexual assault programs and other relevant stakeholders, shall develop, prepare, and produce informational materials relating to emergency contraception for the prevention of pregnancy in rape victims for distribution to and use in all emergency rooms in the state, in quantities sufficient to comply with the requirements of this section. The secretary, in collaboration with community sexual assault programs and other relevant stakeholders, may also approve informational materials from other sources for the purposes of this section. The informational materials must be clearly written and readily comprehensible in a culturally competent manner, as the secretary, in collaboration with community sexual assault programs and other relevant stakeholders, deems necessary to inform victims of sexual assault. The materials must explain the nature of emergency contraception, including that it is effective in preventing pregnancy, treatment options, and where they can be obtained.

(3) The secretary shall adopt rules necessary to implement this section. [2002 c 116 § 3.]

Findings—2002 c 116: "(1) The legislature finds that:

(a) Each year, over three hundred thousand women are sexually assaulted in the United States;

(b) Nationally, over thirty-two thousand women become pregnant each year as a result of sexual assault. Approximately fifty percent of these pregnancies end in abortion;

(c) Approximately thirty-eight percent of women in Washington are sexually assaulted over the course of their lifetime. This is twenty percent more than the national average;

(d) Only fifteen percent of sexual assaults in Washington are reported; however, even the numbers of reported attacks are staggering. For example, last year, two thousand six hundred fifty-nine rapes were reported in Washington, this is more than seven rapes per day.

(2) The legislature deems it essential that all hospital emergency rooms provide emergency contraception as a treatment option to any woman who seeks treatment as a result of a sexual assault." [2002 c 116 § 1.]

70.41.360 Emergency care provided to victims of sexual assault—Department to respond to violations—Task force. The department must respond to complaints of violations of RCW 70.41.350. The department shall convene a task force, composed of representatives from community sexual assault programs and other relevant stakeholders including advocacy agencies, medical agencies, and hospital associations, to provide input into the development and evaluation of the education materials and rule development. The task force shall expire on January 1, 2004. [2002 c 116 § 4.]

Findings—2002 c 116: See note following RCW 70.41.350.

70.41.370 Investigation of complaints of violations concerning nursing technicians. The department shall investigate complaints of violations of RCW 18.79.350 and 18.79.360 by an employer. The department shall maintain records of all employers that have violated RCW 18.79.350 and 18.79.360. [2003 c 258 § 8.]

Severability—Effective date—2003 c 258: See notes following RCW 18.79.330.

70.41.900 Severability—1955 c 267. If any part, or parts, of this chapter shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part can then be administered for the purpose of establishing and maintaining standards for hospitals. [1955 c 267 § 21.]

Chapter 70.42 RCW MEDICAL TEST SITES

Sections

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| 70.42.005 | Intent—Construction. |
| 70.42.010 | Definitions. |
| 70.42.020 | License required. |
| 70.42.030 | Waiver of license—Conditions. |
| 70.42.040 | Sites approved under federal law—Automatic licensure. |
| 70.42.050 | Permission to perform tests not covered by license—License amendment. |
| 70.42.060 | Quality control, quality assurance, recordkeeping, and personnel standards. |
| 70.42.070 | Proficiency testing program. |
| 70.42.080 | Test site supervisor. |
| 70.42.090 | Fees—Account. |
| 70.42.100 | Applicants—Requirements. |
| 70.42.110 | Issuance of license—Renewal. |
| 70.42.120 | Denial of license. |
| 70.42.130 | Conditions upon license. |
| 70.42.140 | Suspension of license. |
| 70.42.150 | Revocation of license. |
| 70.42.160 | Penalties—Acts constituting violations. |
| 70.42.170 | On-site reviews. |
| 70.42.180 | Operating without a license—Injunctions or other remedies—Penalty. |
| 70.42.190 | Petition of superior court for review of disciplinary action. |
| 70.42.200 | Persons who may not own or operate test site. |
| 70.42.210 | Confidentiality of certain information. |
| 70.42.220 | Rules. |
| 70.42.900 | Effective dates—1989 c 386. |

70.42.005 Intent—Construction. The legislature intends that medical test sites meet criteria known to promote accurate and reliable analysis, thus improving health care through uniform test site licensure and regulation including quality control, quality assurance, and proficiency testing. The legislature also intends to meet the requirements of federal laws licensing and regulating medical testing.

The legislature intends that nothing in this chapter shall be interpreted to place any liability whatsoever on the state for the action or inaction of test sites or test site personnel. The legislature further intends that nothing in this chapter shall be interpreted to expand the state's role regarding medical testing beyond the provisions of this chapter. [1989 c 386 § 1.]

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

(1) "Department" means the *department of health if enacted, otherwise the department of social and health services.

(2) "Designated test site supervisor" means the available individual who is responsible for the technical functions of the test site and who meets the department's qualifications set out in rule by the department.

(3) "Person" means any individual, or any public or private organization, agent, agency, corporation, firm, association, partnership, or business.

(4) "Proficiency testing program" means an external service approved by the department which provides samples to evaluate the accuracy, reliability and performance of the tests at each test site.

(5) "Quality assurance" means a comprehensive set of policies, procedures, and practices to assure that a test site's results are accurate and reliable. Quality assurance means a total program of internal and external quality control, equipment preventative maintenance, calibration, recordkeeping, and proficiency testing evaluation, including a written quality assurance plan.

(6) "Quality control" means internal written procedures and day-to-day analysis of laboratory reference materials at each test site to insure precision and accuracy of test methodology, equipment, and results.

(7) "Test" means any examination or procedure conducted on a sample taken from the human body, including screening.

(8) "Test site" means any facility or site, public or private, which analyzes materials derived from the human body for the purposes of health care, treatment, or screening. A test site does not mean a facility or site, including a residence, where a test approved for home use by the federal food and drug administration is used by an individual to test himself or herself without direct supervision or guidance by another and where this test is not part of a commercial transaction. [1989 c 386 § 2.]

***Reviser's note:** 1989 1st ex.s. c 14 created the department of health.

70.42.020 License required. After July 1, 1990, no person may advertise, operate, manage, own, conduct, open, or maintain a test site without first obtaining a license for the tests to be performed, except as provided in RCW 70.42.030. [1989 c 386 § 3.]

70.42.030 Waiver of license—Conditions. (1) As a part of the application for licensure, a test site may request a waiver from licensure under this chapter if the test site performs only examinations which are determined to have insignificant risk of an erroneous result, including those which (a) are approved by the federal food and drug administration for home use; (b) are so simple and accurate as to render the likelihood of erroneous results negligible; or (c) pose no reasonable risk of harm to the patient if performed incorrectly.

(2) The department shall determine by rule which tests meet the criteria in subsection (1) of this section and shall be exempt from coverage of this chapter. The standards applied in developing the list shall be consistent with federal law and regulations.

(3) The department shall grant a waiver from licensure for two years for a valid request based on subsections (1) and (2) of this section.

(4) Any test site which has received a waiver under subsection (3) of this section shall report to the department any changes in the type of tests it intends to perform thirty days in advance of the changes. In no case shall a test site with a

waiver perform tests which require a license under this chapter. [1989 c 386 § 4.]

70.42.040 Sites approved under federal law—Automatic licensure. Test sites accredited, certified, or licensed by an organization or agency approved by the department consistent with federal law and regulations shall receive a license under RCW 70.42.110. [1989 c 386 § 5.]

70.42.050 Permission to perform tests not covered by license—License amendment. A licensee that desires to perform tests for which it is not currently licensed shall notify the department. To the extent allowed by federal law and regulations, upon notification and pending the department's determination, the department shall grant the licensee temporary permission to perform the additional tests. The department shall amend the license if it determines that the licensee meets all applicable requirements. [1989 c 386 § 6.]

70.42.060 Quality control, quality assurance, record-keeping, and personnel standards. The department shall adopt standards established in rule governing test sites for quality control, quality assurance, recordkeeping, and personnel consistent with federal laws and regulations. "Record-keeping" for purposes of this chapter means books, files, or records necessary to show compliance with the quality control and quality assurance requirements adopted by the department. [1989 c 386 § 7.]

70.42.070 Proficiency testing program. (1) Except where there is no reasonable proficiency test, each licensed test site must participate in a department-approved proficiency testing program appropriate to the test or tests which it performs. The department may approve proficiency testing programs offered by private or public organizations when the program meets the standards set by the department. Testing shall be conducted quarterly except as otherwise provided for in rule.

(2) The department shall establish proficiency testing standards by rule which include a measure of acceptable performance for tests, and a system for grading proficiency testing performance for tests. The standards may include an evaluation of the personnel performing tests. [1989 c 386 § 8.]

70.42.080 Test site supervisor. A test site shall have a designated test site supervisor who shall meet the qualifications determined by the department in rule. The designated test site supervisor shall be responsible for the testing functions of the test site. [1989 c 386 § 9.]

70.42.090 Fees—Account. (1) The department shall establish a schedule of fees for license applications, renewals, amendments, and waivers. In fixing said fees, the department shall set the fees at a sufficient level to defray the cost of administering the licensure program. All such fees shall be fixed by rule adopted in accordance with the provisions of the administrative procedure act, chapter 34.05 RCW. In determining the fee schedule, the department shall consider the following: (a) Complexity of the license required; (b) number and type of tests performed at the test site; (c) degree of

supervision required from the department staff; (d) whether the license is granted under RCW 70.42.040; and (e) general administrative costs of the test site licensing program established under this chapter. For each category of license, fees charged shall be related to program costs.

(2) The medical test site licensure account is created in the state treasury. The state treasurer shall transfer into the medical test site licensure account all revenue received from medical test site license fees. Funds for this account may only be appropriated for the support of the activities defined under this chapter.

(3) The department may establish separate fees for repeat inspections and repeat audits it performs under RCW 70.42.170. [1989 c 386 § 10.]

70.42.100 Applicants—Requirements. An applicant for issuance or renewal of a medical test site license shall:

(1) File a written application on a form provided by the department;

(2) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(3) Cooperate with any on-site review which may be conducted by the department prior to licensure or renewal. [1989 c 386 § 11.]

70.42.110 Issuance of license—Renewal. Upon receipt of an application for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. All persons operating test sites before July 1, 1990, shall submit applications by July 1, 1990. A license issued under this chapter shall not be transferred or assigned without thirty days' prior notice to the department and the department's timely approval. A license, unless suspended or revoked, shall be effective for a period of two years. The department may establish penalty fees or take other appropriate action pursuant to this chapter for failure to apply for licensure or renewal as required by this chapter. [1989 c 386 § 12.]

70.42.120 Denial of license. Under this chapter, and chapter 34.05 RCW, the department may deny a license to any applicant who:

(1) Refuses to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Was the holder of a license under this chapter which was revoked for cause and never reissued by the department;

(3) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(4) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(5) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department; or

(6) Misrepresented, or was fraudulent in, any aspect of the applicant's business. [1989 c 386 § 13.]

70.42.130 Conditions upon license. Under this chapter, and chapter 34.05 RCW, the department may place conditions on a license which limit or cancel a test site's authority to conduct any of the tests or groups of tests of any licensee who:

- (1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;
- (2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;
- (3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;
- (4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;
- (5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter; or
- (6) Misrepresented, or was fraudulent in, any aspect of the licensee's business. [1989 c 386 § 14.]

70.42.140 Suspension of license. Under this chapter, and chapter 34.05 RCW, the department may suspend the license of any licensee who:

- (1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;
- (2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;
- (3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;
- (4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;
- (5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter;
- (6) Misrepresented, or was fraudulent in, any aspect of the licensee's business;
- (7) Used false or fraudulent advertising; or
- (8) Failed to pay any civil monetary penalty assessed by the department under this chapter within twenty-eight days after the assessment becomes final. [1989 c 386 § 15.]

70.42.150 Revocation of license. Under this chapter, and chapter 34.05 RCW, the department may revoke the license of any licensee who:

- (1) Fails or refuses to comply with the requirements of this chapter or the rules adopted under this chapter;
- (2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;
- (3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevented, interfered with, or attempted to impede in any way the work of a representative of the department;

(5) Willfully prevented or interfered with preservation of evidence of a known violation of this chapter or the rules adopted under this chapter;

(6) Misrepresented, or was fraudulent in, any aspect of the licensee's business;

(7) Used false or fraudulent advertising; or

(8) Failed to pay any civil monetary penalty assessed by the department pursuant to this chapter within twenty-eight days after the assessment becomes final.

The department may summarily revoke a license when it finds continued licensure of a test site immediately jeopardizes the public health, safety, or welfare. [1989 c 386 § 16.]

70.42.160 Penalties—Acts constituting violations.

Under this chapter, and chapter 34.05 RCW, the department may assess monetary penalties of up to ten thousand dollars per violation in addition to or in lieu of conditioning, suspending, or revoking a license. A violation occurs when a licensee:

(1) Fails or refuses to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Has knowingly or with reason to know made a false statement of a material fact in the application for a license or in any data attached thereto or in any record required by the department;

(3) Refuses to allow representatives of the department to examine any book, record, or file required by this chapter to be maintained;

(4) Willfully prevents, interferes with, or attempts to impede in any way the work of any representative of the department;

(5) Willfully prevents or interferes with preservation of evidence of any known violation of this chapter or the rules adopted under this chapter;

(6) Misrepresents or was fraudulent in any aspect of the applicant's business; or

(7) Uses advertising which is false or fraudulent.

Each day of a continuing violation is a separate violation. [1989 c 386 § 17.]

70.42.170 On-site reviews. The department may at any time conduct an on-site review of a licensee or applicant in order to determine compliance with this chapter. When the department has reason to believe a waived site is conducting tests requiring a license, the department may conduct an on-site review of the waived site in order to determine compliance. The department may also examine and audit records necessary to determine compliance with this chapter. The right to conduct an on-site review and audit and examination of records shall extend to any premises and records of persons whom the department has reason to believe are opening, owning, conducting, maintaining, managing, or otherwise operating a test site without a license.

Following an on-site review, the department shall give written notice of any violation of this chapter or the rules adopted under this chapter. The notice shall describe the rea-

sons for noncompliance and inform the licensee or applicant or test site operator that it shall comply within a specified reasonable time. If the licensee or applicant or test site operator fails to comply, the department may take disciplinary action under RCW 70.42.120 through 70.42.150, or further action as authorized by this chapter. [1989 c 386 § 18.]

70.42.180 Operating without a license—Injunctions or other remedies—Penalty. Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertising, operating, maintaining, managing, or opening of a test site without a license under this chapter. It is a misdemeanor to own, operate, or maintain a test site without a license. [1989 c 386 § 19.]

70.42.190 Petition of superior court for review of disciplinary action. Any test site which has had a denial, condition, suspension, or revocation of its license, or a civil monetary penalty upheld after administrative review under chapter 34.05 RCW, may, within sixty days of the administrative determination, petition the superior court for review of the decision. [1989 c 386 § 20.]

70.42.200 Persons who may not own or operate test site. No person who has owned or operated a test site that has had its license revoked may own or operate a test site within two years of the final adjudication of a license revocation. [1989 c 386 § 21.]

70.42.210 Confidentiality of certain information. All information received by the department through filed reports, audits, or on-site reviews, as authorized under this chapter shall not be disclosed publicly in any manner that would identify persons who have specimens of material from their bodies at a test site, absent a written release from the person, or a court order. [1989 c 386 § 22.]

70.42.220 Rules. The department shall adopt rules under chapter 34.05 RCW necessary to implement the purposes of this chapter. [1989 c 386 § 23.]

70.42.900 Effective dates—1989 c 386. (1) RCW 70.42.005 through 70.42.210 shall take effect July 1, 1990.

(2) RCW 70.42.220 is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989. [1989 c 386 § 25.]

Chapter 70.43 RCW

HOSPITAL STAFF MEMBERSHIP OR PRIVILEGES

Sections

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| 70.43.010 | Applications for membership or privileges—Standards and procedures. |
| 70.43.020 | Applications for membership or privileges—Discrimination based on type of license prohibited—Exception. |
| 70.43.030 | Violations of RCW 70.43.010 or 70.43.020—Injunctive relief. |

(2004 Ed.)

70.43.010 Applications for membership or privileges—Standards and procedures. Within one hundred eighty days of June 11, 1986, the governing body of every hospital licensed under chapter 70.41 RCW shall set standards and procedures to be applied by the hospital and its medical staff in considering and acting upon applications for staff membership or professional privileges. [1986 c 205 § 1.]

70.43.020 Applications for membership or privileges—Discrimination based on type of license prohibited—Exception. The governing body of any hospital, except any hospital which employs its medical staff, in considering and acting upon applications for staff membership or professional privileges within the scope of the applicants' respective licenses, shall not discriminate against a qualified person solely on the basis of whether such person is licensed under chapters 18.71, 18.57, or 18.22 RCW. [1986 c 205 § 2.]

70.43.030 Violations of RCW 70.43.010 or 70.43.020—Injunctive relief. Any person may apply to superior court for a preliminary or permanent injunction restraining a violation of RCW 70.43.010 or 70.43.020. This action is an additional remedy not dependent on the adequacy of the remedy at law. Nothing in this chapter shall require a hospital to grant staff membership or professional privileges until a final determination is made upon the merits by the hospital governing body. [1986 c 205 § 3.]

Chapter 70.44 RCW

PUBLIC HOSPITAL DISTRICTS

Sections

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| 70.44.003 | Purpose. |
| 70.44.007 | Definitions. |
| 70.44.010 | Districts authorized. |
| 70.44.015 | Validation of existing districts. |
| 70.44.016 | Validation of districts. |
| 70.44.020 | Resolution—Petition for county-wide district—Conduct of elections. |
| 70.44.028 | Limitation on legal challenges. |
| 70.44.030 | Petition for lesser district—Procedure. |
| 70.44.035 | Petition for district lying in more than one county—Procedure. |
| 70.44.040 | Elections—Commissioners, terms, districts. |
| 70.44.041 | Validity of appointment or election of commissioners—Compliance with 1994 c 223. |
| 70.44.042 | Commissioner districts—Resolution to abolish—Proposition to reestablish. |
| 70.44.045 | Commissioners—Vacancies. |
| 70.44.047 | Redrawn boundaries—Assignment of commissioners to districts. |
| 70.44.050 | Commissioners—Compensation and expenses—Insurance—Resolutions by majority vote—Officers—Rules—Seal—Records. |
| 70.44.053 | Increase in number of commissioners—Proposition to voters. |
| 70.44.054 | Increase in number of commissioners—Commissioner districts. |
| 70.44.056 | Increase in number of commissioners—Appointments—Election—Terms. |
| 70.44.059 | Chaplains—Authority to employ. |
| 70.44.060 | Powers and duties. |
| 70.44.062 | Commissioners' meetings, proceedings, and deliberations concerning health care providers' clinical or staff privileges to be confidential—Final action in public session. |
| 70.44.065 | Levy for emergency medical care and services. |
| 70.44.067 | Community revitalization financing—Public improvements. |
| 70.44.070 | Superintendent—Appointment—Removal—Compensation. |
| 70.44.080 | Superintendent—Powers. |
| 70.44.090 | Superintendent—Duties. |

[Title 70 RCW—page 61]

- 70.44.110 Plan to construct or improve—General obligation bonds.
- 70.44.130 Bonds—Payment—Security for deposits.
- 70.44.140 Contracts for material and work—Call for bids—Alternative procedures—Exemptions.
- 70.44.171 Treasurer—Duties—Funds—Depositaries—Surety bonds, cost.
- 70.44.185 Change of district boundary lines to allow farm units to be wholly within one hospital district—Notice.
- 70.44.190 Consolidation of districts.
- 70.44.200 Annexation of territory.
- 70.44.210 Alternate method of annexation—Contents of resolution calling for election.
- 70.44.220 Alternate method of annexation—Publication and contents of notice of hearing—Hearing—Resolution—Special election.
- 70.44.230 Alternate method of annexation—Conduct and canvass of election—Notice—Ballot.
- 70.44.235 Withdrawal or reannexation of areas.
- 70.44.240 Contracting or joining with other districts, hospitals, corporations, or individuals to provide services or facilities.
- 70.44.260 Contracts for purchase of real or personal property.
- 70.44.300 Sale of surplus real property.
- 70.44.310 Lease of surplus real property.
- 70.44.315 Evaluation criteria and requirements for acquisition of district hospitals.
- 70.44.320 Disposal of surplus personal property.
- 70.44.350 Dividing a district.
- 70.44.360 Dividing a district—Plan.
- 70.44.370 Dividing a district—Petition to court, hearing, order.
- 70.44.380 Dividing a district—Election—Creation of new districts—Challenges.
- 70.44.400 Withdrawal of territory from public hospital district.
- 70.44.450 Rural public hospital districts—Cooperative agreements and contracts.
- 70.44.460 Rural public hospital district defined.
- 70.44.900 Severability—Construction—1945 c 264.
- 70.44.901 Severability—Construction—1974 ex.s. c 165.
- 70.44.902 Severability—1982 c 84.
- 70.44.903 Savings—1982 c 84.
- 70.44.910 Construction—1945 c 264.

County hospitals: Chapter 36.62 RCW.

Limitation of indebtedness prescribed: RCW 39.36.020.

Tortious conduct of political subdivisions, municipal corporations and quasi municipal corporations, liability for damages: Chapter 4.96 RCW.

70.44.003 Purpose. The purpose of chapter 70.44 RCW is to authorize the establishment of public hospital districts to own and operate hospitals and other health care facilities and to provide hospital services and other health care services for the residents of such districts and other persons. [1982 c 84 § 1.]

70.44.007 Definitions. As used in this chapter, the following words have the meanings indicated:

(1) "Other health care facilities" means nursing home, extended care, long-term care, outpatient and rehabilitative facilities, ambulances, and such other facilities as are appropriate to the health needs of the population served.

(2) "Other health care services" means nursing home, extended care, long-term care, outpatient, rehabilitative, health maintenance, and ambulance services and such other services as are appropriate to the health needs of the population served.

(3) "Public hospital district" or "district" means public health care service district. [1997 c 332 § 15; 1982 c 84 § 12; 1974 ex.s. c 165 § 5.]

Severability—1997 c 332: See RCW 70.45.900.

70.44.010 Districts authorized. Municipal corporations, to be known as public hospital districts, are hereby authorized and may be established within the several counties of the state as hereinafter provided. [1947 c 225 § 1; 1945 c

264 § 2; Rem. Supp. 1947 § 6090-31. FORMER PART OF SECTION: 1945 c 264 § 1 now codified as RCW 70.44.005.]

70.44.015 Validation of existing districts. Each and all of the respective areas of land heretofore attempted to be organized into public hospital districts under the provisions of this chapter are validated and declared to be duly existing hospital districts having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the board of county commissioners of the county in question, and by the files of such districts. [1955 c 135 § 2.]

70.44.016 Validation of districts. Each and all of the respective areas of land attempted to be organized into public hospital districts prior to June 10, 1982, under the provisions of chapter 70.44 RCW where the canvass of the election on the proposition of creating a public hospital district shows the passage of the proposition are validated and declared to be duly existing public hospital districts having the respective boundaries set forth in their organization proceedings as shown by the files in the office of the legislative authority of the county in question, and by the files of such districts. [1982 c 84 § 10.]

70.44.020 Resolution—Petition for county-wide district—Conduct of elections. At any general election or at any special election which may be called for that purpose the county legislative authority of a county may, or on petition of ten percent of the registered voters of the county based on the total vote cast in the last general county election, shall, by resolution, submit to the voters of the county the proposition of creating a public hospital district coextensive with the limits of the county. The petition shall be filed with the county auditor, who shall within fifteen days examine the signatures thereon and certify to the sufficiency thereof, and for that purpose the auditor shall have access to all registration books in the possession of election officers in the county. If the petition is found to be insufficient, it shall be returned to the persons filing it, who may amend or add names thereto for ten days, when it shall be returned to the auditor, who shall have an additional fifteen days to examine it and attach the certificate thereto. No person signing the petition may withdraw his or her name therefrom after filing. When the petition is certified as sufficient, the auditor shall forthwith transmit it, together with the certificate of sufficiency attached thereto, to the county legislative authority, who shall immediately transmit the proposition to the supervisor of elections or other election officer of the county, and he shall submit the proposition to the voters at the next general election or if such petition so requests, shall call a special election on such proposition in accordance with *RCW 29.13.010 and 29.13.020. The notice of the election shall state the boundaries of the proposed district and the object of the election, and shall in other respects conform to the requirements of law governing the time and manner of holding elections. In submitting the question to the voters, the proposition shall be expressed on the ballot substantially in the following terms:

For public hospital district No. . . .

Against public hospital district No. . . . [1990 c 259 § 38; 1955 c 135 § 1; 1945 c 264 § 3; Rem. Supp. 1945 § 6090-32.]

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

70.44.028 Limitation on legal challenges. Unless commenced within thirty days after the date of the filing of the certificate of the canvass of an election on the proposition of creating a new public hospital district pursuant to chapter 70.44 RCW, no lawsuit whatever may be maintained challenging in any way the legal existence of such district or the validity of the proceedings had for the organization and creation thereof. If the creation of a district is not challenged within the period specified in this section, the district conclusively shall be deemed duly and regularly organized under the laws of this state. [1982 c 84 § 9.]

70.44.030 Petition for lesser district—Procedure. Any petition for the formation of a public hospital district may describe a less area than the entire county in which the petition is filed, the boundaries of which shall follow the then existing precinct boundaries and not divide any voting precinct; and in the event that such a petition is filed containing not less than ten percent of the voters of the proposed district who voted at the last general election, certified by the auditor in like manner as for a county-wide district, the board of county commissioners shall fix a date for a hearing on such petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the date of the hearing, together with a notice stating the time of the meeting when such petition will be heard. Such publications required by this chapter shall be in a newspaper published in the proposed or established public hospital district, or, if there be no such newspaper, then in a newspaper published in the county in which such district is situated, and of general circulation in such county. The hearing on such petition may be adjourned from time to time, not exceeding four weeks in all. If upon the final hearing the board of county commissioners shall find that any lands have been unjustly or improperly included within the proposed public hospital district the said board shall change and fix the boundary lines in such manner as it shall deem reasonable and just and conducive to the welfare and convenience, and make and enter an order establishing and defining the boundary lines of the proposed public hospital district: PROVIDED, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of such lands. Thereafter the same procedure shall be followed as prescribed in this chapter for the formation of a public hospital district including an entire county, except that the petition and election shall be confined solely to the lesser public hospital district. [1945 c 264 § 4; Rem. Supp. 1945 § 6090-33.]

70.44.035 Petition for district lying in more than one county—Procedure. Any petition for the formation of a public hospital district may describe an area lying in more than one county, the boundaries of which shall follow the

then existing precinct boundaries and not divide a voting precinct; and if a petition is filed with the county auditor of the respective counties in which a portion of the proposed district is located, containing not less than ten percent of the voters of that area of each county of the proposed district who voted at the last general election, certified by the said respective auditors in like manner as for a county-wide district, the board of county commissioners of each of the counties in which a portion of the proposed district is located shall fix a date for a hearing on the petition, and shall publish the petition, without the signatures thereto appended, for two weeks prior to the hearing, together with a notice stating the time of the meeting when the petition will be heard. The publication required by this chapter shall be in a newspaper published in the portion of each county lying within the proposed district, or if there be no such newspaper published in any such portion of a county, then in one published in the county wherein such portion of said district is situated, and of general circulation in the county. The hearing before the respective county commissioners may be adjourned from time to time not exceeding four weeks in all. If upon the final hearing the respective boards of county commissioners find that any land has been unjustly or improperly included within the proposed district they may change and fix the boundary lines of the portion of said district located within their respective counties in such manner as they deem reasonable and just and conducive to the welfare and convenience, and enter an order establishing and defining the boundary lines of the proposed district located within their respective counties: PROVIDED, That no lands shall be included within the boundaries so fixed lying outside the boundaries described in the petition, except upon the written request of the owners of the land to be so included. Thereafter the same procedure shall be followed as prescribed for the formation of a district including an entire county, except that the petition and election shall be confined solely to the portions of each county lying within the proposed district. [1953 c 267 § 1.]

70.44.040 Elections—Commissioners, terms, districts. (1) The provisions of *Title 29 RCW relating to elections shall govern public hospital districts, except as provided in this chapter.

A public hospital district shall be created when the ballot proposition authorizing the creation of the district is approved by a simple majority vote of the voters of the proposed district voting on the proposition and the total vote cast upon the proposition exceeds forty percent of the total number of votes cast in the proposed district at the preceding state general election.

A public hospital district initially may be created with three, five, or seven commissioner districts. At the election at which the proposition is submitted to the voters as to whether a district shall be formed, three, five, or seven commissioners shall be elected from either three, five, or seven commissioner districts, or at-large positions, or both, as determined by resolution of the county commissioners of the county or counties in which the proposed public hospital district is located, all in accordance with RCW 70.44.054. The election of the initial commissioners shall be null and void if the district is not authorized to be created.

No primary shall be held. A special filing period shall be opened as provided in **RCW 29.15.170 and 29.15.180. The person receiving the greatest number of votes for the commissioner of each commissioner district or at-large position shall be elected as the commissioner of that district. The terms of office of the initial public hospital district commissioners shall be staggered, with the length of the terms assigned so that the person or persons who are elected receiving the greater number of votes being assigned a longer term or terms of office and each term of an initial commissioner running until a successor assumes office who is elected at one of the next three following district general elections the first of which occurs at least one hundred twenty days after the date of the election where voters approved the ballot proposition creating the district, as follows:

(a) If the public hospital district will have three commissioners, the successor to one initial commissioner shall be elected at such first following district general election, the successor to one initial commissioner shall be elected at the second following district general election, and the successor to one initial commissioner shall be elected at the third following district general election;

(b) If the public hospital district will have five commissioners, the successor to one initial commissioner shall be elected at such first following district general election, the successors to two initial commissioners shall be elected at the second following district general election, and the successors to two initial commissioners shall be elected at the third following district general election;

(c) If the public hospital district will have seven commissioners, the successors to two initial commissioners shall be elected at such first following district general election, the successors to ***three [two] initial commissioners shall be elected at the second following district general election, and the successors to three initial commissioners shall be elected at the third following district general election.

The initial commissioners shall take office immediately when they are elected and qualified. The term of office of each successor shall be six years. Each commissioner shall serve until a successor is elected and qualified and assumes office in accordance with **RCW 29.04.170.

(2) Only a registered voter who resides in a commissioner district may be a candidate for, or hold office as, a commissioner of the commissioner district. Voters of the entire public hospital district may vote at a primary or general election to elect a person as a commissioner of the commissioner district.

If the proposed public hospital district initially will have three commissioner districts and the public hospital district is county-wide, and if the county has three county legislative authority districts, the county legislative authority districts shall be used as public hospital district commissioner districts. In all other instances the county auditor of the county in which all or the largest portion of the proposed public hospital district is located shall draw the initial public hospital district commissioner districts and designate at-large positions, if appropriate, as provided in RCW 70.44.054. Each of the commissioner positions shall be numbered consecutively and associated with the commissioner district or at-large position of the same number.

The commissioners of a public hospital district that is not coterminous with the boundaries of a county that has three county legislative authority districts shall at the times required in ****chapter 29.70 RCW and may from time to time redraw commissioner district boundaries in a manner consistent with ****chapter 29.70 RCW. [1997 c 99 § 1; 1994 c 223 § 78; 1990 c 259 § 39; 1979 ex.s. c 126 § 41; 1957 c 11 § 1; 1955 c 82 § 1; 1953 c 267 § 2; 1947 c 229 § 1; 1945 c 264 § 5; Rem. Supp. 1947 § 6090-34.]

Reviser's note: *(1) Title 29 RCW was repealed and/or recodified pursuant to 2003 c 111, effective July 1, 2004. See Title 29A RCW.

** (2) RCW 29.15.170, 29.15.180, and 29.04.170 were recodified as RCW 29A.24.170, 29A.24.180, and 29A.20.040, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and 29A.24.180 were subsequently repealed by 2004 c 271 § 193.

*** (3) The number of commissioners to be elected at the second following district general election appears to have been erroneously changed from three to two in the substitute bill.

**** (4) Chapter 29.70 RCW was recodified as chapter 29A.76 RCW pursuant to 2003 c 111 § 2401, effective July 1, 2004.

Effective date—1997 c 99: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 21, 1997]." [1997 c 99 § 8.]

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

70.44.041 Validity of appointment or election of commissioners—Compliance with 1994 c 223. No appointment to fill a vacant position on or election to the board of commissioners of any public hospital district made after June 9, 1994, and before April 21, 1997, is deemed to be invalid solely due to the public hospital district's failure to redraw its commissioner district boundaries if necessary to comply with chapter 223, Laws of 1994. [1997 c 99 § 7.]

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.042 Commissioner districts—Resolution to abolish—Proposition to reestablish. Notwithstanding any provision in RCW 70.44.040 to the contrary, any board of public hospital district commissioners may, by resolution, abolish commissioner districts and permit candidates for any position on the board to reside anywhere in the public hospital district.

At any general or special election which may be called for that purpose, the board of public hospital district commissioners may, on petition of ten percent of the voters based on the total vote cast in the last district general election in the public hospital district shall, by resolution, submit to the voters of the district the proposition to reestablish commissioner districts. [1997 c 99 § 2; 1967 c 227 § 2.]

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.045 Commissioners—Vacancies. A vacancy in the office of commissioner shall occur as provided in chapter 42.12 RCW or by nonattendance at meetings of the commission for sixty days, unless excused by the commission. A vacancy shall be filled as provided in chapter 42.12 RCW. [1994 c 223 § 79; 1982 c 84 § 13; 1955 c 82 § 2.]

70.44.047 Redrawn boundaries—Assignment of commissioners to districts. If, as the result of redrawing the boundaries of commissioner districts as permitted or required under the provisions of this chapter, *chapter 29.70 RCW, or

any other statute, more than the correct number of commissioners who are associated with commissioner districts reside in the same commissioner district, a commissioner or commissioners residing in that redrawn commissioner district equal in number to the number of commissioners in excess of the correct number shall be assigned to the drawn commissioner district or districts in which less than the correct number of commissioners associated with commissioner districts reside. The commissioner or commissioners who are so assigned shall be those with the shortest unexpired term or terms of office, but if the number of such commissioners with the same terms of office exceeds the number that are to be assigned, the board of commissioners shall select by lot from those commissioners which one or ones are assigned. A commissioner who is so assigned shall be deemed to be a resident of the commissioner district to which he or she is assigned for purposes of determining whether a position is vacant. [1997 c 99 § 6.]

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

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.050 Commissioners—Compensation and expenses—Insurance—Resolutions by majority vote—Officers—Rules—Seal—Records. A district shall provide by resolution for the payment of compensation to each of its commissioners at a rate of seventy dollars for each day or portion thereof devoted to the business of the district, and days upon which he or she attends meetings of the commission of his or her own district, or meetings attended by one or more commissioners of two or more districts called to consider business common to them, except that the total compensation paid to such commissioner during any one year shall not exceed six thousand seven hundred twenty dollars. The commissioners may not be compensated for services performed of a ministerial or professional nature.

Any commissioner may waive all or any portion of his or her compensation payable under this section as to any month or months during his or her term of office, by a written waiver filed with the district as provided in this section. The waiver, to be effective, must be filed any time after the commissioner's election and prior to the date on which the compensation would otherwise be paid. The waiver shall specify the month or period of months for which it is made.

Any district providing group insurance for its employees, covering them, their immediate family, and dependents, may provide insurance for its commissioners with the same coverage. Each commissioner shall be reimbursed for reasonable expenses actually incurred in connection with such business and meetings, including his or her subsistence and lodging and travel while away from his or her place of residence. No resolution shall be adopted without a majority vote of the whole commission. The commission shall organize by election of its own members of a president and secretary, shall by resolution adopt rules governing the transaction of its business and shall adopt an official seal. All proceedings of the commission shall be by motion or resolution recorded in a book or books kept for such purpose, which shall be public records. [1998 c 121 § 7; 1985 c 330 § 7; 1982 c 84 § 14; 1975 c 42 § 1; 1965 c 157 § 1; 1945 c 264 § 15; Rem. Supp. 1945 § 6090-44.]

(2004 Ed.)

70.44.053 Increase in number of commissioners—Proposition to voters. At any general or special election which may be called for that purpose the board of public hospital district commissioners may, or on petition of ten percent of the voters based on the total vote cast in the last district general election in the public hospital district shall, by resolution, submit to the voters of the district the proposition increasing the number of commissioners to either five or seven members. The petition or resolution shall specify whether it is proposed to increase the number of commissioners to either five or seven members. [1997 c 99 § 3; 1994 c 223 § 80; 1967 c 77 § 2.]

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.054 Increase in number of commissioners—Commissioner districts. If the voters of the district approve the ballot proposition authorizing the increase in the number of commissioners to either five or seven members, the additional commissioners shall be elected at large from the entire district; provided that, the board of commissioners of the district may by resolution redistrict the public hospital district into five commissioner districts if the district has five commissioners or seven commissioner districts if the district has seven commissioners. The board of commissioners shall draw the boundaries of each commissioner district to include as nearly as possible equal portions of the total population of the public hospital district.

If the board of commissioners increases the number of commissioner districts as provided in this section, one commissioner shall be elected from each commissioner district, and no commissioner may be elected from a commissioner district in which another commissioner resides. [1997 c 99 § 4.]

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.056 Increase in number of commissioners—Appointments—Election—Terms. In all existing public hospital districts in which an increase in the number of district commissioners is proposed, the additional commissioner positions shall be deemed to be vacant and the board of commissioners of the public hospital district shall appoint qualified persons to fill those vacancies in accordance with RCW 42.12.070.

Each person who is appointed shall serve until a qualified person is elected at the next general election of the district occurring one hundred twenty days or more after the date of the election at which the voters of the district approved the ballot proposition authorizing the increase in the number of commissioners. If needed, special filing periods shall be authorized as provided in *RCW 29.15.170 and 29.15.180 for qualified persons to file for the vacant office. A primary shall be held to nominate candidates if sufficient time exists to hold a primary and more than two candidates file for the vacant office. Otherwise, no primary shall be held and the candidate receiving the greatest number of votes for each position shall be elected. Except for the initial terms of office, persons elected to each of these additional commissioner positions shall be elected to a six-year term. The newly elected commissioners shall assume office as provided in *RCW 29.04.170.

[Title 70 RCW—page 65]

The initial terms of the new commissioners shall be staggered as follows: (1) When the number of commissioners is increased from three to five, the person elected receiving the greatest number of votes shall be elected to a six-year term of office, and the other person shall be elected to a four-year term; (2) when the number of commissioners is increased from three or five to seven, the terms of the new commissioners shall be staggered over the next three district general elections so that two commissioners will be elected at the first district general election following the election where the additional commissioners are elected, two commissioners will be at the second district general election after the election of the additional commissioners, and three commissioners will be elected at the third district general election following the election of the additional commissioners, with the persons elected receiving the greatest number of votes elected to serve the longest terms. [1997 c 99 § 5.]

***Reviser's note:** RCW 29.15.170, 29.15.180, and 29.04.170 were recodified as RCW 29A.24.170, 29A.24.180, and 29A.20.040, respectively, pursuant to 2003 c 111 § 2401, effective July 1, 2004. RCW 29A.24.170 and 29A.24.180 were subsequently repealed by 2004 c 271 § 193.

Effective date—1997 c 99: See note following RCW 70.44.040.

70.44.059 Chaplains—Authority to employ. Public hospital districts may employ chaplains for their hospitals, health care facilities, and hospice programs. [1993 c 234 § 1.]

Contingent effective date—1993 c 234: "This act shall take effect on January 1, 1994, if the proposed amendment to Article I, section 11 of the state Constitution authorizing the legislature to permit public hospital districts to employ chaplains is validly submitted to and is approved and ratified by the voters at the next general election held. If the proposed amendment is not so approved and ratified, this act is void in its entirety." [1993 c 234 § 2.] House Joint Resolution No. 4200 was approved by the voters on November 2, 1993.

70.44.060 Powers and duties. All public hospital districts organized under the provisions of this chapter shall have power:

(1) To make a survey of existing hospital and other health care facilities within and without such district.

(2) To construct, condemn and purchase, purchase, acquire, lease, add to, maintain, operate, develop and regulate, sell and convey all lands, property, property rights, equipment, hospital and other health care facilities and systems for the maintenance of hospitals, buildings, structures, and any and all other facilities, and to exercise the right of eminent domain to effectuate the foregoing purposes or for the acquisition and damaging of the same or property of any kind appurtenant thereto, and such right of eminent domain shall be exercised and instituted pursuant to a resolution of the commission and conducted in the same manner and by the same procedure as in or may be provided by law for the exercise of the power of eminent domain by incorporated cities and towns of the state of Washington in the acquisition of property rights: PROVIDED, That no public hospital district shall have the right of eminent domain and the power of condemnation against any health care facility.

(3) To lease existing hospital and other health care facilities and equipment and/or other property used in connection therewith, including ambulances, and to pay such rental therefor as the commissioners shall deem proper; to provide

hospital and other health care services for residents of said district by facilities located outside the boundaries of said district, by contract or in any other manner said commissioners may deem expedient or necessary under the existing conditions; and said hospital district shall have the power to contract with other communities, corporations, or individuals for the services provided by said hospital district; and they may further receive in said hospitals and other health care facilities and furnish proper and adequate services to all persons not residents of said district at such reasonable and fair compensation as may be considered proper: PROVIDED, That it must at all times make adequate provision for the needs of the district and residents of said district shall have prior rights to the available hospital and other health care facilities of said district, at rates set by the district commissioners.

(4) For the purpose aforesaid, it shall be lawful for any district so organized to take, condemn and purchase, lease, or acquire, any and all property, and property rights, including state and county lands, for any of the purposes aforesaid, and any and all other facilities necessary or convenient, and in connection with the construction, maintenance, and operation of any such hospitals and other health care facilities, subject, however, to the applicable limitations provided in subsection (2) of this section.

(5) To contract indebtedness or borrow money for corporate purposes on the credit of the corporation or the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, and to issue and sell: (a) Revenue bonds, revenue warrants, or other revenue obligations therefor payable solely out of a special fund or funds into which the district may pledge such amount of the revenues of the hospitals thereof, and the revenues of any other facilities or services that the district is or hereafter may be authorized by law to provide, to pay the same as the commissioners of the district may determine, such revenue bonds, warrants, or other obligations to be issued and sold in the same manner and subject to the same provisions as provided for the issuance of revenue bonds, warrants, or other obligations by cities or towns under the Municipal Revenue Bond Act, chapter 35.41 RCW, as may hereafter be amended; (b) general obligation bonds therefor in the manner and form as provided in RCW 70.44.110 and 70.44.130, as may hereafter be amended; or (c) interest-bearing warrants to be drawn on a fund pending deposit in such fund of money sufficient to redeem such warrants and to be issued and paid in such manner and upon such terms and conditions as the board of commissioners may deem to be in the best interest of the district; and to assign or sell hospital accounts receivable, and accounts receivable for the use of other facilities or services that the district is or hereafter may be authorized by law to provide, for collection with or without recourse. General obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. Revenue bonds, revenue warrants, or other revenue obligations may be issued and sold in accordance with chapter 39.46 RCW.

(6) To raise revenue by the levy of an annual tax on all taxable property within such public hospital district not to exceed fifty cents per thousand dollars of assessed value, and an additional annual tax on all taxable property within such public hospital district not to exceed twenty-five cents per

thousand dollars of assessed value, or such further amount as has been or shall be authorized by a vote of the people. Although public hospital districts are authorized to impose two separate regular property tax levies, the levies shall be considered to be a single levy for purposes of the limitation provided for in chapter 84.55 RCW. Public hospital districts are authorized to levy such a general tax in excess of their regular property taxes when authorized so to do at a special election conducted in accordance with and subject to all of the requirements of the Constitution and the laws of the state of Washington now in force or hereafter enacted governing the limitation of tax levies. The said board of district commissioners is authorized and empowered to call a special election for the purpose of submitting to the qualified voters of the hospital district a proposition or propositions to levy taxes in excess of its regular property taxes. The superintendent shall prepare a proposed budget of the contemplated financial transactions for the ensuing year and file the same in the records of the commission on or before the first day of November. Notice of the filing of said proposed budget and the date and place of hearing on the same shall be published for at least two consecutive weeks, at least one time each week, in a newspaper printed and of general circulation in said county. On or before the fifteenth day of November the commission shall hold a public hearing on said proposed budget at which any taxpayer may appear and be heard against the whole or any part of the proposed budget. Upon the conclusion of said hearing, the commission shall, by resolution, adopt the budget as finally determined and fix the final amount of expenditures for the ensuing year. Taxes levied by the commission shall be certified to and collected by the proper county officer of the county in which such public hospital district is located in the same manner as is or may be provided by law for the certification and collection of port district taxes. The commission is authorized, prior to the receipt of taxes raised by levy, to borrow money or issue warrants of the district in anticipation of the revenue to be derived by such district from the levy of taxes for the purpose of such district, and such warrants shall be redeemed from the first money available from such taxes when collected, and such warrants shall not exceed the anticipated revenues of one year, and shall bear interest at a rate or rates as authorized by the commission.

(7) To enter into any contract with the United States government or any state, municipality, or other hospital district, or any department of those governing bodies, for carrying out any of the powers authorized by this chapter.

(8) To sue and be sued in any court of competent jurisdiction: PROVIDED, That all suits against the public hospital district shall be brought in the county in which the public hospital district is located.

(9) To pay actual necessary travel expenses and living expenses incurred while in travel status for (a) qualified physicians or other health care practitioners who are candidates for medical staff positions, and (b) other qualified persons who are candidates for superintendent or other managerial and technical positions, which expenses may include expenses incurred by family members accompanying the candidate, when the district finds that hospitals or other health care facilities owned and operated by it are not adequately staffed and determines that personal interviews with

said candidates to be held in the district are necessary or desirable for the adequate staffing of said facilities.

(10) To employ superintendents, attorneys, and other technical or professional assistants and all other employees; to make all contracts useful or necessary to carry out the provisions of this chapter, including, but not limited to, (a) contracts with private or public institutions for employee retirement programs, and (b) contracts with current or prospective employees, physicians, or other health care practitioners providing for the payment or reimbursement by the public hospital district of health care training or education expenses, including but not limited to debt obligations, incurred by current or prospective employees, physicians, or other health care practitioners in return for their agreement to provide services beneficial to the public hospital district; to print and publish information or literature; and to do all other things necessary to carry out the provisions of this chapter. [2003 c 125 § 1; 2001 c 76 § 1; 1997 c 3 § 206 (Referendum Bill No. 47, approved November 4, 1997); 1990 c 234 § 2; 1984 c 186 § 59; 1983 c 167 § 172; 1982 c 84 § 15; 1979 ex.s. c 155 § 1; 1979 ex.s. c 143 § 4; 1977 ex.s. c 211 § 1; 1974 ex.s. c 165 § 2; 1973 1st ex.s. c 195 § 83; 1971 ex.s. c 218 § 2; 1970 ex.s. c 56 § 85; 1969 ex.s. c 65 § 1; 1967 c 164 § 7; 1965 c 157 § 2; 1949 c 197 § 18; 1945 c 264 § 6; Rem. Supp. 1949 § 6090-35.]

Intent—1997 c 3 §§ 201-207: See note following RCW 84.55.010.

Application—Severability—Part headings not law—Referral to electorate—1997 c 3: See notes following RCW 84.40.030.

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

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

Severability—1979 ex.s. c 155: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 155 § 3.]

Severability—1979 ex.s. c 143: See note following RCW 70.44.200.

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

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

Purpose—Severability—1967 c 164: See notes following RCW 4.96.010.

Eminent domain

by cities: Chapter 8.12 RCW.

generally: State Constitution Art. 1 § 16.

Limitation on levies: State Constitution Art. 7 § 2; RCW 84.52.050.

Port districts, collection of taxes: RCW 53.36.020.

Tortious conduct of political subdivisions, municipal corporations and quasi-municipal corporations, liability for damages: Chapter 4.96 RCW.

70.44.062 Commissioners' meetings, proceedings, and deliberations concerning health care providers' clinical or staff privileges to be confidential—Final action in public session. All meetings, proceedings, and deliberations of the board of commissioners, its staff or agents, concerning the granting, denial, revocation, restriction, or other consideration of the status of the clinical or staff privileges of a physician or other health care provider as that term is defined in RCW 7.70.020, if such other providers at the discretion of the district's commissioners are considered for such privileges, shall be confidential and may be conducted in executive session: PROVIDED, That the final action of the board as to the

denial, revocation, or restriction of clinical or staff privileges of a physician or other health care provider as defined in RCW 7.70.020 shall be done in public session. [1985 c 166 § 1.]

70.44.065 Levy for emergency medical care and services. See RCW 84.52.069.

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

This section does not limit the authority of a public hospital district to otherwise participate in the public improvements if that authority exists elsewhere. [2001 c 212 § 22.]

Severability—2001 c 212: See RCW 39.89.902.

70.44.070 Superintendent—Appointment—Removal—Compensation. (1) The public hospital district commission shall appoint a superintendent, who shall be appointed for an indefinite time and be removable at the will of the commission. Appointments and removals shall be by resolution, introduced at a regular meeting and adopted at a subsequent regular meeting by a majority vote. The superintendent shall receive such compensation as the commission shall fix by resolution.

(2) Where a public hospital district operates more than one hospital, the commission may in its discretion appoint up to one superintendent per hospital and assign among the superintendents the powers and duties set forth in RCW 70.44.080 and 70.44.090 as deemed appropriate by the commission. [1987 c 58 § 1; 1982 c 84 § 16; 1945 c 264 § 7; Rem. Supp. 1945 § 6090-36.]

70.44.080 Superintendent—Powers. (1) The superintendent shall be the chief administrative officer of the public hospital district and shall have control of administrative functions of the district. The superintendent shall be responsible to the commission for the efficient administration of all affairs of the district. In case of the absence or temporary disability of the superintendent a competent person shall be appointed by the commission. The superintendent shall be entitled to attend all meetings of the commission and its committees and to take part in the discussion of any matters pertaining to the district, but shall have no vote.

(2) Where the commission has appointed more than one superintendent as provided in RCW 70.44.070, the commission shall assign among the superintendents the powers set forth in this section as deemed appropriate by the commission. [1987 c 58 § 2; 1982 c 84 § 17; 1945 c 264 § 9; Rem. Supp. 1945 § 6090-38.]

70.44.090 Superintendent—Duties. (1) The public hospital district superintendent shall have the power, and duty:

(a) To carry out the orders of the commission, and to see that all the laws of the state pertaining to matters within the functions of the district are duly enforced.

(b) To keep the commission fully advised as to the financial condition and needs of the district. To prepare, each year, an estimate for the ensuing fiscal year of the probable expenses of the district, and to recommend to the commission what development work should be undertaken, and what extensions and additions, if any, should be made, during the ensuing fiscal year, with an estimate of the costs of such development work, extensions and additions. To certify to the commission all the bills, allowances and payrolls, including claims due contractors of public works. To recommend to the commission a range of salaries to be paid to district employees.

(2) Where the commission has appointed more than one superintendent as provided in RCW 70.44.070, the commission shall assign among the superintendents the duties set forth in this section as deemed appropriate by the commission. [1987 c 58 § 3; 1982 c 84 § 18; 1945 c 264 § 11; Rem. Supp. 1945 § 6090-40.]

70.44.110 Plan to construct or improve—General obligation bonds. Whenever the commission deems it advisable that the district acquire or construct a public hospital, or other health care facilities, or make additions or betterments thereto, or extensions thereof, it shall provide therefor by resolution, which shall specify and adopt the plan proposed, declare the estimated cost thereof, and specify the amount of indebtedness to be incurred therefor. General indebtedness may be incurred by the issuance of general obligation bonds or short-term obligations in anticipation of such bonds. General obligation bonds shall mature in not to exceed thirty years. The incurring of such indebtedness shall be subject to the applicable limitations and requirements provided in section 1, chapter 143, Laws of 1917, as last amended by section 4, chapter 107, Laws of 1967, and RCW 39.36.020, as now or hereafter amended. Such general obligation bonds shall be issued and sold in accordance with chapter 39.46 RCW. [1984 c 186 § 60; 1974 ex.s. c 165 § 3; 1969 ex.s. c 65 § 2; 1955 c 56 § 1; 1945 c 264 § 12; Rem. Supp. 1945 § 6090-41.]

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

70.44.130 Bonds—Payment—Security for deposits. The principal and interest of such general bonds shall be paid by levying each year a tax upon the taxable property within the district sufficient, together with other revenues of the district available for such purpose, to pay said interest and principal of said bonds, which tax shall be due and collectible as any other tax. All bonds and warrants issued under the authority of this chapter shall be legal securities, which may be used by any bank or trust company for deposit with the state treasurer, or any county or city treasurer, as security for deposits, in lieu of a surety bond, under any law relating to deposits of public moneys. [1984 c 186 § 61; 1971 ex.s. c 218 § 3; 1945 c 264 § 14; Rem. Supp. 1945 § 6090-43.]

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

70.44.140 Contracts for material and work—Call for bids—Alternative procedures—Exemptions. (1) All materials purchased and work ordered, the estimated cost of which is in excess of fifty thousand dollars, shall be by contract. Before awarding any such contract, the commission shall publish a notice at least thirteen days before the last date upon which bids will be received, inviting sealed proposals for such work. The plans and specifications must at the time of the publication of such notice be on file at the office of the public hospital district, subject to public inspection: **PROVIDED, HOWEVER,** That the commission may at the same time, and as part of the same notice, invite tenders for the work or materials upon plans and specifications to be submitted by bidders. The notice shall state generally the work to be done, and shall call for proposals for doing the same, to be sealed and filed with the commission on or before the day and hour named therein. Each bid shall be accompanied by bid proposal security in the form of a certified check, cashier's check, postal money order, or surety bond made payable to the order of the commission, for a sum not less than five percent of the amount of the bid, and no bid shall be considered unless accompanied by such bid proposal security. At the time and place named, such bids shall be publicly opened and read, and the commission shall proceed to canvass the bids, and may let such contract to the lowest responsible bidder upon plans and specifications on file, or to the best bidder submitting his or her own plans and specifications: **PROVIDED, HOWEVER,** That no contract shall be let in excess of the estimated cost of the materials or work, or if, in the opinion of the commission, all bids are unsatisfactory, they may reject all of them and readvertise, and in such case all bid proposal security shall be returned to the bidders. If the contract is let, then all bid proposal security shall be returned to the bidders, except that of the successful bidder, which is retained until a contract shall be entered into for the purchase of such materials for doing such work, and a bond to perform such work furnished, with sureties satisfactory to the commission, in an amount to be fixed by the commission, not less than twenty-five percent of contract price in any case, between the bidder and commission, in accordance with the bid. If such bidder fails to enter into the contract in accordance with the bid and furnish such bond within ten days from the date at which the bidder is notified that he or she is the successful bidder, the bid proposal security and the amount thereof shall be forfeited to the public hospital district. A low bidder who claims error and fails to enter into a contract is prohibited from bidding on the same project if a second or subsequent call for bids is made for the project.

(2) As an alternative to the requirements of subsection (1) of this section, a public hospital district may let contracts using the small works roster process under RCW 39.04.155.

(3) Any purchases with an estimated cost of up to fifteen thousand dollars may be made using the process provided in RCW 39.04.190.

(4) The commission may waive the competitive bidding requirements of this section pursuant to RCW 39.04.280 if an exemption contained within that section applies to the purchase or public work. [2002 c 106 § 1; 2000 c 138 § 213; 1999 c 99 § 1; 1998 c 278 § 9; 1996 c 18 § 15; 1993 c 198 § 22; 1965 c 83 § 1; 1945 c 264 § 17; Rem. Supp. 1945 § 6090-46.]

(2004 Ed.)

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

Contractor's bond: Chapter 39.08 RCW.

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

70.44.171 Treasurer—Duties—Funds—Depositaries—Surety bonds, cost. The treasurer of the county in which a public hospital district is located shall be treasurer of the district, except that the commission by resolution may designate some other person having experience in financial or fiscal matters as treasurer of the district. If the treasurer is not the county treasurer, the commission shall require a bond, with a surety company authorized to do business in the state of Washington, in an amount and under the terms and conditions which the commission by resolution from time to time finds will protect the district against loss. The premium on any such bond shall be paid by the district.

All district funds shall be paid to the treasurer and shall be disbursed by him only on warrants issued by an auditor appointed by the commission, upon orders or vouchers approved by it. The treasurer shall establish a public hospital district fund, into which shall be paid all district funds, and he shall maintain such special funds as may be created by the commission, into which he shall place all money as the commission may, by resolution, direct.

If the treasurer of the district is the treasurer of the county all district funds shall be deposited with the county depositaries under the same restrictions, contracts, and security as provided for county depositaries. If the treasurer of the district is some other person, all funds shall be deposited in such bank or banks authorized to do business in this state as the commission by resolution shall designate, and with surety bond to the district or securities in lieu thereof of the kind, no less in amount, as provided in *RCW 36.48.020 for deposit of county funds. Such surety bond or securities in lieu thereof shall be filed or deposited with the treasurer of the district, and approved by resolution of the commission.

All interest collected on district funds shall belong to the district and be deposited to its credit in the proper district funds.

A district may provide and require a reasonable bond of any other person handling moneys or securities of the district. The district may pay the premium on such bond. [1967 c 227 § 1.]

***Reviser's note:** RCW 36.48.020 was repealed by 1984 c 177 § 21.

70.44.185 Change of district boundary lines to allow farm units to be wholly within one hospital district—Notice. Notwithstanding any other provision of law, including RCW 70.44.040, whenever the boundary line between contiguous hospital districts bisects an irrigation block unit placing part of the unit in one hospital district and the balance thereof in another such district, the county auditor, upon his approval of a request therefor after public hearing thereon, shall change the hospital district boundary lines so that the entire farm unit of the person so requesting shall be wholly in one of such hospital districts and give notice thereof to those hospital district and county officials as he shall deem appropriate therefor. [1971 ex.s. c 218 § 4.]

70.44.190 Consolidation of districts. Two or more contiguous hospital districts, whether the territory therein lies in one or more counties, may consolidate by following the procedure outlined in chapter 35.10 RCW with reference to consolidation of cities and towns. [1953 c 267 § 3.]

70.44.200 Annexation of territory. (1) A public hospital district may annex territory outside the existing boundaries of such district and contiguous thereto, whether the territory lies in one or more counties, in accordance with this section.

(2) A petition for annexation of territory contiguous to a public hospital district may be filed with the commission of the district to which annexation is proposed. The petition must be signed by the owners, as prescribed by RCW 35A.01.040(9) (a) through (e), of not less than sixty percent of the area of land within the territory proposed to be annexed. Such petition shall describe the boundaries of the territory proposed to be annexed and shall be accompanied by a map which outlines the boundaries of such territory.

(3) Whenever such a petition for annexation is filed with the commission of a public hospital district, the commission may entertain the same, fix a date for public hearing thereon, and cause notice of the hearing to be published once a week for at least two consecutive weeks in a newspaper of general circulation within the territory proposed to be annexed. The notice shall also be posted in three public places within the territory proposed to be annexed, shall contain a description of the boundaries of such territory, and shall specify the time and place of hearing and invite interested persons to appear and voice approval or disapproval of the annexation.

(4) Following the hearing, if the commission of the district determines to accomplish the annexation, it shall do so by resolution. The resolution may annex all or any portion of the proposed territory but may not include in the annexation any property not described in the petition. Upon passage of the annexation resolution, the territory annexed shall become part of the district and a certified copy of such resolution shall be filed with the legislative authority of the county or counties in which the annexed property is located.

(5) If the petition for annexation and the annexation resolution so provide, as the commission may require, and such petition has been signed by the owners of all the land within the boundaries of the territory being annexed, the annexed property shall assume and be assessed and taxed to pay for all or any portion of the outstanding indebtedness of the district to which it is annexed at the same rates as other property within such district. Unless so provided in the petition and resolution, property within the boundaries of the territory annexed shall not be assessed or taxed to pay for all or any portion of the indebtedness of the district to which it is annexed that was contracted prior to or which existed at the date of annexation. In no event shall any such annexed property be released from any assessments or taxes previously levied against it or from its existing liability for the payment of outstanding bonds or warrants issued prior to such annexation.

(6) The annexation procedure provided for in this section shall be an alternative method of annexation applicable only if at the time the annexation petition is filed either there are no registered voters residing in the territory proposed to be

annexed or the petition is also signed by all of the registered voters residing in the territory proposed to be annexed. [1993 c 489 § 1; 1979 ex.s. c 143 § 1; 1953 c 267 § 4.]

Severability—1979 ex.s. c 143: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 143 § 3.]

70.44.210 Alternate method of annexation—Contents of resolution calling for election. As an alternate method of annexation to public hospital districts, any territory adjacent to a public hospital district may be annexed thereto by vote of the qualified electors residing in the territory to be annexed, in the manner provided in RCW 70.44.210 through 70.44.230. An election to annex such territory may be called pursuant to a resolution calling for such an election adopted by the district commissioners.

Any resolution calling for such an election shall describe the boundaries of the territory to be annexed, state that the annexation of such territory to the public hospital district will be conducive to the welfare and benefit of the persons or property within the district and within the territory proposed to be annexed, and fix the date, time and place for a public hearing thereon which date shall be not more than sixty nor less than forty days following the adoption of such resolution. [1967 c 227 § 6.]

70.44.220 Alternate method of annexation—Publication and contents of notice of hearing—Hearing—Resolution—Special election. Notice of such hearing shall be published once a week for at least two consecutive weeks in one or more newspapers of general circulation within the territory proposed to be annexed. The notice shall contain a description of the boundaries of the territory proposed to be annexed and shall state the time and place of the hearing thereon and the fact that any changes in the boundaries of such territory will be considered at such time and place. At such hearing or any continuation thereof, any interested person may appear and be heard on all matters relating to the proposed annexation. The district commissioners may make such changes in the boundaries of the territory proposed to be annexed as it shall deem reasonable and proper, but may not delete any portion of the proposed area which will create an island of included or excluded lands. If the district commissioners shall determine that any additional territory should be included in the territory to be annexed, a second hearing shall be held and notice given in the same manner as for the original hearing. The district commissioners may adjourn the hearing on the proposed annexation from time to time not exceeding thirty days in all. At the next regular meeting following the conclusion of such hearing, the district commissioners shall, if it finds that the annexation of such territory will be conducive to the welfare and benefit of the persons and property therein and the welfare and benefit of the persons and property within the public hospital district, adopt a resolution fixing the boundaries of the territory to be annexed and causing to be called a special election on such annexation to be held not more than one hundred twenty days nor less than sixty days following the adoption of such resolution. [1967 c 227 § 7.]

70.44.230 Alternate method of annexation—Conduct and canvass of election—Notice—Ballot. An election on the annexation of territory to a public hospital district shall be conducted and canvassed in the same manner as provided for the conduct of an election on the formation of a public hospital district except that notice of such election shall be published in one or more newspapers of general circulation in the territory proposed to be annexed and the ballot proposition shall be in substantially the following form:

ANNEXATION TO (herein insert name of public hospital district)

"Shall the territory described in a resolution of the public hospital district commissioners of (here insert name of public hospital district) adopted on, 19. . ., be annexed to such district?"

YES
NO "

If a majority of those voting on such proposition vote in favor thereof, the territory shall thereupon be annexed to the public hospital district. [1967 c 227 § 8.]

70.44.235 Withdrawal or reannexation of areas. (1) As provided in this section, a public hospital district may withdraw areas from its boundaries, or reannex areas into the public hospital district that previously had been withdrawn from the public hospital district under this section.

(2) The withdrawal of an area shall be authorized upon: (a) Adoption of a resolution by the hospital district commissioners requesting the withdrawal and finding that, in the opinion of the commissioners, inclusion of this area within the public hospital district will result in a reduction of the district's tax levy rate under the provisions of RCW 84.52.010; and (b) adoption of a resolution by the city or town council approving the withdrawal, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the withdrawal, if the area is located outside of a city or town. A withdrawal shall be effective at the end of the day on the thirty-first day of December in the year in which the resolutions are adopted, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution.

The withdrawal of an area from the boundaries of a public hospital district shall not exempt any property therein from taxation for the purpose of paying the costs of redeeming any indebtedness of the public hospital district existing at the time of the withdrawal.

(3) An area that has been withdrawn from the boundaries of a public hospital district under this section may be reannexed into the public hospital district upon: (a) Adoption of a resolution by the hospital district commissioners proposing the reannexation; and (b) adoption of a resolution by the city or town council approving the reannexation, if the area is located within the city or town, or adoption of a resolution by the county legislative authority of the county within which the area is located approving the reannexation, if the area is located outside of a city or town. The reannexation shall be effective at the end of the day on the thirty-first day of

(2004 Ed.)

December in the year in which the adoption of the second resolution occurs, but for purposes of establishing boundaries for property tax purposes, the boundaries shall be established immediately upon the adoption of the second resolution. Referendum action on the proposed reannexation may be taken by the voters of the area proposed to be reannexed if a petition calling for a referendum is filed with the city or town council, or county legislative authority, within a thirty-day period after the adoption of the second resolution, which petition has been signed by registered voters of the area proposed to be reannexed equal in number to ten percent of the total number of the registered voters residing in that area.

If a valid petition signed by the requisite number of registered voters has been so filed, the effect of the resolutions shall be held in abeyance and a ballot proposition to authorize the reannexation shall be submitted to the voters of the area at the next special election date specified in *RCW 29.13.020 that occurs forty-five or more days after the petitions have been validated. Approval of the ballot proposition authorizing the reannexation by a simple majority vote shall authorize the reannexation. [1987 c 138 § 4.]

***Reviser's note:** As enacted by 1987 c 138 § 4, this section contained an apparently erroneous reference to RCW 29.13.030, a section repealed in 1965. Pursuant to RCW 1.08.015, this reference has been changed to RCW 29.13.020, a later enactment of the section repealed. RCW 29.13.020 was subsequently recodified as RCW 29A.04.330 pursuant to 2003 c 111 § 2401, effective July 1, 2004.

70.44.240 Contracting or joining with other districts, hospitals, corporations, or individuals to provide services or facilities. Any public hospital district may contract or join with any other public hospital district, publicly owned hospital, nonprofit hospital, legal entity, or individual to acquire, own, operate, manage, or provide any hospital or other health care facilities or hospital services or other health care services to be used by individuals, districts, hospitals, or others, including providing health maintenance services. If a public hospital district chooses to contract or join with another party or parties pursuant to the provisions of this chapter, it may do so through establishing a nonprofit corporation, partnership, limited liability company, or other legal entity of its choosing in which the public hospital district and the other party or parties participate. The governing body of such legal entity shall include representatives of the public hospital district, which representatives may include members of the public hospital district's board of commissioners. A public hospital district contracting or joining with another party pursuant to the provisions of this chapter may appropriate funds and may sell, lease, or otherwise provide property, personnel, and services to the legal entity established to carry out the contract or joint activity. [2004 c 261 § 7; 1997 c 332 § 16; 1982 c 84 § 19; 1974 ex.s. c 165 § 4; 1967 c 227 § 3.]

Severability—1997 c 332: See RCW 70.45.900.

70.44.260 Contracts for purchase of real or personal property. Any public hospital district may execute an executory conditional sales contract with any other municipal corporation, the state, or any of its political subdivisions, the government of the United States, or any private party for the purchase of any real or personal property, or property rights, in connection with the exercise of any powers or duties which

such districts now or hereafter are authorized to exercise, if the entire amount of the purchase price specified in such contract does not result in a total indebtedness in excess of the limitation imposed by RCW 39.36.020, as now or hereafter amended, to be incurred without the assent of the voters of the district: PROVIDED, That if such a proposed contract would result in a total indebtedness in excess of three-fourths of one percent of the value of taxable property in such public hospital district, a proposition in regard to whether or not such a contract may be executed shall be submitted to the voters for approval or rejection in the same manner that bond issues for capital purposes are submitted to the voters. The term "value of taxable property" shall have the meaning set forth in RCW 39.36.015. [1975-'76 2nd ex.s. c 78 § 1.]

70.44.300 Sale of surplus real property. (1) The board of commissioners of any public hospital district may sell and convey at public or private sale real property of the district if the board determines by resolution that the property is no longer required for public hospital district purposes or determines by resolution that the sale of the property will further the purposes of the public hospital district.

(2) Any sale of district real property authorized pursuant to this section shall be preceded, not more than one year prior to the date of sale, by market value appraisals by three licensed real estate brokers or professionally designated real estate appraisers as defined in RCW 74.46.020 or three independent experts in valuing health care property, selected by the board of commissioners, and no sale shall take place if the sale price would be less than ninety percent of the average of such appraisals.

(3) When the board of commissioners of any public hospital district proposes a sale of district real property pursuant to this section and the value of the property exceeds one hundred thousand dollars, the board shall publish a notice of its intention to sell the property. The notice shall be published at least once each week during two consecutive weeks in a legal newspaper of general circulation within the public hospital district. The notice shall describe the property to be sold and designate the place where and the day and hour when a hearing will be held. The board shall hold a public hearing upon the proposal to dispose of the public hospital district property at the place and the day and hour fixed in the notice and consider evidence offered for and against the propriety and advisability of the proposed sale.

(4) If in the judgment of the board of commissioners of any district the sale of any district real property not needed for public hospital district purposes would be facilitated and greater value realized through use of the services of licensed real estate brokers, a contract for such services may be negotiated and concluded. The fee or commissions charged for any broker service shall not exceed seven percent of the resulting sale price for a single parcel. No licensed real estate broker or professionally designated real estate appraisers as defined in RCW 74.46.020 or independent expert in valuing health care property selected by the board to appraise the market value of a parcel of property to be sold may be a party to any contract with the public hospital district to sell such property for a period of three years after the appraisal. [1997 c 332 § 17; 1984 c 103 § 4; 1982 c 84 § 2.]

Severability—1997 c 332: See RCW 70.45.900.

70.44.310 Lease of surplus real property. The board of commissioners of any public hospital district may lease or rent out real property of the district which the board has determined by resolution presently is not required for public hospital district purposes in such manner and upon such terms and conditions as the board in its discretion finds to be in the best interest of the district. [1982 c 84 § 3.]

70.44.315 Evaluation criteria and requirements for acquisition of district hospitals. (1) When evaluating a potential acquisition, the commissioners shall determine their compliance with the following requirements:

(a) That the acquisition is authorized under chapter 70.44 RCW and other laws governing public hospital districts;

(b) That the procedures used in the decision-making process allowed district officials to thoroughly fulfill their due diligence responsibilities as municipal officers, including those covered under chapter 42.23 RCW governing conflicts of interest and chapter 42.20 RCW prohibiting malfeasance of public officials;

(c) That the acquisition will not result in the revocation of hospital privileges;

(d) That sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(e) That the acquisition is allowed under Article VIII, section 7 of the state Constitution, which prohibits gifts of public funds or lending of credit and Article XI, section 14, prohibiting private use of public funds;

(f) That the public hospital district will retain control over district functions as required under chapter 70.44 RCW and other laws governing hospital districts;

(g) That the activities related to the acquisition process complied with chapters 42.17 and 42.32 RCW, governing disclosure of public records, and chapter 42.30 RCW, governing public meetings;

(h) That the acquisition complies with the requirements of RCW 70.44.300 relating to fair market value; and

(i) Other state laws affecting the proposed acquisition.

(2) The commissioners shall also determine whether the public hospital district should retain a right of first refusal to repurchase the assets by the public hospital district if the hospital is subsequently sold to, acquired by, or merged with another entity.

(3)(a) Prior to approving the acquisition of a district hospital, the board of commissioners of the hospital district shall obtain a written opinion from a qualified independent expert or the Washington state department of health as to whether or not the acquisition meets the standards set forth in RCW 70.45.080.

(b) Upon request, the hospital district and the person seeking to acquire its hospital shall provide the department or independent expert with any needed information and documents. The department shall charge the hospital district for any costs the department incurs in preparing an opinion under this section. The hospital district may recover from the acquiring person any costs it incurs in obtaining the opinion from either the department or the independent expert. The

opinion shall be delivered to the board of commissioners no later than ninety days after it is requested.

(c) Within ten working days after it receives the opinion, the board of commissioners shall publish notice of the opinion in at least one newspaper of general circulation within the hospital district, stating how a person may obtain a copy, and giving the time and location of the hearing required under (d) of this subsection. It shall make a copy of the report and the opinion available to anyone upon request.

(d) Within thirty days after it received the opinion, the board of commissioners shall hold a public hearing regarding the proposed acquisition. The board of commissioners may vote to approve the acquisition no sooner than thirty days following the public hearing.

(4)(a) For purposes of this section, "acquisition" means an acquisition by a person of any interest in a hospital owned by a public hospital district, whether by purchase, merger, lease, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of a hospital currently licensed and operating under RCW 70.41.090. Acquisition does not include an acquisition where the other party or parties to the acquisition are nonprofit corporations having a substantially similar charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include an acquisition where the other party is an organization that is a limited liability corporation, a partnership, or any other legal entity and the members, partners, or otherwise designated controlling parties of the organization are all nonprofit corporations having a charitable health care purpose, organizations exempt from federal income tax under section 501(c)(3) of the internal revenue code, or governmental entities. Acquisition does not include activities between two or more governmental organizations, including organizations acting pursuant to chapter 39.34 RCW, regardless of the type of organizational structure used by the governmental entities.

(b) For purposes of this subsection (4), "person" means an individual, a trust or estate, a partnership, a corporation including associations, a limited liability company, a joint stock company, or an insurance company. [1997 c 332 § 18.]

Severability—1997 c 332: See RCW 70.45.900.

70.44.320 Disposal of surplus personal property. The board of commissioners of any public hospital district may sell or otherwise dispose of surplus personal property of the district which the board has determined by resolution is no longer required for public hospital district purposes in such manner and upon such terms and conditions as the board in its discretion finds to be in the best interest of the district. [1982 c 84 § 4.]

70.44.350 Dividing a district. An existing public hospital district upon resolution of its board of commissioners may be divided into two new public hospital districts, in the manner provided in RCW 70.44.350 through 70.44.380, subject to the approval of the plan therefor by the superior court in the county where such district is located and by a majority of the voters voting on the proposition for such approval at a special election to be held in each of the proposed new dis-

tricts. The board of commissioners of an existing district shall by resolution or resolutions find that such division is in the public interest; adopt and approve a plan of division; authorize the filing of a petition in the superior court in the county in which the district is located to obtain court approval of the plan of division; request the calling of a special election to be held, following such court approval, for the purpose of submitting to the voters in each of the proposed new districts the proposition of whether the plan of division should be approved and carried out; and direct all officers and employees of the existing district to take whatever actions are reasonable and necessary in order to carry out the division, subject to the approval of the plan therefor by the court and the voters. [1982 c 84 § 5.]

70.44.360 Dividing a district—Plan. The plan of division authorized by RCW 70.44.350 shall include: Proposed names for the new districts; a description of the boundaries of the new districts, which boundaries shall follow insofar as reasonably possible the then-existing precinct boundaries and include all of the territory encompassed by the existing district; a division of all the assets of the existing district between the resulting new districts, including funds, rights, and property, both real and personal; the assumption of all the outstanding obligations of the existing district by the resulting new districts, including general obligation and revenue bonds, contracts, and any other liabilities or indebtedness; the establishing and constituting of new boards of three commissioners for each of the new districts, including fixing the boundaries of commissioner districts within such new districts following insofar as reasonably possible the then-existing precinct boundaries; and such other matters as the board of commissioners of the existing district may deem appropriate. Unless the plan of division provides otherwise, all the area and property of the existing district shall remain subject to the outstanding obligations of that district, and the boards of commissioners of the new districts shall make such levies or charges for services as may be necessary to pay such outstanding obligations in accordance with their terms from the sources originally pledged or otherwise liable for that purpose. [1982 c 84 § 6.]

70.44.370 Dividing a district—Petition to court, hearing, order. After adoption of a resolution approving the plan of division by the board of commissioners of an existing district pursuant to RCW 70.44.350 through 70.44.380, the district shall petition the superior court in the county where such district is located requesting court approval of the plan. The court shall conduct a hearing on the plan of division, after reasonable and proper notice of such hearing (including notice to bondholders) is given in the manner fixed and directed by such court. At the conclusion of the hearing, the court may enter its order approving the division of the existing district and of its assets and outstanding obligations in the manner provided by the plan after finding such division to be fair and equitable and in the public interest. [1982 c 84 § 7.]

70.44.380 Dividing a district—Election—Creation of new districts—Challenges. Following the entry of the court order pursuant to RCW 70.44.370, the county officer autho-

rized to call and conduct elections in the county in which the existing district is located shall call a special election as provided by the resolution of the board of commissioners of such district for the purpose of submitting to the voters in each of the proposed new districts the proposition of whether the plan of division should be approved and carried out. Notice of the election describing the boundaries of the proposed new districts and stating the objects of the election shall be given and the election conducted in accordance with the general election laws. The proposition expressed on the ballots at such election shall be substantially as follows:

"Shall the plan of division of public hospital district No., approved by the Superior Court on (insert date), be approved and carried out?

Yes

No

At such election three commissioners for each of the proposed new districts nominated by petition pursuant to RCW 54.12.010 shall be elected to hold office pursuant to RCW 70.44.040. If at such election a majority of the voters voting on the proposition in each of the proposed new districts shall vote in favor of the plan of division, the county canvassing board shall so declare in its canvass of the returns of such election and upon the filing of the certificate of such canvass: The division of the existing district shall be effective; such original district shall cease to exist; the creation of the two new public hospital districts shall be complete; all assets of the original district shall vest in and become the property of the new districts, respectively, pursuant to the plan of division; all the outstanding obligations of the original district shall be assumed by the new districts, respectively, pursuant to such plan; the commissioners of the original district shall cease to hold office; and the affairs of the new districts shall be governed by the newly elected commissioners of such respective new districts. Unless commenced within thirty days after the date of the filing of the certificate of the canvass of such election, no lawsuit whatever may be maintained challenging in any way the legal existence of the resulting new districts, the validity of the proceedings had for the organization and creation thereof, or the lawfulness of the plan of division. Upon the petition of either or both new districts, the superior court in the county where they are located may take whatever actions are reasonable and necessary to complete or confirm the carrying out of such plan. [1982 c 84 § 8.]

70.44.400 Withdrawal of territory from public hospital district. Territory within a public hospital district may be withdrawn therefrom in the same manner provided by law for withdrawal of territory from water-sewer districts, as provided by chapter 57.28 RCW. For purposes of conforming with such procedure, the public hospital district shall be deemed to be the water-sewer district and the public hospital board of commissioners shall be deemed to be the water-sewer district board of commissioners. [1999 c 153 § 65; 1984 c 100 § 1.]

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

70.44.450 Rural public hospital districts—Cooperative agreements and contracts. In addition to other powers

granted to public hospital districts by chapter 39.34 RCW, rural public hospital districts may enter into cooperative agreements and contracts with other rural public hospital districts in order to provide for the health care needs of the people served by the hospital districts. These agreements and contracts are specifically authorized to include:

(1) Allocation of health care services among the different facilities owned and operated by the districts;

(2) Combined purchases and allocations of medical equipment and technologies;

(3) Joint agreements and contracts for health care service delivery and payment with public and private entities; and

(4) Other cooperative arrangements consistent with the intent of chapter 161, Laws of 1992. The provisions of chapter 39.34 RCW shall apply to the development and implementation of the cooperative contracts and agreements. [1992 c 161 § 3.]

Intent—1992 c 161: "The legislature finds that maintaining the viability of health care service delivery in rural areas of Washington is a primary goal of state health policy. The legislature also finds that most hospitals located in rural Washington are operated by public hospital districts authorized under chapter 70.44 RCW and declares that it is not cost-effective, practical, or desirable to provide quality health and hospital care services in rural areas on a competitive basis because of limited patient volume and geographic isolation. It is the intent of this act to foster the development of cooperative and collaborative arrangements among rural public hospital districts by specifically authorizing cooperative agreements and contracts for these entities under the interlocal cooperation act." [1992 c 161 § 1.]

70.44.460 Rural public hospital district defined. Unless the context clearly requires otherwise, the definition in this section applies throughout RCW 70.44.450.

"Rural public hospital district" means a public hospital district authorized under chapter 70.44 RCW whose geographic boundaries do not include a city with a population greater than thirty thousand. [1992 c 161 § 2.]

Intent—1992 c 161: See note following RCW 70.44.450.

70.44.900 Severability—Construction—1945 c 264. Adjudication of invalidity of any section, clause or part of a section of this act [1945 c 264] shall not impair or otherwise affect the validity of the act as a whole or any other part thereof. The rule of strict construction shall have no application to this act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this act is intended. When this act comes in conflict with any provisions, limitation or restriction in any other law, this act shall govern and control. [1945 c 264 § 21; no RRS.]

70.44.901 Severability—Construction—1974 ex.s. c 165. If any section, clause, or other provision of this 1974 amendatory act, or its application to any person or circumstance, is held invalid, the remainder of such 1974 amendatory act, or the application of such section, clause, or provision to other persons or circumstances, shall not be affected. The rule of strict construction shall have no application to this 1974 amendatory act, but the same shall be liberally construed, in order to carry out the purposes and objects for which this 1974 amendatory act is intended. When this 1974 amendatory act comes in conflict with any provision, limitation, or restriction in any other law, this 1974 amendatory act shall govern and control. [1974 ex.s. c 165 § 6.]

70.44.902 Severability—1982 c 84. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 84 § 21.]

70.44.903 Savings—1982 c 84. All debts, contracts, and obligations made or incurred prior to June 10, 1982, by or in favor of any public hospital district, and all bonds, warrants, or other obligations issued by such district, and all other actions and proceedings relating thereto done or taken by such public hospital districts or by their respective officers within their authority are hereby declared to be legal and valid and of full force and effect from the date thereof. [1982 c 84 § 11.]

70.44.910 Construction—1945 c 264. This act [1945 c 264 § 22] shall not be deemed or construed to repeal or affect any existing act, or any part thereof, relating to the construction, operation and maintenance of public hospitals, but shall be supplemental thereto and concurrent therewith. [1945 c 264 § 22; no RRS.]

Chapter 70.45 RCW

ACQUISITION OF NONPROFIT HOSPITALS

Sections

| | |
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| 70.45.010 | Legislative findings. |
| 70.45.020 | Definitions. |
| 70.45.030 | Department approval required—Application—Fees. |
| 70.45.040 | Applications—Deficiencies—Public notice. |
| 70.45.050 | Public hearings. |
| 70.45.060 | Attorney general review and opinion—Department review and decision—Adjudicative proceedings. |
| 70.45.070 | Department review—Criteria to safeguard charitable assets. |
| 70.45.080 | Department review—Criteria for continued existence of accessible, affordable health care. |
| 70.45.090 | Approval of acquisition required—Injunctions. |
| 70.45.100 | Compliance—Department authority—Hearings—Revocation or suspension of hospital license—Referral to attorney general for action. |
| 70.45.110 | Authority of attorney general to ensure compliance. |
| 70.45.120 | Acquisitions completed before July 27, 1997, not subject to this chapter. |
| 70.45.130 | Common law and statutory authority of attorney general. |
| 70.45.140 | Rule-making and contracting authority. |
| 70.45.900 | Severability—1997 c 332. |

70.45.010 Legislative findings. The health of the people of our state is a most important public concern. The state has an interest in assuring the continued existence of accessible, affordable health care facilities that are responsive to the needs of the communities in which they exist. The state also has a responsibility to protect the public interest in nonprofit hospitals and to clarify the responsibilities of local public hospital district boards with respect to public hospital district assets by making certain that the charitable and public assets of those hospitals are managed prudently and safeguarded consistent with their mission under the laws governing nonprofit and municipal corporations. [1997 c 332 § 1.]

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

(2004 Ed.)

(1) "Department" means the Washington state department of health.

(2) "Hospital" means any entity that is: (a) Defined as a hospital in RCW 70.41.020 and is required to obtain a license under RCW 70.41.090; or (b) a psychiatric hospital required to obtain a license under chapter 71.12 RCW.

(3) "Acquisition" means an acquisition by a person of an interest in a nonprofit hospital, whether by purchase, merger, lease, gift, joint venture, or otherwise, that results in a change of ownership or control of twenty percent or more of the assets of the hospital, or that results in the acquiring person holding or controlling fifty percent or more of the assets of the hospital, but acquisition does not include an acquisition if the acquiring person: (a) Is a nonprofit corporation having a substantially similar charitable health care purpose as the nonprofit corporation from whom the hospital is being acquired, or is a government entity; (b) is exempt from federal income tax under section 501(c)(3) of the internal revenue code or as a government entity; and (c) will maintain representation from the affected community on the local board of the hospital.

(4) "Nonprofit hospital" means a hospital owned by a nonprofit corporation organized under Title 24 RCW.

(5) "Person" means an individual, a trust or estate, a partnership, a corporation including associations, limited liability companies, joint stock companies, and insurance companies. [1997 c 332 § 2.]

70.45.030 Department approval required—Application—Fees. (1) A person may not engage in the acquisition of a nonprofit hospital without first having applied for and received the approval of the department under this chapter.

(2) An application must be submitted to the department on forms provided by the department, and at a minimum must include: The name of the hospital being acquired, the name of the acquiring person or other parties to the acquisition, the acquisition price, a copy of the acquisition agreement, a financial and economic analysis and report from an independent expert or consultant of the effect of the acquisition under the criteria in RCW 70.45.070, and all other related documents. The applications and all related documents are considered public records for purposes of chapter 42.17 RCW.

(3) The department shall charge an applicant fees sufficient to cover the costs of implementing this chapter. The fees must include the cost of the attorney general's opinion under RCW 70.45.060. The department shall transfer this portion of the fee, upon receipt, to the attorney general. [1997 c 332 § 3.]

70.45.040 Applications—Deficiencies—Public notice. (1) The department, in consultation with the attorney general, shall determine if the application is complete for the purposes of review. The department may find that an application is incomplete if a question on the application form has not been answered in whole or in part, or has been answered in a manner that does not fairly meet the question addressed, or if the application does not include attachments of supporting documents as required by RCW 70.45.030. If the department determines that an application is incomplete, it shall notify the applicant within fifteen working days after the date

the application was received stating the reasons for its determination of incompleteness, with reference to the particular questions for which a deficiency is noted.

(2) Within five working days after receipt of a completed application, the department shall publish notice of the application in a newspaper of general circulation in the county or counties where the hospital is located and shall notify by first class United States mail, electronic mail, or facsimile transmission, any person who has requested notice of the filing of such applications. The notice must state that an application has been received, state the names of the parties to the agreement, describe the contents of the application, and state the date by which a person may submit written comments about the application to the department. [1997 c 332 § 4.]

70.45.050 Public hearings. During the course of review under this chapter, the department shall conduct one or more public hearings, at least one of which must be in the county where the hospital to be acquired is located. At the hearings, anyone may file written comments and exhibits or appear and make a statement. The department may subpoena additional information or witnesses, require and administer oaths, require sworn statements, take depositions, and use related discovery procedures for purposes of the hearing and at any time prior to making a decision on the application.

A hearing must be held not later than forty-five days after receipt of a completed application. At least ten days' public notice must be given before the holding of a hearing. [1997 c 332 § 5.]

70.45.060 Attorney general review and opinion—Department review and decision—Adjudicative proceedings. (1) The department shall provide the attorney general with a copy of a completed application upon receiving it. The attorney general shall review the completed application, and within forty-five days of the first public hearing held under RCW 70.45.050 shall provide a written opinion to the department as to whether or not the acquisition meets the requirements for approval in RCW 70.45.070.

(2) The department shall review the completed application to determine whether or not the acquisition meets the requirements for approval in RCW 70.45.070 and 70.45.080. Within thirty days after receiving the written opinion of the attorney general under subsection (1) of this section, the department shall:

(a) Approve the acquisition, with or without any specific modifications or conditions; or

(b) Disapprove the acquisition.

(3) The department may not make its decision subject to any condition not directly related to requirements in RCW 70.45.070 or 70.45.080, and any condition or modification must bear a direct and rational relationship to the application under review.

(4) A person engaged in an acquisition and affected by a final decision of the department has the right to an adjudicative proceeding under chapter 34.05 RCW. The opinion of the attorney general provided under subsection (1) of this section may not constitute a final decision for purposes of review.

(5) The department or the attorney general may extend, by not more than thirty days, any deadline established under this chapter one time during consideration of any application, for good cause. [1997 c 332 § 6.]

70.45.070 Department review—Criteria to safeguard charitable assets. The department shall only approve an application if the parties to the acquisition have taken the proper steps to safeguard the value of charitable assets and ensure that any proceeds from the acquisition are used for appropriate charitable health purposes. To this end, the department may not approve an application unless, at a minimum, it determines that:

(1) The acquisition is permitted under chapter 24.03 RCW, the Washington nonprofit corporation act, and other laws governing nonprofit entities, trusts, or charities;

(2) The nonprofit corporation that owns the hospital being acquired has exercised due diligence in authorizing the acquisition, selecting the acquiring person, and negotiating the terms and conditions of the acquisition;

(3) The procedures used by the nonprofit corporation's board of trustees and officers in making its decision fulfilled their fiduciary duties, that the board and officers were sufficiently informed about the proposed acquisition and possible alternatives, and that they used appropriate expert assistance;

(4) No conflict of interest exists related to the acquisition, including, but not limited to, conflicts of interest related to board members of, executives of, and experts retained by the nonprofit corporation, acquiring person, or other parties to the acquisition;

(5) The nonprofit corporation will receive fair market value for its assets. The attorney general or the department may employ, at the expense of the acquiring person, reasonably necessary expert assistance in making this determination. This expense must be in addition to the fees charged under RCW 70.45.030;

(6) Charitable funds will not be placed at unreasonable risk, if the acquisition is financed in part by the nonprofit corporation;

(7) Any management contract under the acquisition will be for fair market value;

(8) The proceeds from the acquisition will be controlled as charitable funds independently of the acquiring person or parties to the acquisition, and will be used for charitable health purposes consistent with the nonprofit corporation's original purpose, including providing health care to the disadvantaged, the uninsured, and the underinsured and providing benefits to promote improved health in the affected community;

(9) Any charitable entity established to hold the proceeds of the acquisition will be broadly based in and representative of the community where the hospital to be acquired is located, taking into consideration the structure and governance of such entity; and

(10) A right of first refusal to repurchase the assets by a successor nonprofit corporation or foundation has been retained if the hospital is subsequently sold to, acquired by, or merged with another entity. [1997 c 332 § 7.]

70.45.080 Department review—Criteria for continued existence of accessible, affordable health care. The department shall only approve an application if the acquisition in question will not detrimentally affect the continued existence of accessible, affordable health care that is responsive to the needs of the community in which the hospital to be acquired is located. To this end, the department shall not approve an application unless, at a minimum, it determines that:

(1) Sufficient safeguards are included to assure the affected community continued access to affordable care, and that alternative sources of care are available in the community should the acquisition result in a reduction or elimination of particular health services;

(2) The acquisition will not result in the revocation of hospital privileges;

(3) Sufficient safeguards are included to maintain appropriate capacity for health science research and health care provider education;

(4) The acquiring person and parties to the acquisition are committed to providing health care to the disadvantaged, the uninsured, and the underinsured and to providing benefits to promote improved health in the affected community. Activities and funding provided under RCW 70.45.070(8) may be considered in evaluating compliance with this commitment; and

(5) Sufficient safeguards are included to avoid conflict of interest in patient referral. [1997 c 332 § 8.]

70.45.090 Approval of acquisition required—Injunctions. (1) The secretary of state may not accept any forms or documents in connection with any acquisition of a nonprofit hospital until the acquisition has been approved by the department under this chapter.

(2) The attorney general may seek an injunction to prevent any acquisition not approved by the department under this chapter. [1997 c 332 § 9.]

70.45.100 Compliance—Department authority—Hearings—Revocation or suspension of hospital license—Referral to attorney general for action. The department shall require periodic reports from the nonprofit corporation or its successor nonprofit corporation or foundation and from the acquiring person or other parties to the acquisition to ensure compliance with commitments made. The department may subpoena information and documents and may conduct on-site compliance audits at the acquiring person's expense.

If the department receives information indicating that the acquiring person is not fulfilling commitments to the affected community under RCW 70.45.080, the department shall hold a hearing upon ten days' notice to the affected parties. If after the hearing the department determines that the information is true, it may revoke or suspend the hospital license issued to the acquiring person pursuant to the procedure established under RCW 70.41.130, refer the matter to the attorney general for appropriate action, or both. The attorney general may seek a court order compelling the acquiring person to fulfill its commitments under RCW 70.45.080. [1997 c 332 § 10.]

70.45.110 Authority of attorney general to ensure compliance. The attorney general has the authority to ensure

(2004 Ed.)

compliance with commitments that inure to the public interest. [1997 c 332 § 11.]

70.45.120 Acquisitions completed before July 27, 1997, not subject to this chapter. An acquisition of a hospital completed before July 27, 1997, and an acquisition in which an application for a certificate of need under chapter 70.38 RCW has been granted by the department before July 27, 1997, is not subject to this chapter. [1997 c 332 § 12.]

70.45.130 Common law and statutory authority of attorney general. No provision of this chapter derogates from the common law or statutory authority of the attorney general. [1997 c 332 § 13.]

70.45.140 Rule-making and contracting authority. The department may adopt rules necessary to implement this chapter and may contract with and provide reasonable reimbursement to qualified persons to assist in determining whether the requirements of RCW 70.45.070 and 70.45.080 have been met. [1997 c 332 § 14.]

70.45.900 Severability—1997 c 332. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 332 § 19.]

Chapter 70.46 RCW HEALTH DISTRICTS

Sections

| | |
|-----------|---|
| 70.46.020 | Districts of two or more counties—Health board—Membership—Chair. |
| 70.46.031 | Districts of one county—Health board—Membership. |
| 70.46.060 | District health board—Powers and duties. |
| 70.46.080 | District health funds. |
| 70.46.085 | County to bear expense of providing public health services. |
| 70.46.090 | Withdrawal of county. |
| 70.46.100 | Power to acquire, maintain, or dispose of property—Contracts. |
| 70.46.110 | Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. |
| 70.46.120 | License or permit fees. |
| 70.46.130 | Contracts for sale or purchase of health services authorized. |

Local health departments, provisions relating to health districts: Chapter 70.05 RCW.

70.46.020 Districts of two or more counties—Health board—Membership—Chair. Health districts consisting of two or more counties may be created whenever two or more boards of county commissioners shall by resolution establish a district for such purpose. Such a district shall consist of all the area of the combined counties. The district board of health of such a district shall consist of not less than five members for districts of two counties and seven members for districts of more than two counties, including two representatives from each county who are members of the board of county commissioners and who are appointed by the board of county commissioners of each county within the district, and shall have a jurisdiction coextensive with the combined boundaries. The boards of county commissioners may by resolution or ordinance provide for elected officials from

cities and towns and persons other than elected officials as members of the district board of health so long as persons other than elected officials do not constitute a majority. A resolution or ordinance adopted under this section must specify the provisions for the appointment, term, and compensation, or reimbursement of expenses. Any multicounty health district existing on *the effective date of this act shall continue in existence unless and until changed by affirmative action of all boards of county commissioners or one or more counties withdraws [withdraw] pursuant to RCW 70.46.090.

At the first meeting of a district board of health the members shall elect a chair to serve for a period of one year. [1995 c 43 § 10; 1993 c 492 § 247; 1967 ex.s. c 51 § 6; 1945 c 183 § 2; Rem. Supp. 1945 § 6099-11.]

***Reviser's note:** For "the effective date of this act" see note following RCW 70.05.030.

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.031 Districts of one county—Health board—Membership. A health district to consist of one county may be created whenever the county legislative authority of the county shall pass a resolution or ordinance to organize such a health district under chapter 70.05 RCW and this chapter.

The resolution or ordinance may specify the membership, representation on the district health board, or other matters relative to the formation or operation of the health district. The county legislative authority may appoint elected officials from cities and towns and persons other than elected officials as members of the health district board so long as persons other than elected officials do not constitute a majority.

Any single county health district existing on *the effective date of this act shall continue in existence unless and until changed by affirmative action of the county legislative authority. [1995 c 43 § 11.]

***Reviser's note:** For "the effective date of this act" see note following RCW 70.05.030.

Effective dates—Contingent effective dates—1995 c 43: See note following RCW 70.05.030.

Severability—1995 c 43: See note following RCW 43.70.570.

70.46.060 District health board—Powers and duties. The district board of health shall constitute the local board of health for all the territory included in the health district, and shall supersede and exercise all the powers and perform all the duties by law vested in the county board of health of any county included in the health district. [1993 c 492 § 248; 1967 ex.s. c 51 § 11; 1945 c 183 § 6; Rem. Supp. 1945 § 6099-15.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.080 District health funds. Each health district shall establish a fund to be designated as the "district health fund", in which shall be placed all sums received by the district from any source, and out of which shall be expended all sums disbursed by the district. In a district composed of more than one county the county treasurer of the county having the largest population shall be the custodian of the fund, and the county auditor of said county shall keep the record of the receipts and disbursements, and shall draw and the county treasurer shall honor and pay all warrants, which shall be approved before issuance and payment as directed by the board.

Each county which is included in the district shall contribute such sums towards the expense for maintaining and operating the district as shall be agreed upon between it and the local board of health in accordance with guidelines established by the state board of health. [1993 c 492 § 249; 1971 ex.s. c 85 § 10; 1967 ex.s. c 51 § 19; 1945 c 183 § 8; Rem. Supp. 1945 § 6099-17.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.085 County to bear expense of providing public health services. The expense of providing public health services shall be borne by each county within the health district. [1993 c 492 § 250; 1967 ex.s. c 51 § 20.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

Expenses of enforcing health laws: RCW 70.05.130.

70.46.090 Withdrawal of county. Any county may withdraw from membership in said health district any time after it has been within the district for a period of two years, but no withdrawal shall be effective except at the end of the calendar year in which the county gives at least six months' notice of its intention to withdraw at the end of the calendar year. No withdrawal shall entitle any member to a refund of any moneys paid to the district nor relieve it of any obligations to pay to the district all sums for which it obligated itself due and owing by it to the district for the year at the end of which the withdrawal is to be effective. Any county which withdraws from membership in said health district shall immediately establish a health department or provide health services which shall meet the standards for health services promulgated by the state board of health. No local health department may be deemed to provide adequate public health services unless there is at least one full time professionally trained and qualified physician as set forth in RCW 70.05.050. [1993 c 492 § 251; 1967 ex.s. c 51 § 21; 1945 c 183 § 9; Rem. Supp. 1945 § 6099-18.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1967 ex.s. c 51: See note following RCW 70.05.010.

70.46.100 Power to acquire, maintain, or dispose of property—Contracts. In addition to all other powers and duties, a health district shall have the power to own, construct, purchase, lease, add to, and maintain any real and personal property or property rights necessary for the conduct of the affairs of the district. A health district may sell, lease, convey or otherwise dispose of any district real or personal property no longer necessary for the conduct of the affairs of the district. A health district may enter into contracts to carry out the provisions of this section. [1957 c 100 § 2.]

70.46.110 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

70.46.120 License or permit fees. In addition to all other powers and duties, health districts shall have the power to charge fees in connection with the issuance or renewal of a license or permit required by law: PROVIDED, That the fees charged shall not exceed the actual cost involved in issuing or renewing the license or permit. [1993 c 492 § 252; 1963 c 121 § 1.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.46.130 Contracts for sale or purchase of health services authorized. See RCW 70.05.150.

Chapter 70.47 RCW

BASIC HEALTH PLAN—HEALTH CARE ACCESS ACT

Sections

| | |
|-----------|--|
| 70.47.002 | Intent—2002 c 2 (Initiative Measure No. 773). |
| 70.47.005 | Transfer power, duties, and functions to Washington state health care authority. |
| 70.47.010 | Legislative findings—Purpose—Administrator and department of social and health services to coordinate eligibility. |
| 70.47.015 | Expanded enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for agents and brokers. |
| 70.47.020 | Definitions. |
| 70.47.030 | Basic health plan trust account—Basic health plan subscription account. |
| 70.47.040 | Basic health plan—Health care authority head to be administrator—Joint operations—Technical advisory committee. |
| 70.47.050 | Rules. |
| 70.47.060 | Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment. |
| 70.47.070 | Benefits from other coverages not reduced. |
| 70.47.080 | Enrollment of applicants—Participation limitations. |
| 70.47.090 | Removal of enrollees. |
| 70.47.100 | Participation by a managed health care system. |
| 70.47.110 | Enrollment of medical assistance recipients. |
| 70.47.115 | Enrollment of persons in timber impact areas. |
| 70.47.120 | Administrator—Contracts for services. |
| 70.47.130 | Exemption from insurance code. |
| 70.47.140 | Reservation of legislative power. |
| 70.47.150 | Public disclosure. |
| 70.47.160 | Right of individuals to receive services—Right of providers, carriers, and facilities to refuse to participate in or pay for services for reason of conscience or religion—Requirements. |
| 70.47.900 | Short title. |
| 70.47.901 | Severability—1987 1st ex.s. c 5. |

(2004 Ed.)

70.47.002 Intent—2002 c 2 (Initiative Measure No. 773). It is the intent of the people to improve the health of low-income children and adults by expanding access to basic health care and by reducing tobacco-related and other diseases and illnesses that disproportionately affect low-income persons. [2002 c 2 § 1 (Initiative Measure No. 773, approved November 6, 2001).]

70.47.005 Transfer power, duties, and functions to Washington state health care authority. The powers, duties, and functions of the Washington basic health plan are hereby transferred to the Washington state health care authority. All references to the administrator of the Washington basic health plan in the Revised Code of Washington shall be construed to mean the administrator of the Washington state health care authority. [1993 c 492 § 201.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.010 Legislative findings—Purpose—Administrator and department of social and health services to coordinate eligibility. (1)(a) The legislature finds that limitations on access to health care services for enrollees in the state, such as in rural and underserved areas, are particularly challenging for the basic health plan. Statutory restrictions have reduced the options available to the administrator to address the access needs of basic health plan enrollees. It is the intent of the legislature to authorize the administrator to develop alternative purchasing strategies to ensure access to basic health plan enrollees in all areas of the state, including: (i) The use of differential rating for managed health care systems based on geographic differences in costs; and (ii) limited use of self-insurance in areas where adequate access cannot be assured through other options.

(b) In developing alternative purchasing strategies to address health care access needs, the administrator shall consult with interested persons including health carriers, health care providers, and health facilities, and with other appropriate state agencies including the office of the insurance commissioner and the office of community and rural health. In pursuing such alternatives, the administrator shall continue to give priority to prepaid managed care as the preferred method of assuring access to basic health plan enrollees followed, in priority order, by preferred providers, fee for service, and self-funding.

(2) The legislature further finds that:

(a) A significant percentage of the population of this state does not have reasonably available insurance or other coverage of the costs of necessary basic health care services;

(b) This lack of basic health care coverage is detrimental to the health of the individuals lacking coverage and to the public welfare, and results in substantial expenditures for emergency and remedial health care, often at the expense of health care providers, health care facilities, and all purchasers of health care, including the state; and

(c) The use of managed health care systems has significant potential to reduce the growth of health care costs incurred by the people of this state generally, and by low-

income pregnant women, and at-risk children and adolescents who need greater access to managed health care.

(3) The purpose of this chapter is to provide or make more readily available necessary basic health care services in an appropriate setting to working persons and others who lack coverage, at a cost to these persons that does not create barriers to the utilization of necessary health care services. To that end, this chapter establishes a program to be made available to those residents not eligible for medicare who share in a portion of the cost or who pay the full cost of receiving basic health care services from a managed health care system.

(4) It is not the intent of this chapter to provide health care services for those persons who are presently covered through private employer-based health plans, nor to replace employer-based health plans. However, the legislature recognizes that cost-effective and affordable health plans may not always be available to small business employers. Further, it is the intent of the legislature to expand, wherever possible, the availability of private health care coverage and to discourage the decline of employer-based coverage.

(5)(a) It is the purpose of this chapter to acknowledge the initial success of this program that has (i) assisted thousands of families in their search for affordable health care; (ii) demonstrated that low-income, uninsured families are willing to pay for their own health care coverage to the extent of their ability to pay; and (iii) proved that local health care providers are willing to enter into a public-private partnership as a managed care system.

(b) As a consequence, the legislature intends to extend an option to enroll to certain citizens above two hundred percent of the federal poverty guidelines within the state who reside in communities where the plan is operational and who collectively or individually wish to exercise the opportunity to purchase health care coverage through the basic health plan if the purchase is done at no cost to the state. It is also the intent of the legislature to allow employers and other financial sponsors to financially assist such individuals to purchase health care through the program so long as such purchase does not result in a lower standard of coverage for employees.

(c) The legislature intends that, to the extent of available funds, the program be available throughout Washington state to subsidized and nonsubsidized enrollees. It is also the intent of the legislature to enroll subsidized enrollees first, to the maximum extent feasible.

(d) The legislature directs that the basic health plan administrator identify enrollees who are likely to be eligible for medical assistance and assist these individuals in applying for and receiving medical assistance. The administrator and the department of social and health services shall implement a seamless system to coordinate eligibility determinations and benefit coverage for enrollees of the basic health plan and medical assistance recipients. [2000 c 79 § 42; 1993 c 492 § 208; 1987 1st ex.s. c 5 § 3.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.015 Expanded enrollment—Findings—Intent—Enrollee premium share—Expedited application and enrollment process—Commission for agents and brokers. (1) The legislature finds that the basic health plan has been an effective program in providing health coverage for uninsured residents. Further, since 1993, substantial amounts of public funds have been allocated for subsidized basic health plan enrollment.

(2) It is the intent of the legislature that the basic health plan enrollment be expanded expeditiously, consistent with funds available in the health services account, with the goal of two hundred thousand adult subsidized basic health plan enrollees and one hundred thirty thousand children covered through expanded medical assistance services by June 30, 1997, with the priority of providing needed health services to children in conjunction with other public programs.

(3) Effective January 1, 1996, basic health plan enrollees whose income is less than one hundred twenty-five percent of the federal poverty level shall pay at least a ten-dollar premium share.

(4) No later than July 1, 1996, the administrator shall implement procedures whereby hospitals licensed under chapters 70.41 and 71.12 RCW, health carrier, rural health care facilities regulated under chapter 70.175 RCW, and community and migrant health centers funded under RCW 41.05.220, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process.

(5) No later than July 1, 1996, the administrator shall implement procedures whereby health insurance agents and brokers, licensed under chapter 48.17 RCW, may expeditiously assist patients and their families in applying for basic health plan or medical assistance coverage, and in submitting such applications directly to the health care authority or the department of social and health services. Brokers and agents may receive a commission for each individual sale of the basic health plan to anyone not signed up within the previous five years and a commission for each group sale of the basic health plan, if funding for this purpose is provided in a specific appropriation to the health care authority. No commission shall be provided upon a renewal. Commissions shall be determined based on the estimated annual cost of the basic health plan, however, commissions shall not result in a reduction in the premium amount paid to health carriers. For purposes of this section "health carrier" is as defined in RCW 48.43.005. The administrator may establish: (a) Minimum educational requirements that must be completed by the agents or brokers; (b) an appointment process for agents or brokers marketing the basic health plan; or (c) standards for revocation of the appointment of an agent or broker to submit applications for cause, including untrustworthy or incompetent conduct or harm to the public. The health care authority and the department of social and health services shall make every effort to simplify and expedite the application and enrollment process. [1997 c 337 § 1; 1995 c 265 § 1.]

Effective date—1997 c 337 §§ 1 and 2: "Sections 1 and 2 of this act are necessary for the immediate preservation of the public peace, health, or

safety, or support of the state government and its existing public institutions, and take effect July 1, 1997." [1997 c 337 § 9.]

Captions not law—1995 c 265: "Captions as used in this act constitute no part of the law." [1995 c 265 § 29.]

Effective date—1995 c 265: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995, except that sections 13 through 18 of this act shall take effect January 1, 1996." [1995 c 265 § 30.]

Savings—1995 c 265: "This act shall not be construed as affecting any existing right acquired or liability or obligation incurred under the sections amended or repealed in this act or under any rule or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1995 c 265 § 31.]

Severability—1995 c 265: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 265 § 32.]

70.47.020 Definitions. (*Effective until January 1, 2005.*) As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(4) "Subsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and (e) who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual, or an individual's spouse or dependent children, who meets the requirements in (a) through (c) and (e) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(2004 Ed.)

(5) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) who chooses to obtain basic health care coverage from a particular managed health care system; and (e) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(6) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(7) "Premium" means a periodic payment, based upon gross family income which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee or a non-subsidized enrollee.

(8) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care system, that is based upon the enrollment of subsidized and nonsubsidized enrollees in the plan and in that system. [2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5. Prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Effective date—1995 c 266: See note following RCW 70.47.060.

Effective date—1995 c 2: See note following RCW 43.72.090.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.020 Definitions. (*Effective January 1, 2005.*) As used in this chapter:

(1) "Washington basic health plan" or "plan" means the system of enrollment and payment for basic health care services, administered by the plan administrator through participating managed health care systems, created by this chapter.

(2) "Administrator" means the Washington basic health plan administrator, who also holds the position of administrator of the Washington state health care authority.

(3) "Health coverage tax credit program" means the program created by the Trade Act of 2002 (P.L. 107-210) that provides a federal tax credit that subsidizes private health insurance coverage for displaced workers certified to receive certain trade adjustment assistance benefits and for individuals receiving benefits from the pension benefit guaranty corporation.

(4) "Health coverage tax credit eligible enrollee" means individual workers and their qualified family members who lose their jobs due to the effects of international trade and are eligible for certain trade adjustment assistance benefits; or are eligible for benefits under the alternative trade adjustment assistance program; or are people who receive benefits from

the pension benefit guaranty corporation and are at least fifty-five years old.

(5) "Managed health care system" means: (a) Any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, or any combination thereof, that provides directly or by contract basic health care services, as defined by the administrator and rendered by duly licensed providers, to a defined patient population enrolled in the plan and in the managed health care system; or (b) a self-funded or self-insured method of providing insurance coverage to subsidized enrollees provided under RCW 41.05.140 and subject to the limitations under RCW 70.47.100(7).

(6) "Subsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) whose gross family income at the time of enrollment does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; and (e) who chooses to obtain basic health care coverage from a particular managed health care system in return for periodic payments to the plan. To the extent that state funds are specifically appropriated for this purpose, with a corresponding federal match, "subsidized enrollee" also means an individual, or an individual's spouse or dependent children, who meets the requirements in (a) through (c) and (e) of this subsection and whose gross family income at the time of enrollment is more than two hundred percent, but less than two hundred fifty-one percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services.

(7) "Nonsubsidized enrollee" means an individual, or an individual plus the individual's spouse or dependent children: (a) Who is not eligible for medicare; (b) who is not confined or residing in a government-operated institution, unless he or she meets eligibility criteria adopted by the administrator; (c) who resides in an area of the state served by a managed health care system participating in the plan; (d) who chooses to obtain basic health care coverage from a particular managed health care system; and (e) who pays or on whose behalf is paid the full costs for participation in the plan, without any subsidy from the plan.

(8) "Subsidy" means the difference between the amount of periodic payment the administrator makes to a managed health care system on behalf of a subsidized enrollee plus the administrative cost to the plan of providing the plan to that subsidized enrollee, and the amount determined to be the subsidized enrollee's responsibility under RCW 70.47.060(2).

(9) "Premium" means a periodic payment, based upon gross family income which an individual, their employer or another financial sponsor makes to the plan as consideration for enrollment in the plan as a subsidized enrollee, a nonsubsidized enrollee, or a health coverage tax credit eligible enrollee.

(10) "Rate" means the amount, negotiated by the administrator with and paid to a participating managed health care

system, that is based upon the enrollment of subsidized, non-subsidized, and health coverage tax credit eligible enrollees in the plan and in that system. [2004 c 192 § 1; 2000 c 79 § 43; 1997 c 335 § 1; 1997 c 245 § 5. Prior: 1995 c 266 § 2; 1995 c 2 § 3; 1994 c 309 § 4; 1993 c 492 § 209; 1987 1st ex.s. c 5 § 4.]

Effective date—2004 c 192: "This act takes effect January 1, 2005." [2004 c 192 § 6.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Effective date—1995 c 266: See note following RCW 70.47.060.

Effective date—1995 c 2: See note following RCW 43.72.090.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.030 Basic health plan trust account—Basic health plan subscription account. (*Effective until January 1, 2005.*)

(1) The basic health plan trust account is hereby established in the state treasury. Any nongeneral fund-state funds collected for this program shall be deposited in the basic health plan trust account and may be expended without further appropriation. Moneys in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of enrollees in the plan and payment of costs of administering the plan.

During the 1995-97 fiscal biennium, the legislature may transfer funds from the basic health plan trust account to the state general fund.

(2) The basic health plan subscription account is created in the custody of the state treasurer. All receipts from amounts due from or on behalf of nonsubsidized enrollees shall be deposited into the account. Funds in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of nonsubsidized enrollees in the plan and payment of costs of administering the plan. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The administrator shall take every precaution to see that none of the funds in the separate accounts created in this section or that any premiums paid either by subsidized or nonsubsidized enrollees are commingled in any way, except that the administrator may combine funds designated for administration of the plan into a single administrative account. [1995 2nd sp.s. c 18 § 913; 1993 c 492 § 210; 1992 c 232 § 907. Prior: 1991 sp.s. c 13 § 68; 1991 sp.s. c 4 § 1; 1987 1st ex.s. c 5 § 5.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1992 c 232: See note following RCW 43.33A.180.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1991 sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state

government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 4 § 4.]

70.47.030 Basic health plan trust account—Basic health plan subscription account. (*Effective January 1, 2005.*) (1) The basic health plan trust account is hereby established in the state treasury. Any nongeneral fund-state funds collected for this program shall be deposited in the basic health plan trust account and may be expended without further appropriation. Moneys in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of enrollees in the plan and payment of costs of administering the plan.

During the 1995-97 fiscal biennium, the legislature may transfer funds from the basic health plan trust account to the state general fund.

(2) The basic health plan subscription account is created in the custody of the state treasurer. All receipts from amounts due from or on behalf of nonsubsidized enrollees and health coverage tax credit eligible enrollees shall be deposited into the account. Funds in the account shall be used exclusively for the purposes of this chapter, including payments to participating managed health care systems on behalf of nonsubsidized enrollees and health coverage tax credit eligible enrollees in the plan and payment of costs of administering the plan. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(3) The administrator shall take every precaution to see that none of the funds in the separate accounts created in this section or that any premiums paid either by subsidized or nonsubsidized enrollees are commingled in any way, except that the administrator may combine funds designated for administration of the plan into a single administrative account. [2004 c 192 § 2; 1995 2nd sp.s. c 18 § 913; 1993 c 492 § 210; 1992 c 232 § 907. Prior: 1991 sp.s. c 13 § 68; 1991 sp.s. c 4 § 1; 1987 1st ex.s. c 5 § 5.]

Effective date—2004 c 192: See note following RCW 70.47.020.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1992 c 232: See note following RCW 43.33A.180.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1991 sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 4 § 4.]

70.47.040 Basic health plan—Health care authority head to be administrator—Joint operations—Technical advisory committee. (1) The Washington basic health plan is created as a program within the Washington state health care authority. The administrative head and appointing authority of the plan shall be the administrator of the Washington state health care authority. The administrator shall appoint a medical director. The medical director and up to

(2004 Ed.)

five other employees of the plan shall be exempt from the civil service law, chapter 41.06 RCW.

(2) The administrator shall employ such other staff as are necessary to fulfill the responsibilities and duties of the administrator, such staff to be subject to the civil service law, chapter 41.06 RCW. In addition, the administrator may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise. Any such contractor or consultant shall be prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the plan. The administrator may call upon other agencies of the state to provide available information as necessary to assist the administrator in meeting its responsibilities under this chapter, which information shall be supplied as promptly as circumstances permit.

(3) The administrator may appoint such technical or advisory committees as he or she deems necessary. The administrator shall appoint a standing technical advisory committee that is representative of health care professionals, health care providers, and those directly involved in the purchase, provision, or delivery of health care services, as well as consumers and those knowledgeable of the ethical issues involved with health care public policy. Individuals appointed to any technical or other advisory committee shall serve without compensation for their services as members, but may be reimbursed for their travel expenses pursuant to RCW 43.03.050 and 43.03.060.

(4) The administrator may apply for, receive, and accept grants, gifts, and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects relating to health care costs and access to health care.

(5) Whenever feasible, the administrator shall reduce the administrative cost of operating the program by adopting joint policies or procedures applicable to both the basic health plan and employee health plans. [1993 c 492 § 211; 1987 1st ex.s. c 5 § 6.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.47.050 Rules. The administrator may promulgate and adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1987 1st ex.s. c 5 § 7.]

70.47.060 Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment. (*Effective until January 1, 2005.*) The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health

plan services chemical dependency services, mental health services and organ transplant services; however, no one service or any combination of these three services shall increase the actuarial value of the basic health plan benefits by more than five percent excluding inflation, as determined by the office of financial management. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.47.030, and such other factors as the administrator deems appropriate.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (9) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (10) of this section.

(b) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(c) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator.

(d) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 2001, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(3) To design and implement a structure of enrollee cost-sharing due a managed health care system from subsidized and nonsubsidized enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing

mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(4) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists.

(5) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(6) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(7) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan for either subsidized enrollees, or nonsubsidized enrollees, or both. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state. Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(8) To receive periodic premiums from or on behalf of subsidized and nonsubsidized enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(9) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized or nonsubsidized enrollees, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145 shall not be counted toward a family's current gross family income for the purposes of this chapter. When an enrollee fails to report income or income changes accurately, the administrator shall have the authority either to bill the enrollee for the amounts overpaid by the state or to impose civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incor-

rectly reporting income. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(10) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(11) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same or actuarially equivalent for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(12) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(2004 Ed.)

(13) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(14) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(15) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(16) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

(17) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool. [2001 c 196 § 13; 2000 c 79 § 34. Prior: 1998 c 314 § 17; 1998 c 148 § 1; prior: 1997 c 337 § 2; 1997 c 335 § 2; 1997 c 245 § 6; 1997 c 231 § 206; prior: 1995 c 266 § 1; 1995 c 2 § 4; 1994 c 309 § 5; 1993 c 492 § 212; 1992 c 232 § 908; prior: 1991 sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Effective date—1997 c 337 §§ 1 and 2: See note following RCW 70.47.015.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Effective date—1995 c 266: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 266 § 5.]

Effective date—1995 c 2: See note following RCW 43.72.090.

Contingency—1994 c 309 §§ 5 and 6: "If a court in a permanent injunction, permanent order, or final decision determines that the amendments made by sections 5 and 6, chapter 309, Laws of 1994, must be submitted to the people for their adoption and ratification, or rejection, as a result of section 13, chapter 2, Laws of 1994, the amendments made by sections 5 and 6, chapter 309, Laws of 1994, shall be null and void." [1994 c 309 § 7.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1992 c 232: See note following RCW 43.33A.180.

Effective date—1991 sp.s. c 4: See note following RCW 70.47.030.

70.47.060 Powers and duties of administrator—Schedule of services—Premiums, copayments, subsidies—Enrollment. (*Effective January 1, 2005.*) The administrator has the following powers and duties:

(1) To design and from time to time revise a schedule of covered basic health care services, including physician services, inpatient and outpatient hospital services, prescription drugs and medications, and other services that may be necessary for basic health care. In addition, the administrator may, to the extent that funds are available, offer as basic health plan services chemical dependency services, mental health services and organ transplant services; however, no one service or any combination of these three services shall increase the actuarial value of the basic health plan benefits by more than five percent excluding inflation, as determined by the

office of financial management. All subsidized and nonsubsidized enrollees in any participating managed health care system under the Washington basic health plan shall be entitled to receive covered basic health care services in return for premium payments to the plan. The schedule of services shall emphasize proven preventive and primary health care and shall include all services necessary for prenatal, postnatal, and well-child care. However, with respect to coverage for subsidized enrollees who are eligible to receive prenatal and postnatal services through the medical assistance program under chapter 74.09 RCW, the administrator shall not contract for such services except to the extent that such services are necessary over not more than a one-month period in order to maintain continuity of care after diagnosis of pregnancy by the managed care provider. The schedule of services shall also include a separate schedule of basic health care services for children, eighteen years of age and younger, for those subsidized or nonsubsidized enrollees who choose to secure basic coverage through the plan only for their dependent children. In designing and revising the schedule of services, the administrator shall consider the guidelines for assessing health services under the mandated benefits act of 1984, RCW 48.47.030, and such other factors as the administrator deems appropriate.

(2)(a) To design and implement a structure of periodic premiums due the administrator from subsidized enrollees that is based upon gross family income, giving appropriate consideration to family size and the ages of all family members. The enrollment of children shall not require the enrollment of their parent or parents who are eligible for the plan. The structure of periodic premiums shall be applied to subsidized enrollees entering the plan as individuals pursuant to subsection (11) of this section and to the share of the cost of the plan due from subsidized enrollees entering the plan as employees pursuant to subsection (12) of this section.

(b) To determine the periodic premiums due the administrator from nonsubsidized enrollees. Premiums due from nonsubsidized enrollees shall be in an amount equal to the cost charged by the managed health care system provider to the state for the plan plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201.

(c) To determine the periodic premiums due the administrator from health coverage tax credit eligible enrollees. Premiums due from health coverage tax credit eligible enrollees must be in an amount equal to the cost charged by the managed health care system provider to the state for the plan, plus the administrative cost of providing the plan to those enrollees and the premium tax under RCW 48.14.0201. The administrator will consider the impact of eligibility determination by the appropriate federal agency designated by the Trade Act of 2002 (P.L. 107-210) as well as the premium collection and remittance activities by the United States internal revenue service when determining the administrative cost charged for health coverage tax credit eligible enrollees.

(d) An employer or other financial sponsor may, with the prior approval of the administrator, pay the premium, rate, or any other amount on behalf of a subsidized or nonsubsidized enrollee, by arrangement with the enrollee and through a mechanism acceptable to the administrator. The administrator shall establish a mechanism for receiving premium pay-

ments from the United States internal revenue service for health coverage tax credit eligible enrollees.

(e) To develop, as an offering by every health carrier providing coverage identical to the basic health plan, as configured on January 1, 2001, a basic health plan model plan with uniformity in enrollee cost-sharing requirements.

(3) To evaluate, with the cooperation of participating managed health care system providers, the impact on the basic health plan of enrolling health coverage tax credit eligible enrollees. The administrator shall issue to the appropriate committees of the legislature preliminary evaluations on June 1, 2005, and January 1, 2006, and a final evaluation by June 1, 2006. The evaluation shall address the number of persons enrolled, the duration of their enrollment, their utilization of covered services relative to other basic health plan enrollees, and the extent to which their enrollment contributed to any change in the cost of the basic health plan.

(4) To end the participation of health coverage tax credit eligible enrollees in the basic health plan if the federal government reduces or terminates premium payments on their behalf through the United States internal revenue service.

(5) To design and implement a structure of enrollee cost-sharing due a managed health care system from subsidized, nonsubsidized, and health coverage tax credit eligible enrollees. The structure shall discourage inappropriate enrollee utilization of health care services, and may utilize copayments, deductibles, and other cost-sharing mechanisms, but shall not be so costly to enrollees as to constitute a barrier to appropriate utilization of necessary health care services.

(6) To limit enrollment of persons who qualify for subsidies so as to prevent an overexpenditure of appropriations for such purposes. Whenever the administrator finds that there is danger of such an overexpenditure, the administrator shall close enrollment until the administrator finds the danger no longer exists. Such a closure does not apply to health coverage tax credit eligible enrollees who receive a premium subsidy from the United States internal revenue service as long as the enrollees qualify for the health coverage tax credit program.

(7) To limit the payment of subsidies to subsidized enrollees, as defined in RCW 70.47.020. The level of subsidy provided to persons who qualify may be based on the lowest cost plans, as defined by the administrator.

(8) To adopt a schedule for the orderly development of the delivery of services and availability of the plan to residents of the state, subject to the limitations contained in RCW 70.47.080 or any act appropriating funds for the plan.

(9) To solicit and accept applications from managed health care systems, as defined in this chapter, for inclusion as eligible basic health care providers under the plan for subsidized enrollees, nonsubsidized enrollees, or health coverage tax credit eligible enrollees. The administrator shall endeavor to assure that covered basic health care services are available to any enrollee of the plan from among a selection of two or more participating managed health care systems. In adopting any rules or procedures applicable to managed health care systems and in its dealings with such systems, the administrator shall consider and make suitable allowance for the need for health care services and the differences in local availability of health care resources, along with other resources, within and among the several areas of the state.

Contracts with participating managed health care systems shall ensure that basic health plan enrollees who become eligible for medical assistance may, at their option, continue to receive services from their existing providers within the managed health care system if such providers have entered into provider agreements with the department of social and health services.

(10) To receive periodic premiums from or on behalf of subsidized, nonsubsidized, and health coverage tax credit eligible enrollees, deposit them in the basic health plan operating account, keep records of enrollee status, and authorize periodic payments to managed health care systems on the basis of the number of enrollees participating in the respective managed health care systems.

(11) To accept applications from individuals residing in areas served by the plan, on behalf of themselves and their spouses and dependent children, for enrollment in the Washington basic health plan as subsidized, nonsubsidized, or health coverage tax credit eligible enrollees, to establish appropriate minimum-enrollment periods for enrollees as may be necessary, and to determine, upon application and on a reasonable schedule defined by the authority, or at the request of any enrollee, eligibility due to current gross family income for sliding scale premiums. Funds received by a family as part of participation in the adoption support program authorized under RCW 26.33.320 and 74.13.100 through 74.13.145 shall not be counted toward a family's current gross family income for the purposes of this chapter. When an enrollee fails to report income or income changes accurately, the administrator shall have the authority either to bill the enrollee for the amounts overpaid by the state or to impose civil penalties of up to two hundred percent of the amount of subsidy overpaid due to the enrollee incorrectly reporting income. The administrator shall adopt rules to define the appropriate application of these sanctions and the processes to implement the sanctions provided in this subsection, within available resources. No subsidy may be paid with respect to any enrollee whose current gross family income exceeds twice the federal poverty level or, subject to RCW 70.47.110, who is a recipient of medical assistance or medical care services under chapter 74.09 RCW. If a number of enrollees drop their enrollment for no apparent good cause, the administrator may establish appropriate rules or requirements that are applicable to such individuals before they will be allowed to reenroll in the plan.

(12) To accept applications from business owners on behalf of themselves and their employees, spouses, and dependent children, as subsidized or nonsubsidized enrollees, who reside in an area served by the plan. The administrator may require all or the substantial majority of the eligible employees of such businesses to enroll in the plan and establish those procedures necessary to facilitate the orderly enrollment of groups in the plan and into a managed health care system. The administrator may require that a business owner pay at least an amount equal to what the employee pays after the state pays its portion of the subsidized premium cost of the plan on behalf of each employee enrolled in the plan. Enrollment is limited to those not eligible for medicare who wish to enroll in the plan and choose to obtain the basic health care coverage and services from a managed care system participating in the plan. The administrator shall adjust

(2004 Ed.)

the amount determined to be due on behalf of or from all such enrollees whenever the amount negotiated by the administrator with the participating managed health care system or systems is modified or the administrative cost of providing the plan to such enrollees changes.

(13) To determine the rate to be paid to each participating managed health care system in return for the provision of covered basic health care services to enrollees in the system. Although the schedule of covered basic health care services will be the same or actuarially equivalent for similar enrollees, the rates negotiated with participating managed health care systems may vary among the systems. In negotiating rates with participating systems, the administrator shall consider the characteristics of the populations served by the respective systems, economic circumstances of the local area, the need to conserve the resources of the basic health plan trust account, and other factors the administrator finds relevant.

(14) To monitor the provision of covered services to enrollees by participating managed health care systems in order to assure enrollee access to good quality basic health care, to require periodic data reports concerning the utilization of health care services rendered to enrollees in order to provide adequate information for evaluation, and to inspect the books and records of participating managed health care systems to assure compliance with the purposes of this chapter. In requiring reports from participating managed health care systems, including data on services rendered enrollees, the administrator shall endeavor to minimize costs, both to the managed health care systems and to the plan. The administrator shall coordinate any such reporting requirements with other state agencies, such as the insurance commissioner and the department of health, to minimize duplication of effort.

(15) To evaluate the effects this chapter has on private employer-based health care coverage and to take appropriate measures consistent with state and federal statutes that will discourage the reduction of such coverage in the state.

(16) To develop a program of proven preventive health measures and to integrate it into the plan wherever possible and consistent with this chapter.

(17) To provide, consistent with available funding, assistance for rural residents, underserved populations, and persons of color.

(18) In consultation with appropriate state and local government agencies, to establish criteria defining eligibility for persons confined or residing in government-operated institutions.

(19) To administer the premium discounts provided under RCW 48.41.200(3)(a) (i) and (ii) pursuant to a contract with the Washington state health insurance pool. [2004 c 192 § 3; 2001 c 196 § 13; 2000 c 79 § 34. Prior: 1998 c 314 § 17; 1998 c 148 § 1; prior: 1997 c 337 § 2; 1997 c 335 § 2; 1997 c 245 § 6; 1997 c 231 § 206; prior: 1995 c 266 § 1; 1995 c 2 § 4; 1994 c 309 § 5; 1993 c 492 § 212; 1992 c 232 § 908; prior: 1991 sp.s. c 4 § 2; 1991 c 3 § 339; 1987 1st ex.s. c 5 § 8.]

Effective date—2004 c 192: See note following RCW 70.47.020.

Effective date—2001 c 196: See note following RCW 48.20.025.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

Effective date—1997 c 337 §§ 1 and 2: See note following RCW 70.47.015.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

Effective date—1995 c 266: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 266 § 5.]

Effective date—1995 c 2: See note following RCW 43.72.090.

Contingency—1994 c 309 §§ 5 and 6: "If a court in a permanent injunction, permanent order, or final decision determines that the amendments made by sections 5 and 6, chapter 309, Laws of 1994, must be submitted to the people for their adoption and ratification, or rejection, as a result of section 13, chapter 2, Laws of 1994, the amendments made by sections 5 and 6, chapter 309, Laws of 1994, shall be null and void." [1994 c 309 § 7.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

Severability—1992 c 232: See note following RCW 43.33A.180.

Effective date—1991 sp.s. c 4: See note following RCW 70.47.030.

70.47.070 Benefits from other coverages not reduced.

The benefits available under the plan shall be subject to RCW 48.21.200 and shall be excess to the benefits payable under the terms of any insurance policy issued to or on the behalf of an enrollee that provides payments toward medical expenses without a determination of liability for the injury. [1987 1st ex.s. c 5 § 9.]

70.47.080 Enrollment of applicants—Participation limitations. On and after July 1, 1988, the administrator shall accept for enrollment applicants eligible to receive covered basic health care services from the respective managed health care systems which are then participating in the plan.

Thereafter, total subsidized enrollment shall not result in expenditures that exceed the total amount that has been made available by the legislature in any act appropriating funds to the plan. To the extent that new funding is appropriated for expansion, the administrator shall endeavor to secure participation contracts from managed health care systems in geographic areas of the state that are unserved by the plan at the time at which the new funding is appropriated. In the selection of any such areas the administrator shall take into account the levels and rates of unemployment in different areas of the state, the need to provide basic health care coverage to a population reasonably representative of the portion of the state's population that lacks such coverage, and the need for geographic, demographic, and economic diversity.

The administrator shall at all times closely monitor growth patterns of enrollment so as not to exceed that consistent with the orderly development of the plan as a whole, in any area of the state or in any participating managed health care system. The annual or biennial enrollment limitations derived from operation of the plan under this section do not apply to nonsubsidized enrollees as defined in *RCW 70.47.020(5). [1993 c 492 § 213; 1987 1st ex.s. c 5 § 10.]

***Reviser's note:** RCW 70.47.020 was amended by 2004 c 192 § 1, changing subsection (5) to subsection (7), effective January 1, 2005.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

[Title 70 RCW—page 88]

70.47.090 Removal of enrollees. Any enrollee whose premium payments to the plan are delinquent or who moves his or her residence out of an area served by the plan may be dropped from enrollment status. An enrollee whose premium is the responsibility of the department of social and health services under RCW 70.47.110 may not be dropped solely because of nonpayment by the department. The administrator shall provide delinquent enrollees with advance written notice of their removal from the plan and shall provide for a hearing under chapters 34.05 and 34.12 RCW for any enrollee who contests the decision to drop the enrollee from the plan. Upon removal of an enrollee from the plan, the administrator shall promptly notify the managed health care system in which the enrollee has been enrolled, and shall not be responsible for payment for health care services provided to the enrollee (including, if applicable, members of the enrollee's family) after the date of notification. A managed health care system may contest the denial of payment for coverage of an enrollee through a hearing under chapters 34.05 and 34.12 RCW. [1987 1st ex.s. c 5 § 11.]

70.47.100 Participation by a managed health care system. (Effective until January 1, 2005.) (1) A managed health care system participating in the plan shall do so by contract with the administrator and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the administrator as long as payments from the administrator on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The administrator may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the administrator to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The administrator shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the administrator shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

(3) Prior to negotiating with any managed health care system, the administrator shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of provid-

(2004 Ed.)

ing the services through the various systems and in different areas of the state.

(4) In negotiating with managed health care systems for participation in the plan, the administrator shall adopt a uniform procedure that includes at least the following:

(a) The administrator shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The administrator shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The administrator may then select one or more systems to provide the covered services within a local area; and

(d) The administrator may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(5) The administrator may contract with a managed health care system to provide covered basic health care services to either subsidized enrollees, or nonsubsidized enrollees, or both.

(6) The administrator may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (4) of this section, upon a determination by the administrator that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(7)(a) The administrator shall implement a self-funded or self-insured method of providing insurance coverage to subsidized enrollees, as provided under RCW 41.05.140, if one of the following conditions is met:

(i) The authority determines that no managed health care system other than the authority is willing and able to provide access, as defined in the request for proposal documents, to covered basic health care services for all subsidized enrollees in an area; or

(ii) The authority determines that no other managed health care system is willing to provide access, as defined in the request for proposal documents, for one hundred thirty-three percent of the statewide benchmark price or less, and the authority is able to offer such coverage at a price that is less than the lowest price at which any other managed health care system is willing to provide such access in an area.

(b) The authority shall initiate steps to provide the coverage described in (a) of this subsection within ninety days of making its determination that the conditions for providing a self-funded or self-insured method of providing insurance have been met.

(c) The administrator may not implement a self-funded or self-insured method of providing insurance in an area unless the administrator has received a certification from a member of the American academy of actuaries that the funding available in the basic health plan self-insurance reserve account is sufficient for the self-funded or self-insured risk assumed, or expected to be assumed, by the administrator. [2000 c 79 § 35; 1987 1st ex.s. c 5 § 12.]

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

(2004 Ed.)

70.47.100 Participation by a managed health care system. (*Effective January 1, 2005.*) (1) A managed health care system participating in the plan shall do so by contract with the administrator and shall provide, directly or by contract with other health care providers, covered basic health care services to each enrollee covered by its contract with the administrator as long as payments from the administrator on behalf of the enrollee are current. A participating managed health care system may offer, without additional cost, health care benefits or services not included in the schedule of covered services under the plan. A participating managed health care system shall not give preference in enrollment to enrollees who accept such additional health care benefits or services. Managed health care systems participating in the plan shall not discriminate against any potential or current enrollee based upon health status, sex, race, ethnicity, or religion. The administrator may receive and act upon complaints from enrollees regarding failure to provide covered services or efforts to obtain payment, other than authorized copayments, for covered services directly from enrollees, but nothing in this chapter empowers the administrator to impose any sanctions under Title 18 RCW or any other professional or facility licensing statute.

(2) The plan shall allow, at least annually, an opportunity for enrollees to transfer their enrollments among participating managed health care systems serving their respective areas. The administrator shall establish a period of at least twenty days in a given year when this opportunity is afforded enrollees, and in those areas served by more than one participating managed health care system the administrator shall endeavor to establish a uniform period for such opportunity. The plan shall allow enrollees to transfer their enrollment to another participating managed health care system at any time upon a showing of good cause for the transfer.

(3) Prior to negotiating with any managed health care system, the administrator shall determine, on an actuarially sound basis, the reasonable cost of providing the schedule of basic health care services, expressed in terms of upper and lower limits, and recognizing variations in the cost of providing the services through the various systems and in different areas of the state.

(4) In negotiating with managed health care systems for participation in the plan, the administrator shall adopt a uniform procedure that includes at least the following:

(a) The administrator shall issue a request for proposals, including standards regarding the quality of services to be provided; financial integrity of the responding systems; and responsiveness to the unmet health care needs of the local communities or populations that may be served;

(b) The administrator shall then review responsive proposals and may negotiate with respondents to the extent necessary to refine any proposals;

(c) The administrator may then select one or more systems to provide the covered services within a local area; and

(d) The administrator may adopt a policy that gives preference to respondents, such as nonprofit community health clinics, that have a history of providing quality health care services to low-income persons.

(5) The administrator may contract with a managed health care system to provide covered basic health care services to subsidized enrollees, nonsubsidized enrollees, health

coverage tax credit eligible enrollees, or any combination thereof.

(6) The administrator may establish procedures and policies to further negotiate and contract with managed health care systems following completion of the request for proposal process in subsection (4) of this section, upon a determination by the administrator that it is necessary to provide access, as defined in the request for proposal documents, to covered basic health care services for enrollees.

(7)(a) The administrator shall implement a self-funded or self-insured method of providing insurance coverage to subsidized enrollees, as provided under RCW 41.05.140, if one of the following conditions is met:

(i) The authority determines that no managed health care system other than the authority is willing and able to provide access, as defined in the request for proposal documents, to covered basic health care services for all subsidized enrollees in an area; or

(ii) The authority determines that no other managed health care system is willing to provide access, as defined in the request for proposal documents, for one hundred thirty-three percent of the statewide benchmark price or less, and the authority is able to offer such coverage at a price that is less than the lowest price at which any other managed health care system is willing to provide such access in an area.

(b) The authority shall initiate steps to provide the coverage described in (a) of this subsection within ninety days of making its determination that the conditions for providing a self-funded or self-insured method of providing insurance have been met.

(c) The administrator may not implement a self-funded or self-insured method of providing insurance in an area unless the administrator has received a certification from a member of the American academy of actuaries that the funding available in the basic health plan self-insurance reserve account is sufficient for the self-funded or self-insured risk assumed, or expected to be assumed, by the administrator. [2004 c 192 § 4; 2000 c 79 § 35; 1987 1st ex.s. c 5 § 12.]

Effective date—2004 c 192: See note following RCW 70.47.020.

Effective date—Severability—2000 c 79: See notes following RCW 48.04.010.

70.47.110 Enrollment of medical assistance recipients. The department of social and health services may make payments to the administrator or to participating managed health care systems on behalf of any enrollee who is a recipient of medical care under chapter 74.09 RCW, at the maximum rate allowable for federal matching purposes under Title XIX of the social security act. Any enrollee on whose behalf the department of social and health services makes such payments may continue as an enrollee, making premium payments based on the enrollee's own income as determined under the sliding scale, after eligibility for coverage under chapter 74.09 RCW has ended, as long as the enrollee remains eligible under this chapter. Nothing in this section affects the right of any person eligible for coverage under chapter 74.09 RCW to receive the services offered to other persons under that chapter but not included in the schedule of basic health care services covered by the plan. The administrator shall seek to determine which enrollees or prospective enrollees may be eligible for medical care under chapter

74.09 RCW and may require these individuals to complete the eligibility determination process under chapter 74.09 RCW prior to enrollment or continued participation in the plan. The administrator and the department of social and health services shall cooperatively adopt procedures to facilitate the transition of plan enrollees and payments on their behalf between the plan and the programs established under chapter 74.09 RCW. [1991 sp.s. c 4 § 3; 1987 1st ex.s. c 5 § 13.]

Effective date—1991 sp.s. c 4: See note following RCW 70.47.030.

70.47.115 Enrollment of persons in timber impact areas.

(1) The administrator, when specific funding is provided and where feasible, shall make the basic health plan available in timber impact areas. The administrator shall prioritize making the plan available under this section to the timber impact areas meeting the following criteria, as determined by the employment security department: (a) A lumber and wood products employment location quotient at or above the state average; (b) a direct lumber and wood products job loss of one hundred positions or more; and (c) an annual unemployment rate twenty percent above the state average.

(2) Persons assisted under this section shall meet the requirements of enrollee as defined in *RCW 70.47.020(4).

(3) For purposes of this section, "timber impact area" means:

(a) A county having a population of less than five hundred thousand, or a city or town located within a county having a population of less than five hundred thousand, and meeting two of the following three criteria, as determined by the employment security department, for the most recent year such data is available: (i) A lumber and wood products employment location quotient at or above the state average; (ii) projected or actual direct lumber and wood products job losses of one hundred positions or more, except counties having a population greater than two hundred thousand but less than five hundred thousand must have direct lumber and wood products job losses of one thousand positions or more; or (iii) an annual unemployment rate twenty percent or more above the state average; or

(b) Additional communities as the economic recovery coordinating board, established in **RCW 43.31.631, designates based on a finding by the board that each designated community is socially and economically integrated with areas that meet the definition of a timber impact area under (a) of this subsection. [1992 c 21 § 7; 1991 c 315 § 22.]

Reviser's note: *(1) RCW 70.47.020 was amended by 2004 c 192 § 1, changing subsection (4) to subsection (6), effective January 1, 2005.

***(2) RCW 43.31.631 was repealed by 1995 c 226 § 33 and 1995 c 269 § 1902, effective July 1, 1995.

Intent—1991 c 315: See note following RCW 28B.50.030.

Severability—Conflict with federal requirements—Effective date—1991 c 315: See RCW 50.70.900 through 50.70.902.

70.47.120 Administrator—Contracts for services. In addition to the powers and duties specified in RCW 70.47.040 and 70.47.060, the administrator has the power to enter into contracts for the following functions and services:

(1) With public or private agencies, to assist the administrator in her or his duties to design or revise the schedule of covered basic health care services, and/or to monitor or eval-

uate the performance of participating managed health care systems.

(2) With public or private agencies, to provide technical or professional assistance to health care providers, particularly public or private nonprofit organizations and providers serving rural areas, who show serious intent and apparent capability to participate in the plan as managed health care systems.

(3) With public or private agencies, including health care service contractors registered under RCW 48.44.015, and doing business in the state, for marketing and administrative services in connection with participation of managed health care systems, enrollment of enrollees, billing and collection services to the administrator, and other administrative functions ordinarily performed by health care service contractors, other than insurance. Any activities of a health care service contractor pursuant to a contract with the administrator under this section shall be exempt from the provisions and requirements of Title 48 RCW except that persons appointed or authorized to solicit applications for enrollment in the basic health plan shall comply with chapter 48.17 RCW. [1997 c 337 § 7; 1987 1st ex.s. c 5 § 14.]

70.47.130 Exemption from insurance code. (1) The activities and operations of the Washington basic health plan under this chapter, including those of managed health care systems to the extent of their participation in the plan, are exempt from the provisions and requirements of Title 48 RCW except:

(a) Benefits as provided in RCW 70.47.070;

(b) Managed health care systems are subject to the provisions of RCW 48.43.022, 48.43.500, 70.02.045, 48.43.505 through 48.43.535, 43.70.235, 48.43.545, 48.43.550, 70.02.110, and 70.02.900;

(c) Persons appointed or authorized to solicit applications for enrollment in the basic health plan, including employees of the health care authority, must comply with chapter 48.17 RCW. For purposes of this subsection (1)(c), "solicit" does not include distributing information and applications for the basic health plan and responding to questions; and

(d) Amounts paid to a managed health care system by the basic health plan for participating in the basic health plan and providing health care services for nonsubsidized enrollees in the basic health plan must comply with RCW 48.14.0201.

(2) The purpose of the 1994 amendatory language to this section in chapter 309, Laws of 1994 is to clarify the intent of the legislature that premiums paid on behalf of nonsubsidized enrollees in the basic health plan are subject to the premium and prepayment tax. The legislature does not consider this clarifying language to either raise existing taxes nor to impose a tax that did not exist previously. [2004 c 115 § 2; 2000 c 5 § 21; 1997 c 337 § 8; 1994 c 309 § 6; 1987 1st ex.s. c 5 § 15.]

Intent—Purpose—2000 c 5: See RCW 48.43.005.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

Contingency—1994 c 309 §§ 5 and 6: See note following RCW 70.47.060.

(2004 Ed.)

70.47.140 Reservation of legislative power. The legislature reserves the right to amend or repeal all or any part of this chapter at any time and there shall be no vested private right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or any acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter at any time. [1987 1st ex.s. c 5 § 2.]

70.47.150 Public disclosure. Notwithstanding the provisions of chapter 42.17 RCW, (1) records obtained, reviewed by, or on file with the plan containing information concerning medical treatment of individuals shall be exempt from public inspection and copying; and (2) actuarial formulas, statistics, and assumptions submitted in support of a rate filing by a managed health care system or submitted to the administrator upon his or her request shall be exempt from public inspection and copying in order to preserve trade secrets or prevent unfair competition. [1990 c 54 § 1.]

70.47.160 Right of individuals to receive services—Right of providers, carriers, and facilities to refuse to participate in or pay for services for reason of conscience or religion—Requirements. (1) The legislature recognizes that every individual possesses a fundamental right to exercise their religious beliefs and conscience. The legislature further recognizes that in developing public policy, conflicting religious and moral beliefs must be respected. Therefore, while recognizing the right of conscientious objection to participating in specific health services, the state shall also recognize the right of individuals enrolled with the basic health plan to receive the full range of services covered under the basic health plan.

(2)(a) No individual health care provider, religiously sponsored health carrier, or health care facility may be required by law or contract in any circumstances to participate in the provision of or payment for a specific service if they object to so doing for reason of conscience or religion. No person may be discriminated against in employment or professional privileges because of such objection.

(b) The provisions of this section are not intended to result in an enrollee being denied timely access to any service included in the basic health plan. Each health carrier shall:

(i) Provide written notice to enrollees, upon enrollment with the plan, listing services that the carrier refuses to cover for reason of conscience or religion;

(ii) Provide written information describing how an enrollee may directly access services in an expeditious manner; and

(iii) Ensure that enrollees refused services under this section have prompt access to the information developed pursuant to (b)(ii) of this subsection.

(c) The administrator shall establish a mechanism or mechanisms to recognize the right to exercise conscience while ensuring enrollees timely access to services and to assure prompt payment to service providers.

(3)(a) No individual or organization with a religious or moral tenet opposed to a specific service may be required to purchase coverage for that service or services if they object to doing so for reason of conscience or religion.

(b) The provisions of this section shall not result in an enrollee being denied coverage of, and timely access to, any service or services excluded from their benefits package as a result of their employer's or another individual's exercise of the conscience clause in (a) of this subsection.

(c) The administrator shall define the process through which health carriers may offer the basic health plan to individuals and organizations identified in (a) and (b) of this subsection in accordance with the provisions of subsection (2)(c) of this section.

(4) Nothing in this section requires the health care authority, health carriers, health care facilities, or health care providers to provide any basic health plan service without payment of appropriate premium share or enrollee cost sharing. [1995 c 266 § 3.]

Effective date—1995 c 266: See note following RCW 70.47.060.

70.47.900 Short title. This chapter shall be known and may be cited as the health care access act of 1987. [1987 1st ex.s. c 5 § 1.]

70.47.901 Severability—1987 1st ex.s. c 5. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 1st ex.s. c 5 § 26.]

Chapter 70.48 RCW

CITY AND COUNTY JAILS ACT

Sections

| | |
|-----------|--|
| 70.48.020 | Definitions. |
| 70.48.060 | Capital construction—Financial assistance—Rules—Oversight—Cost estimates. |
| 70.48.071 | Standards for operation—Adoption by units of local government. |
| 70.48.090 | Interlocal contracts for jail services—Responsibility for operation of jail—Departments of corrections authorized. |
| 70.48.095 | Regional jails. |
| 70.48.100 | Jail register, open to the public—Records confidential—Exception. |
| 70.48.130 | Emergency or necessary medical and health care for confined persons—Reimbursement procedures—Conditions—Limitations. |
| 70.48.140 | Confinement pursuant to authority of the United States. |
| 70.48.160 | Post-approval limitation on funding. |
| 70.48.170 | Short title. |
| 70.48.180 | Authority to locate and operate jail facilities—Counties. |
| 70.48.190 | Authority to locate and operate jail facilities—Cities and towns. |
| 70.48.210 | Farms, camps, work release programs, and special detention facilities. |
| 70.48.220 | Confinement may be wherever jail services are contracted—Defendant contact with defense counsel. |
| 70.48.230 | Transportation and temporary confinement of prisoners. |
| 70.48.240 | Transfer of felons from jail to state institution—Time limit. |
| 70.48.270 | Disposition of proceeds from sale of bonds. |
| 70.48.280 | Proceeds of bond sale—Deposits—Administration. |
| 70.48.310 | Jail renovation bond retirement fund—Debt-limit general fund bond retirement account. |
| 70.48.320 | Bonds legal investments for public funds. |
| 70.48.380 | Special detention facilities—Fees for cost of housing. |
| 70.48.390 | Fee payable by person being booked. |
| 70.48.400 | Sentences to be served in state institutions—When—Sentences that may be served in jail—Financial responsibility of city or county. |
| 70.48.410 | Financial responsibility for convicted felons. |
| 70.48.420 | Financial responsibility for persons detained on parole hold. |
| 70.48.430 | Financial responsibility for work release inmates detained in jail. |

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|-----------|--|
| 70.48.440 | Office of financial management to establish reimbursement rate for cities and counties—Rate until June 30, 1985—Re-establishment of rates. |
| 70.48.450 | Local jail reporting form—Information to be provided by city or county requesting payment for prisoners from state. |
| 70.48.460 | Contracts for incarceration services for prisoners not covered by RCW 70.48.400 through 70.48.450. |
| 70.48.470 | Sex, kidnapping offenders—Notices to offenders, law enforcement officials. |
| 70.48.475 | Release of offender or defendant subject to a discharge review—Required notifications. |
| 70.48.480 | Communicable disease prevention guidelines. |

70.48.020 Definitions. As used in this chapter the words and phrases in this section shall have the meanings indicated unless the context clearly requires otherwise.

(1) "Holding facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the temporary housing of such persons during or after trial and/or sentencing, but in no instance shall the housing exceed thirty days.

(2) "Detention facility" means a facility operated by a governing unit primarily designed, staffed, and used for the temporary housing of adult persons charged with a criminal offense prior to trial or sentencing and for the housing of adult persons for purposes of punishment and correction after sentencing or persons serving terms not to exceed ninety days.

(3) "Special detention facility" means a minimum security facility operated by a governing unit primarily designed, staffed, and used for the housing of special populations of sentenced persons who do not require the level of security normally provided in detention and correctional facilities including, but not necessarily limited to, persons convicted of offenses under RCW 46.61.502 or 46.61.504.

(4) "Correctional facility" means a facility operated by a governing unit primarily designed, staffed, and used for the housing of adult persons serving terms not exceeding one year for the purposes of punishment, correction, and rehabilitation following conviction of a criminal offense.

(5) "Jail" means any holding, detention, special detention, or correctional facility as defined in this section.

(6) "Health care" means preventive, diagnostic, and rehabilitative services provided by licensed health care professionals and/or facilities; such care to include providing prescription drugs where indicated.

(7) "Governing unit" means the city and/or county or any combinations of cities and/or counties responsible for the operation, supervision, and maintenance of a jail.

(8) "Major urban" means a county or combination of counties which has a city having a population greater than twenty-six thousand based on the 1978 projections of the office of financial management.

(9) "Medium urban" means a county or combination of counties which has a city having a population equal to or greater than ten thousand but less than twenty-six thousand based on the 1978 projections of the office of financial management.

(10) "Rural" means a county or combination of counties which has a city having a population less than ten thousand based on the 1978 projections of the office of financial management.

(11) "Office" means the office of financial management. [1987 c 462 § 6; 1986 c 118 § 1; 1983 c 165 § 34; 1981 c 136 § 25; 1979 ex.s. c 232 § 11; 1977 ex.s. c 316 § 2.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

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

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1977 ex.s. c 316: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 316 § 26.]

70.48.060 Capital construction—Financial assistance—Rules—Oversight—Cost estimates.

Reviser's note: RCW 70.48.060 was amended by 1987 c 505 § 59 without reference to its repeal by 1987 c 462 § 23, effective January 1, 1988. It has been decodified for publication purposes pursuant to RCW 1.12.025.

70.48.071 Standards for operation—Adoption by units of local government. All units of local government that own or operate adult correctional facilities shall, individually or collectively, adopt standards for the operation of those facilities no later than January 1, 1988. Cities and towns shall adopt the standards after considering guidelines established collectively by the cities and towns of the state; counties shall adopt the standards after considering guidelines established collectively by the counties of the state. These standards shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public's health, safety, and welfare. Local correctional facilities shall be operated in accordance with these standards. [1987 c 462 § 17.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48.090 Interlocal contracts for jail services—Responsibility for operation of jail—Departments of corrections authorized. (1) Contracts for jail services may be made between a county and a city, and among counties and cities. The contracts shall: Be in writing, give one governing unit the responsibility for the operation of the jails, specify the responsibilities of each governing unit involved, and include the applicable charges for custody of the prisoners as well as the basis for adjustments in the charges. The contracts may be terminated only by ninety days written notice to the governing units involved and to the office. The notice shall state the grounds for termination and the specific plans for accommodating the affected jail population.

(2) The contract authorized in subsection (1) of this section shall be for a minimum term of ten years when state funds are provided to construct or remodel a jail in one governing unit that will be used to house prisoners of other governing units. The contract may not be terminated prior to the end of the term without the office's approval. If the contract is terminated, or upon the expiration and nonrenewal of the contract, the governing unit whose jail facility was built or remodeled to hold the prisoners of other governing units shall pay to the state treasurer the amount set by the *corrections standards board or office when it authorized disbursement of state funds for the remodeling or construction under **RCW

(2004 Ed.)

70.48.120. This amount shall be deposited in the local jail improvement and construction account and shall fairly represent the construction costs incurred in order to house prisoners from other governing units. The office may pay the funds to the governing units which had previously contracted for jail services under rules which the office may adopt. The acceptance of state funds for constructing or remodeling consolidated jail facilities constitutes agreement to the proportionate amounts set by the office. Notice of the proportionate amounts shall be given to all governing units involved.

(3) A city or county primarily responsible for the operation of a jail or jails may create a department of corrections to be in charge of such jail and of all persons confined therein by law, subject to the authority of the governing unit. If such department is created, it shall have charge of jails and persons confined therein. If no such department of corrections is created, the chief law enforcement officer of the city or county primarily responsible for the operation of said jail shall have charge of the jail and of all persons confined therein. [2002 c 125 § 1; 1987 c 462 § 7; 1986 c 118 § 6; 1979 ex.s. c 232 § 15; 1977 ex.s. c 316 § 9.]

Reviser's note: *(1) The corrections standards board no longer exists. See 1987 c 462 § 21.

** (2) RCW 70.48.120 was repealed by 1991 sp.s. c 13 § 122, effective July 1, 1991.

Effective dates—1987 c 462: See note following RCW 13.04.116.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.095 Regional jails. (1) Regional jails may be created and operated between two or more local governments, or one or more local governments and the state, and may be governed by representatives from multiple jurisdictions.

(2) A jurisdiction that confines persons prior to conviction in a regional jail in another county is responsible for providing private telephone, video-conferencing, or in-person contact between the defendant and his or her public defense counsel.

(3) The creation and operation of any regional jail must comply with the interlocal cooperation act described in chapter 39.34 RCW.

(4) Nothing in this section prevents counties and cities from contracting for jail services as described in RCW 70.48.090. [2002 c 124 § 1.]

70.48.100 Jail register, open to the public—Records confidential—Exception. (1) A department of corrections or chief law enforcement officer responsible for the operation of a jail shall maintain a jail register, open to the public, into which shall be entered in a timely basis:

(a) The name of each person confined in the jail with the hour, date and cause of the confinement; and

(b) The hour, date and manner of each person's discharge.

(2) Except as provided in subsection (3) of this section the records of a person confined in jail shall be held in confidence and shall be made available only to criminal justice agencies as defined in RCW 43.43.705; or

(a) For use in inspections made pursuant to *RCW 70.48.070;

(b) In jail certification proceedings;

(c) For use in court proceedings upon the written order of the court in which the proceedings are conducted; or

(d) Upon the written permission of the person.

(3)(a) Law enforcement may use booking photographs of a person arrested or confined in a local or state penal institution to assist them in conducting investigations of crimes.

(b) Photographs and information concerning a person convicted of a sex offense as defined in RCW 9.94A.030 may be disseminated as provided in RCW 4.24.550, 9A.44.130, 9A.44.140, 10.01.200, 43.43.540, 43.43.745, 46.20.187, 70.48.470, 72.09.330, and **section 401, chapter 3, Laws of 1990. [1990 c 3 § 130; 1977 ex.s. c 316 § 10.]

Reviser's note: *(1) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.

***(2) 1990 c 3 § 401 appears as a note following RCW 9A.44.130.

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

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.130 Emergency or necessary medical and health care for confined persons—Reimbursement procedures—Conditions—Limitations. It is the intent of the legislature that all jail inmates receive appropriate and cost-effective emergency and necessary medical care. Governing units, the department of social and health services, and medical care providers shall cooperate to achieve the best rates consistent with adequate care.

Payment for emergency or necessary health care shall be by the governing unit, except that the department of social and health services shall directly reimburse the provider pursuant to chapter 74.09 RCW, in accordance with the rates and benefits established by the department, if the confined person is eligible under the department's medical care programs as authorized under chapter 74.09 RCW. After payment by the department, the financial responsibility for any remaining balance, including unpaid client liabilities that are a condition of eligibility or participation under chapter 74.09 RCW, shall be borne by the medical care provider and the governing unit as may be mutually agreed upon between the medical care provider and the governing unit. In the absence of mutual agreement between the medical care provider and the governing unit, the financial responsibility for any remaining balance shall be borne equally between the medical care provider and the governing unit. Total payments from all sources to providers for care rendered to confined persons eligible under chapter 74.09 RCW shall not exceed the amounts that would be paid by the department for similar services provided under Title XIX medicaid, unless additional resources are obtained from the confined person.

As part of the screening process upon booking or preparation of an inmate into jail, general information concerning the inmate's ability to pay for medical care shall be identified, including insurance or other medical benefits or resources to which an inmate is entitled. This information shall be made available to the department, the governing unit, and any provider of health care services.

The governing unit or provider may obtain reimbursement from the confined person for the cost of health care services not provided under chapter 74.09 RCW, including reimbursement from any insurance program or from other medical benefit programs available to the confined person.

Nothing in this chapter precludes civil or criminal remedies to recover the costs of medical care provided jail inmates or paid for on behalf of inmates by the governing unit. As part of a judgment and sentence, the courts are authorized to order defendants to repay all or part of the medical costs incurred by the governing unit or provider during confinement.

To the extent that a confined person is unable to be financially responsible for medical care and is ineligible for the department's medical care programs under chapter 74.09 RCW, or for coverage from private sources, and in the absence of an interlocal agreement or other contracts to the contrary, the governing unit may obtain reimbursement for the cost of such medical services from the unit of government whose law enforcement officers initiated the charges on which the person is being held in the jail: PROVIDED, That reimbursement for the cost of such services shall be by the state for state prisoners being held in a jail who are accused of either escaping from a state facility or of committing an offense in a state facility.

There shall be no right of reimbursement to the governing unit from units of government whose law enforcement officers initiated the charges for which a person is being held in the jail for care provided after the charges are disposed of by sentencing or otherwise, unless by intergovernmental agreement pursuant to chapter 39.34 RCW.

Under no circumstance shall necessary medical services be denied or delayed because of disputes over the cost of medical care or a determination of financial responsibility for payment of the costs of medical care provided to confined persons.

Nothing in this section shall limit any existing right of any party, governing unit, or unit of government against the person receiving the care for the cost of the care provided. [1993 c 409 § 1; 1986 c 118 § 9; 1977 ex.s. c 316 § 13.]

Effective date—1993 c 409: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 409 § 2.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.140 Confinement pursuant to authority of the United States. A person having charge of a jail shall receive and keep in such jail, when room is available, all persons confined or committed thereto by process or order issued under authority of the United States until discharged according to law, the same as if such persons had been committed under process issued under authority of the state, if provision is made by the United States for the support of such persons confined, and for any additional personnel required. [1977 ex.s. c 316 § 14.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.160 Post-approval limitation on funding. Having received approval pursuant to *RCW 70.48.060, a governing unit shall not be eligible for further funding for physical plant standards for a period of ten years from the date of the completion of the approved project. A jail shall not be closed for noncompliance to physical plant standards within this same ten year period. This section does not apply if:

(1) The state elects to fund phased components of a jail project for which a governing unit has applied. In that

instance, initially funded components do not constitute full funding within the meaning of *RCW 70.48.060(1) and **70.48.070(2) and the state may fund subsequent phases of the jail project;

(2) There is destruction of the facility because of an act of God or the result of a negligent and/or criminal act. [1987 c 462 § 9; 1986 c 118 § 10; 1981 c 276 § 3; 1977 ex.s. c 316 § 16.]

Reviser's note: *(1) RCW 70.48.060 was repealed by 1987 c 462 § 23, effective January 1, 1988.

***(2) RCW 70.48.070 was repealed by 1987 c 462 § 23, effective January 1, 1988.

Effective dates—1987 c 462: See note following RCW 13.04.116.

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.170 Short title. This chapter shall be known and may be cited as the City and County Jails Act. [1977 ex.s. c 316 § 17.]

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.180 Authority to locate and operate jail facilities—Counties. Counties may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place designated by the county legislative authority within the territorial limits of the county. The facilities shall comply with chapter 70.48 RCW and the rules adopted thereunder. [1983 c 165 § 37; 1979 ex.s. c 232 § 16.]

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

70.48.190 Authority to locate and operate jail facilities—Cities and towns. Cities and towns may acquire, build, operate, and maintain holding, detention, special detention, and correctional facilities as defined in RCW 70.48.020 at any place within the territorial limits of the county in which the city or town is situated, as may be selected by the legislative authority of the municipality. The facilities comply with the provisions of chapter 70.48 RCW and rules adopted thereunder. [1983 c 165 § 38; 1977 ex.s. c 316 § 19; 1965 c 7 § 35.21.330. Prior: 1917 c 103 § 1; RRS § 10204. Formerly RCW 35.21.330.]

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

Severability—1977 ex.s. c 316: See note following RCW 70.48.020.

70.48.210 Farms, camps, work release programs, and special detention facilities. (1) All cities and counties are authorized to establish and maintain farms, camps, and work release programs and facilities, as well as special detention facilities. The facilities shall meet the requirements of chapter 70.48 RCW and any rules adopted thereunder.

(2) Farms and camps may be established either inside or outside the territorial limits of a city or county. A sentence of confinement in a city or county jail may include placement in a farm or camp. Unless directed otherwise by court order, the chief law enforcement officer or department of corrections, may transfer the prisoner to a farm or camp. The sentencing court, chief law enforcement officer, or department of corrections may not transfer to a farm or camp a greater number of

prisoners than can be furnished with constructive employment and can be reasonably accommodated.

(3) The city or county may establish a city or county work release program and housing facilities for the prisoners in the program. In such regard, factors such as employment conditions and the condition of jail facilities should be considered. When a work release program is established the following provisions apply:

(a) A person convicted of a felony and placed in a city or county jail is eligible for the work release program. A person sentenced to a city or county jail is eligible for the work release program. The program may be used as a condition of probation for a criminal offense. Good conduct is a condition of participation in the program.

(b) The court may permit a person who is currently, regularly employed to continue his or her employment. The chief law enforcement officer or department of corrections shall make all necessary arrangements if possible. The court may authorize the person to seek suitable employment and may authorize the chief law enforcement officer or department of corrections to make reasonable efforts to find suitable employment for the person. A person participating in the work release program may not work in an establishment where there is a labor dispute.

(c) The work release prisoner shall be confined in a work release facility or jail unless authorized to be absent from the facility for program-related purposes, unless the court directs otherwise.

(d) Each work release prisoner's earnings may be collected by the chief law enforcement officer or a designee. The chief law enforcement officer or a designee may deduct from the earnings moneys for the payments for the prisoner's board, personal expenses inside and outside the jail, a share of the administrative expenses of this section, court-ordered victim compensation, and court-ordered restitution. Support payments for the prisoner's dependents, if any, shall be made as directed by the court. With the prisoner's consent, the remaining funds may be used to pay the prisoner's preexisting debts. Any remaining balance shall be returned to the prisoner.

(e) The prisoner's sentence may be reduced by earned early release time in accordance with procedures that shall be developed and promulgated by the work release facility. The earned early release time shall be for good behavior and good performance as determined by the facility. The facility shall not credit the offender with earned early release credits in advance of the offender actually earning the credits. In the case of an offender convicted of a serious violent offense or a sex offense that is a class A felony committed on or after July 1, 1990, the aggregate earned early release time may not exceed fifteen percent of the sentence. In no other case may the aggregate earned early release time exceed one-third of the total sentence.

(f) If the work release prisoner violates the conditions of custody or employment, the prisoner shall be returned to the sentencing court. The sentencing court may require the prisoner to spend the remainder of the sentence in actual confinement and may cancel any earned reduction of the sentence.

(4) A special detention facility may be operated by a noncorrectional agency or by noncorrectional personnel by contract with the governing unit. The employees shall meet

the standards of training and education established by the criminal justice training commission as authorized by RCW 43.101.080. The special detention facility may use combinations of features including, but not limited to, low-security or honor prisoner status, work farm, work release, community review, prisoner facility maintenance and food preparation, training programs, or alcohol or drug rehabilitation programs. Special detention facilities may establish a reasonable fee schedule to cover the cost of facility housing and programs. The schedule shall be on a sliding basis that reflects the person's ability to pay. [1990 c 3 § 203; 1989 c 248 § 3; 1985 c 298 § 1; 1983 c 165 § 39; 1979 ex.s. c 232 § 17.]

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

Application—1989 c 248: See note following RCW 9.92.151.

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

70.48.220 Confinement may be wherever jail services are contracted—Defendant contact with defense counsel. A person confined for an offense punishable by imprisonment in a city or county jail may be confined in the jail of any city or county contracting with the prosecuting city or county for jail services.

A jurisdiction that confines persons prior to conviction in a jail in another county is responsible for providing private telephone, video-conferencing, or in-person contact between the defendant and his or her public defense counsel. [2002 c 125 § 2; 1979 ex.s. c 232 § 19.]

70.48.230 Transportation and temporary confinement of prisoners. The jurisdiction having immediate authority over a prisoner is responsible for the transportation expenses. The transporting officer shall have custody of the prisoner within any Washington county while being transported. Any jail within the state may be used for the temporary confinement of the prisoner with the only charge being for the reasonable cost of board. [1979 ex.s. c 232 § 18.]

70.48.240 Transfer of felons from jail to state institution—Time limit. A person imprisoned in a jail and sentenced to a state institution for a felony conviction shall be transferred to a state institution before the forty-first day from the date of sentencing.

This section does not apply to persons sentenced for a felony who are held in the facility as a condition of probation or who are specifically sentenced to confinement in the facility.

Payment for persons sentenced to state institutions and remaining in a jail from the eighth through the fortieth days following sentencing shall be in accordance with the procedure prescribed under this chapter. [1984 c 235 § 8; 1979 ex.s. c 232 § 20.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.270 Disposition of proceeds from sale of bonds. The proceeds from the sale of bonds authorized by this chapter shall be deposited in the local jail improvement and construction account hereby created in the general fund and shall be used exclusively for the purpose specified in this chapter

and for payment of the expenses incurred in the issuance and sale of the bonds. [1979 ex.s. c 232 § 3.]

70.48.280 Proceeds of bond sale—Deposits—Administration. The proceeds from the sale of the bonds deposited in the local jail improvement and construction account of the general fund under the terms of this chapter shall be administered by the office subject to legislative appropriation. [1987 c 462 § 10; 1986 c 118 § 13; 1979 ex.s. c 232 § 4.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48.310 Jail renovation bond retirement fund—Debt-limit general fund bond retirement account. The jail renovation bond retirement fund is hereby created in the state treasury. This fund shall be used for the payment of interest on and retirement of the bonds and notes authorized by this chapter. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the jail renovation bond retirement fund an amount equal to the amount certified by the state finance committee to be due on the payment date. The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section.

If a debt-limit general fund bond retirement account is created in the state treasury by chapter 456, Laws of 1997 and becomes effective prior to the issuance of any of the bonds authorized by this chapter, the debt-limit general fund bond retirement account shall be used for the purposes of this chapter in lieu of the jail renovation bond retirement fund. [1997 c 456 § 26; 1979 ex.s. c 232 § 7.]

Severability—1997 c 456: See RCW 43.99L.900.

Effective date—1997 c 456 §§ 9-43: See RCW 43.99M.901.

70.48.320 Bonds legal investments for public funds. The bonds authorized in this chapter shall be a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1979 ex.s. c 232 § 8.]

70.48.380 Special detention facilities—Fees for cost of housing. The legislative authority of a county or city that establishes a special detention facility as defined in RCW 70.48.020 for persons convicted of violating RCW 46.61.502 or 46.61.504 may establish a reasonable fee schedule to cover the cost of housing in the facility. The schedule shall be on a sliding basis that reflects the person's ability to pay. [1983 c 165 § 36.]

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

70.48.390 Fee payable by person being booked. A governing unit may require that each person who is booked at a city, county, or regional jail pay a fee based on the jail's actual booking costs or one hundred dollars, whichever is

less, to the sheriff's department of the county or police chief of the city in which the jail is located. The fee is payable immediately from any money then possessed by the person being booked, or any money deposited with the sheriff's department or city jail administration on the person's behalf. If the person has no funds at the time of booking or during the period of incarceration, the sheriff or police chief may notify the court in the county or city where the charges related to the booking are pending, and may request the assessment of the fee. Unless the person is held on other criminal matters, if the person is not charged, is acquitted, or if all charges are dismissed, the sheriff or police chief shall return the fee to the person at the last known address listed in the booking records. [2003 c 99 § 1; 1999 c 325 § 3.]

70.48.400 Sentences to be served in state institutions—When—Sentences that may be served in jail—Financial responsibility of city or county. Persons sentenced to felony terms or a combination of terms of more than three hundred sixty-five days of incarceration shall be committed to state institutions under the authority of the department of corrections. Persons serving sentences of three hundred sixty-five consecutive days or less may be sentenced to a jail as defined in RCW 70.48.020. All persons convicted of felonies or misdemeanors and sentenced to jail shall be the financial responsibility of the city or county. [1987 c 462 § 11; 1984 c 235 § 1.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

Effective dates—1984 c 235: "Section 5 of this act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [March 27, 1984]. The remainder of this act shall take effect July 1, 1984." [1984 c 235 § 10.]

70.48.410 Financial responsibility for convicted felons. Persons convicted of a felony as defined by chapter 9A.20 RCW and committed to the care and custody of the department of corrections shall be the financial responsibility of the department of corrections not later than the eighth day, excluding weekends and holidays, following sentencing for the felony and notification that the prisoner is available for movement to a state correctional institution. However, if good cause is shown, a superior court judge may order the prisoner detained in the jail beyond the eight-day period for an additional period not to exceed ten days. If a superior court orders a convicted felon to be detained beyond the eighth day following sentencing, the county or city shall retain financial responsibility for that ten-day period or portion thereof ordered by the court. [1984 c 235 § 2.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.420 Financial responsibility for persons detained on parole hold. A person detained in jail solely by reason of a parole hold is the financial responsibility of the city or the county detaining the person until the sixteenth day, at which time the person shall become the financial responsibility of the department of corrections. Persons who are detained in a jail on a parole hold and for whom the prosecutor has filed a felony charge remain the responsibility of the city or county. [1984 c 235 § 3.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.430 Financial responsibility for work release inmates detained in jail. Inmates, as defined by *RCW 72.09.020, who reside in a work release facility and who are detained in a city or county jail are the financial responsibility of the department of corrections. [1984 c 235 § 4.]

***Reviser's note:** RCW 72.09.020 was repealed by 1995 1st sp.s. c 19 § 36.

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.440 Office of financial management to establish reimbursement rate for cities and counties—Rate until June 30, 1985—Re-establishment of rates. The office of financial management shall establish a uniform equitable rate for reimbursing cities and counties for the care of sentenced felons who are the financial responsibility of the department of corrections and are detained or incarcerated in a city or county jail.

Until June 30, 1985, the rate for the care of sentenced felons who are the financial responsibility of the department of corrections shall be ten dollars per day. Cost of extraordinary emergency medical care incurred by prisoners who are the financial responsibility of the department of corrections under this chapter shall be reimbursed. The department of corrections shall be advised as far in advance as practicable by competent medical authority of the nature and course of treatment required to ensure the most efficient use of state resources to address the medical needs of the offender. In the event emergency medical care is needed, the department of corrections shall be advised as soon as practicable after the offender is treated.

Prior to June 30, 1985, the office of financial management shall meet with the *corrections standards board to establish criteria to determine equitable rates regarding variable costs for sentenced felons who are the financial responsibility of the department of corrections after June 30, 1985. The office of financial management shall re-establish these rates each even-numbered year beginning in 1986. [1984 c 235 § 5.]

***Reviser's note:** The corrections standards board no longer exists. See 1987 c 462 § 21.

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.450 Local jail reporting form—Information to be provided by city or county requesting payment for prisoners from state. The department of corrections is responsible for developing a reporting form for the local jails. The form shall require sufficient information to identify the person, type of state responsibility, method of notification for availability for movement, and the number of days for which the state is financially responsible. The information shall be provided by the city or county requesting payment for prisoners who are the financial responsibility of the department of corrections. [1984 c 235 § 6.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.460 Contracts for incarceration services for prisoners not covered by RCW 70.48.400 through 70.48.450. Nothing in RCW 70.48.400 through 70.48.450 precludes the establishment of mutually agreeable contracts between the department of corrections and counties for incar-

ceration services of prisoners not covered by RCW 70.48.400 through 70.48.450. [1984 c 235 § 7.]

Effective dates—1984 c 235: See note following RCW 70.48.400.

70.48.470 Sex, kidnapping offenders—Notices to offenders, law enforcement officials. (1) A person having charge of a jail shall notify in writing any confined person who is in the custody of the jail for a conviction of a sex offense as defined in RCW 9A.44.030 or a kidnapping offense as defined in RCW 9A.44.130 of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement, and shall obtain written acknowledgment of such notification. The person shall also obtain from the inmate the county of the inmate's residence upon release from jail and, where applicable, the city.

(2) When a sex offender or a person convicted of a kidnapping offense as defined in RCW 9A.44.130 under local government jurisdiction will reside in a county other than the county of conviction upon discharge or release, the chief law enforcement officer of the jail or his or her designee shall give notice of the inmate's discharge or release to the sheriff of the county and, where applicable, to the police chief of the city where the offender will reside. [2000 c 91 § 4. Prior: 1997 c 364 § 3; 1997 c 113 § 7; 1996 c 215 § 2; 1990 c 3 § 406.]

Severability—1997 c 364: See note following RCW 4.24.550.

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

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

70.48.475 Release of offender or defendant subject to a discharge review—Required notifications. (1) A person having charge of a jail, or that person's designee, shall notify the county designated mental health professional or the designated chemical dependency specialist seventy-two hours prior to the release to the community of an offender or defendant who was subject to a discharge review under RCW 71.05.232. If the person having charge of the jail does not receive seventy-two hours notice of the release, the notification to the county designated mental health professional or the designated chemical dependency specialist shall be made as soon as reasonably possible, but not later than the actual release to the community of the defendant or offender.

(2) When a person having charge of a jail, or that person's designee, releases an offender or defendant who was the subject of a discharge review under RCW 71.05.232, the person having charge of a jail, or that person's designee, shall notify the state hospital from which the offender or defendant was released. [2004 c 166 § 14.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

70.48.480 Communicable disease prevention guidelines. (1) Local jail administrators shall develop and implement policies and procedures for the uniform distribution of communicable disease prevention guidelines to all jail staff who, in the course of their regularly assigned job responsibilities, may come within close physical proximity to offenders or detainees with communicable diseases.

(2) The guidelines shall identify special precautions necessary to reduce the risk of transmission of communicable diseases.

(3) For the purposes of this section, "communicable disease" means a sexually transmitted disease, as defined in RCW 70.24.017, diseases caused by bloodborne pathogens, or any other illness caused by an infectious agent that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. [1997 c 345 § 5.]

Findings—Intent—1997 c 345: See note following RCW 70.24.105.

Chapter 70.48A RCW JAIL IMPROVEMENT AND CONSTRUCTION—BOND ISSUE

Sections

| | |
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| 70.48A.010 | Legislative declaration. |
| 70.48A.020 | Bond issue authorized—Appropriations. |
| 70.48A.030 | Proceeds from bond sale—Deposit, use. |
| 70.48A.040 | Proceeds from bond sale—Administration. |
| 70.48A.050 | Bonds—Minimum sale price. |
| 70.48A.060 | Bonds—State's full faith and credit pledged. |
| 70.48A.070 | Bonds—Payment of interest, retirement. |
| 70.48A.080 | Bonds legal investment for public funds. |
| 70.48A.090 | Legislative intent. |
| 70.48A.900 | Severability—1981 c 131. |

70.48A.010 Legislative declaration. In order for the state to provide safe and humane detention and correctional facilities, its long range development goals must include the renovation of jail buildings and facilities. [1981 c 131 § 1.]

70.48A.020 Bond issue authorized—Appropriations. For the purpose of providing funds for the planning, acquisition, construction, and improvement of jail buildings and necessary supporting facilities within the state, and the office of financial management's operational costs related to the review of physical plant funding applications, award of grants, and construction monitoring, the state finance committee is authorized to issue general obligation bonds of the state of Washington in the sum of one hundred forty-four million three hundred thousand dollars, or so much thereof as may be required, to finance the improvements defined in RCW 70.48A.010 through 70.48A.080 and all costs incidental thereto, including administration, but not including acquisition or preparation of sites. Appropriations for administration shall be determined by the legislature. No bonds authorized by this section may be offered for sale without prior legislative appropriation of the proceeds of the bonds to be sold: PROVIDED, That the reappropriation of previously authorized bond moneys and this new appropriation shall constitute full funding of each approved project within the meaning of *RCW 70.48.070 and 70.48.110. [1987 c 462 § 13; 1986 c 118 § 16; 1983 1st ex.s. c 63 § 1; 1981 c 131 § 2.]

***Reviser's note:** RCW 70.48.070 and 70.48.110 were repealed by 1987 c 462 § 23, effective January 1, 1988.

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48A.030 Proceeds from bond sale—Deposit, use. The proceeds from the sale of bonds authorized by RCW 70.48A.010 through 70.48A.080 shall be deposited in the

local jail improvement and construction account in the general fund and shall be used exclusively for the purpose specified in RCW 70.48A.010 through 70.48A.080 and for payment of the expenses incurred in the issuance and sale of the bonds. [1981 c 131 § 3.]

70.48A.040 Proceeds from bond sale—Administration. The proceeds from the sale of the bonds deposited in the local jail improvement and construction account in the general fund under the terms of RCW 70.48A.010 through 70.48A.080 shall be administered by the office of financial management subject to legislative appropriation. [1987 c 462 § 14; 1986 c 118 § 17; 1981 c 131 § 4.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

70.48A.050 Bonds—Minimum sale price. None of the bonds authorized in RCW 70.48A.010 through 70.48A.080 may be sold for less than their par value. [1981 c 131 § 5.]

70.48A.060 Bonds—State's full faith and credit pledged. The bonds shall pledge the full faith and credit of the state of Washington and shall contain an unconditional promise to pay the principal and interest when due. [1981 c 131 § 6.]

70.48A.070 Bonds—Payment of interest, retirement. The debt-limit general fund bond retirement account shall be used for the payment of principal and interest on and retirement of the bonds authorized by RCW 70.48A.010 through 70.48A.080.

The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount required in the next succeeding twelve months for the payment of the principal of and the interest coming due on the bonds. Not less than thirty days prior to the date on which any interest or principal and interest payment is due, the state treasurer shall withdraw from any general state revenues received in the state treasury and deposit in the debt-limit general fund bond retirement account an amount equal to the amount certified by the state finance committee to be due on the payment date.

The owner and holder of each of the bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require the transfer and payment of funds as directed in this section. [1997 c 456 § 27; 1981 c 131 § 7.]

Severability—1997 c 456: See RCW 43.99L.900.

Effective date—1997 c 456 §§ 9-43: See RCW 43.99M.901.

70.48A.080 Bonds legal investment for public funds. The bonds authorized in RCW 70.48A.010 through 70.48A.080 shall be a legal investment for all state funds or for funds under state control and for all funds of any other public body. [1981 c 131 § 8.]

70.48A.090 Legislative intent. It is the intent of the legislature that the construction and remodeling of jails proceed without further delay, and the jail commission's review and funding procedures are to reflect this intent. Neither the jail commission nor local governments should order or authorize capital expenditures to improve jails now in use which are scheduled for replacement. Capital expenditures which

(2004 Ed.)

relate directly to life safety of inmates or jail personnel may be ordered. [1981 c 131 § 9.]

70.48A.900 Severability—1981 c 131. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 131 § 11.]

Chapter 70.50 RCW STATE OTOLOGIST

Sections

70.50.010 Appointment—Salary.
70.50.020 Duties.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Hearing tests for public school children: RCW 28A.210.020.

70.50.010 Appointment—Salary. The secretary of health shall appoint and employ an otologist skilled in diagnosis of diseases of the ear and defects in hearing, especially for school children with an impaired sense of hearing, and shall fix the salary of such otologist in a sum not exceeding the salary of the secretary. [1991 c 3 § 340; 1979 c 141 § 108; 1945 c 23 § 1; Rem. Supp. 1945 § 6010-10.]

70.50.020 Duties. The otologist shall cooperate with the state department of public instruction, and with the state, county and city health officers, seeking for the children in the schools who are hard of hearing, or have an impaired sense of hearing, and making otological inspections and examinations of children referred to him by such departments and officers. Where necessary or proper he shall make recommendations to parents or guardians of such children, and urge them to submit such recommendations to physicians to be selected by such parents or guardians. [1945 c 23 § 2; Rem. Supp. 1945 § 6010-11.]

Chapter 70.54 RCW MISCELLANEOUS HEALTH AND SAFETY PROVISIONS

Sections

70.54.005 Transfer of duties to the department of health.
70.54.010 Polluting water supply—Penalty.
70.54.020 Furnishing impure water—Penalty.
70.54.030 Pollution of watershed of city in adjoining state—Penalty.
70.54.040 Secretary to advise local authorities on sanitation.
70.54.050 Exposing contagious disease—Penalty.
70.54.060 Ambulances and drivers.
70.54.065 Ambulances and drivers—Penalty.
70.54.070 Door of public buildings to swing outward—Penalty.
70.54.080 Liability of person handling steamboat or steam boiler.
70.54.090 Attachment of objects to utility poles—Penalty.
70.54.120 Immunity from implied warranties and civil liability relating to blood, blood products, tissues, organs, or bones—Scope—Effective date.
70.54.130 Laetrile—Legislative declaration.
70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Board of pharmacy, duties.
70.54.150 Physicians not subject to disciplinary action for prescribing or administering laetrile—Conditions.
70.54.160 Public restrooms—Pay facilities—Penalty.

- 70.54.180 Deaf persons access to emergency services—Telecommunication devices.
- 70.54.190 DMSO (dimethyl sulfoxide)—Use—Liability.
- 70.54.200 Fees for repository of vaccines, biologics.
- 70.54.220 Practitioners to provide information on prenatal testing.
- 70.54.230 Cancer registry program.
- 70.54.240 Cancer registry program—Reporting requirements.
- 70.54.250 Cancer registry program—Confidentiality.
- 70.54.260 Liability.
- 70.54.270 Rule making.
- 70.54.280 Bone marrow donor recruitment and education program—Generally—Target minority populations.
- 70.54.290 Bone marrow donor recruitment and education program—State employees to be recruited.
- 70.54.300 Bone marrow donor recruitment and education program—Private sector and community involvement.
- 70.54.305 Bone marrow donation—Status as minor not a disqualifying factor.
- 70.54.310 Semiautomatic external defibrillator—Duty of acquirer—Immunity from civil liability.
- 70.54.320 Electrology and tattooing—Findings.
- 70.54.330 Electrology and tattooing—Definitions.
- 70.54.340 Electrology and tattooing—Rules, sterilization requirements.
- 70.54.350 Electrology and tattooing—Practitioners to comply with rules—Penalty.
- 70.54.360 Hepatitis C—Plan for education, prevention, and management—Rules.
- 70.54.370 Meningococcal disease—Students to receive informational materials.

Control of cities and towns over water pollution: Chapter 35.88 RCW.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Nuisances, generally: Chapters 7.48 and 9.66 RCW.

Water pollution control: Chapter 90.48 RCW.

70.54.005 Transfer of duties to the department of health. The powers and duties of the secretary of social and health services under this chapter shall be performed by the secretary of health. [1989 1st ex.s. c 9 § 250.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.54.010 Polluting water supply—Penalty. Every person who shall deposit or suffer to be deposited in any spring, well, stream, river or lake, the water of which is or may be used for drinking purposes, or on any property owned, leased or otherwise controlled by any municipal corporation, corporation or person as a watershed or drainage basin for a public or private water system, any matter or thing whatever, dangerous or deleterious to health, or any matter or thing which may or could pollute the waters of such spring, well, stream, river, lake or water system, shall be guilty of a gross misdemeanor. [1909 c 249 § 290; RRS § 2542.]

70.54.020 Furnishing impure water—Penalty. Every owner, agent, manager, operator or other person having charge of any waterworks furnishing water for public or private use, who shall knowingly permit any act or omit any duty or precaution by reason whereof the purity or healthfulness of the water supplied shall become impaired, shall be guilty of a gross misdemeanor. [1909 c 249 § 291; RRS § 2543.]

70.54.030 Pollution of watershed of city in adjoining state—Penalty. Any person who shall place or cause to be placed within any watershed from which any city or municipal corporation of any adjoining state obtains its water supply, any substance which either by itself or in connection

with other matter will corrupt, pollute or impair the quality of said water supply, or the owner of any dead animal who shall knowingly leave or cause to be left the carcass or any portion thereof within any such watershed in such condition as to in any way corrupt or pollute such water supply shall be deemed guilty of a misdemeanor and upon conviction shall be punished by fine in any sum not exceeding five hundred dollars. [1909 c 16 § 2; RRS § 9281.]

70.54.040 Secretary to advise local authorities on sanitation. The commissioners of any county or the mayor of any city may call upon the secretary of health for advice relative to improving sanitary conditions or disposing of garbage and sewage or obtaining a pure water supply, and when so called upon the secretary shall either personally or by an assistant make a careful examination into the conditions existing and shall make a full report containing his or her advice to the county or city making such request. [1991 c 3 § 341; 1979 c 141 § 109; 1909 c 208 § 3; RRS § 6006.]

70.54.050 Exposing contagious disease—Penalty. Every person who shall wilfully expose himself to another, or any animal affected with any contagious or infectious disease, in any public place or thoroughfare, except upon his or its necessary removal in a manner not dangerous to the public health; and every person so affected who shall expose any other person thereto without his knowledge, shall be guilty of a misdemeanor. [1909 c 249 § 287; RRS § 2539.]

70.54.060 Ambulances and drivers. (1) The drivers of all ambulances shall be required to take the advanced first aid course as prescribed by the American Red Cross.

(2) All ambulances must be at all times equipped with first aid equipment consisting of leg and arm splints and standard twenty-four unit first aid kit as prescribed by the American Red Cross. [1945 c 65 § 1; Rem. Supp. 1945 § 6131-1. FORMER PART OF SECTION: 1945 c 65 § 2 now codified as RCW 70.54.060, part.]

70.54.065 Ambulances and drivers—Penalty. Any person violating any of the provisions herein shall be guilty of a misdemeanor. [1945 c 65 § 2; Rem. Supp. 1945 § 6131-2. Formerly RCW 70.54.060, part.]

70.54.070 Door of public buildings to swing outward—Penalty. The doors of all theatres, opera houses, school buildings, churches, public halls, or places used for public entertainments, exhibitions or meetings, which are used exclusively or in part for admission to or egress from the same, or any part thereof, shall be so hung and arranged as to open outwardly, and during any exhibition, entertainment or meeting, shall be kept unlocked and unfastened, and in such condition that in case of danger or necessity, immediate escape from such building shall not be prevented or delayed; and every agent or lessee of any such building who shall rent the same or allow it to be used for any of the aforesaid public purposes without having the doors thereof hung and arranged as hereinbefore provided, shall, for each violation of any provision of this section, be guilty of a misdemeanor. [1909 c 249 § 273; RRS § 2525.]

70.54.080 Liability of person handling steamboat or steam boiler. Every person who shall apply, or cause to be applied to a steam boiler a higher pressure of steam than is allowed by law, or by any inspector, officer or person authorized to limit the same; every captain or other person having charge of the machinery or boiler in a steamboat used for the conveyance of passengers on the waters of this state, who, from ignorance or gross neglect, or for the purpose of increasing the speed of such boat, shall create or cause to be created an undue or unsafe pressure of steam; and every engineer or other person having charge of a steam boiler, steam engine or other apparatus for generating or employing steam, who shall wilfully or from ignorance or gross neglect, create or allow to be created such an undue quantity of steam as to burst the boiler, engine or apparatus, or cause any other accident, whereby human life is endangered, shall be guilty of a gross misdemeanor. [1909 c 249 § 280; RRS § 2532.]

Boilers and unfired pressure vessels: Chapter 70.79 RCW.

Industrial safety and health: Chapter 43.22 RCW.

70.54.090 Attachment of objects to utility poles—Penalty. (1) It shall be unlawful to attach to utility poles any of the following: Advertising signs, posters, vending machines, or any similar object which presents a hazard to, or endangers the lives of, electrical workers. Any attachment to utility poles shall only be made with the permission of the utility involved, and shall be placed not less than twelve feet above the surface of the ground.

(2) A person violating this section is guilty of a misdemeanor. [2003 c 53 § 351; 1953 c 185 § 1.]

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

70.54.120 Immunity from implied warranties and civil liability relating to blood, blood products, tissues, organs, or bones—Scope—Effective date. The procurement, processing, storage, distribution, administration, or use of whole blood, plasma, blood products and blood derivatives for the purpose of injecting or transfusing the same, or any of them, or of tissues, organs, or bones for the purpose of transplanting them, or any of them, into the human body is declared to be, for all purposes whatsoever, the rendition of a service by each and every person, firm, or corporation participating therein, and is declared not to be covered by any implied warranty under the Uniform Commercial Code, Title 62A RCW, or otherwise, and no civil liability shall be incurred as a result of any of such acts, except in the case of wilful or negligent conduct: PROVIDED, HOWEVER, That this section shall apply only to liability alleged in the contraction of hepatitis, malaria, and acquired immune deficiency disease and shall not apply to any transaction in which the donor receives compensation: PROVIDED FURTHER, That this section shall only apply where the person, firm or corporation rendering the above service shall have maintained records of donor suitability and donor identification: PROVIDED FURTHER, That nothing in this section shall be considered by the courts in determining or applying the law to any blood transfusion occurring before June 10, 1971 and the court shall decide such case as though this section had not been passed. [1987 c 84 § 1; 1985 c 321 § 1; 1971 c 56 § 1.]

(2004 Ed.)

Severability—1971 c 56: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1971 c 56 § 2.]

70.54.130 Laetrile—Legislative declaration. It is the intent of the legislature that passage of RCW 70.54.130 through 70.54.150 shall not constitute any endorsement whatever of the efficacy of amygdalin (Laetrile) in the treatment of cancer, but represents only the legislature's endorsement of a patient's freedom of choice, so long as the patient has been given sufficient information in writing to make an informed decision regarding his/her treatment and the substance is not proven to be directly detrimental to health. [1977 ex.s. c 122 § 1.]

70.54.140 Laetrile—Interference with physician/patient relationship by health facility—Board of pharmacy, duties. No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of amygdalin (Laetrile) when prescribed or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

For the purposes of RCW 70.54.130 through 70.54.150, the state board of pharmacy shall provide for the certification as to the identity of amygdalin (Laetrile) by random sample testing or other testing procedures, and shall promulgate rules and regulations necessary to implement and enforce its authority under this section. [1977 ex.s. c 122 § 2.]

70.54.150 Physicians not subject to disciplinary action for prescribing or administering laetrile—Conditions. No physician may be subject to disciplinary action by any entity of either the state of Washington or a professional association for prescribing or administering amygdalin (Laetrile) to a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute unprofessional conduct. [1986 c 259 § 150; 1977 ex.s. c 122 § 3.]

Severability—1986 c 259: See note following RCW 18.130.010.

70.54.160 Public restrooms—Pay facilities—Penalty. (1) Every establishment which maintains restrooms for use by the public shall not discriminate in charges required between facilities used by men and facilities used by women. (2) When coin lock controls are used, the controls shall be so allocated as to allow for a proportionate equality of free toilet units available to women as compared with those units available to men, and at least one-half of the units in any restroom shall be free of charge. As used in this section, toilet units are defined as constituting commodes and urinals. (3) In situations involving coin locks placed on restroom entry doors, admission keys shall be readily provided without charge when requested, and notice as to the availability of the keys shall be posted on the restroom entry door.

(4) Any owner, agent, manager, or other person charged with the responsibility of the operation of an establishment who operates such establishment in violation of this section is guilty of a misdemeanor. [2003 c 53 § 352; 1977 ex.s. c 97 § 1.]

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

70.54.180 Deaf persons access to emergency services—Telecommunication devices. (1) For the purpose of this section "telecommunication device" means an instrument for telecommunication in which speaking or hearing is not required for communicators.

(2) The county legislative authority of each county with a population of eighteen thousand or more and the governing body of each city with a population in excess of ten thousand shall provide by July 1, 1980, for a telecommunication device in their jurisdiction or through a central dispatch office that will assure access to police, fire, or other emergency services.

(3) The county legislative authority of each county with a population of eighteen thousand or less shall by July 1, 1980, make a determination of whether sufficient need exists with their respective counties to require installation of a telecommunication device. Reconsideration of such determination will be made at any future date when a deaf individual indicates a need for such an instrument. [1991 c 363 § 142; 1979 ex.s. c 63 § 2.]

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

Purpose—1979 ex.s. c 63: "The legislature finds that many citizens of this state who are unable to utilize telephone services in a regular manner due to hearing defects are able to communicate by teletypewriters where hearing is not required for communication. Hence, it is the purpose of section 2 of this act [RCW 70.54.180] to require that telecommunication devices for the deaf be installed." [1979 ex.s. c 63 § 1.]

70.54.190 DMSO (dimethyl sulfoxide)—Use—Liability. No hospital or health facility may interfere with the physician/patient relationship by restricting or forbidding the use of DMSO (dimethyl sulfoxide) when prescribed or administered by a physician licensed pursuant to chapter 18.57 or 18.71 RCW and requested by a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

No physician may be subject to disciplinary action by any entity of either the state of Washington or a professional association for prescribing or administering DMSO (dimethyl sulfoxide) to a patient under his/her care who has requested the substance after having been given sufficient information in writing to make an informed decision.

It is not the intent of this section to shield a physician from acts or omissions which otherwise would constitute unprofessional conduct. [1986 c 259 § 151; 1981 c 50 § 2.]

Severability—1986 c 259: See note following RCW 18.130.010.

DMSO authorized: RCW 69.04.565.

70.54.200 Fees for repository of vaccines, biologics. The department shall prescribe by rule a schedule of fees predicated on the cost of providing a repository of emergency vaccines and other biologics. [1981 c 284 § 2.]

Reviser's note: Although 1981 c 284 directs this section be added to chapter 74.04 RCW, codification here is considered more appropriate. The

"department" referred to is apparently the department of social and health services.

70.54.220 Practitioners to provide information on prenatal testing. All persons licensed or certified by the state of Washington to provide prenatal care or to practice medicine shall provide information regarding the use and availability of prenatal tests to all pregnant women in their care within the time limits prescribed by department rules and in accordance with standards established by those rules. [1988 c 276 § 5.]

Effective date—1988 c 276 § 5: "Section 5 of this act shall take effect December 31, 1989." [1988 c 276 § 10.]

70.54.230 Cancer registry program. The secretary of health may contract with either a recognized regional cancer research institution or regional tumor registry, or both, which shall hereinafter be called the contractor, to establish a statewide cancer registry program and to obtain cancer reports from all or a portion of the state as required in RCW 70.54.240 and to make available data for use in cancer research and for purposes of improving the public health. [1990 c 280 § 2.]

Intent—1990 c 280: "It is the intent of the legislature to establish a system to accurately monitor the incidence of cancer in the state of Washington for the purposes of understanding, controlling, and reducing the occurrence of cancer in this state. In order to accomplish this, the legislature has determined that cancer cases shall be reported to the department of health, and that there shall be established a statewide population-based cancer registry." [1990 c 280 § 1.]

70.54.240 Cancer registry program—Reporting requirements. (1) The department of health shall adopt rules as to which types of cancer shall be reported, who shall report, and the form and timing of the reports.

(2) Every health care facility and independent clinical laboratory, and those physicians or others providing health care who diagnose or treat any patient with cancer who is not hospitalized within one month of diagnosis, will provide the contractor with the information required under subsection (1) of this section. The required information may be collected on a regional basis where such a system exists and forwarded to the contractor in a form suitable for the purposes of RCW 70.54.230 through 70.54.270. Such reporting arrangements shall be reduced to a written agreement between the contractor and any regional reporting agency which shall detail the manner, form, and timeliness of the reporting. [1990 c 280 § 3.]

Intent—1990 c 280: See note following RCW 70.54.230.

70.54.250 Cancer registry program—Confidentiality. (1) Data obtained under RCW 70.54.240 shall be used for statistical, scientific, medical research, and public health purposes only.

(2) The department and its contractor shall ensure that access to data contained in the registry is consistent with federal law for the protection of human subjects and consistent with chapter 42.48 RCW. [1990 c 280 § 4.]

Intent—1990 c 280: See note following RCW 70.54.230.

70.54.260 Liability. Providing information required under RCW 70.54.240 or 70.54.250 shall not create any lia-

bility on the part of the provider nor shall it constitute a breach of confidentiality. The contractor shall, at the request of the provider, but not more frequently than once a year, sign an oath of confidentiality, which reads substantially as follows:

"As a condition of conducting research concerning persons who have received services from (name of the health care provider or facility), I, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such research that could lead to identification of such persons receiving services, or to the identification of their health care providers. I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law."

[1990 c 280 § 5.]

Intent—1990 c 280: See note following RCW 70.54.230.

70.54.270 Rule making. The department shall adopt rules to implement RCW 70.54.230 through 70.54.260, including but not limited to a definition of cancer. [1990 c 280 § 6.]

Intent—1990 c 280: See note following RCW 70.54.230.

70.54.280 Bone marrow donor recruitment and education program—Generally—Target minority populations. The department of health shall establish a bone marrow donor recruitment and education program to educate residents of the state about:

- (1) The need for bone marrow donors;
- (2) The procedures required to become registered as a potential bone marrow donor, including procedures for determining a person's tissue type; and
- (3) The procedures a donor must undergo to donate bone marrow or other sources of blood stem cells.

The department of health shall make special efforts to educate and recruit citizens from minority populations to volunteer as potential bone marrow donors. Means of communication may include use of press, radio, and television, and placement of educational materials in appropriate health care facilities, blood banks, and state and local agencies. The department of health in conjunction with the department of licensing shall make educational materials available at all places where driver licenses are issued or renewed. [1992 c 109 § 2.]

Findings—1992 c 109: "The legislature finds that an estimated sixteen thousand American children and adults are stricken each year with leukemia, aplastic anemia, or other fatal blood diseases. For many of these individuals, bone marrow transplantation is the only chance for survival. Nearly seventy percent cannot find a suitable bone marrow match within their own families. The chance that a patient will find a matching, unrelated donor in the general population is between one in a hundred and one in a million.

The legislature further finds that because tissue types are inherited, and different tissue types are found in different ethnic groups, the chances of finding an unrelated donor vary according to the patient's ethnic and racial background. Patients from minority groups are therefore less likely to find matching, unrelated donors.

It is the intent of the legislature to establish a statewide bone marrow donor education and recruitment program in order to increase the number of Washington residents who become bone marrow donors, and to increase the chance that patients in need of bone marrow transplants will find a suitable bone marrow match." [1992 c 109 § 1.]

(2004 Ed.)

70.54.290 Bone marrow donor recruitment and education program—State employees to be recruited. The department of health shall make special efforts to educate and recruit state employees to volunteer as potential bone marrow donors. Such efforts shall include, but not be limited to, conducting a bone marrow donor drive to encourage state employees to volunteer as potential bone marrow donors. The drive shall include educational materials furnished by the national bone marrow donor program and presentations that explain the need for bone marrow donors, and the procedures for becoming registered as potential bone marrow donors. The cost of educational materials and presentations to state employees shall be borne by the national marrow donor program. [1992 c 109 § 3.]

Findings—1992 c 109: See note following RCW 70.54.280.

70.54.300 Bone marrow donor recruitment and education program—Private sector and community involvement. In addition to educating and recruiting state employees, the department of health shall make special efforts to encourage community and private sector businesses and associations to initiate independent efforts to achieve the goals of chapter 109, Laws of 1992. [1992 c 109 § 4.]

Findings—1992 c 109: See note following RCW 70.54.280.

70.54.305 Bone marrow donation—Status as minor not a disqualifying factor. A person's status as a minor may not disqualify him or her from bone marrow donation. [2000 c 116 § 1.]

70.54.310 Semiautomatic external defibrillator—Duty of acquirer—Immunity from civil liability. (1) As used in this section, "defibrillator" means a semiautomatic external defibrillator as prescribed by a physician licensed under chapter 18.71 RCW or an osteopath licensed under chapter 18.57 RCW.

(2) A person or entity who acquires a defibrillator shall ensure that:

(a) Expected defibrillator users receive reasonable instruction in defibrillator use and cardiopulmonary resuscitation by a course approved by the department of health;

(b) The defibrillator is maintained and tested by the acquirer according to the manufacturer's operational guidelines;

(c) Upon acquiring a defibrillator, medical direction is enlisted by the acquirer from a licensed physician in the use of the defibrillator and cardiopulmonary resuscitation;

(d) The person or entity who acquires a defibrillator shall notify the local emergency medical services organization about the existence and the location of the defibrillator; and

(e) The defibrillator user shall call 911 or its local equivalent as soon as possible after the emergency use of the defibrillator and shall assure that appropriate follow-up data is made available as requested by emergency medical service or other health care providers.

(3) A person who uses a defibrillator at the scene of an emergency and all other persons and entities providing services under this section are immune from civil liability for any personal injury that results from any act or omission in the use of the defibrillator in an emergency setting.

(4) The immunity from civil liability does not apply if the acts or omissions amount to gross negligence or willful or wanton misconduct.

(5) The requirements of subsection (2) of this section shall not apply to any individual using a defibrillator in an emergency setting if that individual is acting as a good samaritan under RCW 4.24.300. [1998 c 150 § 1.]

70.54.320 Electrology and tattooing—Findings. The legislature finds and declares that the practices of electrology and tattooing involve an invasive procedure with the use of needles and instruments which may be dangerous when improperly sterilized presenting a risk of infecting the client with bloodborne pathogens such as HIV and Hepatitis B. It is in the interests of the public health, safety, and welfare to establish requirements for the sterilization procedures in the commercial practices of electrology and tattooing in this state. [2001 c 194 § 1.]

70.54.330 Electrology and tattooing—Definitions. The definitions in this section apply throughout RCW 70.54.320, 70.54.340, and 70.54.350 unless the context clearly requires otherwise.

(1) "Electrologist" means a person who practices the business of electrology for a fee.

(2) "Electrology" means the process by which hair is permanently removed through the utilization of solid needle/probe electrode epilation, including thermolysis, being of shortwave, high frequency type, and including electrolysis, being of galvanic type, or a combination of both which is accomplished by a superimposed or sequential blend.

(3) "Tattoo artist" means a person who practices the business of tattooing for a fee.

(4) "Tattooing" means the indelible mark, figure, or decorative design introduced by insertion of nontoxic dyes or pigments into or under the subcutaneous portion of the skin upon the body of a live human being for cosmetic or figurative purposes. [2001 c 194 § 2.]

70.54.340 Electrology and tattooing—Rules, sterilization requirements. The secretary of health shall adopt by rule requirements for the sterilization of needles and instruments by electrologists and tattoo artists in accordance with nationally recognized professional standards. The secretary shall consider the universal precautions for infection control, as recommended by the United States centers for disease control, and guidelines for infection control, as recommended by the national environmental health association and the alliance of professional tattooists, in the adoption of these sterilization requirements. [2001 c 194 § 3.]

70.54.350 Electrology and tattooing—Practitioners to comply with rules—Penalty. (1) Any person who practices electrology or tattooing shall comply with the rules adopted by the department of health under RCW 70.54.340.

(2) A violation of this section is a misdemeanor. [2001 c 194 § 4.]

70.54.360 Hepatitis C—Plan for education, prevention, and management—Rules. (*Expires June 30, 2007.*)

(1) The secretary of health shall design a state plan for education efforts concerning hepatitis C and the prevention and management of the disease by January 1, 2004. In developing the plan, the secretary shall consult with:

(a) The public;

(b) Patient groups and organizations;

(c) Relevant state agencies that have functions that involve hepatitis C or provide services to persons with hepatitis C;

(d) Local health departments;

(e) Public health and clinical laboratories;

(f) Providers and suppliers of services to persons with hepatitis C;

(g) Research scientists;

(h) The University of Washington; and

(i) Relevant health care associations.

(2) The plan shall include implementation recommendations in the following areas:

(a) Hepatitis C virus prevention and treatment strategies for groups at risk for hepatitis C with an emphasis towards those groups that are disproportionately affected by hepatitis C, including persons infected with HIV, veterans, racial or ethnic minorities that suffer a higher incidence of hepatitis C, and persons who engage in high-risk behavior, such as intravenous drug use;

(b) Educational programs to promote public awareness about hepatitis C and knowledge about risk factors, the value of early detection, screening, services, and available treatment options for hepatitis C, which may be incorporated in public awareness programs concerning bloodborne infections;

(c) Education curricula for appropriate health and health-related providers covered by the uniform disciplinary act, chapter 18.130 RCW;

(d) Training courses for persons providing hepatitis C counseling, public health clinic staff, and any other appropriate provider, which shall focus on disease prevention, early detection, and intervention;

(e) Capacity for voluntary hepatitis C testing programs to be performed at facilities providing voluntary HIV testing under chapter 70.24 RCW;

(f) A comprehensive model for an evidence-based process for the prevention and management of hepatitis C that is applicable to other diseases; and

(g) Sources and availability of funding to implement the plan.

(3) The secretary of health shall develop the state plan described in subsections (1) and (2) of this section only to the extent that, and for as long as, federal or private funds are available for that purpose, including grants. Funding for chapter 273, Laws of 2003 shall not come from state sources.

(4) The board of health may adopt rules necessary to implement subsection (2)(b) of this section.

(5) The secretary of health shall submit the completed state plan to the legislature by January 1, 2004. After the initial state plan is submitted, the department shall update the state plan biennially and shall submit the plan to the governor and make it available to other interested parties. The update and progress reports are due December 1, 2004, and every two years thereafter.

(6) The state plan recommendations described in subsection (2)(b) of this section shall be implemented by the secretary of health only to the extent that, and for as long as, federal or private funds are available for that purpose, including grants.

(7) This section expires June 30, 2007. [2003 c 273 § 1.]

Private right of action—2003 c 273 § 1: "Section 1 of this act does not create a private right of action." [2003 c 273 § 5.]

70.54.370 Meningococcal disease—Students to receive informational materials. (1) Except for community and technical colleges, each degree-granting public or private postsecondary residential campus that provides on-campus or group housing shall provide information on meningococcal disease to each enrolled matriculated first-time student. Community and technical colleges must provide the information only to those students who are offered on-campus or group housing. The information about meningococcal disease shall include:

(a) Symptoms, risks, especially as the risks relate to circumstances of group living arrangements, and treatment; and

(b) Current recommendations from the United States centers for disease control and prevention regarding the receipt of vaccines for meningococcal disease and where the vaccination can be received.

(2) This section shall not be construed to require the department of health or the postsecondary educational institution to provide the vaccination to students.

(3) The department of health shall be consulted regarding the preparation of the information materials provided to the first-time students.

(4) If institutions provide electronic enrollment or registration to first-time students, the information required by this section shall be provided electronically and acknowledged by the student before completion of electronic enrollment or registration.

(5) This section does not create a private right of action. [2003 c 398 § 1.]

Reviser's note: Substitute House Bill No. 1059, Substitute House Bill No. 1173, and Engrossed Substitute House Bill No. 1827 were enacted during the 2003 regular session of the legislature, but were vetoed in part by the governor. A stipulated judgment, No. 03-2-01988-4 filed in the Superior Court of Thurston County, between the governor and the legislature, settled litigation over the governor's use of veto powers and declared the vetoes of SHB 1059, SHB 1173, and ESHB 1827 null and void. Consequently, the text of this section has been returned to the version passed by the legislature prior to the vetoes. For vetoed text and message, see chapter 398, Laws of 2003.

Effective date—2003 c 398: "This act takes effect July 1, 2004." [2003 c 398 § 2.]

**Chapter 70.58 RCW
VITAL STATISTICS**

Sections

- 70.58.005 Definitions.
- 70.58.010 Registration districts.
- 70.58.020 Local registrars—Deputies.
- 70.58.030 Duties of local registrars.
- 70.58.040 Compensation of local registrars.
- 70.58.050 Duty to enforce law.
- 70.58.055 Certificates generally.
- 70.58.061 Electronic and hard copy transmission.
- 70.58.065 Local registrar use of electronic data bases.
- 70.58.070 Registration of births required.

(2004 Ed.)

- 70.58.080 Birth certificates—Filing—Establishing paternity—Surname of child.
- 70.58.082 Birth certificates—Rules—Release of copies.
- 70.58.085 Birth certificates suitable for display—Issuance—Fee—Disposition of funds.
- 70.58.095 New certificate of birth—Legitimation, paternity—Substitution for original—Inspection of original, when—When delayed registration required.
- 70.58.100 Supplemental report on name of child.
- 70.58.104 Reproductions of vital records—Disclosure of information for research purposes—Furnishing of birth and death records by local registrars.
- 70.58.107 Fees charged by department and local registrars.
- 70.58.110 Delayed registration of births—Authorized.
- 70.58.120 Delayed registration of births—Application—Evidence required.
- 70.58.130 Delayed registration of births—Where registered—Copy as evidence.
- 70.58.145 Order establishing record of birth when delayed registration not available—Procedure.
- 70.58.150 "Fetal death," "evidence of life," defined.
- 70.58.160 Certificate of death or fetal death required.
- 70.58.170 Certificate of death or fetal death—By whom filed.
- 70.58.180 Certificate when no physician, physician's assistant, or advanced registered nurse practitioner in attendance—Legally accepted cause of death.
- 70.58.190 Permit to dispose of body when cause of death undetermined.
- 70.58.210 Birth certificate upon adoption.
- 70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee.
- 70.58.240 Duties of funeral directors.
- 70.58.250 Burial-transit permit—Requisites.
- 70.58.260 Burial grounds—Duties of sexton.
- 70.58.270 Data on inmates of hospitals, etc.
- 70.58.280 Penalty.
- 70.58.380 Certificates for out-of-state marriage license requirements.
- 70.58.390 Certificates of presumed death incident to accidents, disasters.

Vital statistics

duties of state registrar: RCW 43.70.160.

registration of: RCW 43.70.150.

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

(1) "Department" means the department of health.

(2) "Vital records" means records of birth, death, fetal death, marriage, dissolution, annulment, and legal separation, as maintained under the supervision of the state registrar of vital statistics. [1991 c 3 § 342; 1987 c 223 § 1.]

70.58.010 Registration districts. Each city of the first class shall constitute a primary registration district and each county and the territory of counties jointly comprising a health district, exclusive of the portion included within cities of the first class, shall constitute a primary registration area. All other counties and municipal areas not included in the foregoing shall be divided into registration areas by the state registrar as he may deem essential to obtain the most efficient registration of vital events as provided by law. [1979 ex.s. c 52 § 2; 1951 c 106 § 4; 1915 c 180 § 1; 1907 c 83 § 2; RRS § 6019.]

70.58.020 Local registrars—Deputies. Under the direction and control of the state registrar, the health officer of each city of the first class shall be the local registrar in and for the primary registration district under his supervision as health officer and the health officer of each county and district health department shall be the local registrar in and for the registration area which he supervises as health officer and shall serve as such as long as he performs the registration duties as prescribed by law. He may be removed as local reg-

istrar of the registration area which he serves by the state board of health upon its finding of evidence of neglect in the performance of his duties as such registrar. The state registrar shall appoint local registrars for those registration areas not included in the foregoing and also in areas where the state board of health has removed the health officer from this position as registrar.

Each local registrar, subject to the approval of the state registrar, shall appoint in writing a sufficient number of deputy registrars to administer the laws relating to vital statistics, and shall certify the appointment of such deputies to the state registrar. Deputy registrars shall act in the case of absence, death, illness or disability of the local registrar, or such other conditions as may be deemed sufficient cause to require their services. [1979 ex.s. c 52 § 3; 1961 ex.s. c 5 § 5; 1951 c 106 § 5; 1915 c 180 § 2; 1907 c 83 § 3; RRS § 6020.]

Director of combined city-county health department as registrar: RCW 70.08.060.

70.58.030 Duties of local registrars. The local registrar shall supply blank forms of certificates to such persons as require them. He or she shall carefully examine each certificate of birth, death, and fetal death when presented for record, and see that it has been made out in accordance with the provisions of law and the instructions of the state registrar. If any certificate of death is incomplete or unsatisfactory, the local registrar shall call attention to the defects in the return, and withhold issuing the burial-transit permit until it is corrected. If the certificate of death is properly executed and complete, he or she shall issue a burial-transit permit to the funeral director or person acting as such. If a certificate of a birth is incomplete, he or she shall immediately notify the informant, and require that the missing items be supplied if they can be obtained. He or she shall sign as local registrar to each certificate filed in attest of the date of filing in the office. He or she shall make a record of each birth, death, and fetal death certificate registered in such manner as directed by the state registrar. The local registrar shall transmit to the state registrar each original death or fetal death certificate no less than thirty days after the certificate was registered nor more than sixty days after the certificate was registered. On or before the fifteenth day and the last day of each month, each local registrar shall transmit to the state registrar all original birth certificates that were registered prior to that day and which had not been transmitted previously. A local registrar shall transmit an original certificate to the state registrar whenever the state registrar requests the transfer of the certificate from the local registrar. If no births or no deaths occurred in any month, he or she shall, on the tenth day of the following month, report that fact to the state registrar, on a card provided for this purpose. Local registrars in counties in which a first class city or a city of twenty-seven thousand or more population is located may retain an exact copy of the original and make certified copies of the exact copy. [1990 c 99 § 1; 1961 ex.s. c 5 § 6; 1907 c 83 § 18; RRS § 6035.]

70.58.040 Compensation of local registrars. A local registrar shall be paid the sum of one dollar for each birth, death, or fetal death certificate registered for his district which sum shall cover making out the burial-transit permit and record of the certificate to be filed and preserved in his

office. If no births or deaths were registered during any month, the local registrar shall be paid the sum of one dollar for each report to that effect: PROVIDED, That all local health officers who are by statute required to serve as local registrars shall not be entitled to the fee of one dollar. Neither shall any members of their staffs be entitled to the above fee of one dollar when such persons serve as deputy registrars. All fees payable to local registrars shall be paid by the treasurer of the county or city, properly chargeable therewith, out of the funds of the county or city, upon warrants drawn by the auditor, or other proper officer of the county or city. No warrant shall be issued to a local registrar except upon a statement, signed by the state registrar, stating the names and addresses respectively of the local registrars entitled to fees from the county or city, and the number of certificates and reports of births, deaths, and fetal deaths, properly returned to the state registrar, by each local registrar, during three preceding calendar months prior to the date of the statement, and the amount of fees to which each local registrar is entitled, which statement the state registrar shall file with the proper officers during the months of January, April, July, and October of each year. Upon filing of the statement the auditor or other proper officer of the county or city shall issue warrants for the amount due each local registrar. [1961 ex.s. c 5 § 7; 1951 c 106 § 8; 1915 c 180 § 10; 1907 c 83 § 19; RRS § 6036.]

70.58.050 Duty to enforce law. The local registrars are hereby charged with the strict and thorough enforcement of the provisions of *this act in their districts, under the supervision and direction of the state registrar. And they shall make an immediate report to the state registrar of any violations of this law coming to their notice by observation or upon the complaint of any person, or otherwise. The state registrar is hereby charged with the thorough and efficient execution of the provisions of *this act in every part of the state, and with supervisory power over local registrars, to the end that all of the requirements shall be uniformly complied with. He shall have authority to investigate cases of irregularity or violation of law, personally or by accredited representative, and all local registrars shall aid him, upon request, in such investigation. When he shall deem it necessary he shall report cases of violation of any of the provisions of *this act to the prosecuting attorney of the proper county with a statement of the fact and circumstances; and when any such case is reported to them by the state registrar, all prosecuting attorneys or officials acting in such capacity shall forthwith initiate and promptly follow up the necessary court proceedings against the parties responsible for the alleged violations of law. And upon request of the state registrar the attorney general shall likewise assist in the enforcement of the provisions of *this act. [1907 c 83 § 22; RRS § 6039.]

***Reviser's note:** "this act" appears in 1907 c 83 codified as RCW 70.58.010 through 70.58.100, 70.58.230 through 70.58.280, and 43.20A.620 through 43.20A.630.

70.58.055 Certificates generally. (1) To promote and maintain nation-wide uniformity in the system of vital statistics, the certificates required by this chapter or by the rules adopted under this chapter shall include, as a minimum, the

items recommended by the federal agency responsible for national vital statistics including social security numbers.

(2) The state board of health by rule may require additional pertinent information relative to the birth and manner of delivery as it may deem necessary for statistical study. This information shall be placed in a confidential section of the birth certificate form and shall not be subject to the view of the public or for certification purposes except upon order of the court. The state board of health may eliminate from the forms items that it determines are not necessary for statistical study.

(3) Each certificate or other document required by this chapter shall be on a form or in a format prescribed by the state registrar.

(4) All vital records shall contain the data required for registration. No certificate may be held to be complete and correct that does not supply all items of information called for or that does not satisfactorily account for the omission of required items.

(5) Information required in certificates or documents authorized by this chapter may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar. [1997 c 58 § 948; 1991 c 96 § 1.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

70.58.061 Electronic and hard copy transmission.

The department is authorized to prescribe by rule the schedule and system for electronic and hard copy transmission of certificates and documents required by this chapter. [1991 c 96 § 2.]

70.58.065 Local registrar use of electronic data bases. The department, in mutual agreement with a local health officer as defined in RCW 70.05.010, may authorize a local registrar to access the statewide birth data base or death data base and to issue a certified copy of birth or death certificates from the respective statewide electronic data bases. In such cases, the department may bill local registrars for only direct line charges associated with accessing birth and death data bases. [1991 c 96 § 3.]

70.58.070 Registration of births required. All births that occur in the state shall be immediately registered in the districts in which they occur, as hereinafter provided. [1907 c 83 § 11; RRS § 6028.]

70.58.080 Birth certificates—Filing—Establishing paternity—Surname of child. (1) Within ten days after the birth of any child, the attending physician, midwife, or his or her agent shall:

(a) Fill out a certificate of birth, giving all of the particulars required, including: (i) The mother's name and date of birth, and (ii) if the mother and father are married at the time of birth or an acknowledgment of paternity has been signed or one has been filed with the state registrar of vital statistics naming the man as the father, the father's name and date of birth; and

(b) File the certificate of birth together with the mother's and father's social security numbers with the state registrar of vital statistics.

(2) The local registrar shall forward the birth certificate, any signed acknowledgment of paternity that has not been filed with the state registrar of vital statistics, and the mother's and father's social security numbers to the state office of vital statistics pursuant to RCW 70.58.030.

(3) The state registrar of vital statistics shall make available to the division of child support the birth certificates, the mother's and father's social security numbers and acknowledgments of paternity.

(4) Upon the birth of a child to an unmarried woman, the attending physician, midwife, or his or her agent shall:

(a) Provide an opportunity for the child's mother and natural father to complete an acknowledgment of paternity. The completed acknowledgment shall be filed with the state registrar of vital statistics. The acknowledgment shall be prepared as required by RCW 26.26.305.

(b) Provide written information and oral information, furnished by the department of social and health services, to the mother and the father regarding the benefits of having the child's paternity established and of the availability of paternity establishment services, including a request for support enforcement services. The oral and written information shall also include information regarding the alternatives to, the legal consequences of, and the rights, including, if one parent is a minor any rights afforded due to minority status, and responsibilities that arise from, signing the acknowledgment of paternity.

(5) The physician or midwife or his or her agent is entitled to reimbursement for reasonable costs, which the department shall establish by rule, when an acknowledgment of paternity is filed with the state registrar of vital statistics.

(6) If there is no attending physician or midwife, the father or mother of the child, householder or owner of the premises, manager or superintendent of the public or private institution in which the birth occurred, shall notify the local registrar, within ten days after the birth, of the fact of the birth, and the local registrar shall secure the necessary information and signature to make a proper certificate of birth.

(7) When an infant is found for whom no certificate of birth is known to be on file, a birth certificate shall be filed within the time and in the form prescribed by the state board of health.

(8) When no alleged father is named on a birth certificate of a child born to an unwed mother the mother may give any surname she so desires to her child but shall designate in space provided for father's name on the birth certificate "None Named". [2002 c 302 § 708; 1997 c 58 § 937; 1989 c 55 § 2; 1961 ex.s. c 5 § 8; 1951 c 106 § 6; 1907 c 83 § 12; RRS § 6029.]

Application—Construction—Short title—Severability—2002 c 302: See RCW 26.26.903, 26.26.911, and 26.26.912.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Implementation—1994 c 299: "The department of social and health services shall make a substantial effort to determine the identity of the non-custodial parent through consistent implementation of RCW 70.58.080. By December 1, 1994, the department of social and health services shall report

to the fiscal committees of the legislature on the method for validating claims of good cause for refusing to establish paternity, the methods used in other states, and the national average rate of claims of good cause for refusing to establish paternity compared to the Washington state rate of claims of good cause for refusing to establish paternity, the reasons for differences in the rates, and steps that may be taken to reduce these differences." [1994 c 299 § 13.]

70.58.082 Birth certificates—Rules—Release of copies. No person may prepare or issue any birth certificate that purports to be an original, certified copy, or copy of a birth certificate except as authorized in this chapter.

The department shall adopt rules providing for the release of paper or electronic copies of birth certificate records that include adequate standards for security and confidentiality, assure the proper record is identified, and prevent fraudulent use of records. All certified copies of birth certificates in the state must be on paper and in a format provided and approved by the department and must include security features to deter the alteration, counterfeiting, duplication, or simulation without ready detection.

Federal, state, and local governmental agencies may, upon request and with submission of the appropriate fee, be furnished copies of birth certificates if the birth certificate will be used for the agencies' official duties. The department may enter into agreements with offices of vital statistics outside the state for the transmission of copies of birth certificates to those offices when the birth certificates relate to residents of those jurisdictions and receipt of copies of birth certificates from those offices. The agreement must specify the statistical and administrative purposes for which the birth certificates may be used and must provide instructions for the proper retention and disposition of the copies. Copies of birth certificates that are received by the department from other offices of vital statistics outside the state must be handled as provided under the agreements.

The department may disclose information that may identify any person named in any birth certificate record for research purposes as provided under chapter 42.48 RCW. [1997 c 108 § 1.]

70.58.085 Birth certificates suitable for display—Issuance—Fee—Disposition of funds. (1) In addition to the original birth certificate, the state registrar shall issue upon request and upon payment of the fee established pursuant to subsection (3) of this section a birth certificate representing that the birth of the person named thereon is recorded in the office of the registrar. The certificate issued under this section shall be in a form consistent with the need to protect the integrity of vital records but shall be suitable for display. It may bear the seal of the state printed thereon and may be signed by the governor. It shall have the same status as evidence as the original birth certificate.

(2) Of the funds received under subsection (1) of this section, the amount needed to reimburse the registrar for expenses incurred in administering this section shall be credited to the state registrar account. The remainder shall be credited to the children's trust fund established under RCW 43.121.100.

(3) The fee shall be set by the council established pursuant to RCW 43.121.020, at a level likely to maximize reve-

nues for the children's trust fund. [2004 c 53 § 1; 1987 c 351 § 6.]

Legislative findings—1987 c 351: "The legislature finds that children are society's most valuable resource and that child abuse and neglect is a threat to the physical, mental, and emotional health of children. The legislature further finds that assisting community-based private nonprofit and public organizations, agencies, or school districts in identifying and establishing needed primary prevention programs will reduce the incidence of child abuse and neglect, and the necessity for costly subsequent intervention in family life by the state. Child abuse and neglect prevention programs can be most effectively and economically administered through the use of trained volunteers and the cooperative efforts of the communities, citizens, and the state. The legislature finds that the Washington council for prevention of child abuse is an effective counsel for reducing child abuse but limited resources have prevented the council from funding promising prevention concepts statewide.

It is the intent of the legislature to establish a cost-neutral revenue system for the children's trust fund which is designed to fund primary prevention programs and innovative prevention related activities such as research or public awareness campaigns. The fund shall be supported through revenue created by the sale of heirloom birth certificates. This concept has proven to be a cost-effective approach to funding child abuse prevention in the state of Oregon. The legislature believes that this is an innovative way of using private dollars to supplement our public dollars to reduce child abuse and neglect." [1987 c 351 § 1.]

70.58.095 New certificate of birth—Legitimation, paternity—Substitution for original—Inspection of original, when—When delayed registration required. The state registrar of vital statistics shall establish a new certificate of birth for a person born in this state when he receives a request that a new certificate be established and such evidence as required by regulation of the state board of health proving that such person has been acknowledged, or that a court of competent jurisdiction has determined the paternity of such person. When a new certificate of birth is established, the actual place and date of birth shall be shown. It shall be substituted for the original certificate of birth. Thereafter, the original certificate and the evidence of paternity, or acknowledgment shall not be subject to inspection except upon order of a court of competent jurisdiction, or upon written request of the department of social and health services, the attorney general, or a prosecuting attorney, stating that the documents are being sought in furtherance of an action to enforce a duty of support. If no certificate of birth is on file for the person for whom a new certificate is to be established under this section, a delayed registration of birth shall be filed with the state registrar of vital statistics as provided in RCW 70.58.120. [1983 1st ex.s. c 41 § 14; 1975-'76 2nd ex.s. c 42 § 38; 1961 ex.s. c 5 § 21.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

70.58.100 Supplemental report on name of child. It shall be the duty of every local registrar when any certificate of birth of a living child is presented without statement of the given name, to make out and deliver to the parents of such child a special blank for the supplemental report of the given name of the child, which shall be filled out as directed and returned to the registrar as soon as the child has been named. [1915 c 180 § 8; 1907 c 83 § 14; RRS § 6031.]

70.58.104 Reproductions of vital records—Disclosure of information for research purposes—Furnishing of birth and death records by local registrars. (1) The state registrar may prepare typewritten, photographic, electronic,

or other reproductions of records of birth, death, fetal death, marriage, or decrees of divorce, annulment, or legal separation registered under law or that portion of the record of any birth which shows the child's full name, sex, date of birth, and date of filing of the certificate. Such reproductions, when certified by the state registrar, shall be considered for all purposes the same as the original and shall be prima facie evidence of the facts stated therein.

(2) The department may authorize by regulation the disclosure of information contained in vital records for research purposes. All research proposals must be submitted to the department and must be reviewed and approved as to scientific merit and to ensure that confidentiality safeguards are provided in accordance with department policy.

(3) Local registrars may, upon request, furnish certified copies of the records of birth, death, and fetal death, subject to all provisions of state law applicable to the state registrar. [1991 c 96 § 4; 1987 c 223 § 2.]

70.58.107 Fees charged by department and local registrars. The department of health shall charge a fee of seventeen dollars for certified copies of records and for copies or information provided for research, statistical, or administrative purposes, and eight dollars for a search of the files or records when no copy is made. The department shall prescribe by regulation fees to be paid for preparing sealed files and for opening sealed files.

No fee may be demanded or required for furnishing certified copies of a birth, death, fetal death, marriage, divorce, annulment, or legal separation record for use in connection with a claim for compensation or pension pending before the veterans administration. No fee may be demanded or required for furnishing certified copies of a death certificate of a sex offender for use by a law enforcement agency in maintaining a registered sex offender data base.

The department shall keep a true and correct account of all fees received and transmit the fees to the state treasurer on a weekly basis.

Local registrars shall charge the same fees as the state as hereinabove provided and as prescribed by department regulation except in cases where payment is made by credit card, charge card, debit card, smart card, stored value card, federal wire, automatic clearinghouse system, or other electronic communication. Payment by these electronic methods may be subject to an additional fee consistent with the requirements established by RCW 36.29.190. All such fees collected, except for seven dollars of each fee collected for the issuance of birth certificates and first copies of death certificates and fourteen dollars of each fee collected for additional copies of the same death certificate ordered at the same time as the first copy, shall be paid to the jurisdictional health department.

All local registrars in cities and counties shall keep a true and correct account of all fees received under this section for the issuance of certified copies and shall transmit seven dollars of the fees collected for birth certificates and first copies of death certificates and fourteen dollars of the fee collected for additional copies of death certificates to the state treasurer on or before the first day of January, April, July, and October. All but five dollars of the fees turned over to the state treasurer by local registrars shall be paid to the department of

(2004 Ed.)

health for the purpose of developing and maintaining the state vital records systems, including a web-based electronic death registration system.

Five dollars of each fee imposed for the issuance of certified copies, except for copies suitable for display issued under RCW 70.58.085, at both the state and local levels shall be held by the state treasurer in the death investigations' account established by RCW 43.79.445. [2003 c 272 § 1; 2003 c 241 § 1; 1997 c 223 § 1; 1991 c 3 § 343; 1988 c 40 § 1; 1987 c 223 § 3.]

Reviser's note: This section was amended by 2003 c 241 § 1 and by 2003 c 272 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

70.58.110 Delayed registration of births—Authorized. Whenever a birth which occurred in this state on or after July 1, 1907, is not on record in the office of the state registrar or in the office of the auditor of the county in which the birth occurred if the birth was prior to July 1, 1907, application for the registration of the birth may be made by the interested person to the state registrar: PROVIDED, That if the person whose birth is to be recorded be a child under four years of age the attending physician, if available, shall make the registration. [1953 c 90 § 2; 1943 c 176 § 1; 1941 c 167 § 1; Rem. Supp. 1943 § 6011-1.]

70.58.120 Delayed registration of births—Application—Evidence required. The delayed registration of birth form shall be provided by the state registrar and shall be signed by the registrant if of legal age, or by the attendant at birth, parent, or guardian if the registrant is not of legal age. In instances of delayed registration of birth where the person whose birth is to be recorded is four years of age or over but under twelve years of age and in instances where the person whose birth is to be recorded is less than four years of age and the attending physician is not available to make the registration, the facts concerning date of birth, place of birth, and parentage shall be established by at least one piece of documentary evidence. In instances of delayed registration of birth where the person whose birth is to be recorded is twelve years of age or over, the facts concerning date of birth and place of birth shall be established by at least three documents of which only one may be an affidavit. The facts concerning parentage shall be established by at least one document. Documents, other than affidavits, or documents established prior to the fourth birthday of the registrant, shall be at least five years old or shall have been made from records established at least five years prior to the date of application. [1961 ex.s. c 5 § 9; 1953 c 90 § 3; 1943 c 176 § 2; 1941 c 167 § 2; Rem. Supp. 1943 § 6011-2.]

70.58.130 Delayed registration of births—Where registered—Copy as evidence. The birth shall be registered in the records of the state registrar. A certified copy of the record shall be prima facie evidence of the facts stated therein. [1961 ex.s. c 5 § 10; 1953 c 90 § 4; 1951 c 106 § 2; 1943 c 176 § 4; 1941 c 167 § 4; Rem. Supp. 1943 § 6011-4.]

70.58.145 Order establishing record of birth when delayed registration not available—Procedure. When a

person alleged to be born in this state is unable to meet the requirements for a delayed registration of birth in accordance with RCW 70.58.120, he may petition the superior court of the county of residence or of the county of birth for an order establishing a record of the date and place of his birth, and his parentage. The court shall fix a time for hearing the petition, and the state registrar shall be given notice at least twenty days prior to the date set for hearing in order that he may present at the hearing any information he believes will be useful to the court. If the court from the evidence presented to it finds that the petitioner was born in this state, the court shall issue an order to establish a record of birth. This order shall include the birth data to be registered. If the court orders the birth of a person born in this state registered, it shall be registered in the records of the state registrar. [1961 ex.s. c 5 § 20.]

70.58.150 "Fetal death," "evidence of life," defined.

A fetal death means any product of conception that shows no evidence of life after complete expulsion or extraction from its mother. The words "evidence of life" include breathing, beating of the heart, pulsation of the umbilical cord, or definite movement of voluntary muscles. [1961 ex.s. c 5 § 11; 1945 c 159 § 5; Rem. Supp. 1945 § 6024-5.]

70.58.160 Certificate of death or fetal death required. A certificate of every death or fetal death shall be filed with the local registrar of the district in which the death or fetal death occurred within three days after the occurrence is known, or if the place of death or fetal death is not known, then with the local registrar of the district in which the body is found within twenty-four hours thereafter. In every instance a certificate shall be filed prior to the interment or other disposition of the body: PROVIDED, That a certificate of fetal death shall not be required if the period of gestation is less than twenty weeks. [1961 ex.s. c 5 § 12; 1945 c 159 § 1; Rem. Supp. 1945 § 6024-1. Prior: 1915 c 180 § 4; 1907 c 83 § 5.]

70.58.170 Certificate of death or fetal death—By whom filed. The funeral director or person in charge of interment shall file the certificate of death or fetal death. In preparing such certificate, the funeral director or person in charge of interment shall obtain and enter on the certificate such personal data as the certificate requires from the person or persons best qualified to supply them. He or she shall present the certificate of death to the physician, physician's assistant, or advanced registered nurse practitioner last in attendance upon the deceased, or, if the deceased died without medical attendance, to the health officer, coroner, or prosecuting attorney having jurisdiction, who shall thereupon certify the cause of death according to his or her best knowledge and belief and shall sign the certificate of death or fetal death within two days after being presented with the certificate unless good cause for not signing the certificate within the two days can be established. He or she shall present the certificate of fetal death to the physician, physician's assistant, advanced registered nurse practitioner, midwife, or other person in attendance at the fetal death, who shall certify the fetal death and such medical data pertaining thereto as he or she

can furnish. [2000 c 133 § 1; 1979 ex.s. c 162 § 1; 1961 ex.s. c 5 § 13; 1945 c 159 § 2; Rem. Supp. 1945 § 6024-2.]

70.58.180 Certificate when no physician, physician's assistant, or advanced registered nurse practitioner in attendance—Legally accepted cause of death. If the death occurred without medical attendance, the funeral director or person in charge of interment shall notify the coroner, or prosecuting attorney if there is no coroner in the county. If the circumstances suggest that the death or fetal death was caused by unlawful or unnatural causes or if there is no local health officer with jurisdiction, the coroner, or if none, the prosecuting attorney shall complete and sign the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death. In case of any death without medical attendance in which there is no suspicion of death from unlawful or unnatural causes, the local health officer or his or her deputy, the coroner and if none, the prosecuting attorney, shall complete and sign the certification, noting upon the certificate that no physician, physician's assistant, or advanced registered nurse practitioner was in attendance at the time of death, and noting the cause of death without the holding of an inquest or performing of an autopsy or post mortem, but from statements of relatives, persons in attendance during the last sickness, persons present at the time of death or other persons having adequate knowledge of the facts.

The cause of death, the manner and mode in which death occurred, as noted by the coroner or if none, the prosecuting attorney or the health officer and incorporated in the death certificate filed with the bureau of vital statistics of the board of health shall be the legally accepted manner and mode by which the deceased came to his or her death and shall be the legally accepted cause of death. [2000 c 133 § 2; 1961 ex.s. c 5 § 14; 1953 c 188 § 5; 1945 c 159 § 3; Rem. Supp. 1945 § 6024-3. Prior: 1915 c 180 § 5; 1907 c 83 § 7.]

70.58.190 Permit to dispose of body when cause of death undetermined. If the cause of death cannot be determined within three days, the certification of its cause may be filed after the prescribed period, but the attending physician, coroner, or prosecuting attorney shall give the local registrar of the district in which the death occurred written notice of the reason for the delay, in order that a permit for the disposition of the body may be issued if required. [1945 c 159 § 4; Rem. Supp. 1945 § 6024-4.]

70.58.210 Birth certificate upon adoption. (1) Whenever a decree of adoption has been entered declaring a child, born in the state of Washington, adopted in any court of competent jurisdiction in the state of Washington or any other state or any territory of the United States, a certified copy of the decree of adoption shall be recorded with the proper department of registration of births in the state of Washington and a certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the adoptive parents of the child and the age, sex, and date of birth of the child, but no reference in any birth certificate shall have reference to the adoption of the child.

However, original registration of births shall remain a part of the record of the board of health.

(2) Whenever a decree of adoption has been entered declaring a child, born outside of the United States and its territories, adopted in any court of competent jurisdiction in the state of Washington, a certified copy of the decree of adoption together with evidence as to the child's birth date and birth place provided by the original birth certificate, or by a certified copy, extract, or translation thereof or by a certified copy of some other document essentially equivalent thereto, shall be recorded with the proper department of registration of births in the state of Washington. The records of the United States immigration and naturalization service or of the United States department of state are essentially equivalent to the birth certificate. A certificate of birth shall issue upon request, bearing the new name of the child as shown in the decree of adoption, the names of the adoptive parents of the child and the age, sex, and date of birth of the child, but no reference in any birth certificate shall have reference to the adoption of the child. Unless the court orders otherwise, the certificate of birth shall have the same overall appearance as the certificate which would have been issued if the adopted child had been born in the state of Washington.

A person born outside of the United States and its territories for whom a decree of adoption has been entered in a court of this state before September 1, 1979, may apply for a certificate of birth under this subsection by furnishing the proper department of registration of births with a certified copy of the decree of adoption together with the other evidence required by this subsection as to the date and place of birth. Upon receipt of the decree and evidence, a certificate of birth shall be issued in accordance with this subsection. [1979 ex.s. c 101 § 2; 1975-'76 2nd ex.s. c 42 § 40; 1943 c 12 § 1; 1939 c 133 § 1; Rem. Supp. 1943 § 6013-1.]

Severability—1979 ex.s. c 101: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 101 § 3.]

Adoption: Chapter 26.33 RCW.

Decree of adoption—Duties of state registrar of vital statistics: RCW 26.33.290.

Uniform parentage act: Chapter 26.26 RCW.

70.58.230 Permits for burial, removal, etc., required—Removal to another district without permit, notice to registrar, fee. It shall be unlawful for any person to inter, deposit in a vault, grave, or tomb, cremate or otherwise dispose of, or disinter or remove from one registration district to another, or hold for more than seventy-two hours after death, the body or remains of any person whose death occurred in this state or any body which shall be found in this state, without obtaining, from the local registrar of the district in which the death occurred or in which the body was found, a permit for the burial, disinterment, or removal of such body: PROVIDED, That a licensed funeral director or embalmer of this state may remove a body from the district where the death occurred to another registration district without having obtained a permit but in such cases the funeral director or embalmer shall at the time of removing a body file with or mail to the local registrar of the district where the death occurred a notice of removal upon a blank to be furnished by

(2004 Ed.)

the state registrar. The notice of removal shall be signed by the funeral director or embalmer and shall contain the name and address of the local registrar with whom the certificate of death will be filed and the burial-transit permit secured. Every local registrar, accepting a death certificate and issuing a burial-transit permit for a death that occurred outside his district, shall be entitled to a fee of one dollar to be paid by the funeral director or embalmer at the time the death certificate is accepted and the permit is secured. It shall be unlawful for any person to bring into or transport within the state or inter, deposit in a vault, grave, or tomb, or cremate or otherwise dispose of the body or remains of any person whose death occurred outside this state unless such body or remains be accompanied by a removal or transit permit issued in accordance with the law and health regulations in force where the death occurred, or unless a special permit for bringing such body into this state shall be obtained from the state registrar. [1961 ex.s. c 5 § 16; 1915 c 180 § 3; 1907 c 83 § 4; RRS § 6021.]

Cemeteries and human remains: Title 68 RCW.

70.58.240 Duties of funeral directors. Each funeral director or person acting as such shall obtain a certificate of death and file the same with the local registrar, and secure a burial-transit permit, prior to any permanent disposition of the body. He shall obtain the personal and statistical particulars required, from the person best qualified to supply them. He shall present the certificate to the attending physician or in case the death occurred without any medical attendance, to the proper official for certification for the medical certificate of the cause of death and other particulars necessary to complete the record. He shall supply the information required relative to the date and place of disposition and he shall present the completed certificate to the local registrar, for the issuance of a burial-transit permit. He shall deliver the burial permit to the sexton, or person in charge of the place of burial, before interring the body; or shall attach the transit permit to the box containing the corpse, when shipped by any transportation company, and the permit shall accompany the corpse to its destination. [1961 ex.s. c 5 § 17; 1915 c 180 § 6; 1907 c 83 § 8; RRS § 6025.]

70.58.250 Burial-transit permit—Requisites. The burial-transit permit shall contain a statement by the local registrar and over his signature, that a satisfactory certificate of death having been filed with him, as required by law, permission is granted to inter, remove, or otherwise dispose of the body; stating the name of the deceased and other necessary details upon the form prescribed by the state registrar. [1961 ex.s. c 5 § 18; 1907 c 83 § 9; RRS § 6026.]

70.58.260 Burial grounds—Duties of sexton. It shall be unlawful for any person in charge of any premises in which bodies of deceased persons are interred, cremated or otherwise permanently disposed of, to permit the interment, cremation or other disposition of any body upon such premises unless it is accompanied by a burial, removal or transit permit as hereinabove provided. It shall be the duty of the person in charge of any such premises to, in case of the interment, cremation or other disposition of a body therein,

[Title 70 RCW—page 111]

endorse upon the permit the date and character of such disposition, over his signature, to return all permits so endorsed to the local registrar of his district within ten days from the date of such disposition, and to keep a record of all bodies disposed of on the premises under his charge, stating, in each case, the name of the deceased person, if known, the place of death, the date of burial or other disposition, and the name and address of the undertaker, which record shall at all times be open to public inspection, and it shall be the duty of every undertaker, or person acting as such, when burying a body in a cemetery or burial grounds having no person in charge, to sign the burial, removal or transit permit, giving the date of burial, write across the face of the permit the words "no person in charge", and file the burial, removal or transit permit within ten days with the registrar of the district in which the cemetery is located. [1915 c 180 § 7; 1907 c 83 § 10; RRS § 6027.]

70.58.270 Data on inmates of hospitals, etc. All superintendents or managers, or other persons in charge of hospitals, almshouses, lying-in or other institutions, public or private, to which persons resort for treatment of disease, confinement, or are committed by process of law, are hereby required to make a record of all the personal and statistical particulars relative to the inmates in their institutions, at the date of approval of *this act, that are required in the form of the certificate provided for by this act, as directed by the state registrar; and thereafter such record shall be by them made for all future inmates at the time of their admission. And in case of persons admitted or committed for medical treatment of contagious disease, the physician in charge shall specify, for entry in the record, the nature of the disease, and where, in his opinion, it was contracted. The personal particulars and information required by this section shall be obtained from the individual himself, if it is practicable to do so; and when they cannot be so obtained, they shall be secured in as complete a manner as possible from the relatives, friends, or other persons acquainted with the facts. [1907 c 83 § 16; RRS § 6033.]

***Reviser's note:** For "this act," see note following RCW 70.58.050.

70.58.280 Penalty. (1) Every person who violates or willfully fails, neglects, or refuses to comply with any provisions of *this act is guilty of a misdemeanor and for a second offense shall be punished by a fine of not less than twenty-five dollars, and for a third and each subsequent offense shall be punished by a fine of not less than fifty dollars or more than two hundred and fifty dollars or by imprisonment for not more than ninety days, or by both fine and imprisonment.

(2) Every person who willfully furnishes any false information for any certificate required by *this act or who makes any false statement in any such certificate is guilty of a gross misdemeanor. [2003 c 53 § 353; 1915 c 180 § 12; 1907 c 83 § 21; RRS § 6038.]

***Reviser's note:** For "this act," see note following RCW 70.58.050.

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

70.58.380 Certificates for out-of-state marriage license requirements. The department shall prescribe by

rule a schedule of fees for providing certificates necessary to meet marriage license requirements of other states. The fees shall be predicated on the costs of conducting premarital blood screening tests and issuing certificates. [1981 c 284 § 1.]

Reviser's note: Although 1981 c 284 directs this section be added to chapter 74.04 RCW, codification here is considered more appropriate. The department of social and health services is apparently the department referred to.

70.58.390 Certificates of presumed death incident to accidents, disasters. A county coroner, medical examiner, or the prosecuting attorney having jurisdiction may issue a certificate of presumed death when the official issuing the certificate determines to the best of the official's knowledge and belief that there is sufficient circumstantial evidence to indicate that a person has in fact died in the county or in waters contiguous to the county as a result of an accident or natural disaster, such as a drowning, flood, earthquake, volcanic eruption, or similar occurrence, and that it is unlikely that the body will be recovered. The certificate shall recite, to the extent possible, the date, circumstances, and place of the death, and shall be the legally accepted fact of death.

In the event that the county in which the death occurred cannot be determined with certainty, the county coroner, medical examiner, or prosecuting attorney in the county in which the events occurred and in which the decedent was last known to be alive may issue a certificate of presumed death under this section.

The official issuing the certificate of presumed death shall file the certificate with the state registrar of vital statistics, and thereafter all persons and parties acting in good faith may rely thereon with acquittance. [1981 c 176 § 1.]

Chapter 70.62 RCW

TRANSIENT ACCOMMODATIONS— LICENSING—INSPECTIONS

Sections

| | |
|-----------|--|
| 70.62.200 | Purpose. |
| 70.62.210 | Definitions. |
| 70.62.220 | License required—Fee—Display. |
| 70.62.240 | Rules. |
| 70.62.250 | Powers and duties of department. |
| 70.62.260 | Licenses—Applications—Expiration—Renewal. |
| 70.62.270 | Suspension or revocation of licenses—Civil fine. |
| 70.62.280 | Violations—Penalty. |
| 70.62.290 | Adoption of fire and safety rules. |
| 70.62.900 | Severability—1971 ex.s. c 239. |

Reviser's note: Throughout this chapter, the terms "this 1971 amendatory act" or "this act" have been changed to "this chapter." "This 1971 amendatory act" and "this act" consist of this chapter, the amendment of RCW 43.22.050 and the repeal of RCW 70.62.010 through 70.62.130 and 43.22.060 through 43.22.110 by 1971 ex.s. c 239.

Hotels: Chapter 19.48 RCW.

Lien of hotels, lodging and boarding houses: Chapter 60.64 RCW.

70.62.200 Purpose. The purpose of this chapter is to provide for the development, establishment, and enforcement of standards for the maintenance and operation of transient accommodations through a licensing program to promote the protection of the health and safety of individuals using such accommodations in this state. [1994 c 250 § 1; 1971 ex.s. c 239 § 1.]

70.62.210 Definitions. The following terms whenever used or referred to in this chapter shall have the following respective meanings for the purposes of this chapter, except in those instances where the context clearly indicates otherwise:

- (1) The term "transient accommodation" shall mean any facility such as a hotel, motel, condominium, resort, or any other facility or place offering three or more lodging units to travelers and transient guests.
- (2) The term "person" shall mean any individual, firm, partnership, corporation, company, association or joint stock association, and the legal successor thereof.
- (3) The term "secretary" shall mean the secretary of the Washington state department of health and any duly authorized representative thereof.
- (4) The term "board" shall mean the Washington state board of health.
- (5) The term "department" shall mean the Washington state department of health.
- (6) The term "lodging unit" shall mean one self-contained unit designated by number, letter or some other method of identification. [1991 c 3 § 347; 1971 ex.s. c 239 § 2.]

70.62.220 License required—Fee—Display. The person operating a transient accommodation as defined in this chapter shall secure each year an annual operating license and shall pay a fee to cover the cost of licensure and enforcement activities as established by the department under RCW 43.70.110 and 43.70.250. The initial licensure period shall run for one year from the date of issuance, and the license shall be renewed annually on that date. The license fee shall be paid to the department. The license shall be conspicuously displayed in the lobby or office of the facility for which it is issued. [1994 c 250 § 2; 1987 c 75 § 9; 1982 c 201 § 10; 1971 ex.s. c 239 § 3.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

70.62.240 Rules. The board shall adopt such rules as may be necessary to assure that each transient accommodation will be operated and maintained in a manner consistent with the health and safety of the members of the public using such facilities. Such rules shall provide for adequate light, heat, ventilation, cleanliness, and sanitation and shall include provisions to assure adequate maintenance. All rules and amendments thereto shall be adopted in conformance with the provisions of chapter 34.05 RCW. [1994 c 250 § 3; 1971 ex.s. c 239 § 5.]

70.62.250 Powers and duties of department. The department is hereby granted and shall have and exercise, in addition to the powers herein granted, all the powers necessary and appropriate to carry out and execute the purposes of this chapter, including but not limited to the power:

- (1) To develop such rules and regulations for proposed adoption by the board as may be necessary to implement the purposes of this chapter;
- (2) To enter and inspect at any reasonable time any transient accommodation and to make such investigations as are reasonably necessary to carry out the provisions of this chap-

ter and any rules and regulations promulgated thereunder: PROVIDED, That no room or suite shall be entered for inspection unless said room or suite is not occupied by any patron or guest of the transient accommodation at the time of entry;

- (3) To perform such other duties and employ such personnel as may be necessary to carry out the provisions of this chapter; and
- (4) To administer and enforce the provisions of this chapter and the rules and regulations promulgated thereunder by the board. [1971 ex.s. c 239 § 6; (1994 c 250 § 4 expired June 30, 1997).]

70.62.260 Licenses—Applications—Expiration—Renewal. (1) No person shall operate a transient accommodation as defined in this chapter without having a valid license issued by the department. Applications for a transient accommodation license shall be filed with the department sixty days or more before initiating business as a transient accommodation. All licenses issued under the provisions of this chapter shall expire one year from the effective date.

(2) All applications for renewal of licenses shall be either: (a) Postmarked no later than midnight on the date the license expires; or (b) if personally presented to the department or sent by electronic means, received by the department by 5:00 p.m. on the date the license expires.

(3) A licensee that submits a license renewal application in accordance with this section and the rules and fee schedule adopted under this chapter shall be deemed to possess a valid license for the year following the expiration date of the expiring license, or until the department suspends or revokes the license pursuant to RCW 70.62.270.

(4) The license of a licensee that fails to submit a license renewal application in accordance with this section, and the rules and fee schedule adopted under this chapter, shall become invalid on the thirty-fifth day after the expiration date, unless the licensee shall have corrected any and all deficiencies in the renewal application and paid a penalty fee as established by rule by the department before the thirty-fifth day following the expiration date. An invalid license may be reinstated upon reapplication as an applicant for a new license under subsection (1) of this section.

(5) Each license shall be issued only for the premises and persons named in the application. [2004 c 162 § 1; 1994 c 250 § 6; 1971 ex.s. c 239 § 7.]

70.62.270 Suspension or revocation of licenses—Civil fine. (1) Licenses issued under this chapter may be suspended or revoked upon the failure or refusal of the person operating a transient accommodation to comply with the provisions of this chapter, or of any rules adopted under this chapter by the board. All such proceedings shall be governed by the provisions of chapter 34.05 RCW.

(2) In lieu of or in addition to license suspension or revocation, the department may assess a civil fine in accordance with RCW 43.70.095. [1994 c 250 § 7; 1971 ex.s. c 239 § 8.]

70.62.280 Violations—Penalty. Any violation of this chapter or the rules and regulations promulgated hereunder by any person operating a transient accommodation shall be a

misdeemeanor and shall be punished as such. Each day of operation of a transient accommodation in violation of this chapter shall constitute a separate offense. [1971 ex.s. c 239 § 10.]

70.62.290 Adoption of fire and safety rules. Rules establishing fire and life safety requirements, not inconsistent with the provisions of this chapter, shall continue to be adopted by the director of community, trade, and economic development, through the director of fire protection. [1994 c 250 § 8; 1986 c 266 § 95; 1971 ex.s. c 239 § 11.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.62.900 Severability—1971 ex.s. c 239. If any section or any portion of any section of this 1971 amendatory act is found to be unconstitutional, the finding shall be to the individual section or portion of section specifically found to be unconstitutional and the balance of the act shall remain in full force and effect. [1971 ex.s. c 239 § 12.]

Chapter 70.74 RCW

WASHINGTON STATE EXPLOSIVES ACT

Sections

| | |
|-----------|--|
| 70.74.010 | Definitions. |
| 70.74.020 | Restrictions on manufacture, sale, or storage—Users—Reports on storage—Waiver. |
| 70.74.022 | License required to manufacture, purchase, sell, use, possess, transport, or store explosives—Penalty—Surrender of explosives by unlicensed person—Other relief. |
| 70.74.025 | Magazines—Classification, location and construction—Standards—Use. |
| 70.74.030 | Quantity and distance tables for storage—Adoption by rule. |
| 70.74.040 | Limit on storage quantity. |
| 70.74.050 | Quantity and distance table for explosives manufacturing buildings. |
| 70.74.061 | Quantity and distance tables for separation between magazines—Adoption by rule. |
| 70.74.100 | Storage of caps with explosives prohibited. |
| 70.74.110 | Manufacturer's report—Inspection—License. |
| 70.74.120 | Storage report—Inspection—License—Cancellation. |
| 70.74.130 | Dealer in explosives—Application—License. |
| 70.74.135 | Purchaser of explosives—Application—License. |
| 70.74.137 | Purchaser's license fee. |
| 70.74.140 | Storage license fee. |
| 70.74.142 | User's license or renewal—Fee. |
| 70.74.144 | Manufacturer's license fee—Manufacturers to comply with dealer requirements when selling. |
| 70.74.146 | Seller's license fee—Sellers to comply with dealer requirements. |
| 70.74.150 | Annual inspection. |
| 70.74.160 | Unlawful access to explosives. |
| 70.74.170 | Discharge of firearms or igniting flame near explosives. |
| 70.74.180 | Explosive devices prohibited—Penalty. |
| 70.74.191 | Exemptions. |
| 70.74.201 | Municipal or county ordinances unaffected—State preemption. |
| 70.74.210 | Coal mining code unaffected. |
| 70.74.230 | Shipments out of state—Dealer's records. |
| 70.74.240 | Sale to unlicensed person prohibited. |
| 70.74.250 | Blasting near fur farms and hatcheries. |
| 70.74.270 | Malicious placement of an explosive—Penalties. |
| 70.74.272 | Malicious placement of an imitation device—Penalties. |
| 70.74.275 | Intimidation or harassment with an explosive—Class C felony. |
| 70.74.280 | Malicious explosion of a substance—Penalties. |
| 70.74.285 | "Terrorist act" defined. |
| 70.74.295 | Abandonment of explosives. |
| 70.74.297 | Separate storage of components capable of detonation when mixed. |
| 70.74.300 | Explosive containers to be marked—Penalty. |
| 70.74.310 | Gas bombs, explosives, stink bombs, etc. |
| 70.74.320 | Small arms ammunition, primers and propellants—Transportation regulations. |

| | |
|-----------|---|
| 70.74.330 | Small arms ammunition, primers and propellants—Separation from flammable materials. |
| 70.74.340 | Small arms ammunition, primers and propellants—Transportation, storage and display requirements. |
| 70.74.350 | Small arms ammunition, primers and propellants—Primers, transportation and storage requirements. |
| 70.74.360 | Licenses—Fingerprint and criminal record checks—Fee—Licenses prohibited for certain persons—License fees. |
| 70.74.370 | License revocation, nonrenewal, or suspension. |
| 70.74.380 | Licenses—Expiration—Extension of storage licenses. |
| 70.74.390 | Implementation of chapter and rules pursuant to chapter 49.17 RCW. |
| 70.74.400 | Seizure and forfeiture. |
| 70.74.410 | Reporting theft or loss of explosives. |

70.74.010 Definitions. As used in this chapter, unless a different meaning is plainly required by the context:

(1) The terms "authorized", "approved" or "approval" shall be held to mean authorized, approved, or approval by the department of labor and industries.

(2) The term "blasting agent" shall be held to mean and include any material or mixture consisting of a fuel and oxidizer, that is intended for blasting and not otherwise defined as an explosive; if the finished product, as mixed for use or shipment, cannot be detonated by means of a number 8 test blasting cap when unconfined. A number 8 test blasting cap is one containing two grams of a mixture of eighty percent mercury fulminate and twenty percent potassium chlorate, or a blasting cap of equivalent strength. An equivalent strength cap comprises 0.40-0.45 grams of PETN base charge pressed in an aluminum shell with bottom thickness not to exceed 0.03 of an inch, to a specific gravity of not less than 1.4 g/cc., and primed with standard weights of primer depending on the manufacturer.

(3) The term "explosive" or "explosives" whenever used in this chapter, shall be held to mean and include any chemical compound or mechanical mixture that is commonly used or intended for the purpose of producing an explosion, that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing, that an ignition by fire, by friction, by concussion, by percussion, or by detonation of any part of the compound or mixture may cause such a sudden generation of highly heated gases that the resultant gaseous pressures are capable of producing destructive effects on contiguous objects or of destroying life or limb. In addition, the term "explosives" shall include all material which is classified as division 1.1, 1.2, 1.3, 1.4, 1.5, or 1.6 explosives by the United States department of transportation. For the purposes of this chapter small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder not exceeding five pounds shall not be defined as explosives, unless possessed or used for a purpose inconsistent with small arms use or other lawful purpose.

(4) Classification of explosives shall include but not be limited to the following:

(a) DIVISION 1.1 and 1.2 EXPLOSIVES: Possess mass explosion or detonating hazard and include dynamite, nitroglycerin, picric acid, lead azide, fulminate of mercury, black powder exceeding five pounds, blasting caps in quantities of 1001 or more, and detonating primers.

(b) DIVISION 1.3 EXPLOSIVES: Possess a minor blast hazard, a minor projection hazard, or a flammable hazard and

include propellant explosives, including smokeless powder exceeding fifty pounds.

(c) DIVISION 1.4, 1.5, and 1.6 EXPLOSIVES: Include certain types of manufactured articles which contain division 1.1, 1.2, or 1.3 explosives, or all, as components, but in restricted quantities, and also include blasting caps in quantities of 1000 or less.

(5) The term "explosive-actuated power devices" shall be held to mean any tool or special mechanized device which is actuated by explosives, but not to include propellant-actuated power devices.

(6) The term "magazine", shall be held to mean and include any building or other structure, other than an explosives manufacturing building, used for the storage of explosives.

(7) The term "improvised device" means a device which is fabricated with explosives or destructive, lethal, noxious, pyrotechnic, or incendiary chemicals and which is designed, or has the capacity, to disfigure, destroy, distract, or harass.

(8) The term "inhabited building", shall be held to mean and include only a building regularly occupied in whole or in part as a habitation for human beings, or any church, schoolhouse, railroad station, store, or other building where people are accustomed to assemble, other than any building or structure occupied in connection with the manufacture, transportation, storage, or use of explosives.

(9) The term "explosives manufacturing plant" shall be held to mean and include all lands, with the buildings situated thereon, used in connection with the manufacturing or processing of explosives or in which any process involving explosives is carried on, or the storage of explosives thereat, as well as any premises where explosives are used as a component part or ingredient in the manufacture of any article or device.

(10) The term "explosives manufacturing building", shall be held to mean and include any building or other structure (excepting magazines) containing explosives, in which the manufacture of explosives, or any processing involving explosives, is carried on, and any building where explosives are used as a component part or ingredient in the manufacture of any article or device.

(11) The term "railroad" shall be held to mean and include any steam, electric, or other railroad which carries passengers for hire.

(12) The term "highway" shall be held to mean and include any public street, public alley, or public road, including a privately financed, constructed, or maintained road that is regularly and openly traveled by the general public.

(13) The term "efficient artificial barricade" shall be held to mean an artificial mound or properly revetted wall of earth of a minimum thickness of not less than three feet or such other artificial barricade as approved by the department of labor and industries.

(14) The term "person" shall be held to mean and include any individual, firm, partnership, corporation, company, association, society, joint stock company, joint stock association, and including any trustee, receiver, assignee, or personal representative thereof.

(15) The term "dealer" shall be held to mean and include any person who purchases explosives or blasting agents for the sole purpose of resale, and not for use or consumption.

(16) The term "forbidden or not acceptable explosives" shall be held to mean and include explosives which are forbidden or not acceptable for transportation by common carriers by rail freight, rail express, highway, or water in accordance with the regulations of the federal department of transportation.

(17) The term "handloader" shall be held to mean and include any person who engages in the noncommercial assembling of small arms ammunition for his own use, specifically the operation of installing new primers, powder, and projectiles into cartridge cases.

(18) The term "handloader components" means small arms ammunition, small arms ammunition primers, smokeless powder not exceeding fifty pounds, and black powder as used in muzzle loading firearms not exceeding five pounds.

(19) The term "fuel" shall be held to mean and include a substance which may react with the oxygen in the air or with the oxygen yielded by an oxidizer to produce combustion.

(20) The term "motor vehicle" shall be held to mean and include any self-propelled automobile, truck, tractor, semi-trailer or full trailer, or other conveyance used for the transportation of freight.

(21) The term "natural barricade" shall be held to mean and include any natural hill, mound, wall, or barrier composed of earth or rock or other solid material of a minimum thickness of not less than three feet.

(22) The term "oxidizer" shall be held to mean a substance that yields oxygen readily to stimulate the combustion of organic matter or other fuel.

(23) The term "propellant-actuated power device" shall be held to mean and include any tool or special mechanized device or gas generator system which is actuated by a propellant or which releases and directs work through a propellant charge.

(24) The term "public conveyance" shall be held to mean and include any railroad car, streetcar, ferry, cab, bus, airplane, or other vehicle which is carrying passengers for hire.

(25) The term "public utility transmission system" shall mean power transmission lines over 10 KV, telephone cables, or microwave transmission systems, or buried or exposed pipelines carrying water, natural gas, petroleum, or crude oil, or refined products and chemicals, whose services are regulated by the utilities and transportation commission, municipal, or other publicly owned systems.

(26) The term "purchaser" shall be held to mean any person who buys, accepts, or receives any explosives or blasting agents.

(27) The term "pyrotechnic" shall be held to mean and include any combustible or explosive compositions or manufactured articles designed and prepared for the purpose of producing audible or visible effects which are commonly referred to as fireworks as defined in chapter 70.77 RCW.

(28) The term "small arms ammunition" shall be held to mean and include any shotgun, rifle, pistol, or revolver cartridge, and cartridges for propellant-actuated power devices and industrial guns. Military-type ammunition containing explosive bursting charges, incendiary, tracer, spotting, or pyrotechnic projectiles is excluded from this definition.

(29) The term "small arms ammunition primers" shall be held to mean small percussion-sensitive explosive charges

encased in a cup, used to ignite propellant powder and shall include percussion caps as used in muzzle loaders.

(30) The term "smokeless powder" shall be held to mean and include solid chemicals or solid chemical mixtures in excess of fifty pounds which function by rapid combustion.

(31) The term "user" shall be held to mean and include any natural person, manufacturer, or blaster who acquires, purchases, or uses explosives as an ultimate consumer or who supervises such use.

Words used in the singular number shall include the plural, and the plural the singular. [2002 c 370 § 1; 1993 c 293 § 1; 1972 ex.s. c 88 § 5; 1970 ex.s. c 72 § 1; 1969 ex.s. c 137 § 3; 1931 c 111 § 1; RRS § 5440-1.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—1993 c 293: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 293 § 11.]

Severability—1931 c 111: "In case any provision of this act shall be adjudged unconstitutional, or void for any other reason, such adjudication shall not affect any of the other provisions of this act." [1931 c 111 § 19.]

70.74.020 Restrictions on manufacture, sale, or storage—Users—Reports on storage—Waiver. (1) No person shall manufacture, possess, store, sell, purchase, transport, or use explosives or blasting agents except in compliance with this chapter.

(2) The director of the department of labor and industries shall make and promulgate rules and regulations concerning qualifications of users of explosives and shall have the authority to issue licenses for users of explosives to effectuate the purpose of this chapter: PROVIDED, That where there is a finding by the director that the use or disposition of explosives in any class of industry presents no unusual hazard to the safety of life or limb of persons employed therewith, and where the users are supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a license for such use under this chapter, the director in his discretion may exclude said users in those classes of industry from individual licensing.

(3) The director of the department of labor and industries shall make and promulgate rules and regulations concerning the manufacture, sale, purchase, use, transportation, storage, and disposal of explosives, and shall have the authority to issue licenses for the manufacture, purchase, sale, use, transportation, and storage of explosives to effectuate the purpose of this chapter. The director of the department of labor and industries is hereby delegated the authority to grant written waiver of this chapter whenever it can be shown that the manufacturing, handling, or storing of explosives are in compliance with applicable national or federal explosive safety standards: PROVIDED, That any resident of this state who is qualified to purchase explosives in this state and who has complied with the provisions of this chapter applicable to him may purchase explosives from an authorized dealer of a bordering state and may transport said explosives into this state for use herein: PROVIDED FURTHER, That residents of this state shall, within ten days of the date of purchase, present to the department of labor and industries a report signed by both vendor and vendee of every purchase from an

out of state dealer, said report indicating the date of purchase, name of vendor, vendor's license number, vendor's business address, amount and kind of explosives purchased, the name of the purchaser, the purchaser's license number, and the name of receiver if different than purchaser.

(4) It shall be unlawful to sell, give away or otherwise dispose of, or deliver to any person under twenty-one years of age any explosives including black powder, and blasting caps or other explosive igniters, whether said person is acting for himself or for any other person: PROVIDED, That small arms ammunition and handloader components shall not be considered explosives for the purposes of this section: PROVIDED FURTHER, That if there is a finding by the director that said use or disposition of explosives poses no unusual hazard to the safety of life or limb in any class of industry, where persons eighteen years of age or older are employed as users, and where said persons are adequately trained and adequately supervised by a superior in an employment relationship who is sufficiently experienced in the use of explosives, and who possesses a valid license for such use under this chapter, the director in his discretion may exclude said persons in that class of industry from said minimum age requirement.

(5) All persons engaged in keeping, using, or storing any compound, mixture, or material, in wet condition, or otherwise, which upon drying out or undergoing other physical changes, may become an explosive within the definition of RCW 70.74.010, shall report in writing subscribed to by such person or his agent, to the department of labor and industries, report blanks to be furnished by such department, and such reports to require:

- (a) The kind of compound, mixture, or material kept or stored, and maximum quantity thereof;
- (b) Condition or state of compound, mixture, or material;
- (c) Place where kept or stored.

The department of labor and industries may at any time cause an inspection to be made to determine whether the condition of the compound, mixture, or material is as reported. [1982 c 111 § 1; 1972 ex.s. c 88 § 6; 1969 ex.s. c 137 § 4; 1967 c 99 § 1; 1931 c 111 § 2; RRS § 5440-2.]

70.74.022 License required to manufacture, purchase, sell, use, possess, transport, or store explosives—Penalty—Surrender of explosives by unlicensed person—Other relief. (1) It is unlawful for any person to manufacture, purchase, sell, offer for sale, use, possess, transport, or store any explosive, improvised device, or components that are intended to be assembled into an explosive or improvised device without having a validly issued license from the department of labor and industries, which license has not been revoked or suspended. Violation of this section is a class C felony.

(2) Upon notice from the department of labor and industries or any law enforcement agency having jurisdiction, a person manufacturing, purchasing, selling, offering for sale, using, possessing, transporting, or storing any explosive, improvised device, or components of explosives or improvised devices without a license shall immediately surrender those explosives, improvised devices, or components to the department or to the respective law enforcement agency.

(3) At any time that the director of labor and industries requests the surrender of explosives, improvised devices, or components of explosives or improvised devices, from any person pursuant to subsection (2) of this section, the director may in addition request the attorney general to make application to the superior court of the county in which the unlawful practice exists for a temporary restraining order or such other relief as appears to be appropriate under the circumstances. [1993 c 293 § 2; 1988 c 198 § 10.]

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.025 Magazines—Classification, location and construction—Standards—Use. The director of the department of labor and industries shall establish by rule or regulation requirements for classification, location and construction of magazines for storage of explosives in compliance with accepted applicable explosive safety standards. All explosives shall be kept in magazines which meet the requirements of this chapter. [1969 ex.s. c 137 § 9.]

70.74.030 Quantity and distance tables for storage—Adoption by rule. All explosive manufacturing buildings and magazines in which explosives or blasting agents except small arms ammunition and smokeless powder are had, kept, or stored, must be located at distances from inhabited buildings, railroads, highways, and public utility transmission systems in conformity with the quantity and distance tables adopted by the department of labor and industries by rule. The department of labor and industries shall adopt the quantity and distance tables promulgated by the federal bureau of alcohol, tobacco, and firearms unless the department determines the tables to be inappropriate. The tables shall be the basis on which applications for storage license[s] are made and storage licenses issued as provided in RCW 70.74.110 and 70.74.120. [1988 c 198 § 1; 1972 ex.s. c 88 § 7; 1969 ex.s. c 137 § 10; 1931 c 111 § 5; RRS § 5440-5.]

70.74.040 Limit on storage quantity. No quantity in excess of three hundred thousand pounds, or the equivalent in blasting caps shall be had, kept or stored in any factory building or magazine in this state. [1970 ex.s. c 72 § 2; 1931 c 111 § 4; RRS § 5440-4.]

70.74.050 Quantity and distance table for explosives manufacturing buildings. All explosives manufacturing buildings shall be located one from the other and from other buildings on explosives manufacturing plants in which persons are regularly employed, and all magazines shall be located from factory buildings and buildings on explosives plants in which persons are regularly employed, in conformity with the intraexplosives plant quantity and distance table below set forth:

| EXPLOSIVES | Pounds Over | Pounds Not Over | Distance Feet |
|------------|-------------|-----------------|--|
| | | | Separate Building or Within Substantial Dividing Walls |
| | | 10 | |
| 10 | | 25 | 40 |
| 25 | | 50 | 60 |
| 50 | | 100 | 80 |
| 100 | | 200 | 100 |
| 200 | | 300 | 120 |
| 300 | | 400 | 130 |
| 400 | | 500 | 140 |
| 500 | | 750 | 160 |
| 750 | | 1,000 | 180 |
| 1,000 | | 1,500 | 210 |
| 1,500 | | 2,000 | 230 |
| 2,000 | | 3,000 | 260 |
| 3,000 | | 4,000 | 280 |
| 4,000 | | 5,000 | 300 |
| 5,000 | | 6,000 | 320 |
| 6,000 | | 7,000 | 340 |
| 7,000 | | 8,000 | 360 |
| 8,000 | | 9,000 | 380 |
| 9,000 | | 10,000 | 400 |
| 10,000 | | 12,500 | 420 |
| 12,500 | | 15,000 | 450 |
| 15,000 | | 17,500 | 470 |
| 17,500 | | 20,000 | 490 |
| 20,000 | | 25,000 | 530 |
| 25,000 | | 30,000 | 560 |
| 30,000 | | 35,000 | 590 |
| 35,000 | | 40,000 | 620 |
| 40,000 | | 45,000 | 640 |
| 45,000 | | 50,000 | 660 |
| 50,000 | | 55,000 | 680 |
| 55,000 | | 60,000 | 700 |
| 60,000 | | 65,000 | 720 |
| 65,000 | | 70,000 | 740 |
| 70,000 | | 75,000 | 770 |
| 75,000 | | 80,000 | 780 |
| 80,000 | | 85,000 | 790 |
| 85,000 | | 90,000 | 800 |
| 90,000 | | 95,000 | 820 |
| 95,000 | | 100,000 | 830 |
| 100,000 | | 125,000 | 900 |
| 125,000 | | 150,000 | 950 |
| 150,000 | | 175,000 | 1,000 |
| 175,000 | | 200,000 | 1,050 |
| 200,000 | | 225,000 | 1,100 |
| 225,000 | | 250,000 | 1,150 |

[1972 ex.s. c 88 § 8; 1931 c 111 § 5; RRS § 5440-5.]

70.74.061 Quantity and distance tables for separation between magazines—Adoption by rule. Magazines containing blasting caps and electric blasting caps shall be separated from other magazines containing like contents, or from magazines containing explosives by distances set in the quantity and distance tables adopted by the department of labor and industries by rule. The department of labor and industries shall adopt the quantity and distance tables promulgated by the federal bureau of alcohol, tobacco, and fire-arms unless the department determines the tables to be inappropriate. The tables shall be the basis on which applications for storage license[s] are made and storage licenses issued as provided in RCW 70.74.110 and 70.74.120. [1988 c 198 § 2; 1969 ex.s. c 137 § 11.]

70.74.100 Storage of caps with explosives prohibited. No blasting caps, or other detonating or fulminating caps, or detonators, or flame-producing devices shall be kept or stored in any magazine in which other explosives are kept or stored. [1969 ex.s. c 137 § 12; 1931 c 111 § 10; RRS § 5440-10.]

70.74.110 Manufacturer's report—Inspection—License. All persons engaged in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device, on August 11, 1969, shall within sixty days thereafter, and all persons engaging in the manufacture of explosives, or any process involving explosives, or where explosives are used as a component part in the manufacture of any article or device after August 11, 1969, shall, before so engaging, make an application in writing, subscribed to by such person or his agent, to the department of labor and industries, the application stating:

- (1) Location of place of manufacture or processing;
- (2) Kind of explosives manufactured, processed or used;
- (3) The distance that such explosives manufacturing building is located or intended to be located from the other factory buildings, magazines, inhabited buildings, railroads and highways and public utility transmission systems;
- (4) The name and address of the applicant;
- (5) The reason for desiring to manufacture explosives;
- (6) The applicant's citizenship, if the applicant is an individual;
- (7) If the applicant is a partnership, the names and addresses of the partners, and their citizenship;
- (8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof, and their citizenship; and
- (9) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

There shall be kept in the main office on the premises of each explosives manufacturing plant a plan of said plant showing the location of all explosives manufacturing buildings and the distance they are located from other factory buildings where persons are employed and from magazines, and these plans shall at all times be open to inspection by duly authorized inspectors of the department of labor and industries. The superintendent of each plant shall upon demand of said inspector furnish the following information:

(a) The maximum amount and kind of explosive material which is or will be present in each building at one time.

(b) The nature and kind of work carried on in each building and whether or not said buildings are surrounded by natural or artificial barricades.

Except as provided in RCW 70.74.370, the department of labor and industries shall as soon as possible after receiving such application cause an inspection to be made of the explosives manufacturing plant, and if found to be in accordance with RCW 70.74.030 and 70.74.050 and 70.74.061, such department shall issue a license to the person applying therefor showing compliance with the provisions of this chapter if the applicant demonstrates that either the applicant or the officers, agents or employees of the applicant are sufficiently experienced in the manufacture of explosives and the applicant meets the qualifications for a license under RCW 70.74.360. Such license shall continue in full force and effect until expired, suspended, or revoked by the department pursuant to this chapter. [1997 c 58 § 870; 1988 c 198 § 5; 1969 ex.s. c 137 § 13; 1941 c 101 § 1; 1931 c 111 § 11; Rem. Supp. 1941 § 5440-1.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

70.74.120 Storage report—Inspection—License—Cancellation. All persons engaged in keeping or storing and all persons having in their possession explosives on August 11, 1969, shall within sixty days thereafter, and all persons engaging in keeping or storing explosives or coming into possession thereof after August 11, 1969, shall before engaging in the keeping or storing of explosives or taking possession thereof, make an application in writing subscribed to by such person or his agent, to the department of labor and industries stating:

- (1) The location of the magazine, if any, if then existing, or in case of a new magazine, the proposed location of such magazine;
- (2) The kind of explosives that are kept or stored or possessed or intended to be kept or stored or possessed and the maximum quantity that is intended to be kept or stored or possessed thereat;
- (3) The distance that such magazine is located or intended to be located from other magazines, inhabited buildings, explosives manufacturing buildings, railroads, highways and public utility transmission systems;
- (4) The name and address of the applicant;
- (5) The reason for desiring to store or possess explosives;
- (6) The citizenship of the applicant if the applicant is an individual;
- (7) If the applicant is a partnership, the names and addresses of the partners and their citizenship;
- (8) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship;

(9) And such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall, as soon as may be after receiving such application, cause an inspection to be made of the magazine, if then constructed, and, in the case of a new magazine, as soon as may be after same is found to be constructed in accordance with the specification provided in RCW 70.74.025, such department shall determine the amount of explosives that may be kept and stored in such magazine by reference to the quantity and distance tables specified in or adopted under this chapter and shall issue a license to the person applying therefor if the applicant demonstrates that either the applicant or the officers, agents, or employees of the applicant are sufficiently experienced in the handling of explosives and possess suitable storage facilities therefor, and that the applicant meets the qualifications for a license under RCW 70.74.360. Said license shall set forth the maximum quantity of explosives that may be had, kept or stored by said person. Such license shall be valid until canceled for one or more of the causes hereinafter provided. Whenever by reason of change in the physical conditions surrounding said magazine at the time of the issuance of the license therefor, such as:

- (a) The erection of buildings nearer said magazine;
- (b) The construction of railroads nearer said magazine;
- (c) The opening for public travel of highways nearer said magazine; or
- (d) The construction of public utilities transmission systems near said magazine; then the amounts of explosives which may be lawfully had, kept or stored in said magazine must be reduced to conform to such changed conditions in accordance with the quantity and distance table notwithstanding the license, and the department of labor and industries shall modify or cancel such license in accordance with the changed conditions. Whenever any person to whom a license has been issued, keeps or stores in the magazine or has in his possession, any quantity of explosives in excess of the maximum amount set forth in said license, or whenever any person fails for thirty days to pay the annual license fee hereinafter provided after the same becomes due, the department is authorized to cancel such license. Whenever a license is canceled by the department for any cause herein specified, the department shall notify the person to whom such license is issued of the fact of such cancellation and shall in said notice direct the removal of all explosives stored in said magazine within ten days from the giving of said notice, or, if the cause of cancellation be the failure to pay the annual license fee, or the fact that explosives are kept for an unlawful purpose, the department of labor and industries shall order such person to dispossess himself of said explosives within ten days from the giving of said notice. Failure to remove the explosives stored in said magazine or to dispossess oneself of the explosives as herein provided within the time specified in said notice shall constitute a violation of this chapter. [1988 c 198 § 6; 1969 ex.s. c 137 § 14; 1941 c 101 § 2; 1931 c 111 § 12; Rem. Supp. 1941 § 5440-12.]

70.74.130 Dealer in explosives—Application—License. Every person desiring to engage in the business of dealing in explosives shall apply to the department of labor

(2004 Ed.)

and industries for a license therefor. Said application shall state, among other things:

- (1) The name and address of applicant;
- (2) The reason for desiring to engage in the business of dealing in explosives;
- (3) Citizenship, if an individual applicant;
- (4) If a partnership, the names and addresses of the partners and their citizenship;
- (5) If an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and
- (6) Such other pertinent information as the director of labor and industries shall require to effectuate the purpose of this chapter.

Except as provided in RCW 70.74.370, the department of labor and industries shall issue the license if the applicant demonstrates that either the applicant or the principal officers, agents, or employees of the applicant are experienced in the business of dealing in explosives, possess suitable facilities therefor, have not been convicted of any crime that would warrant revocation or nonrenewal of a license under this chapter, and have never had an explosives-related license revoked under this chapter or under similar provisions of any other state. [1997 c 58 § 871; 1988 c 198 § 7; 1969 ex.s. c 137 § 16; 1941 c 101 § 3; Rem. Supp. 1941 § 5440-12a.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

70.74.135 Purchaser of explosives—Application—License. All persons desiring to purchase explosives except handloader components shall apply to the department of labor and industries for a license. Said application shall state, among other things:

- (1) The location where explosives are to be used;
- (2) The kind and amount of explosives to be used;
- (3) The name and address of the applicant;
- (4) The reason for desiring to use explosives;
- (5) The citizenship of the applicant if the applicant is an individual;
- (6) If the applicant is a partnership, the names and addresses of the partners and their citizenship;
- (7) If the applicant is an association or corporation, the names and addresses of the officers and directors thereof and their citizenship; and
- (8) Such other pertinent information as the director of the department of labor and industries shall require to effectuate the purpose of this chapter.

The department of labor and industries shall issue the license if the applicant demonstrates that either the applicant or the officers, agents or employees of the applicant are sufficiently experienced in the use of explosives to authorize a purchase license. However, no purchaser's license may be issued to any person who cannot document proof of possession or right to use approved and licensed storage facilities unless the person signs a statement certifying that explosives will not be stored. [1988 c 198 § 8; 1971 ex.s. c 302 § 7; 1970 ex.s. c 72 § 3; 1969 ex.s. c 137 § 18.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.74.137 Purchaser's license fee. Every person applying for a purchaser's license, or renewal thereof, shall pay an annual license fee of five dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed fifteen dollars.

Said license fee shall accompany the application and shall be transmitted by the department to the state treasurer: PROVIDED, That if the applicant is denied a purchaser's license the license fee shall be returned to said applicant by registered mail. [1988 c 198 § 12; 1972 ex.s. c 88 § 2.]

70.74.140 Storage license fee. Every person engaging in the business of keeping or storing of explosives shall pay an annual license fee for each magazine maintained, to be graduated by the department of labor and industries according to the quantity kept or stored therein, of ten dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed one hundred dollars.

Said license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [1988 c 198 § 13; 1969 ex.s. c 137 § 15; 1931 c 111 § 13; RRS § 5440-13.]

70.74.142 User's license or renewal—Fee. Every person applying for a user's license, or renewal thereof, under this chapter shall pay an annual license fee of five dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed fifteen dollars.

Said license fee shall accompany the application, and be turned over by the department to the state treasurer: PROVIDED, That if the applicant is denied a user's license the license fee shall be returned to said applicant by registered mail. [1988 c 198 § 14; 1972 ex.s. c 88 § 1.]

70.74.144 Manufacturer's license fee—Manufacturers to comply with dealer requirements when selling. Every person engaged in the business of manufacturing explosives shall pay an annual license fee of twenty-five dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administrative costs of the department. The fee shall not exceed fifty dollars.

Businesses licensed to manufacture explosives are not required to have a dealer's license, but must comply with all of the dealer requirements of this chapter when they sell explosives.

The license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [1988 c 198 § 15.]

70.74.146 Seller's license fee—Sellers to comply with dealer requirements. Every person engaged in the business of selling explosives shall pay an annual license fee of twenty-five dollars. The director of labor and industries may adjust the amount of the license fee to reflect the administra-

tive costs of the department. The fee shall not exceed fifty dollars.

Businesses licensed to sell explosives must comply with all of the dealer requirements of this chapter.

The license fee shall accompany the application and shall be transmitted by the department to the state treasurer. [1988 c 198 § 16.]

70.74.150 Annual inspection. The department of labor and industries shall make, or cause to be made, at least one inspection during every year, of each licensed explosives plant or magazine. [1931 c 111 § 14; RRS § 5440-14.]

70.74.160 Unlawful access to explosives. No person, except the director of labor and industries or the director's authorized agent, the owner, the owner's agent, or a person authorized to enter by the owner or owner's agent, or a law enforcement officer acting within his or her official capacity, may enter any explosives manufacturing building, magazine or car, vehicle or other common carrier containing explosives in this state. Violation of this section is a gross misdemeanor punishable under chapter 9A.20 RCW. [1993 c 293 § 3; 1969 ex.s. c 137 § 19; 1931 c 111 § 15; RRS § 5440-15.]

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.170 Discharge of firearms or igniting flame near explosives. No person shall discharge any firearms at or against any magazine or explosives manufacturing buildings or ignite any flame or flame-producing device nearer than two hundred feet from said magazine or explosives manufacturing building. [1969 ex.s. c 137 § 20; 1931 c 111 § 16; RRS § 5440-16.]

70.74.180 Explosive devices prohibited—Penalty. Any person who has in his or her possession or control any shell, bomb, or similar device, charged or filled with one or more explosives, intending to use it or cause it to be used for an unlawful purpose, is guilty of a class A felony, and upon conviction shall be punished by imprisonment in a state prison for a term of not more than twenty years. [2003 c 53 § 354; 1984 c 55 § 1; 1969 ex.s. c 137 § 21; 1931 c 111 § 18; RRS § 5440-18.]

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

70.74.191 Exemptions. The laws contained in this chapter and regulations prescribed by the department of labor and industries pursuant to this chapter shall not apply to:

(1) Explosives or blasting agents in the course of transportation by way of railroad, water, highway, or air under the jurisdiction of, and in conformity with, regulations adopted by the federal department of transportation, the Washington state utilities and transportation commission, and the Washington state patrol;

(2) The laboratories of schools, colleges, and similar institutions if confined to the purpose of instruction or research and if not exceeding the quantity of one pound;

(3) Explosives in the forms prescribed by the official United States Pharmacopoeia;

(4) The transportation, storage, and use of explosives or blasting agents in the normal and emergency operations of United States agencies and departments including the regular United States military departments on military reservations; arsenals, navy yards, depots, or other establishments owned by, operated by, or on behalf of, the United States; or the duly authorized militia of any state; or to emergency operations of any state department or agency, any police, or any municipality or county;

(5) A hazardous devices technician when carrying out normal and emergency operations, handling evidence, and operating and maintaining a specially designed emergency response vehicle that carries no more than ten pounds of explosive material or when conducting training and whose employer possesses the minimum safety equipment prescribed by the federal bureau of investigation for hazardous devices work. For purposes of this section, a hazardous devices technician is a person who is a graduate of the federal bureau of investigation hazardous devices school and who is employed by a state, county, or municipality;

(6) The importation, sale, possession, and use of fireworks as defined in chapter 70.77 RCW, signaling devices, flares, fuses, and torpedoes;

(7) The transportation, storage, and use of explosives or blasting agents in the normal and emergency avalanche control procedures as conducted by trained and licensed ski area operator personnel. However, the storage, transportation, and use of explosives and blasting agents for such use shall meet the requirements of regulations adopted by the director of labor and industries;

(8) The storage of consumer fireworks as defined in chapter 70.77 RCW pursuant to a forfeiture or seizure under chapter 70.77 RCW by the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority; and

(9) Any violation under this chapter if any existing ordinance of any city, municipality, or county is more stringent than this chapter. [2002 c 370 § 2; 1998 c 40 § 1; 1993 c 293 § 5; 1985 c 191 § 2; 1969 ex.s. c 137 § 5.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—1993 c 293: See note following RCW 70.74.010.

Purpose—1985 c 191: "It is the purpose of this 1985 act to protect the public by enabling ski area operators to exercise appropriate avalanche control measures. The legislature finds that avalanche control is of vital importance to safety in ski areas and that the provisions of the Washington state explosives act contain restrictions which do not reflect special needs for the use of explosives as a means of clearing an area of serious avalanche risks. This 1985 act recognizes these needs while providing for a system of regulations designed to ensure that the use of explosives for avalanche control conforms to fundamental safety requirements." [1985 c 191 § 1.]

70.74.201 Municipal or county ordinances unaffected—State preemption. This chapter shall not affect, modify or limit the power of a city, municipality or county in this state to make an ordinance that is more stringent than this chapter which is applicable within their respective corporate limits or boundaries: PROVIDED, That the state shall be deemed to have preempted the field of regulation of small arms ammunition and handloader components. [1970 ex.s. c 72 § 5; 1969 ex.s. c 137 § 6.]

(2004 Ed.)

70.74.210 Coal mining code unaffected. All acts and parts of acts inconsistent with this act are hereby repealed: PROVIDED, HOWEVER, That nothing in this act shall be construed as amending, limiting, or repealing any provision of chapter 36, session laws of 1917, known as the coal mining code. [1931 c 111 § 22; RRS § 5440-22.]

70.74.230 Shipments out of state—Dealer's records. If any manufacturer of explosives or dealer therein shall have shipped any explosives into another state, and the laws of such other state shall designate an officer or agency to regulate the possession, receipt or storage of explosives, and such officer or agency shall so require, such manufacturer shall, at least once each calendar month, file with such officer or agency of such other state a report giving the names of all purchasers and the amount and description of all explosives sold or delivered in such other state. Dealers in explosives shall keep a record of all explosives purchased or sold by them, which record shall include the name and address of each vendor and vendee, the date of each sale or purchase, and the amount and kind of explosives sold or purchased. Such records shall be open for inspection by the duly authorized agents of the department of labor and industries and by all federal, state and local law enforcement officers at all times, and a copy of such record shall be furnished once each calendar month to the department of labor and industries in such form as said department shall prescribe. [1941 c 101 § 4; Rem. Supp. 1941 § 5440-23.]

70.74.240 Sale to unlicensed person prohibited. No dealer shall sell, barter, give or dispose of explosives to any person who does not hold a license to purchase explosives issued under the provisions of this chapter. [1970 ex.s. c 72 § 4; 1969 ex.s. c 137 § 17; 1941 c 101 § 5; Rem. Supp. 1941 § 5440-24.]

70.74.250 Blasting near fur farms and hatcheries. Between the dates of January 15th and June 15th of each year it shall be unlawful for any person to do, or cause to be done, any blasting within fifteen hundred feet from any fur farm or commercial hatchery except in case of emergency without first giving to the person in charge of such farm or hatchery twenty-four hours notice: PROVIDED, HOWEVER, That in the case of an established quarry and sand and gravel operations, and where it is necessary for blasting to be done continually, the notice required in this section may be made at the beginning of the period each year when blasting is to be done. [1941 c 107 § 1; Rem. Supp. 1941 § 5440-25.]

70.74.270 Malicious placement of an explosive—Penalties. A person who maliciously places any explosive or improvised device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, in such manner or under such circumstances as to destroy or injure it if exploded is guilty of:

(1) Malicious placement of an explosive in the first degree if the offense is committed with intent to commit a terrorist act. Malicious placement of an explosive in the first degree is a class A felony;

(2) Malicious placement of an explosive in the second degree if the offense is committed under circumstances not amounting to malicious placement of an explosive in the first degree and if the circumstances and surroundings are such that the safety of any person might be endangered by the explosion. Malicious placement of an explosive in the second degree is a class B felony;

(3) Malicious placement of an explosive in the third degree if the offense is committed under circumstances not amounting to malicious placement of an explosive in the first or second degree. Malicious placement of an explosive in the third degree is a class B felony. [1997 c 120 § 1; 1993 c 293 § 6; 1992 c 7 § 49; 1984 c 55 § 2; 1971 ex.s. c 302 § 8; 1969 ex.s. c 137 § 23; 1909 c 249 § 400; RRS § 2652.]

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.272 Malicious placement of an imitation device—Penalties. (1) A person who maliciously places any imitation device in, upon, under, against, or near any building, car, vessel, railroad track, airplane, public utility transmission system, or structure, with the intent to give the appearance or impression that the imitation device is an explosive or improvised device, is guilty of:

(a) Malicious placement of an imitation device in the first degree if the offense is committed with intent to commit a terrorist act. Malicious placement of an imitation device in the first degree is a class B felony;

(b) Malicious placement of an imitation device in the second degree if the offense is committed under circumstances not amounting to malicious placement of an imitation device in the first degree. Malicious placement of an imitation device in the second degree is a class C felony.

(2) For purposes of this section, "imitation device" means a device or substance that is not an explosive or improvised device, but which by appearance or representation would lead a reasonable person to believe that the device or substance is an explosive or improvised device. [1997 c 120 § 2.]

70.74.275 Intimidation or harassment with an explosive—Class C felony. Unless otherwise allowed to do so under this chapter, a person who exhibits a device designed, assembled, fabricated, or manufactured, to convey the appearance of an explosive or improvised device, and who intends to, and does, intimidate or harass a person, is guilty of a class C felony. [1993 c 293 § 4.]

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.280 Malicious explosion of a substance—Penalties. A person who maliciously, by the explosion of gunpowder or any other explosive substance or material, destroy or damage any building, car, airplane, vessel, common carrier, railroad track, or public utility transmission system or structure is guilty of:

(1) Malicious explosion of a substance in the first degree if the offense is committed with intent to commit a terrorist act. Malicious explosion of a substance in the first degree is a class A felony;

(2) Malicious explosion of a substance in the second degree if the offense is committed under circumstances not

amounting to malicious explosion of a substance in the first degree and if thereby the life or safety of a human being is endangered. Malicious explosion of a substance in the second degree is a class A felony;

(3) Malicious explosion of a substance in the third degree if the offense is committed under circumstances not amounting to malicious explosion of a substance in the first or second degree. Malicious explosion of a substance in the third degree is a class B felony. [1997 c 120 § 3; 1992 c 7 § 50; 1971 ex.s. c 302 § 9; 1969 ex.s. c 137 § 24; 1909 c 249 § 401; RRS § 2653.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.74.285 "Terrorist act" defined. For the purposes of RCW 70.74.270, 70.74.272, and 70.74.280 "terrorist act" means an act that is intended to: (1) Intimidate or coerce a civilian population; (2) influence the policy of a branch or level of government by intimidation or coercion; (3) affect the conduct of a branch or level of government by intimidation or coercion; or (4) retaliate against a branch or level of government for a policy or conduct of the government. [1997 c 120 § 4.]

70.74.295 Abandonment of explosives. It shall be unlawful for any person to abandon explosives or improvised devices. Violation of this section is a gross misdemeanor punishable under chapter 9A.20 RCW. [1993 c 293 § 7; 1972 ex.s. c 88 § 3.]

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.297 Separate storage of components capable of detonation when mixed. Any two components which, when mixed, become capable of detonation by a No. 6 cap must be stored in separate locked containers or in a licensed, approved magazine. [1972 ex.s. c 88 § 4.]

70.74.300 Explosive containers to be marked—Penalty. Every person who shall put up for sale, or who shall deliver to any warehouseman, dock, depot, or common carrier any package, cask or can containing any explosive, nitroglycerin, dynamite, or powder, without having been properly labeled thereon to indicate its explosive classification, shall be guilty of a gross misdemeanor. [1969 ex.s. c 137 § 26; 1909 c 249 § 254; RRS § 2506.]

Reviser's note: Caption for 1909 c 249 § 254 reads as follows: "Sec. 254. TRANSPORTING EXPLOSIVES."

70.74.310 Gas bombs, explosives, stink bombs, etc. Any person other than a lawfully constituted peace officer of this state who shall deposit, leave, place, spray, scatter, spread or throw in any building, or any place, or who shall counsel, aid, assist, encourage, incite or direct any other person or persons to deposit, leave, place, spray, scatter, spread or throw, in any building or place, or who shall have in his possession for the purpose of, and with the intent of depositing, leaving, placing, spraying, scattering, spreading or throwing, in any building or place, or of counseling, aiding, assisting, encouraging, inciting or directing any other person or persons to deposit, leave, place, spray, scatter, spread or throw, any stink bomb, stink paint, tear bomb, tear shell,

explosive or flame-producing device, or any other device, material, chemical or substance, which, when exploded or opened, or without such exploding or opening, by reason of its offensive and pungent odor, does or will annoy, injure, endanger or inconvenience any person or persons, shall be guilty of a gross misdemeanor: PROVIDED, That this section shall not apply to persons in the military service, actually engaged in the performance of military duties, pursuant to orders from competent authority nor to any property owner or person acting under his authority in providing protection against the commission of a felony. [1969 ex.s. c 137 § 27; 1927 c 245 § 1; RRS § 2504-1.]

70.74.320 Small arms ammunition, primers and propellants—Transportation regulations. The federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants are hereby adopted in this chapter by reference.

The director of the department of labor and industries has the authority to issue future regulations in accordance with amendments and additions to the federal regulations of the United States department of transportation on the transportation of small arms ammunition, of small arms ammunition primers, and of small arms smokeless propellants. [1969 ex.s. c 137 § 28.]

70.74.330 Small arms ammunition, primers and propellants—Separation from flammable materials. Small arms ammunition shall be separated from flammable liquids, flammable solids and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet. [1969 ex.s. c 137 § 29.]

70.74.340 Small arms ammunition, primers and propellants—Transportation, storage and display requirements. Quantities of small arms smokeless propellant (class B) in shipping containers approved by the federal department of transportation not in excess of fifty pounds may be transported in a private vehicle.

Quantities in excess of twenty-five pounds but not to exceed fifty pounds in a private passenger vehicle shall be transported in an approved magazine as specified by the department of labor and industries rules and regulations.

Transportation of quantities in excess of fifty pounds is prohibited in passenger vehicles: PROVIDED, That this requirement shall not apply to duly licensed dealers.

Transportation of quantities in excess of fifty pounds shall be in accordance with federal department of transportation regulations.

Small arms smokeless propellant intended for personal use in quantities not to exceed twenty-five pounds may be stored without restriction in residences; quantities over twenty-five pounds but not to exceed fifty pounds shall be stored in a strong box or cabinet constructed with three-fourths inch plywood (minimum), or equivalent, on all sides, top, and bottom.

Black powder as used in muzzle loading firearms may be transported in a private vehicle or stored without restriction in private residences in quantities not to exceed five pounds.

Not more than seventy-five pounds of small arms smokeless propellant, in containers of one pound maximum capacity may be displayed in commercial establishments.

Not more than twenty-five pounds of black powder as used in muzzle loading firearms may be stored in commercial establishments of which not more than four pounds in containers of one pound maximum capacity may be displayed.

Quantities in excess of one hundred fifty pounds of smokeless propellant or twenty-five pounds of black powder as used in muzzle loading firearms shall be stored in magazines constructed as specified in the rules and regulations for construction of magazines, and located in compliance with this chapter.

All small arms smokeless propellant when stored shall be packed in federal department of transportation approved containers. [1970 ex.s. c 72 § 6; 1969 ex.s. c 137 § 30.]

70.74.350 Small arms ammunition, primers and propellants—Primers, transportation and storage requirements. Small arms ammunition primers shall not be transported or stored except in the original shipping container approved by the federal department of transportation.

Truck or rail transportation of small arms ammunition primers shall be in accordance with the federal regulation of the United States department of transportation.

No more than twenty-five thousand small arms ammunition primers shall be transported in a private passenger vehicle: PROVIDED, That this requirement shall not apply to duly licensed dealers.

Quantities not to exceed ten thousand small arms ammunition primers may be stored in a residence.

Small arms ammunition primers shall be separate from flammable liquids, flammable solids, and oxidizing materials by a fire-resistant wall of one-hour rating or by a distance of twenty-five feet.

Not more than seven hundred fifty thousand small arms ammunition primers shall be stored in any one building except as next provided; no more than one hundred thousand shall be stored in any one pile, and piles shall be separated by at least fifteen feet.

Quantities of small arms ammunition primers in excess of seven hundred fifty thousand shall be stored in magazines in accordance with RCW 70.74.025. [1969 ex.s. c 137 § 31.]

70.74.360 Licenses—Fingerprint and criminal record checks—Fee—Licenses prohibited for certain persons—License fees. (1) The director of labor and industries shall require, as a condition precedent to the original issuance or renewal of any explosive license, fingerprinting and criminal history record information checks of every applicant. In the case of a corporation, fingerprinting and criminal history record information checks shall be required for the management officials directly responsible for the operations where explosives are used if such persons have not previously had their fingerprints recorded with the department of labor and industries. In the case of a partnership, fingerprinting and criminal history record information checks shall be required of all general partners. Such fingerprints as are required by the department of labor and industries shall be submitted on forms provided by the department to the identification sec-

tion of the Washington state patrol and to the identification division of the federal bureau of investigation in order that these agencies may search their records for prior convictions of the individuals fingerprinted. The Washington state patrol shall provide to the director of labor and industries such criminal record information as the director may request. The applicant shall give full cooperation to the department of labor and industries and shall assist the department of labor and industries in all aspects of the fingerprinting and criminal history record information check. The applicant may be required to pay a fee not to exceed twenty dollars to the agency that performs the fingerprinting and criminal history process.

(2) The director of labor and industries shall not issue a license to manufacture, purchase, store, use, or deal with explosives to:

(a) Any person under twenty-one years of age;

(b) Any person whose license is suspended or whose license has been revoked, except as provided in RCW 70.74.370;

(c) Any person who has been convicted in this state or elsewhere of a violent offense as defined in RCW 9.94A.030, perjury, false swearing, or bomb threats or a crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the director of labor and industries may issue a license if the person suffering a drug or alcohol related dependency is participating in or has completed an alcohol or drug recovery program acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The director of labor and industries shall require the applicant to provide proof of such participation and control; or

(d) Any person who has previously been adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease and who has not at the time of application been restored to competency.

(3) The director of labor and industries may establish reasonable licensing fees for the manufacture, dealing, purchase, use, and storage of explosives. [1988 c 198 § 3.]

70.74.370 License revocation, nonrenewal, or suspension. (1) The department of labor and industries shall revoke and not renew the license of any person holding a manufacturer, dealer, purchaser, user, or storage license upon conviction of any of the following offenses, which conviction has become final:

(a) A violent offense as defined in RCW 9.94A.030;

(b) A crime involving perjury or false swearing, including the making of a false affidavit or statement under oath to the department of labor and industries in an application or report made pursuant to this title;

(c) A crime involving bomb threats;

(d) A crime involving a schedule I or II controlled substance, or any other drug or alcohol related offense, unless such other drug or alcohol related offense does not reflect a drug or alcohol dependency. However, the department of labor and industries may condition renewal of the license to any convicted person suffering a drug or alcohol dependency who is participating in an alcoholism or drug recovery pro-

gram acceptable to the department of labor and industries and has established control of their alcohol or drug dependency. The department of labor and industries shall require the licensee to provide proof of such participation and control;

(e) A crime relating to possession, use, transfer, or sale of explosives under this chapter or any other chapter of the Revised Code of Washington.

(2) The department of labor and industries shall revoke the license of any person adjudged to be mentally ill or insane, or to be incompetent due to any mental disability or disease. The director shall not renew the license until the person has been restored to competency.

(3) The department of labor and industries is authorized to suspend, for a period of time not to exceed six months, the license of any person who has violated this chapter or the rules promulgated pursuant to this chapter.

(4) The department of labor and industries may revoke the license of any person who has repeatedly violated this chapter or the rules promulgated pursuant to this chapter, or who has twice had his or her license suspended under this chapter.

(5) The department of labor and industries shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department of labor and industries' receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order.

(6) Upon receipt of notification by the department of labor and industries of revocation or suspension, a licensee must surrender immediately to the department any or all such licenses revoked or suspended. [1997 c 58 § 872; 1988 c 198 § 4.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

70.74.380 Licenses—Expiration—Extension of storage licenses. With the exception of storage licenses for permanent facilities, every license issued under the authority of this chapter shall expire after one year from the date issued unless suspended or revoked. The director of labor and industries may extend the duration of storage licenses for permanent facilities to two years provided the location, distances, and use of the facilities remain unchanged. The fee for the two-year storage license shall be twice the annual fee. [1988 c 198 § 9.]

70.74.390 Implementation of chapter and rules pursuant to chapter 49.17 RCW. Unless specifically provided otherwise by statute, this chapter and the rules adopted thereunder shall be implemented and enforced, including penalties, violations, citations, appeals, and other administrative procedures, pursuant to the Washington industrial safety and health act, chapter 49.17 RCW. [1988 c 198 § 11.]

70.74.400 Seizure and forfeiture. (1) Explosives, improvised devices, and components of explosives and improvised devices that are possessed, manufactured, delivered, imported, exported, stored, sold, purchased, transported, abandoned, detonated, or used, or intended to be used, in violation of a provision of this chapter are subject to seizure and forfeiture by a law enforcement agency and no property right exists in them.

(2) The law enforcement agency making the seizure shall notify the Washington state department of labor and industries of the seizure.

(3) Seizure of explosives, improvised devices, and components of explosives and improvised devices under subsection (1) of this section may be made if:

(a) The seizure is incident to arrest or a search under a search warrant;

(b) The explosives, improvised devices, or components have been the subject of a prior judgment in favor of the state in an injunction or forfeiture proceeding based upon this chapter;

(c) A law enforcement officer has probable cause to believe that the explosives, improvised devices, or components are directly or indirectly dangerous to health or safety; or

(d) The law enforcement officer has probable cause to believe that the explosives, improvised devices, or components were used or were intended to be used in violation of this chapter.

(4) A law enforcement agency shall destroy explosives seized under this chapter when it is necessary to protect the public safety and welfare. When destruction is not necessary to protect the public safety and welfare, and the explosives are not being held for evidence, a seizure pursuant to this section commences proceedings for forfeiture.

(5) The law enforcement agency under whose authority the seizure was made shall issue a written notice of the seizure and commencement of the forfeiture proceedings to the person from whom the explosives were seized, to any known owner of the explosives, and to any person who has a known interest in the explosives. The notice shall be issued within fifteen days of the seizure. The notice of seizure and commencement of the forfeiture proceedings shall be served in the same manner as provided in RCW 4.28.080 for service of a summons. The law enforcement agency shall provide a form by which the person or persons may request a hearing before the law enforcement agency to contest the seizure.

(6) If no person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of the explosives, improvised devices, or components within thirty days of the date the notice was issued, the seized explosives, devices, or components shall be deemed forfeited.

(7) If, within thirty days of the issuance of the notice, any person notifies the seizing law enforcement agency in writing of the person's claim of ownership or right to possession of items seized, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before the chief law enforcement or the officer's designee of the seizing agency, except that the person asserting the claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the items seized is more than five hundred dollars. The hearing and any appeal shall be conducted according to chapter 34.05 RCW. The seizing law enforcement agency shall bear the burden of proving that the person (a) has no lawful right of ownership or possession and (b) that the items seized were possessed, manufactured, stored, sold, purchased, transported, abandoned, detonated, or used in violation of a provision of this chapter with the person's knowledge or consent.

(8) The seizing law enforcement agency shall promptly return the items seized to the claimant upon a determination that the claimant is entitled to possession of the items seized.

(9) If the items seized are forfeited under this statute, the seizing agency shall dispose of the explosives by summary destruction. However, when explosives are destroyed either to protect public safety or because the explosives were forfeited, the person from whom the explosives were seized loses all rights of action against the law enforcement agency or its employees acting within the scope of their employment, or other governmental entity or employee involved with the seizure and destruction of explosives.

(10) This section is not intended to change the seizure and forfeiture powers, enforcement, and penalties available to the department of labor and industries pursuant to chapter 49.17 RCW as provided in RCW 70.74.390. [2002 c 370 § 3; 1993 c 293 § 8.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—1993 c 293: See note following RCW 70.74.010.

70.74.410 Reporting theft or loss of explosives. A person who knows of a theft or loss of explosives for which that person is responsible under this chapter shall report the theft or loss to the local law enforcement agency within twenty-four hours of discovery of the theft or loss. The local law enforcement agency shall immediately report the theft or loss to the department of labor and industries. [1993 c 293 § 9.]

Severability—1993 c 293: See note following RCW 70.74.010.

Chapter 70.75 RCW

FIRE FIGHTING EQUIPMENT— STANDARDIZATION

Sections

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| 70.75.010 | Standard thread specified—Exceptions. |
| 70.75.020 | Duties of chief of the Washington state patrol. |
| 70.75.030 | Duties of chief of the Washington state patrol—Notification of industrial establishments and property owners having equipment. |
| 70.75.040 | Sale of nonstandard equipment as misdemeanor—Exceptions. |
| 70.75.900 | Severability—1967 c 152. |

70.75.010 Standard thread specified—Exceptions. All equipment for fire protection purposes, other than for forest fire fighting, purchased by state and municipal authorities,

or any other authorities having charge of public property, shall be equipped with the standard threads designated as the national standard thread as adopted by the American Insurance Association and defined in its pamphlet No. 194, dated 1963: PROVIDED, That this section shall not apply to steamer connections on fire hydrants. [1967 c 152 § 1.]

70.75.020 Duties of chief of the Washington state patrol. The standardization of existing fire protection equipment in this state shall be arranged for and carried out by or under the direction of the chief of the Washington state patrol, through the director of fire protection. He or she shall provide the appliances necessary for carrying on this work, shall proceed with such standardization as rapidly as possible, and shall require the completion of such work within a period of five years from June 8, 1967: PROVIDED, That the chief of the Washington state patrol, through the director of fire protection, may exempt special purpose fire equipment and existing fire protection equipment from standardization when it is established that such equipment is not essential to the coordination of public fire protection operations. [1995 c 369 § 41; 1986 c 266 § 96; 1967 c 152 § 2.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

State fire protection: Chapter 48.48 RCW.

70.75.030 Duties of chief of the Washington state patrol—Notification of industrial establishments and property owners having equipment. The chief of the Washington state patrol, through the director of fire protection, shall notify industrial establishments and property owners having equipment, which may be necessary for fire department use in protecting the property or putting out fire, of any changes necessary to bring their equipment up to the requirements of the standard established by RCW 70.75.020, and shall render such assistance as may be available for converting substandard equipment to meet standard specifications and requirements. [1995 c 369 § 42; 1986 c 266 § 97; 1967 c 152 § 3.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.75.040 Sale of nonstandard equipment as misdemeanor—Exceptions. Any person who, without approval of the chief of the Washington state patrol, through the director of fire protection, sells or offers for sale in Washington any fire hose, fire engine or other equipment for fire protection purposes which is fitted or equipped with other than the standard thread is guilty of a misdemeanor: PROVIDED, That fire equipment for special purposes, research, programs, forest fire fighting, or special features of fire protection equipment found appropriate for uniformity within a particular protection area may be specifically exempted from this requirement by order of the chief of the Washington state patrol, through the director of fire protection. [1995 c 369 § 43; 1986 c 266 § 98; 1967 c 152 § 4.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.75.900 Severability—1967 c 152. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1967 c 152 § 5.]

Chapter 70.77 RCW STATE FIREWORKS LAW

Sections

- 70.77.111 Intent.
- 70.77.120 Definitions—To govern chapter.
- 70.77.124 Definitions—"City."
- 70.77.126 Definitions—"Fireworks."
- 70.77.131 Definitions—"Display fireworks."
- 70.77.136 Definitions—"Consumer fireworks."
- 70.77.138 Definitions—"Articles pyrotechnic."
- 70.77.141 Definitions—"Agricultural and wildlife fireworks."
- 70.77.146 Definitions—"Special effects."
- 70.77.160 Definitions—"Public display of fireworks."
- 70.77.165 Definitions—"Fire nuisance."
- 70.77.170 Definitions—"License."
- 70.77.175 Definitions—"Licensee."
- 70.77.177 Definitions—"Local fire official."
- 70.77.180 Definitions—"Permit."
- 70.77.182 Definitions—"Permittee."
- 70.77.190 Definitions—"Person."
- 70.77.200 Definitions—"Importer."
- 70.77.205 Definitions—"Manufacturer."
- 70.77.210 Definitions—"Wholesaler."
- 70.77.215 Definitions—"Retailer."
- 70.77.230 Definitions—"Pyrotechnic operator."
- 70.77.236 Definitions—"New fireworks item."
- 70.77.241 Definitions—"Permanent storage"—"Temporary storage."
- 70.77.250 Chief of the Washington state patrol to enforce and administer—Powers and duties.
- 70.77.252 Civil penalty—Notice—Remission, mitigation, review.
- 70.77.255 Acts prohibited without appropriate licenses and permits—Minimum age for license or permit—Activities permitted without license or permit.
- 70.77.260 Application for permit.
- 70.77.265 Investigation, report on permit application.
- 70.77.270 Governing body to grant permits—Statewide standards—Liability insurance.
- 70.77.280 Public display permit—Investigation—Governing body to grant—Conditions.
- 70.77.285 Public display permit—Bond or insurance for liability.
- 70.77.290 Public display permit—Granted for exclusive purpose.
- 70.77.295 Public display permit—Amount of bond or insurance.
- 70.77.305 Chief of the Washington state patrol to issue licenses—Registration of in-state agents.
- 70.77.311 Exemptions from licensing—Purchase of certain agricultural and wildlife fireworks by government agencies—Purchase of consumer fireworks by religious or private organizations.
- 70.77.315 Application for license.
- 70.77.320 Application for license to be signed.
- 70.77.325 Annual application for a license—Dates.
- 70.77.330 License to engage in particular act to be issued if not contrary to public safety or welfare—Transportation of fireworks authorized.
- 70.77.335 License authorizes activities of sellers, authorized representatives, employees.
- 70.77.340 Annual license fees.
- 70.77.343 License fees—Additional.
- 70.77.345 Duration of licenses and retail fireworks sales permits.
- 70.77.355 General license for public display—Surety bond or insurance—Filing of license certificate with local permit application.
- 70.77.360 Denial of license for material misrepresentation or if contrary to public safety or welfare.
- 70.77.365 Denial of license for failure to meet qualifications or conditions.
- 70.77.370 Hearing on denial of license.
- 70.77.375 Revocation of license.
- 70.77.381 Wholesalers and retailers—Liability insurance requirements.
- 70.77.386 Retailers—Purchase from licensed wholesalers.
- 70.77.395 Dates and times consumer fireworks may be sold or discharged—Local governments may limit, prohibit sale or discharge of fireworks.
- 70.77.401 Sale of certain fireworks prohibited.

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|-----------|--|
| 70.77.405 | Authorized sales of toy caps, tricks, and novelties. |
| 70.77.410 | Public displays not to be hazardous. |
| 70.77.415 | Supervision of public displays. |
| 70.77.420 | Permanent storage permit required—Application—Investigation—Grant or denial—Conditions. |
| 70.77.425 | Approved permanent storage facilities required. |
| 70.77.430 | Sale of stock after revocation or expiration of license. |
| 70.77.435 | Seizure of fireworks. |
| 70.77.440 | Seizure of fireworks—Proceedings for forfeiture—Disposal of confiscated fireworks. |
| 70.77.450 | Examination, inspection of books and premises. |
| 70.77.455 | Licenses to maintain and make available complete records—Exemption from public disclosure act. |
| 70.77.460 | Reports, payments deemed made when filed or paid or date mailed. |
| 70.77.480 | Prohibited transfers of fireworks. |
| 70.77.485 | Unlawful possession of fireworks—Penalties. |
| 70.77.488 | Unlawful discharge or use of fireworks—Penalty. |
| 70.77.495 | Forestry permit to set off fireworks in forest, brush, fallow, etc. |
| 70.77.510 | Unlawful sales or transfers of display fireworks—Penalty. |
| 70.77.515 | Unlawful sales or transfers of consumer fireworks—Penalty. |
| 70.77.517 | Unlawful transportation of fireworks—Penalty. |
| 70.77.520 | Unlawful to permit fire nuisance where fireworks kept—Penalty. |
| 70.77.525 | Manufacture or sale of fireworks for out-of-state shipment. |
| 70.77.530 | Nonprohibited acts—Signal purposes, forest protection. |
| 70.77.535 | Articles pyrotechnic, special effects for entertainment media. |
| 70.77.540 | Penalty. |
| 70.77.545 | Violation a separate, continuing offense. |
| 70.77.547 | Civil enforcement not precluded. |
| 70.77.548 | Attorney general may institute civil proceedings—Venue. |
| 70.77.549 | Civil penalty—Costs. |
| 70.77.550 | Short title. |
| 70.77.555 | Local permit and license fees—Limits. |
| 70.77.575 | Chief of the Washington state patrol to provide list of consumer fireworks that may be sold to the public. |
| 70.77.580 | Retailers to post list of consumer fireworks. |
| 70.77.900 | Effective date—1961 c 228. |
| 70.77.910 | Severability—1961 c 228. |
| 70.77.911 | Severability—1982 c 230. |
| 70.77.912 | Severability—1984 c 249. |

State building code: Chapter 19.27 RCW.

70.77.111 Intent. The legislature declares that fireworks, when purchased and used in compliance with the laws of the state of Washington, are legal. The legislature intends that this chapter is regulatory only, and not prohibitory. [1995 c 61 § 1.]

Severability—1995 c 61: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 61 § 32.]

Effective date—1995 c 61: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 17, 1995]." [1995 c 61 § 33.]

70.77.120 Definitions—To govern chapter. The definitions set forth in this chapter shall govern the construction of this chapter, unless the context otherwise requires. [1961 c 228 § 1.]

70.77.124 Definitions—"City." "City" means any incorporated city or town. [1995 c 61 § 2; 1994 c 133 § 2.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.126 Definitions—"Fireworks." "Fireworks" means any composition or device designed to produce a visible or audible effect by combustion, deflagration, or detonation, and which meets the definition of articles pyrotechnic or

(2004 Ed.)

consumer fireworks or display fireworks. [2002 c 370 § 4; 1995 c 61 § 3; 1984 c 249 § 1; 1982 c 230 § 1.]

Severability—2002 c 370: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 370 § 50.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.131 Definitions—"Display fireworks." "Display fireworks" means large fireworks designed primarily to produce visible or audible effects by combustion, deflagration, or detonation and includes, but is not limited to, salutes containing more than 2 grains (130 mg) of explosive materials, aerial shells containing more than 40 grams of pyrotechnic compositions, and other display pieces which exceed the limits of explosive materials for classification as "consumer fireworks" and are classified as fireworks UN0333, UN0334, or UN0335 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002, and including fused setpieces containing components which exceed 50 mg of salute powder. [2002 c 370 § 5; 1995 c 61 § 4; 1984 c 249 § 2; 1982 c 230 § 2.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.136 Definitions—"Consumer fireworks." "Consumer fireworks" means any small firework device designed to produce visible effects by combustion and which must comply with the construction, chemical composition, and labeling regulations of the United States consumer product safety commission, as set forth in 16 C.F.R. Parts 1500 and 1507 and including some small devices designed to produce audible effects, such as whistling devices, ground devices containing 50 mg or less of explosive materials, and aerial devices containing 130 mg or less of explosive materials and classified as fireworks UN0336 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002, and not including fused setpieces containing components which together exceed 50 mg of salute powder. [2002 c 370 § 6; 1995 c 61 § 5; 1984 c 249 § 3; 1982 c 230 § 3.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.138 Definitions—"Articles pyrotechnic." "Articles pyrotechnic" means pyrotechnic devices for professional use similar to consumer fireworks in chemical composition and construction but not intended for consumer use which meet the weight limits for consumer fireworks but which are not labeled as such and which are classified as UN0431 or UN0432 by the United States department of transportation at 49 C.F.R. Sec. 172.101 as of June 13, 2002. [2002 c 370 § 7.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.141 Definitions—"Agricultural and wildlife fireworks." "Agricultural and wildlife fireworks" includes fireworks devices distributed to farmers, ranchers, and grow-

ers through a wildlife management program administered by the United States department of the interior or an equivalent state or local governmental agency. [2002 c 370 § 8; 1982 c 230 § 4.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.146 Definitions—"Special effects." "Special effects" means any combination of chemical elements or chemical compounds capable of burning independently of the oxygen of the atmosphere, and designed and intended to produce an audible, visual, mechanical, or thermal effect as an integral part of a motion picture, radio, television, theatrical, or opera production, or live entertainment. [1995 c 61 § 8; 1994 c 133 § 1; 1984 c 249 § 4; 1982 c 230 § 5.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—1994 c 133: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 133 § 17.]

Effective date—1994 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 28, 1994]." [1994 c 133 § 18.]

70.77.160 Definitions—"Public display of fireworks." "Public display of fireworks" means an entertainment feature where the public is or could be admitted or allowed to view the display or discharge of display fireworks. [2002 c 370 § 9; 1997 c 182 § 1; 1982 c 230 § 6; 1961 c 228 § 9.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—1997 c 182: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 182 § 26.]

Effective date—1997 c 182: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 23, 1997]." [1997 c 182 § 27.]

70.77.165 Definitions—"Fire nuisance." "Fire nuisance" means anything or any act which increases, or may cause an increase of, the hazard or menace of fire to a greater degree than customarily recognized as normal by persons in the public service of preventing, suppressing, or extinguishing fire; or which may obstruct, delay, or hinder, or may become the cause of any obstruction, delay, or a hindrance to the prevention or extinguishment of fire. [1961 c 228 § 10.]

70.77.170 Definitions—"License." "License" means a nontransferable formal authorization which the chief of the Washington state patrol, through the director of fire protection, is authorized to issue under this chapter to allow a person to engage in the act specifically designated therein. [2002 c 370 § 10; 1995 c 369 § 44; 1986 c 266 § 99; 1982 c 230 § 7; 1961 c 228 § 11.]

Severability—2002 c 370: See note following RCW 70.77.126.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.175 Definitions—"Licensee." "Licensee" means any person issued a fireworks license in conformance with this chapter. [2002 c 370 § 11; 1961 c 228 § 12.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.177 Definitions—"Local fire official." "Local fire official" means the chief of a local fire department or a chief fire protection officer or such other person as may be designated by the governing body of a city or county to act as a local fire official under this chapter. [1994 c 133 § 3; 1984 c 249 § 6.]

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.180 Definitions—"Permit." "Permit" means the official authorization granted by a city or county for the purpose of establishing and maintaining a place within the jurisdiction of the city or county where fireworks are manufactured, constructed, produced, packaged, stored, sold, or exchanged and the official authorization granted by a city or county for a public display of fireworks. [2002 c 370 § 12; 1995 c 61 § 9; 1984 c 249 § 5; 1982 c 230 § 8; 1961 c 228 § 13.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.182 Definitions—"Permittee." "Permittee" means any person issued a fireworks permit in conformance with this chapter. [2002 c 370 § 13.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.190 Definitions—"Person." "Person" includes any individual, firm, partnership, joint venture, association, concern, corporation, estate, trust, business trust, receiver, syndicate, or any other group or combination acting as a unit. [1961 c 228 § 15.]

70.77.200 Definitions—"Importer." "Importer" includes any person who for any purpose other than personal use:

- (1) Brings fireworks into this state or causes fireworks to be brought into this state;
- (2) Procures the delivery or receives shipments of any fireworks into this state; or
- (3) Buys or contracts to buy fireworks for shipment into this state. [1995 c 61 § 10; 1961 c 228 § 17.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.205 Definitions—"Manufacturer." "Manufacturer" includes any person who manufactures, makes, constructs, fabricates, or produces any fireworks article or device but does not include persons who assemble or fabricate sets or mechanical pieces in public displays of fireworks or persons who assemble consumer fireworks items or sets or packages containing consumer fireworks items. [2002 c 370 § 14; 1995 c 61 § 11; 1961 c 228 § 18.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.210 Definitions—"Wholesaler." "Wholesaler" includes any person who sells fireworks to a retailer or any other person for resale and any person who sells display fireworks to public display licensees. [2002 c 370 § 15; 1982 c 230 § 9; 1961 c 228 § 19.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.215 Definitions—"Retailer." "Retailer" includes any person who, at a fixed location or place of business, offers for sale, sells, or exchanges for consideration consumer fireworks to a consumer or user. [2002 c 370 § 16; 1982 c 230 § 10; 1961 c 228 § 20.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.230 Definitions—"Pyrotechnic operator." "Pyrotechnic operator" includes any individual who by experience and training has demonstrated the required skill and ability for safely setting up and discharging display fireworks. [2002 c 370 § 17; 1982 c 230 § 11; 1961 c 228 § 23.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.236 Definitions—"New fireworks item." (1) "New fireworks item" means any fireworks initially classified or reclassified as articles pyrotechnic, display fireworks, or consumer fireworks by the United States department of transportation after June 13, 2002, and which comply with the construction, chemical composition, and labeling regulations of the United States consumer products safety commission, 16 C.F.R., Parts 1500 and 1507.

(2) The chief of the Washington state patrol, through the director of fire protection, shall classify any new fireworks item in the same manner as the item is classified by the United States department of transportation and the United States consumer product safety commission. The chief of the Washington state patrol, through the director of fire protection, may determine, stating reasonable grounds, that the item should not be so classified. [2002 c 370 § 18; 1997 c 182 § 4; 1995 c 61 § 6.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.241 Definitions—"Permanent storage"—"Temporary storage." (1) "Permanent storage" means storage of display fireworks at any time and/or storage of consumer fireworks at any time other than the periods allowed under RCW 70.77.420(2) and 70.77.425 and which shall be in compliance with the requirements of chapter 70.74 RCW.

(2) "Temporary storage" means the storage of consumer fireworks during the periods allowed under RCW 70.77.420(2) and 70.77.425. [2002 c 370 § 34.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.250 Chief of the Washington state patrol to enforce and administer—Powers and duties. (1) The chief

(2004 Ed.)

of the Washington state patrol, through the director of fire protection, shall enforce and administer this chapter.

(2) The chief of the Washington state patrol, through the director of fire protection, shall appoint such deputies and employees as may be necessary and required to carry out the provisions of this chapter.

(3) The chief of the Washington state patrol, through the director of fire protection, shall adopt those rules relating to fireworks as are necessary for the implementation of this chapter.

(4) The chief of the Washington state patrol, through the director of fire protection, shall adopt those rules as are necessary to ensure statewide minimum standards for the enforcement of this chapter. Counties and cities shall comply with these state rules. Any ordinances adopted by a county or city that are more restrictive than state law shall have an effective date no sooner than one year after their adoption.

(5) The chief of the Washington state patrol, through the director of fire protection, may exercise the necessary police powers to enforce the criminal provisions of this chapter. This grant of police powers does not prevent any other state agency and city, county, or local government agency having general law enforcement powers from enforcing this chapter within the jurisdiction of the agency and city, county, or local government.

(6) The chief of the Washington state patrol, through the director of fire protection, shall adopt rules necessary to enforce the civil penalty provisions for the violations of this chapter. A civil penalty under this subsection may not exceed one thousand dollars per day for each violation and is subject to the procedural requirements under RCW 70.77.252.

(7) The chief of the Washington state patrol, through the director of fire protection, may investigate or cause to be investigated all fires resulting, or suspected of resulting, from the use of fireworks. [2002 c 370 § 19; 1997 c 182 § 5. Prior: 1995 c 369 § 45; 1995 c 61 § 12; 1986 c 266 § 100; 1984 c 249 § 7; 1982 c 230 § 12; 1961 c 228 § 27.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.252 Civil penalty—Notice—Remission, mitigation, review. (1) The penalty provided for in RCW 70.77.250(6) shall be imposed by a notice in writing to the person against whom the civil fine is assessed and shall describe the violation with reasonable particularity. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner which shows proof of receipt. Any penalty imposed by RCW 70.77.250(6) shall become due and payable twenty-eight days after receipt of notice unless application for remission or mitigation is made as provided in subsection (2) of this section or unless application for an adjudicative proceeding is filed as provided in subsection (3) of this section.

(2) Within fourteen days after the notice is received, the person incurring the penalty may apply in writing to the chief of the Washington state patrol, through the director of fire

protection, for the remission or mitigation of the penalty. Upon receipt of the application, the chief of the Washington state patrol, through the director of fire protection, may remit or mitigate the penalty upon whatever terms the chief of the Washington state patrol, through the director of fire protection, deems proper, giving consideration to the degree of hazard associated with the violation. The chief of the Washington state patrol, through the director of fire protection, may only grant a remission or mitigation that it deems to be in the best interests of carrying out the purposes of this chapter. The chief of the Washington state patrol, through the director of fire protection, may ascertain the facts regarding all such applications in a manner it deems proper. When an application for remission or mitigation is made, any penalty incurred under RCW 70.77.250(6) becomes due and payable twenty-eight days after receipt of the notice setting forth the disposition of the application, unless an application for an adjudicative proceeding to contest the disposition is filed as provided in subsection (3) of this section.

(3) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the chief of the Washington state patrol, through the director of fire protection.

(4) Any penalty imposed by final order following an adjudicative proceeding becomes due and payable upon service of the final order.

(5) The attorney general may bring an action in the name of the chief of the Washington state patrol, through the director of fire protection, in the superior court of Thurston county or of any county in which the violator may do business to collect any penalty imposed under this chapter.

(6) All penalties imposed under this section shall be paid to the state treasury and credited to the fire services trust fund and used as follows: At least fifty percent is for a statewide public education campaign developed by the chief of the Washington state patrol, through the director of fire protection, and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks; and the remainder is for statewide efforts to enforce this chapter. [2002 c 370 § 20.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.255 Acts prohibited without appropriate licenses and permits—Minimum age for license or permit—Activities permitted without license or permit. (1) Except as otherwise provided in this chapter, no person, without appropriate state licenses and city or county permits as required by this chapter may:

- (a) Manufacture, import, possess, or sell any fireworks at wholesale or retail for any use;
- (b) Make a public display of fireworks;
- (c) Transport fireworks, except as a licensee or as a public carrier delivering to a licensee; or
- (d) Knowingly manufacture, import, transport, store, sell, or possess with intent to sell, as fireworks, explosives, as defined under RCW 70.74.010, that are not fireworks, as defined under this chapter.

(2) Except as authorized by a license and permit under subsection (1)(b) of this section or as provided in RCW 70.77.311, no person may discharge display fireworks at any place.

(3) No person less than eighteen years of age may apply for or receive a license or permit under this chapter.

(4) No license or permit is required for the possession or use of consumer fireworks lawfully purchased at retail. [2002 c 370 § 21; 1997 c 182 § 6; 1995 c 61 § 13; 1994 c 133 § 4; 1984 c 249 § 10; 1982 c 230 § 14; 1961 c 228 § 28.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.260 Application for permit. (1) Any person desiring to do any act mentioned in RCW 70.77.255(1) (a) or (c) shall apply in writing to a local fire official for a permit.

(2) Any person desiring to put on a public display of fireworks under RCW 70.77.255(1)(b) shall apply in writing to a local fire official for a permit. Application shall be made at least ten days in advance of the proposed display. [1984 c 249 § 11; 1982 c 230 § 15; 1961 c 228 § 29.]

General license holders to file license certificate with application for permit for public display of fireworks: RCW 70.77.355.

70.77.265 Investigation, report on permit application. The local fire official receiving an application for a permit under RCW 70.77.260(1) shall investigate the application and submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city or county. [1994 c 133 § 5; 1984 c 249 § 12; 1961 c 228 § 30.]

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.270 Governing body to grant permits—Statewide standards—Liability insurance. (1) The governing body of a city or county, or a designee, shall grant an application for a permit under RCW 70.77.260(1) if the application meets the standards under this chapter, and the applicable ordinances of the city or county. The permit shall be granted by June 10, or no less than thirty days after receipt of an application whichever date occurs first, for sales commencing on June 28 and on December 27; or by December 10, or no less than thirty days after receipt of an application whichever date occurs first, for sales commencing only on December 27.

(2) The chief of the Washington state patrol, through the director of fire protection, shall prescribe uniform, statewide standards for retail fireworks stands including, but not limited to, the location of the stands, setback requirements and siting of the stands, types of buildings and construction material that may be used for the stands, use of the stands and areas around the stands, cleanup of the area around the stands, transportation of fireworks to and from the stands, and temporary storage of fireworks associated with the retail fire-

works stands. All cities and counties which allow retail fireworks sales shall comply with these standards.

(3) No retail fireworks permit may be issued to any applicant unless the retail fireworks stand is covered by a liability insurance policy with coverage of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not readily available from at least three approved insurance companies. If insurance in this amount is not offered, each fireworks permit shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

No wholesaler may knowingly sell or supply fireworks to any retail fireworks licensee unless the wholesaler determines that the retail fireworks licensee is covered by liability insurance in the same, or greater, amount as provided in this subsection. [2002 c 370 § 22; 1997 c 182 § 8; 1995 c 61 § 14; 1994 c 133 § 6; 1984 c 249 § 13; 1961 c 228 § 31.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.280 Public display permit—Investigation—Governing body to grant—Conditions. The local fire official receiving an application for a permit under RCW 70.77.260(2) for a public display of fireworks shall investigate whether the character and location of the display as proposed would be hazardous to property or dangerous to any person. Based on the investigation, the official shall submit a report of findings and a recommendation for or against the issuance of the permit, together with reasons, to the governing body of the city or county. The governing body shall grant the application if it meets the requirements of this chapter and the ordinance of the city or county. [1995 c 61 § 15; 1994 c 133 § 7; 1984 c 249 § 14; 1961 c 228 § 33.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.285 Public display permit—Bond or insurance for liability. Except as provided in RCW 70.77.355, the applicant for a permit under RCW 70.77.260(2) for a public display of fireworks shall include with the application evidence of a bond issued by an authorized surety company. The bond shall be in the amount required by RCW 70.77.295 and shall be conditioned upon the applicant's payment of all damages to persons or property resulting from or caused by such public display of fireworks, or any negligence on the part of the applicant or its agents, servants, employees, or subcontractors in the presentation of the display. Instead of a bond, the applicant may include a certificate of insurance evidencing the carrying of appropriate liability insurance in the amount required by RCW 70.77.295 for the benefit of the person named therein as assured, as evidence of ability to

respond in damages. The local fire official receiving the application shall approve the bond or insurance if it meets the requirements of this section. [1995 c 61 § 16; 1984 c 249 § 15; 1982 c 230 § 16; 1961 c 228 § 34.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.290 Public display permit—Granted for exclusive purpose. If a permit under RCW 70.77.260(2) for the public display of fireworks is granted, the sale, possession and use of fireworks for the public display is lawful for that purpose only. [1997 c 182 § 9; 1984 c 249 § 16; 1961 c 228 § 35.]

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

70.77.295 Public display permit—Amount of bond or insurance. In the case of an application for a permit under RCW 70.77.260(2) for the public display of fireworks, the amount of the surety bond or certificate of insurance required under RCW 70.77.285 shall be not less than fifty thousand dollars and one million dollars for bodily injury liability for each person and event, respectively, and not less than twenty-five thousand dollars for property damage liability for each event. [1984 c 249 § 17; 1982 c 230 § 17; 1961 c 228 § 36.]

70.77.305 Chief of the Washington state patrol to issue licenses—Registration of in-state agents. The chief of the Washington state patrol, through the director of fire protection, has the power to issue licenses for the manufacture, importation, sale, and use of all fireworks in this state, except as provided in RCW 70.77.311 and 70.77.395. A person may be licensed as a manufacturer, importer, or wholesaler under this chapter only if the person has a designated agent in this state who is registered with the chief of the Washington state patrol, through the director of fire protection. [2002 c 370 § 23; 1995 c 369 § 46; 1986 c 266 § 101; 1984 c 249 § 18; 1982 c 230 § 18; 1961 c 228 § 38.]

Severability—2002 c 370: See note following RCW 70.77.126.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.311 Exemptions from licensing—Purchase of certain agricultural and wildlife fireworks by government agencies—Purchase of consumer fireworks by religious or private organizations. (1) No license is required for the purchase of agricultural and wildlife fireworks by government agencies if:

(a) The agricultural and wildlife fireworks are used for wildlife control or are distributed to farmers, ranchers, or growers through a wildlife management program administered by the United States department of the interior or an equivalent state or local governmental agency;

(b) The distribution is in response to a written application describing the wildlife management problem that requires use of the devices;

(c) It is of no greater quantity than necessary to control the described problem; and

(d) It is limited to situations where other means of control are unavailable or inadequate.

(2) No license is required for religious organizations or private organizations or persons to purchase or use consumer fireworks and such audible ground devices as firecrackers, salutes, and chasers if:

- (a) Purchased from a licensed manufacturer, importer, or wholesaler;
- (b) For use on prescribed dates and locations;
- (c) For religious or specific purposes; and
- (d) A permit is obtained from the local fire official. No fee may be charged for this permit. [2002 c 370 § 24; 1995 c 61 § 17; 1984 c 249 § 19; 1982 c 230 § 19.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.315 Application for license. Any person who desires to engage in the manufacture, importation, sale, or use of fireworks, except use as provided in RCW 70.77.255(4), 70.77.311, and 70.77.395, shall make a written application to the chief of the Washington state patrol, through the director of fire protection, on forms provided by him or her. Such application shall be accompanied by the annual license fee as prescribed in this chapter. [2002 c 370 § 25; 1997 c 182 § 10. Prior: 1995 c 369 § 47; 1995 c 61 § 18; 1986 c 266 § 102; 1982 c 230 § 20; 1961 c 228 § 40.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.320 Application for license to be signed. The application for a license shall be signed by the applicant. If application is made by a partnership, it shall be signed by each partner of the partnership, and if application is made by a corporation, it shall be signed by an officer of the corporation and bear the seal of the corporation. [1961 c 228 § 41.]

70.77.325 Annual application for a license—Dates.

(1) An application for a license shall be made annually by every person holding an existing license who wishes to continue the activity requiring the license during an additional year. The application shall be accompanied by the annual license fees as prescribed in RCW 70.77.343 and 70.77.340.

(2) A person applying for an annual license as a retailer under this chapter shall file an application no later than May 1 for annual sales commencing on June 28 and on December 27, or no later than November 1 for sales commencing only on December 27. The chief of the Washington state patrol, through the director of fire protection, shall grant or deny the license within fifteen days of receipt of the application.

(3) A person applying for an annual license as a manufacturer, importer, or wholesaler under this chapter shall file an application by January 31 of the current year. The chief of the Washington state patrol, through the director of fire protection, shall grant or deny the license within ninety days of receipt of the application. [1997 c 182 § 11; 1994 c 133 § 8;

1991 c 135 § 4; 1986 c 266 § 103; 1984 c 249 § 20; 1982 c 230 § 21; 1961 c 228 § 42.]

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.43.946.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.330 License to engage in particular act to be issued if not contrary to public safety or welfare—Transportation of fireworks authorized. If the chief of the Washington state patrol, through the director of fire protection, finds that the granting of such license is not contrary to public safety or welfare, he or she shall issue a license authorizing the applicant to engage in the particular act or acts upon the payment of the license fee specified in this chapter. Licensees may transport the class of fireworks for which they hold a valid license. [2002 c 370 § 26; 1995 c 369 § 48; 1986 c 266 § 104; 1982 c 230 § 22; 1961 c 228 § 43.]

Severability—2002 c 370: See note following RCW 70.77.126.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.335 License authorizes activities of sellers, authorized representatives, employees. The authorization to engage in the particular act or acts conferred by a license to a person shall extend to sellers, authorized representatives, and other employees of such person. [2002 c 370 § 27; 1982 c 230 § 23; 1961 c 228 § 44.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.340 Annual license fees. The original and annual license fee shall be as follows:

| | | |
|--|----|----------|
| Manufacturer | \$ | 500.00 |
| Importer | | 100.00 |
| Wholesaler | | 1,000.00 |
| Retailer (for each separate retail outlet) | | 10.00 |
| Public display for display fireworks | | 10.00 |
| Pyrotechnic operator for display fireworks | | 5.00 |

[2002 c 370 § 28; 1982 c 230 § 24; 1961 c 228 § 45.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.343 License fees—Additional. (1) License fees, in addition to the fees in RCW 70.77.340, shall be charged as follows:

| | | |
|--|----|----------|
| Manufacturer | \$ | 1,500.00 |
| Importer | | 900.00 |
| Wholesaler | | 1,000.00 |
| Retailer (for each separate outlet) | | 30.00 |
| Public display for display fireworks | | 40.00 |

Pyrotechnic operator for display fireworks 5.00

(2) All receipts from the license fees in this section shall be placed in the fire services trust fund and at least seventy-five percent of these receipts shall be used to fund a statewide public education campaign developed by the chief of the Washington state patrol and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks and the remaining receipts shall be used to fund statewide enforcement efforts against the sale and use of fireworks that are illegal under this chapter. [2002 c 370 § 29; 1997 c 182 § 12; 1995 c 61 § 19; 1991 c 135 § 6.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.43.946.

70.77.345 Duration of licenses and retail fireworks sales permits. Every license and every retail fireworks sales permit issued shall be for the period from January 1st of the year for which the application is made through January 31st of the subsequent year, or the remaining portion thereof. [1997 c 182 § 13; 1995 c 61 § 20; 1991 c 135 § 5; 1982 c 230 § 25; 1961 c 228 § 46.]

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Intent—Effective date—Severability—1991 c 135: See notes following RCW 43.43.946.

70.77.355 General license for public display—Surety bond or insurance—Filing of license certificate with local permit application. (1) Any adult person may secure a general license from the chief of the Washington state patrol, through the director of fire protection, for the public display of fireworks within the state of Washington. A general license is subject to the provisions of this chapter relative to the securing of local permits for the public display of fireworks in any city or county, except that in lieu of filing the bond or certificate of public liability insurance with the appropriate local official under RCW 70.77.260 as required in RCW 70.77.285, the same bond or certificate shall be filed with the chief of the Washington state patrol, through the director of fire protection. The bond or certificate of insurance for a general license in addition shall provide that: (a) The insurer will not cancel the insured's coverage without fifteen days prior written notice to the chief of the Washington state patrol, through the director of fire protection; (b) the duly licensed pyrotechnic operator required by law to supervise and discharge the public display, acting either as an employee of the insured or as an independent contractor and the state of Washington, its officers, agents, employees, and servants are included as additional insureds, but only insofar as any operations under contract are concerned; and (c) the state is not responsible for any premium or assessments on the policy.

(2004 Ed.)

(2) The chief of the Washington state patrol, through the director of fire protection, may issue such general licenses. The holder of a general license shall file a certificate from the chief of the Washington state patrol, through the director of fire protection, evidencing the license with any application for a local permit for the public display of fireworks under RCW 70.77.260. [1997 c 182 § 14; 1994 c 133 § 9; 1986 c 266 § 105; 1984 c 249 § 21; 1982 c 230 § 26; 1961 c 228 § 48.]

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.360 Denial of license for material misrepresentation or if contrary to public safety or welfare. If the chief of the Washington state patrol, through the director of fire protection, finds that an application for any license under this chapter contains a material misrepresentation or that the granting of any license would be contrary to the public safety or welfare, the chief of the Washington state patrol, through the director of fire protection, may deny the application for the license. [1995 c 369 § 49; 1986 c 266 § 106; 1984 c 249 § 22; 1982 c 230 § 27; 1961 c 228 § 49.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.365 Denial of license for failure to meet qualifications or conditions. A written report by the chief of the Washington state patrol, through the director of fire protection, or a local fire official, or any of their authorized representatives, disclosing that the applicant for a license, or the premises for which a license is to apply, do not meet the qualifications or conditions for a license constitutes grounds for the denial by the chief of the Washington state patrol, through the director of fire protection, of any application for a license. [1995 c 369 § 50; 1986 c 266 § 107; 1984 c 249 § 23; 1982 c 230 § 28; 1961 c 228 § 50.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.370 Hearing on denial of license. Any applicant who has been denied a license for reasons other than making application after the date set forth in RCW 70.77.325 is entitled to a hearing in accordance with the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [1994 c 133 § 10; 1989 c 175 § 129; 1982 c 230 § 29; 1961 c 228 § 51.]

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Effective date—1989 c 175: See note following RCW 34.05.010.

70.77.375 Revocation of license. The chief of the Washington state patrol, through the director of fire protection, upon reasonable opportunity to be heard, may revoke any license issued pursuant to this chapter, if he or she finds that:

(1) The licensee has violated any provisions of this chapter or any rule made by the chief of the Washington state

patrol, through the director of fire protection, under and with the authority of this chapter;

(2) The licensee has created or caused a fire nuisance;

(3) Any licensee has failed or refused to file any required reports; or

(4) Any fact or condition exists which, if it had existed at the time of the original application for such license, reasonably would have warranted the chief of the Washington state patrol, through the director of fire protection, in refusing originally to issue such license. [1997 c 182 § 16; 1995 c 369 § 51; 1995 c 61 § 21; 1986 c 266 § 108; 1982 c 230 § 30; 1961 c 228 § 52.]

Reviser's note: RCW 70.77.375 was amended twice during the 1995 legislative session, each without reference to the other. This section was subsequently amended by 1997 c 182 § 16, combining the text of the 1995 amendments, but not reenacting those sections. Any subsequent amendments to this section should include the 1997 and both 1995 histories in a reenactment.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.381 Wholesalers and retailers—Liability insurance requirements. (1) Every wholesaler shall carry liability insurance for each wholesale and retail fireworks outlet it operates in the amount of not less than fifty thousand dollars and five hundred thousand dollars for bodily injury liability for each person and occurrence, respectively, and not less than fifty thousand dollars for property damage liability for each occurrence, unless such insurance is not available from at least three approved insurance companies. If insurance in this amount is not offered, each wholesale and retail outlet shall be covered by a liability insurance policy in the maximum amount offered by at least three different approved insurance companies.

(2) No wholesaler may knowingly sell or supply fireworks to any retail licensee unless the wholesaler determines that the retail licensee carries liability insurance in the same, or greater, amount as provided in subsection (1) of this section. [2002 c 370 § 30; 1995 c 61 § 27.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.386 Retailers—Purchase from licensed wholesalers. Retail fireworks licensees shall purchase all fireworks from wholesalers possessing a valid wholesale license issued by the state of Washington. [1995 c 61 § 28.]

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.395 Dates and times consumer fireworks may be sold or discharged—Local governments may limit, prohibit sale or discharge of fireworks. (1) It is legal to sell and purchase consumer fireworks within this state from twelve o'clock noon to eleven o'clock p.m. on the twenty-eighth of June, from nine o'clock a.m. to eleven o'clock p.m. on each day from the twenty-ninth of June through the fourth of July, from nine o'clock a.m. to nine o'clock p.m. on the

fifth of July, from twelve o'clock noon to eleven o'clock p.m. on each day from the twenty-seventh of December through the thirty-first of December of each year, and as provided in RCW 70.77.311.

(2) Consumer fireworks may be used or discharged each day between the hours of twelve o'clock noon and eleven o'clock p.m. on the twenty-eighth of June and between the hours of nine o'clock a.m. and eleven o'clock p.m. on the twenty-ninth of June to the third of July, and on July 4th between the hours of nine o'clock a.m. and twelve o'clock midnight, and between the hours of nine o'clock a.m. and eleven o'clock p.m. on July 5th, and from six o'clock p.m. on December 31st until one o'clock a.m. on January 1st of the subsequent year, and as provided in RCW 70.77.311.

(3) A city or county may enact an ordinance within sixty days of June 13, 2002, to limit or prohibit the sale, purchase, possession, or use of consumer fireworks on December 27, 2002, through December 31, 2002, and thereafter as provided in RCW 70.77.250(4). [2002 c 370 § 31; 1995 c 61 § 22; 1984 c 249 § 24; 1982 c 230 § 31; 1961 c 228 § 56.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.401 Sale of certain fireworks prohibited. No fireworks may be sold or offered for sale to the public as consumer fireworks which are classified as sky rockets, or missile-type rockets, firecrackers, salutes, or chasers as defined by the United States department of transportation and the federal consumer products safety commission except as provided in RCW 70.77.311. [2002 c 370 § 32; 1995 c 61 § 7.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.405 Authorized sales of toy caps, tricks, and novelties. Toy paper caps containing not more than twenty-five hundredths grain of explosive compound for each cap and trick or novelty devices not classified as consumer fireworks may be sold at all times unless prohibited by local ordinance. [2002 c 370 § 33; 1982 c 230 § 32; 1961 c 228 § 58.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.410 Public displays not to be hazardous. All public displays of fireworks shall be of such a character and so located, discharged, or fired as not to be hazardous or dangerous to persons or property. [1961 c 228 § 59.]

70.77.415 Supervision of public displays. Every public display of fireworks shall be handled or supervised by a pyrotechnic operator licensed by the chief of the Washington state patrol, through the director of fire protection, under RCW 70.77.255. [1995 c 369 § 52; 1986 c 266 § 109; 1984 c 249 § 25; 1982 c 230 § 33; 1961 c 228 § 60.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.420 Permanent storage permit required—Application—Investigation—Grant or denial—Condi-

tions. (1) It is unlawful for any person to store permanently fireworks of any class without a permit for such permanent storage from the city or county in which the storage is to be made. A person proposing to store permanently fireworks shall apply in writing to a city or county at least ten days prior to the date of the proposed permanent storage. The city or county receiving the application for a permanent storage permit shall investigate whether the character and location of the permanent storage as proposed meets the requirements of the zoning, building, and fire codes or constitutes a hazard to property or is dangerous to any person. Based on the investigation, the city or county may grant or deny the application. The city or county may place reasonable conditions on any permit granted.

(2) For the purposes of this section the temporary storing or keeping of consumer fireworks when in conjunction with a valid retail sales license and permit shall comply with RCW 70.77.425 and the standards adopted under RCW 70.77.270(2) and not this section. [2002 c 370 § 35; 1997 c 182 § 18; 1984 c 249 § 26; 1982 c 230 § 34; 1961 c 228 § 61.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

70.77.425 Approved permanent storage facilities required. It is unlawful for any person to store permanently stocks of fireworks remaining unsold after the lawful period of sale as provided in the person's permit except in such places of permanent storage as the city or county issuing the permit approves. Unsold stocks of consumer fireworks remaining after the authorized retail sales period from nine o'clock a.m. on June 28th to twelve o'clock noon on July 5th shall be returned on or before July 31st of the same year, or remaining after the authorized retail sales period from twelve o'clock noon on December 27th to eleven o'clock p.m. on December 31st shall be returned on or before January 10th of the subsequent year, to the approved permanent storage facilities of a licensed fireworks wholesaler or to a magazine or permanent storage place approved by a local fire official. [2002 c 370 § 36; 1984 c 249 § 27; 1982 c 230 § 35; 1961 c 228 § 62.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.430 Sale of stock after revocation or expiration of license. Notwithstanding RCW 70.77.255, following the revocation or expiration of a license, a licensee in lawful possession of a lawfully acquired stock of fireworks may sell such fireworks, but only under supervision of the chief of the Washington state patrol, through the director of fire protection. Any sale under this section shall be solely to persons who are authorized to buy, possess, sell, or use such fireworks. [1995 c 369 § 53; 1986 c 266 § 110; 1984 c 249 § 28; 1982 c 230 § 36; 1961 c 228 § 63.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.435 Seizure of fireworks. Any fireworks which are illegally sold, offered for sale, used, discharged, possessed, or transported in violation of the provisions of this chapter or the rules or regulations of the chief of the Wash-

ington state patrol, through the director of fire protection, are subject to seizure by the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, or by state agencies or local governments having general law enforcement authority. [2002 c 370 § 37; 1997 c 182 § 20; 1995 c 61 § 23; 1994 c 133 § 11; 1986 c 266 § 111; 1982 c 230 § 37; 1961 c 228 § 64.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.440 Seizure of fireworks—Proceedings for forfeiture—Disposal of confiscated fireworks. (1) In the event of seizure under RCW 70.77.435, proceedings for forfeiture shall be deemed commenced by the seizure. The chief of the Washington state patrol or a designee, through the director of fire protection or the agency conducting the seizure, under whose authority the seizure was made shall cause notice to be served within fifteen days following the seizure on the owner of the fireworks seized and the person in charge thereof and any person having any known right or interest therein, of the seizure and intended forfeiture of the seized property. The notice may be served by any method authorized by law or court rule including but not limited to service by certified mail with return receipt requested. Service by mail shall be deemed complete upon mailing within the fifteen-day period following the seizure.

(2) If no person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or right to lawful possession of seized fireworks within thirty days of the seizure, the seized fireworks shall be deemed forfeited.

(3) If any person notifies the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, in writing of the person's claim of lawful ownership or possession of the fireworks within thirty days of the seizure, the person or persons shall be afforded a reasonable opportunity to be heard as to the claim or right. The hearing shall be before an administrative law judge appointed under chapter 34.12 RCW, except that any person asserting a claim or right may remove the matter to a court of competent jurisdiction if the aggregate value of the seized fireworks is more than five hundred dollars. The hearing before an administrative law judge and any appeal therefrom shall be under Title 34 RCW. In a court hearing between two or more claimants to the article or articles involved, the prevailing party shall be entitled to a judgment for costs and reasonable attorneys' fees. The burden of producing evidence shall be upon the person claiming to have the lawful right to possession of the seized fireworks. The chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, shall promptly return the fireworks to the claimant upon a determination by the administrative law judge or court that the claimant is lawfully entitled to possession of the fireworks.

(4) When fireworks are forfeited under this chapter the chief of the Washington state patrol, through the director of fire protection or the agency conducting the seizure, may:

(a) Dispose of the fireworks by summary destruction at any time subsequent to thirty days from such seizure or ten days from the final termination of proceedings under this section, whichever is later; or

(b) Sell the forfeited fireworks and chemicals used to make fireworks, that are legal for use and possession under this chapter, to wholesalers or manufacturers, authorized to possess and use such fireworks or chemicals under a license issued by the chief of the Washington state patrol, through the director of fire protection. Sale shall be by public auction after publishing a notice of the date, place, and time of the auction in a newspaper of general circulation in the county in which the auction is to be held, at least three days before the date of the auction. The proceeds of the sale of the seized fireworks under this section may be retained by the agency conducting the seizure and used to offset the costs of seizure and/or storage costs of the seized fireworks. The remaining proceeds, if any, shall be deposited in the fire services trust fund and shall be used as follows: At least fifty percent is for a statewide public education campaign developed by the chief of the Washington state patrol, through the director of fire protection, and the licensed fireworks industry emphasizing the safe and responsible use of legal fireworks; and the remainder is for statewide efforts to enforce this chapter. [2002 c 370 § 38; 1997 c 182 § 21; 1995 c 61 § 24; 1994 c 133 § 12; 1986 c 266 § 112; 1984 c 249 § 29; 1961 c 228 § 65.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.450 Examination, inspection of books and premises. The chief of the Washington state patrol, through the director of fire protection, may make an examination of the books and records of any licensee, or other person relative to fireworks, and may visit and inspect the premises of any licensee he may deem at any time necessary for the purpose of enforcing the provisions of this chapter. The licensee, owner, lessee, manager, or operator of any such building or premises shall permit the chief of the Washington state patrol, through the director of fire protection, his or her deputies or salaried assistants, the local fire official, and their authorized representatives to enter and inspect the premises at the time and for the purpose stated in this section. [1997 c 182 § 22; 1994 c 133 § 13; 1986 c 266 § 113; 1961 c 228 § 67.]

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.455 Licensees to maintain and make available complete records—Exemption from public disclosure act.

(1) All licensees shall maintain and make available to the

chief of the Washington state patrol, through the director of fire protection, full and complete records showing all production, imports, exports, purchases, and sales of fireworks items by class.

(2) All records obtained and all reports produced, as required by this chapter, are not subject to disclosure through the public disclosure act under chapter 42.17 RCW. [1997 c 182 § 23. Prior: 1995 c 369 § 54; 1995 c 61 § 25; 1986 c 266 § 114; 1982 c 230 § 38; 1961 c 228 § 68.]

Severability—Effective date—1997 c 182: See notes following RCW 70.77.160.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.460 Reports, payments deemed made when filed or paid or date mailed. When reports on fireworks transactions or the payments of license fees or penalties are required to be made on or by specified dates, they shall be deemed to have been made at the time they are filed with or paid to the chief of the Washington state patrol, through the director of fire protection, or, if sent by mail, on the date shown by the United States postmark on the envelope containing the report or payment. [1995 c 369 § 55; 1986 c 266 § 115; 1961 c 228 § 69.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.480 Prohibited transfers of fireworks. The transfer of fireworks ownership whether by sale at wholesale or retail, by gift or other means of conveyance of title, or by delivery of any fireworks to any person in the state who does not possess and present to the carrier for inspection at the time of delivery a valid license, where such license is required to purchase, possess, transport, or use fireworks, is prohibited. [1982 c 230 § 39; 1961 c 228 § 73.]

70.77.485 Unlawful possession of fireworks—Penalties. It is unlawful to possess any class or kind of fireworks in violation of this chapter. A violation of this section is:

(1) A misdemeanor if involving less than one pound of fireworks, exclusive of external packaging; or

(2) A gross misdemeanor if involving one pound or more of fireworks, exclusive of external packaging.

For the purposes of this section, "external packaging" means any materials that are not an integral part of the operative unit of fireworks. [1984 c 249 § 30; 1961 c 228 § 74.]

70.77.488 Unlawful discharge or use of fireworks—Penalty. It is unlawful for any person to discharge or use fireworks in a reckless manner which creates a substantial risk of death or serious physical injury to another person or damage to the property of another. A violation of this section is a gross misdemeanor. [1984 c 249 § 37.]

70.77.495 Forestry permit to set off fireworks in forest, brush, fallow, etc. It is unlawful for any person to set off fireworks of any kind in forest, fallows, grass or brush covered land, either on his own land or the property of another,

between April 15th and December 1st of any year, unless it is done under a written permit from the Washington state department of natural resources or its duly authorized agent, and in strict accordance with the terms of the permit and any other applicable law. [2002 c 370 § 39; 1988 c 128 § 11; 1961 c 228 § 76.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.510 Unlawful sales or transfers of display fireworks—Penalty. It is unlawful for any person knowingly to sell, transfer, or agree to sell or transfer any display fireworks to any person who is not a fireworks licensee as provided for by this chapter. A violation of this section is a gross misdemeanor. [2002 c 370 § 40; 1984 c 249 § 31; 1982 c 230 § 40; 1961 c 228 § 79.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.515 Unlawful sales or transfers of consumer fireworks—Penalty. (1) It is unlawful for any person to offer for sale, sell, or exchange for consideration, any consumer fireworks to a consumer or user other than at a fixed place of business of a retailer for which a license and permit have been issued.

(2) No licensee may sell any fireworks to any person under the age of sixteen.

(3) A violation of this section is a gross misdemeanor. [2002 c 370 § 41; 1984 c 249 § 32; 1982 c 230 § 41; 1961 c 228 § 80.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.517 Unlawful transportation of fireworks—Penalty. It is unlawful for any person, except in the course of continuous interstate transportation through any state, to transport fireworks from this state into any other state, or deliver them for transportation into any other state, or attempt so to do, knowing that such fireworks are to be delivered, possessed, stored, transshipped, distributed, sold, or otherwise dealt with in a manner or for a use prohibited by the laws of such other state specifically prohibiting or regulating the use of fireworks. A violation of this section is a gross misdemeanor.

This section does not apply to a common or contract carrier or to international or domestic water carriers engaged in interstate commerce or to the transportation of fireworks into a state for the use of United States agencies in the carrying out or the furtherance of their operations.

In the enforcement of this section, the definitions of fireworks contained in the laws of the respective states shall be applied.

As used in this section, the term "state" includes the several states, territories, and possessions of the United States, and the District of Columbia. [2002 c 370 § 42; 1984 c 249 § 34.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.520 Unlawful to permit fire nuisance where fireworks kept—Penalty. It is unlawful for any person to allow any combustibles to accumulate in any premises in which fireworks are stored or sold or to permit a fire nuisance to exist in such a premises. A violation of this section is a

misdemeanor. [2002 c 370 § 43; 1984 c 249 § 33; 1961 c 228 § 81.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.525 Manufacture or sale of fireworks for out-of-state shipment. This chapter does not prohibit any manufacturer, wholesaler, dealer, or jobber, having a license and a permit secured under the provisions of this chapter, from manufacturing or selling any kind of fireworks for direct shipment out of this state. [1982 c 230 § 42; 1961 c 228 § 82.]

70.77.530 Nonprohibited acts—Signal purposes, forest protection. This chapter does not prohibit the use of torpedoes, flares, or fuses by motor vehicles, railroads, or other transportation agencies for signal purposes or illumination or for use in forest protection activities. [1961 c 228 § 83.]

70.77.535 Articles pyrotechnic, special effects for entertainment media. The assembling, compounding, use, and display of articles pyrotechnic or special effects in the production of motion pictures, radio or television productions, or live entertainment shall be under the direction and control of a pyrotechnic operator licensed by the state of Washington and who possesses a valid permit from the city or county. [2002 c 370 § 44; 1994 c 133 § 14; 1984 c 249 § 35; 1982 c 230 § 43; 1961 c 228 § 84.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.540 Penalty. Except as otherwise provided in this chapter, any person violating any of the provisions of this chapter or any rules issued thereunder is guilty of a misdemeanor. [1984 c 249 § 36; 1961 c 228 § 85.]

70.77.545 Violation a separate, continuing offense. A person is guilty of a separate offense for each day during which he commits, continues, or permits a violation of any provision of, or any order, rule, or regulation made pursuant to this chapter. [1961 c 228 § 86.]

70.77.547 Civil enforcement not precluded. The inclusion in this chapter of criminal penalties does not preclude enforcement of this chapter through civil means. [1994 c 133 § 15.]

Severability—Effective date—1994 c 133: See notes following RCW 70.77.146.

70.77.548 Attorney general may institute civil proceedings—Venue. Civil proceedings to enforce this chapter may be brought in the superior court of Thurston county or the county in which the violation occurred by the attorney general or the attorney of the city or county in which the violation occurred on his or her own motion or at the request of the chief of the Washington state patrol, through the director of fire protection. [2002 c 370 § 48.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.549 Civil penalty—Costs. In addition to criminal penalties, a person who violates this chapter is also liable for a civil penalty and for the costs incurred with enforcing this chapter and bringing the civil action, including court costs and reasonable investigative and attorneys' fees. [2002 c 370 § 49.]

Severability—2002 c 370: See note following RCW 70.77.126.

70.77.550 Short title. This chapter shall be known and may be cited as the state fireworks law. [1961 c 228 § 87.]

70.77.555 Local permit and license fees—Limits. (1) A city or county may provide by ordinance for a fee in an amount sufficient to cover all legitimate costs for all needed permits, licenses, and authorizations from application to and through processing, issuance, and inspection, but in no case to exceed a total of one hundred dollars for any one retail sales permit for any one selling season in a year, whether June 28th through July 5th or December 27th through December 31st, or a total of two hundred dollars for both selling seasons.

(2) A city or county may provide by ordinance for a fee in an amount sufficient to cover all legitimate costs for all display permits, licenses, and authorizations from application to and through processing, issuance, and inspection, not to exceed actual costs and in no case more than a total of five thousand dollars for any one display permit. [2002 c 370 § 45; 1995 c 61 § 26; 1982 c 230 § 44; 1961 c 228 § 88.]

Severability—2002 c 370: See note following RCW 70.77.126.

Severability—Effective date—1995 c 61: See notes following RCW 70.77.111.

70.77.575 Chief of the Washington state patrol to provide list of consumer fireworks that may be sold to the public. (1) The chief of the Washington state patrol, through the director of fire protection, shall adopt by rule a list of the consumer fireworks that may be sold to the public in this state pursuant to this chapter. The chief of the Washington state patrol, through the director of fire protection, shall file the list by October 1st of each year with the code reviser for publication, unless the previously published list has remained current.

(2) The chief of the Washington state patrol, through the director of fire protection, shall provide the list adopted under subsection (1) of this section by November 1st of each year to all manufacturers, wholesalers, and importers licensed under this chapter, unless the previously distributed list has remained current. [2002 c 370 § 46; 1995 c 369 § 57; 1986 c 266 § 117; 1984 c 249 § 8.]

Severability—2002 c 370: See note following RCW 70.77.126.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.580 Retailers to post list of consumer fireworks. Retailers required to be licensed under this chapter shall post prominently at each retail location a list of the consumer fireworks that may be sold to the public in this state pursuant to this chapter. The posted list shall be in a form approved by the chief of the Washington state patrol, through the director of fire protection. The chief of the Washington

state patrol, through the director of fire protection, shall make the list available. [2002 c 370 § 47; 1995 c 369 § 58; 1986 c 266 § 118; 1984 c 249 § 9.]

Severability—2002 c 370: See note following RCW 70.77.126.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.77.900 Effective date—1961 c 228. This act shall take effect on January 1, 1962. [1961 c 228 § 90.]

70.77.910 Severability—1961 c 228. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1961 c 228 § 91.]

70.77.911 Severability—1982 c 230. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 230 § 45.]

70.77.912 Severability—1984 c 249. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 249 § 41.]

Chapter 70.79 RCW

BOILERS AND UNFIRED PRESSURE VESSELS

Sections

| | |
|-----------|--|
| 70.79.010 | Board of boiler rules—Members—Terms—Meetings. |
| 70.79.020 | Compensation and travel expenses. |
| 70.79.030 | Duties of board. |
| 70.79.040 | Rules and regulations—Scope. |
| 70.79.050 | Rules and regulations—Effect. |
| 70.79.060 | Construction, installation must conform to rules—Special installation and operating permits. |
| 70.79.070 | Existing installations—Conformance required—Miniature hobby boilers. |
| 70.79.080 | Exemptions from chapter. |
| 70.79.090 | Exemptions from certain provisions. |
| 70.79.095 | Espresso machines—Local regulation prohibited. |
| 70.79.100 | Chief inspector—Qualifications—Appointment, removal. |
| 70.79.110 | Chief inspector—Duties in general. |
| 70.79.120 | Deputy inspectors—Qualifications—Employment. |
| 70.79.130 | Special inspectors—Qualifications—Commission. |
| 70.79.140 | Special inspectors—Compensation—Continuance of commission. |
| 70.79.150 | Special inspectors—Inspections—Exempts from inspection fees. |
| 70.79.160 | Report of inspection by special inspector—Filing. |
| 70.79.170 | Examinations for inspector's appointment or commission—Reexamination. |
| 70.79.180 | Suspension, revocation of inspector's commission—Grounds—Reinstatement. |
| 70.79.190 | Suspension, revocation of commission—Appeal. |
| 70.79.200 | Lost or destroyed certificate or commission. |
| 70.79.210 | Inspectors—Performance bond required. |
| 70.79.220 | Inspections—Who shall make. |
| 70.79.230 | Access to premises by inspectors. |
| 70.79.240 | Inspection of boilers, unfired pressure vessels—Scope—Frequency. |
| 70.79.250 | Inspection—Frequency—Grace period. |
| 70.79.260 | Inspection—Frequency—Modification by rules. |
| 70.79.270 | Hydrostatic test. |
| 70.79.280 | Inspection during construction. |
| 70.79.290 | Inspection certificate—Contents—Posting—Fee. |
| 70.79.300 | Inspection certificate invalid on termination of insurance. |

| | |
|-----------|--|
| 70.79.310 | Inspection certificate—Suspension—Reinstatement. |
| 70.79.320 | Operating without inspection certificate prohibited—Penalty. |
| 70.79.330 | Inspection fees—Expenses—Schedules. |
| 70.79.350 | Inspection fees—Receipts for—Pressure systems safety fund. |
| 70.79.360 | Appeal from orders or acts. |
| 70.79.900 | Severability—1951 c 32. |

Excessive steam in boilers, penalty: RCW 70.54.080.

State building code: Chapter 19.27 RCW.

70.79.010 Board of boiler rules—Members—Terms—Meetings. There is hereby created within this state a board of boiler rules, which shall hereafter be referred to as the board, consisting of five members who shall be appointed to the board by the governor, one for a term of one year, one for a term of two years, one for a term of three years, and two for a term of four years. At the expiration of their respective terms of office, they, or their successors identifiable with the same interests respectively as hereinafter provided, shall be appointed for terms of four years each. The governor may at any time remove any member of the board for inefficiency or neglect of duty in office. Upon the death or incapacity of any member the governor shall fill the vacancy for the remainder of the vacated term with a representative of the same interests with which his or her predecessor was identified. Of these five appointed members, one shall be representative of owners and users of boilers and unfired pressure vessels within the state, one shall be representative of the boiler or unfired pressure vessel manufacturers within the state, one shall be a representative of a boiler insurance company licensed to do business within the state, one shall be a mechanical engineer on the faculty of a recognized engineering college or a graduate mechanical engineer having equivalent experience, and one shall be representative of the boilermakers, stationary operating engineers, or pressure vessel operators. The board shall elect one of its members to serve as chair and, at the call of the chair, the board shall meet at least four times each year at the state capitol or other place designated by the board. [1999 c 183 § 1; 1951 c 32 § 1.]

70.79.020 Compensation and travel expenses. The members of the board shall be compensated in accordance with RCW 43.03.240 and shall receive travel expenses incurred while in the performance of their duties as members of the board, in accordance with RCW 43.03.050 and 43.03.060. [1984 c 287 § 105; 1975-'76 2nd ex.s. c 34 § 159; 1951 c 32 § 2.]

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.79.030 Duties of board. The board shall formulate definitions and rules for the safe and proper construction, installation, repair, use, and operation of boilers and for the safe and proper construction, installation, and repair of unfired pressure vessels in this state. The definitions and rules so formulated shall be based upon, and, at all times, follow the nationally or internationally accepted engineering standards, formulae, and practices established and pertaining to boiler and unfired pressure vessel construction and safety, and the board may by resolution adopt existing published codifications thereof, and when so adopted the same shall be

(2004 Ed.)

deemed incorporated into, and to constitute a part or the whole of the definitions and rules of the board. Amendments and interpretations to the code shall be enforceable immediately upon being adopted, to the end that the definitions and rules shall at all times follow nationally or internationally accepted engineering standards. However, all rules adopted by the board shall be adopted in compliance with the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended. [1999 c 183 § 2; 1972 ex.s. c 86 § 1; 1951 c 32 § 3.]

70.79.040 Rules and regulations—Scope. The board shall promulgate rules and regulations for the safe and proper installation, repair, use and operation of boilers, and for the safe and proper installation and repair of unfired pressure vessels which were in use or installed ready for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter. [1951 c 32 § 4.]

70.79.050 Rules and regulations—Effect. (1) The rules and regulations formulated by the board shall have the force and effect of law, except that the rules applying to the construction of new boilers and unfired pressure vessels shall not be construed to prevent the installation thereof until twelve months after their approval by the director of the department of labor and industries.

(2) Subsequent amendments to the rules and regulations adopted by the board shall be permissive immediately and shall become mandatory twelve months after such approval. [1951 c 32 § 5.]

70.79.060 Construction, installation must conform to rules—Special installation and operating permits. (1) Except as provided in subsection (2) of this section, no power boiler, low pressure boiler, or unfired pressure vessel which does not conform to the rules and regulations formulated by the board governing new construction and installation shall be installed and operated in this state after twelve months from the date upon which the first rules and regulations under this chapter pertaining to new construction and installation shall have become effective, unless the boiler or unfired pressure vessel is of special design or construction, and is not covered by the rules and regulations, nor is in any way inconsistent with such rules and regulations, in which case a special installation and operating permit may at its discretion be granted by the board.

(2) A special permit may also be granted for boilers and pressure vessels manufactured before 1951 which do not comply with the code requirements of the American Society of Mechanical Engineers adopted under this chapter, if the boiler or pressure vessel is operated exclusively for the purposes of public exhibition, and the board finds, upon inspection, that operation of the boiler or pressure vessel for such purposes is not unsafe. [1984 c 93 § 1; 1951 c 32 § 6.]

70.79.070 Existing installations—Conformance required—Miniature hobby boilers. (1) All boilers and unfired pressure vessels which were in use, or installed ready

for use in this state prior to the date upon which the first rules and regulations under this chapter pertaining to existing installations became effective, or during the twelve months period immediately thereafter, shall be made to conform to the rules and regulations of the board governing existing installations, and the formulae prescribed therein shall be used in determining the maximum allowable working pressure for such boilers and unfired pressure vessels.

(2) This chapter shall not be construed as in any way preventing the use or sale of boilers or unfired vessels as referred to in subsection (1) of this section, provided they have been made to conform to the rules and regulations of the board governing existing installations, and provided, further, they have not been found upon inspection to be in an unsafe condition.

(3) A special permit may also be granted for miniature hobby boilers that do not comply with the code requirements of the American society of mechanical engineers adopted under this chapter and do not exceed any of the following limits:

- (a) Sixteen inches inside diameter of the shell;
- (b) Twenty square feet of total heating surface;
- (c) Five cubic feet of gross volume of vessel; and
- (d) One hundred fifty p.s.i.g. maximum allowable working pressure, and if the boiler is to be operated exclusively not for commercial or industrial use and the department of labor and industries finds, upon inspection, that operation of the boiler for such purposes is not unsafe. [1995 c 41 § 1; 1993 c 193 § 1; 1951 c 32 § 7.]

70.79.080 Exemptions from chapter. This chapter shall not apply to the following boilers, unfired pressure vessels and domestic hot water tanks:

- (1) Boilers and unfired pressure vessels under federal regulation or operated by any railroad subject to the provisions of the interstate commerce act;
- (2) Unfired pressure vessels meeting the requirements of the interstate commerce commission for shipment of liquids or gases under pressure;
- (3) Air tanks located on vehicles operating under the rules of other state authorities and used for carrying passengers, or freight;
- (4) Air tanks installed on the right of way of railroads and used directly in the operation of trains;
- (5) Unfired pressure vessels having a volume of five cubic feet or less when not located in places of public assembly;
- (6) Unfired pressure vessels designed for a pressure not exceeding fifteen pounds per square inch gauge when not located in place of public assembly;
- (7) Tanks used in connection with heating water for domestic and/or residential purposes;
- (8) Boilers and unfired pressure vessels in cities having ordinances which are enforced and which have requirements equal to or higher than those provided for under this chapter, covering the installation, operation, maintenance and inspection of boilers and unfired pressure vessels;
- (9) Tanks containing water with no air cushion and no direct source of energy that operate at a temperature of one hundred thirty degrees Fahrenheit or less;
- (10) Electric boilers:

(a) Having a tank volume of not more than one and one-half cubic feet;

(b) Having a maximum allowable working pressure of eighty pounds per square inch or less, with a pressure relief system to prevent excess pressure; and

(c) If constructed after June 10, 1994, constructed to American society of mechanical engineers code, or approved or otherwise certified by a nationally recognized or recognized foreign testing laboratory or construction code, including but not limited to Underwriters Laboratories, Edison Testing Laboratory, or Instituto Superiore Per La Prevenzione E La Sicurezza Del Lavoro;

(11) Electrical switchgear and control apparatus that have no external source of energy to maintain pressure and are located in restricted access areas under the control of an electric utility;

(12) Regardless of location, unfired pressure vessels and hot water heaters less than one and one-half cubic feet (11.25 gallons) in volume with a safety valve setting of one hundred fifty pounds per square inch gauge (psig) or less, or less than six inches in diameter and less than five cubic feet (37.5 gallons) in volume with a safety valve set at any pressure, or less than fifteen psig containing substances other than steam, lethal substances, or liquids with low flash points. [1999 c 183 § 3; 1996 c 72 § 1; 1994 c 64 § 2; 1986 c 97 § 1; 1951 c 32 § 8.]

Finding—Intent—1994 c 64: See note following RCW 70.79.095.

70.79.090 Exemptions from certain provisions. The following boilers and unfired pressure vessels shall be exempt from the requirements of RCW 70.79.220 and 70.79.240 through 70.79.330:

- (1) Boilers or unfired pressure vessels located on farms and used solely for agricultural purposes;
- (2) Unfired pressure vessels that are part of fertilizer applicator rigs designed and used exclusively for fertilization in the conduct of agricultural operations;
- (3) Steam boilers used exclusively for heating purposes carrying a pressure of not more than fifteen pounds per square inch gauge and which are located in private residences or in apartment houses of less than six families;
- (4) Hot water heating boilers carrying a pressure of not more than thirty pounds per square inch and which are located in private residences or in apartment houses of less than six families;
- (5) Approved pressure vessels (hot water heaters listed by a nationally recognized testing agency), with approved safety devices including a pressure relief valve, with a nominal water containing capacity of one hundred twenty gallons or less having a heat input of two hundred thousand b.t.u.'s per hour or less, used for hot water supply at pressure of one hundred sixty pounds per square inch or less, and at temperatures of two hundred ten degrees Fahrenheit or less: **PROVIDED, HOWEVER,** That such pressure vessels are not installed in schools, child care centers, public and private hospitals, nursing and boarding homes, churches, public buildings owned or leased and maintained by the state or any political subdivision thereof, and assembly halls;
- (6) Unfired pressure vessels containing only water under pressure for domestic supply purposes, including those con-

taining air, the compression of which serves only as a cushion or airlift pumping systems, when located in private residences or in apartment houses of less than six families;

(7) Unfired pressure vessels containing liquified petroleum gases. [1999 c 183 § 4; 1988 c 254 § 20; 1983 c 3 § 174; 1972 ex.s. c 86 § 2; 1951 c 32 § 9.]

70.79.095 Espresso machines—Local regulation prohibited. A county, city, or other political subdivision of the state may not enforce any law specifically regulating the manufacture, installation, operation, maintenance, or inspection of any electric boiler exempt from this chapter by RCW 70.79.080(10). [1994 c 64 § 3.]

Finding—Intent—1994 c 64: "The legislature finds that small low-pressure boilers are found in devices such as espresso coffee machines and cleaning equipment common throughout Washington state. Such systems present little threat to public health and safety. Government regulation of such systems could impose a substantial burden on many small businesses and provide minimal public benefit. It is therefore the intent of the legislature to exempt these boilers from regulation under chapter 70.79 RCW and similar laws adopted by local governments." [1994 c 64 § 1.]

70.79.100 Chief inspector—Qualifications—Appointment, removal. (1) Within sixty days after the effective date of this chapter, and at any time thereafter that the office of the chief inspector may become vacant, the director of the department of labor and industries shall appoint a chief inspector who shall have had at the time of such appointment not less than ten years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels, as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the same kind of examination as that prescribed for deputy or special inspectors in RCW 70.79.170 to be chief inspector until his successor shall have been appointed and qualified. Such chief inspector may be removed for cause after due investigation by the board and its recommendation to the director of the department of labor and industries. [1951 c 32 § 10.]

70.79.110 Chief inspector—Duties in general. The chief inspector, if authorized by the director of the department of labor and industries is hereby charged, directed and empowered:

(1) To cause the prosecution of all violators of the provisions of this chapter;

(2) To issue, or to suspend, or revoke for cause, inspection certificates as provided for in RCW 70.79.290;

(3) To take action necessary for the enforcement of the laws of the state governing the use of boilers and unfired pressure vessels and of the rules and regulations of the board;

(4) To keep a complete record of the type, dimensions, maximum allowable working pressure, age, condition, location, and date of the last recorded internal inspection of all boilers and unfired pressure vessels to which this chapter applies;

(5) To publish and distribute, among manufacturers and others requesting them, copies of the rules and regulations adopted by the board. [1951 c 32 § 11.]

70.79.120 Deputy inspectors—Qualifications—Employment. The director shall employ deputy inspectors

(2004 Ed.)

who shall have had at time of appointment not less than five years practical experience in the construction, maintenance, repair, or operation of high pressure boilers and unfired pressure vessels as a mechanical engineer, steam engineer, boilermaker, or boiler inspector, and who shall have passed the examination provided for in RCW 70.79.170. [1994 c 164 § 27; 1951 c 32 § 12.]

70.79.130 Special inspectors—Qualifications—Commission. In addition to the deputy boiler inspectors authorized by RCW 70.79.120, the chief inspector shall, upon the request of any company authorized to insure against loss from explosion of boilers and unfired pressure vessels in this state, or upon the request of any company operating boilers or unfired pressure vessels in this state, issue to any inspectors of said company commissions as special inspectors, provided that each such inspector before receiving his or her commission shall satisfactorily pass the examination provided for in RCW 70.79.170, or, in lieu of such examination, shall hold a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state or a certificate as an inspector of boilers and unfired pressure vessels from the national board of boiler and pressure vessel inspectors. A commission as a special inspector for a company operating boilers or unfired pressure vessels in this state shall be issued only if, in addition to meeting the requirements stated herein, the inspector is continuously employed by the company for the purpose of making inspections of boilers or unfired pressure vessels used, or to be used, by such company. [1999 c 183 § 5; 1951 c 32 § 13.]

70.79.140 Special inspectors—Compensation—Continuance of commission. Special inspectors shall receive no salary from, nor shall any of their expenses be paid by the state, and the continuance of a special inspector's commission shall be conditioned upon his or her continuing in the employ of a boiler insurance company duly authorized as aforesaid or upon continuing in the employ of a company operating boilers or unfired pressure vessels in this state and upon his or her maintenance of the standards imposed by this chapter. [1999 c 183 § 6; 1951 c 32 § 14.]

70.79.150 Special inspectors—Inspections—Exempts from inspection fees. Special inspectors shall inspect all boilers and unfired pressure vessels insured or operated by their respective companies and, when so inspected, the owners and users of such insured boilers and unfired pressure vessels shall be exempt from the payment to the state of the inspection fees as provided for in RCW 70.79.330. [1999 c 183 § 7; 1951 c 32 § 15.]

70.79.160 Report of inspection by special inspector—Filing. Each company employing special inspectors shall, within thirty days following each internal boiler or unfired pressure vessel inspection made by such inspectors, file a report of such inspection with the chief inspector upon appropriate forms. Reports of external inspections shall not be required except when such inspections disclose that the boiler

or unfired pressure vessel is in dangerous condition. [1999 c 183 § 8; 1951 c 32 § 16.]

70.79.170 Examinations for inspector's appointment or commission—Reexamination. Examinations for chief, deputy, or special inspectors shall be in writing and shall be held by the board, or by at least two members of the board. Such examinations shall be confined to questions the answers to which will aid in determining the fitness and competency of the applicant for the intended service. In case an applicant for an inspector's appointment or commission fails to pass the examination, he may appeal to the board for another examination which shall be given by the board within ninety days. The record of an applicant's examination shall be accessible to said applicant and his employer. [1951 c 32 § 18.]

70.79.180 Suspension, revocation of inspector's commission—Grounds—Reinstatement. A commission may be suspended or revoked after due investigation and recommendation by the board to the director of the department of labor and industries for the incompetence or untrustworthiness of the holder thereof, or for wilful falsification of any matter or statement contained in his application or in a report of any inspection. A person whose commission has been suspended or revoked, except for untrustworthiness, shall be entitled to apply to the board for reinstatement or, in the case of a revocation, for a new examination and commission after ninety days from such revocation. [1951 c 32 § 19.]

70.79.190 Suspension, revocation of commission—Appeal. A person whose commission has been suspended or revoked shall be entitled to an appeal as provided in RCW 70.79.360 and to be present in person and/or represented by counsel on the hearing of the appeal. [1951 c 32 § 20.]

70.79.200 Lost or destroyed certificate or commission. If a certificate or commission is lost or destroyed, a new certificate or commission shall be issued in its place without another examination. [1951 c 32 § 21.]

70.79.210 Inspectors—Performance bond required. The chief inspector shall furnish a bond in the sum of five thousand dollars and each of the deputy inspectors, employed and paid by the state, shall furnish a bond in the sum of two thousand dollars conditioned upon the faithful performance of their duties and upon a true account of moneys handled by them respectively and the payment thereof to the proper recipient. The cost of said bonds shall be paid by the state. [1951 c 32 § 35.]

70.79.220 Inspections—Who shall make. The inspections herein required shall be made by the chief inspector, by a deputy inspector, or by a special inspector provided for in this chapter. [1951 c 32 § 25.]

70.79.230 Access to premises by inspectors. The chief inspector, or any deputy or special inspector, shall have free access, during reasonable hours, to any premises in the state where a boiler or unfired pressure vessel is being constructed, or is being installed or operated, for the purpose of ascertain-

ing whether such boiler or unfired pressure vessel is constructed, installed and operated in accordance with the provisions of this chapter. [1951 c 32 § 17.]

70.79.240 Inspection of boilers, unfired pressure vessels—Scope—Frequency. Each boiler and unfired pressure vessel used or proposed to be used within this state, except boilers or unfired pressure vessels exempt in RCW 70.79.080 and 70.79.090, shall be thoroughly inspected as to their construction, installation, condition and operation, as follows:

(1) Power boilers shall be inspected annually both internally and externally while not under pressure, except that the board may provide for longer periods between inspections where the contents, history, or operation of the power boiler or the material of which it is constructed warrant special consideration. Power boilers shall also be inspected annually externally while under pressure if possible;

(2) Low pressure heating boilers shall be inspected both internally and externally biennially where construction will permit;

(3) Unfired pressure vessels subject to internal corrosion shall be inspected both internally and externally biennially where construction will permit, except that the board may, in its discretion, provide for longer periods between inspections;

(4) Unfired pressure vessels not subject to internal corrosion shall be inspected externally at intervals set by the board, but internal inspections shall not be required of unfired pressure vessels, the contents of which are known to be noncorrosive to the material of which the shell, head, or fittings are constructed, either from the chemical composition of the contents or from evidence that the contents are adequately treated with a corrosion inhibitor, provided that such vessels are constructed in accordance with the rules and regulations of the board or in accordance with standards substantially equivalent to the rules and regulations of the board, in effect at the time of manufacture. [1993 c 391 § 1; 1951 c 32 § 22.]

70.79.250 Inspection—Frequency—Grace period. In the case of power boilers a grace period of not more than two months longer than the period established by the board under RCW 70.79.240(1) may elapse between internal inspections of a boiler while not under pressure or between external inspections of a boiler while under pressure; in the case of low pressure heating boilers not more than twenty-six months shall elapse between inspections, and in the case of unfired pressure vessels not more than two months longer than the period between inspections prescribed by the board shall elapse between internal inspections. [1993 c 391 § 2; 1951 c 32 § 23.]

70.79.260 Inspection—Frequency—Modification by rules. The rules and regulations formulated by the board applying to the inspection of unfired pressure vessels may be modified by the board to reduce or extend the interval between required inspections where the contents of the vessel or the material of which it is constructed warrant special consideration. [1951 c 32 § 24.]

70.79.270 Hydrostatic test. If at any time a hydrostatic test shall be deemed necessary to determine the safety of a boiler or unfired pressure vessel, [the] same shall be made, at the discretion of the inspector, by the owner or user thereof. [1951 c 32 § 26.]

70.79.280 Inspection during construction. All boilers and all unfired pressure vessels to be installed in this state after the twelve-month period from the date upon which the rules of the board shall become effective shall be inspected during construction as required by the applicable rules of the board by an inspector authorized to inspect boilers and unfired pressure vessels in this state, or, if constructed outside of the state, by an inspector holding a certificate from the national board of boiler and pressure vessel inspectors, or a certificate of competency as an inspector of boilers and unfired pressure vessels for a state that has a standard of examination substantially equal to that of this state as provided in RCW 70.79.170. [1999 c 183 § 9; 1951 c 32 § 27.]

70.79.290 Inspection certificate—Contents—Posting—Fee. If, upon inspection, a boiler or pressure vessel is found to comply with the rules and regulations of the board, and upon the appropriate fee payment made directly to the chief inspector, as required by RCW 70.79.160 or 70.79.330, the chief inspector shall issue to the owner or user of such a boiler or pressure vessel an inspection certificate bearing the date of inspection and specifying the maximum pressure under which the boiler or pressure vessel may be operated. Such inspection certificate shall be valid for not more than fourteen months from its date in the case of power boilers and twenty-six months in the case of low pressure heating boilers, and for not more than two months longer than the authorized inspection period in the case of pressure vessels. Certificates shall be posted under glass in the room containing the boiler or pressure vessel inspected. If the boiler or pressure vessel is not located within a building, the certificate shall be posted in a location convenient to the boiler or pressure vessel inspected or, in the case of a portable boiler or pressure vessel, the certificate shall be kept in a protective container to be fastened to the boiler or pressure vessel or in a tool box accompanying the boiler or pressure vessel. [1977 ex.s. c 175 § 1; 1970 ex.s. c 21 § 1; 1951 c 32 § 28.]

70.79.300 Inspection certificate invalid on termination of insurance. No inspection certificate issued for an insured boiler or unfired pressure vessel inspected by a special inspector shall be valid after the boiler or unfired pressure vessel, for which it was issued, shall cease to be insured by a company duly authorized by this state to carry such insurance. [1951 c 32 § 29.]

70.79.310 Inspection certificate—Suspension—Reinstatement. The chief inspector, or his or her authorized representative, may at any time suspend an inspection certificate when, in his or her opinion, the boiler or unfired pressure vessel for which it was issued cannot be operated without menace to the public safety, or when the boiler or unfired pressure vessel is found not to comply with the rules herein provided. A special inspector shall have corresponding powers with

respect to inspection certificates for boilers or unfired pressure vessels insured or operated by the company employing him or her. Such suspension of an inspection certificate shall continue in effect until such boiler or unfired pressure vessel shall have been made to conform to the rules of the board, and until said inspection certificate shall have been reinstated. [1999 c 183 § 10; 1951 c 32 § 30.]

70.79.320 Operating without inspection certificate prohibited—Penalty. (1) It shall be unlawful for any person, firm, partnership, or corporation to operate under pressure in this state a boiler or unfired pressure vessel, to which this chapter applies, without a valid inspection certificate as provided for in this chapter.

(2) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(3) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(4) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice by certified mail to the violator that a hearing may be requested under RCW 70.79.360. The hearing shall not stay the effect of the penalty. [1986 c 97 § 2; 1951 c 32 § 31.]

70.79.330 Inspection fees—Expenses—Schedules. The owner or user of a boiler or pressure vessel required by this chapter to be inspected by the chief inspector, or his deputy inspector, shall pay directly to the chief inspector, upon completion of inspection, fees and expenses in accordance with a schedule adopted by the board and approved by the director of the department of labor and industries in accordance with the requirements of the Administrative Procedure Act, chapter 34.05 RCW. [1977 ex.s. c 175 § 2; 1970 ex.s. c 21 § 2; 1963 c 217 § 1; 1951 c 32 § 32.]

70.79.350 Inspection fees—Receipts for—Pressure systems safety fund. The chief inspector shall give an official receipt for all fees required by chapter 70.79 RCW and shall transfer all sums so received to the treasurer of the state of Washington as ex officio custodian thereof and the treasurer shall place all sums in a special fund hereby created and designated as the "pressure systems safety fund". Funds shall be paid out upon vouchers duly and regularly issued therefor and approved by the director of the department of labor and industries. The treasurer, as ex officio custodian of the fund, shall keep an accurate record of any payments into the fund, and of all disbursements therefrom. The fund shall be used exclusively to defray only the expenses of administering chapter 70.79 RCW by the chief inspector as authorized by law and the expenses incident to the maintenance of the office. The fund shall be charged with its pro rata share of the cost of administering the fund which is to be determined by the director of financial management and by the director of the department of labor and industries.

During the 2003-2005 fiscal biennium, the legislature may transfer from the pressure systems safety fund to the state general fund such amounts as reflect the excess fund balance of the fund. [2003 1st sp.s. c 25 § 931; 1979 c 151 § 171; 1977 ex.s. c 175 § 3; 1951 c 32 § 34.]

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

70.79.360 Appeal from orders or acts. Any person aggrieved by an order or act of the director of the department of labor and industries, the chief inspector, under this chapter, may, within fifteen days after notice thereof, appeal from such order or act to the board which shall, within thirty days thereafter, hold a hearing after having given at least ten days written notice to all interested parties. The board shall, within thirty days after such hearing, issue an appropriate order either approving or disapproving said order or act. A copy of such order by the board shall be given to all interested parties. Within thirty days after any order or act of the board, any person aggrieved thereby may file a petition in the superior court of the county of Thurston for a review thereof. The court shall summarily hear the petition and may make any appropriate order or decree. [1951 c 32 § 36.]

70.79.900 Severability—1951 c 32. The fact that any section, subsection, sentence, clause, or phrase of this chapter is declared unconstitutional or invalid for any reason shall not affect the remaining portions of this chapter. [1951 c 32 § 37.]

Chapter 70.82 RCW

CEREBRAL PALSY PROGRAM

Sections

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| 70.82.010 | Purpose and aim of program. |
| 70.82.021 | Cerebral palsy fund—Moneys transferred to general fund. |
| 70.82.022 | Cerebral palsy fund—Appropriations to be paid from general fund. |
| 70.82.023 | Cerebral palsy fund—Abolished. |
| 70.82.024 | Cerebral palsy fund—Warrants to be paid from general fund. |
| 70.82.030 | Eligibility. |
| 70.82.040 | Diagnosis. |
| 70.82.050 | Powers, duties, functions, unallocated funds, transferred. |

70.82.010 Purpose and aim of program. It is hereby declared to be of vital concern to the state of Washington that all persons who are bona fide residents of the state of Washington and who are afflicted with cerebral palsy in any degree be provided with facilities and a program of service for medical care, education, treatment and training to enable them to become normal individuals. In order to effectively accomplish such purpose the department of social and health services, hereinafter called the department, is authorized and instructed and it shall be its duty to establish and administer facilities and a program of service for the discovery, care, education, hospitalization, treatment and training of educable persons afflicted with cerebral palsy, and to provide in connection therewith nursing, medical, surgical and corrective care, together with academic, occupational and related training. Such program shall extend to developing, extending and improving service for the discovery of such persons and for diagnostic and hospitalization and shall include cooper-

ation with other agencies of the state charged with the administration of laws providing for any type of service or aid to handicapped persons, and with the United States government through any appropriate agency or instrumentality in developing, extending and improving such service, program and facilities. Such facilities shall include field clinics, diagnosis and observation centers, boarding schools, special classes in day schools, research facilities and such other facilities as shall be required to render appropriate aid to such persons. Existing facilities, buildings, hospitals and equipment belonging to or operated by the state of Washington shall be made available for these purposes when use therefor does not conflict with the primary use of such existing facilities. Existing buildings, facilities and equipment belonging to private persons, firms or corporations or to the United States government may be acquired or leased. [1974 ex.s. c 91 § 2; 1947 c 240 § 1; Rem. Supp. 1947 § 5547-1.]

Severability—1974 ex.s. c 91: "If any provision of this 1974 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 91 § 8.]

Effective date—1974 ex.s. c 91: "This 1974 amendatory act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately: PROVIDED, That sections 2 through 5 of this 1974 amendatory act shall not take effect until July 1, 1974." [1974 ex.s. c 91 § 7.]

Severability—1947 c 240: "If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application." [1947 c 240 § 5.]

70.82.021 Cerebral palsy fund—Moneys transferred to general fund. All moneys in the state treasury to the credit of the state cerebral palsy fund on the first day of May, 1955, and all moneys thereafter paid into the state treasury for or to the credit of the state cerebral palsy fund, shall be and are hereby transferred to and placed in the general fund. [1955 c 326 § 1.]

70.82.022 Cerebral palsy fund—Appropriations to be paid from general fund. From and after the first day of April, 1955, all appropriations made by the thirty-fourth legislature from the state cerebral palsy fund shall be paid out of moneys in the general fund. [1955 c 326 § 2.]

70.82.023 Cerebral palsy fund—Abolished. From and after the first day of May, 1955, the state cerebral palsy fund is abolished. [1955 c 326 § 3.]

70.82.024 Cerebral palsy fund—Warrants to be paid from general fund. From and after the first day of May, 1955, all warrants drawn on the state cerebral palsy fund and not presented for payment shall be paid from the general fund, and it shall be the duty of the state treasurer and he is hereby directed to pay such warrants when presented from the general fund. [1955 c 326 § 4.]

70.82.030 Eligibility. Any resident of this state who is educable but so severely handicapped as the result of cerebral palsy that he is unable to take advantage of the regular system of free education of this state may be admitted to or be eligi-

ble for any service and facilities provided hereunder, provided such resident has lived in this state continuously for more than one year before his application for such admission or eligibility. [1947 c 240 § 3; Rem. Supp. 1947 § 5547-2.]

70.82.040 Diagnosis. Persons shall be admitted to or be eligible for the services and facilities provided herein only after diagnosis according to procedures and regulations established and approved for this purpose by the department of social and health services. [1974 ex.s. c 91 § 3; 1947 c 240 § 4; Rem. Supp. 1947 § 5547-3.]

Severability—Effective date—1974 ex.s. c 91: See notes following RCW 70.82.010.

70.82.050 Powers, duties, functions, unallocated funds, transferred. All powers, duties and functions of the superintendent of public instruction or the state board of education relating to the Cerebral Palsy Center as referred to in chapter 39, Laws of 1973 2nd ex. sess. shall be transferred to the department of social and health services as created in chapter 43.20A RCW, and all unallocated funds within any account to the credit of the superintendent of public instruction or the state board of education for purposes of such Cerebral Palsy Center shall be transferred effective July 1, 1974 to the credit of the department of social and health services, which department shall hereafter expend such funds for such Cerebral Palsy Center purposes as contemplated in the appropriations therefor. All employees of the Cerebral Palsy Center on July 1, 1974 who are classified employees under chapter 41.06 RCW, the state civil service law, shall be assigned and transferred to the department of social and health services to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law. [1974 ex.s. c 91 § 4.]

Severability—Effective date—1974 ex.s. c 91: See notes following RCW 70.82.010.

Chapter 70.83 RCW

PHENYLKETONURIA AND OTHER PREVENTABLE HERITABLE DISORDERS

Sections

- 70.83.010 Declaration of policy and purpose.
- 70.83.020 Screening tests of newborn infants.
- 70.83.030 Report of positive test to department of health.
- 70.83.040 Services and facilities of state agencies made available to families and physicians—Fees.
- 70.83.050 Rules and regulations to be adopted by state board of health.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.83.010 Declaration of policy and purpose. It is hereby declared to be the policy of the state of Washington to make every effort to detect as early as feasible and to prevent where possible phenylketonuria and other preventable heritable disorders leading to developmental disabilities or physical defects. [1977 ex.s. c 80 § 40; 1967 c 82 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

(2004 Ed.)

70.83.020 Screening tests of newborn infants. It shall be the duty of the department of health to require screening tests of all newborn infants before they are discharged from the hospital for the detection of phenylketonuria and other heritable or metabolic disorders leading to mental retardation or physical defects as defined by the state board of health: PROVIDED, That no such tests shall be given to any newborn infant whose parents or guardian object thereto on the grounds that such tests conflict with their religious tenets and practices. [1991 c 3 § 348; 1975-'76 2nd ex.s. c 27 § 1; 1967 c 82 § 2.]

70.83.030 Report of positive test to department of health. Laboratories, attending physicians, hospital administrators, or other persons performing or requesting the performance of tests for phenylketonuria shall report to the department of health all positive tests. The state board of health by rule shall, when it deems appropriate, require that positive tests for other heritable and metabolic disorders covered by this chapter be reported to the state department of health by such persons or agencies requesting or performing such tests. [1991 c 3 § 349; 1979 c 141 § 113; 1967 c 82 § 3.]

70.83.040 Services and facilities of state agencies made available to families and physicians—Fees. When notified of positive screening tests, the state department of health shall offer the use of its services and facilities, designed to prevent mental retardation or physical defects in such children, to the attending physician, or the parents of the newborn child if no attending physician can be identified.

The services and facilities of the department, and other state and local agencies cooperating with the department in carrying out programs of detection and prevention of mental retardation and physical defects shall be made available to the family and physician to the extent required in order to carry out the intent of this chapter and within the availability of funds. The department has the authority to collect a reasonable fee, from the parents or other responsible party of each infant screened to fund specialty clinics that provide treatment services for hemoglobin diseases, phenylketonuria, congenital adrenal hyperplasia, and congenital hypothyroidism. The fee may be collected through the facility where the screening specimen is obtained. [1999 c 76 § 1; 1991 c 3 § 350; 1979 c 141 § 114; 1967 c 82 § 4.]

70.83.050 Rules and regulations to be adopted by state board of health. The state board of health shall adopt rules and regulations necessary to carry out the intent of this chapter. [1967 c 82 § 5.]

Chapter 70.83C RCW

ALCOHOL AND DRUG USE TREATMENT ASSOCIATED WITH PREGNANCY—FETAL ALCOHOL SYNDROME

Sections

- 70.83C.005 Intent.
- 70.83C.010 Definitions.
- 70.83C.020 Prevention strategies.

70.83C.005 Intent. The legislature recognizes that the use of alcohol and other drugs during pregnancy can cause medical, psychological, and social problems for women and infants. The legislature further recognizes that communities are increasingly concerned about this problem and the associated costs to the mothers, infants, and society as a whole. The legislature recognizes that the department of health and other agencies are focusing on primary prevention activities to reduce the use of alcohol or drugs during pregnancy but few efforts have focused on secondary prevention efforts aimed at intervening in the lives of women already involved in the use of alcohol or other drugs during pregnancy. The legislature recognizes that the best way to prevent problems for chemically dependent pregnant women and their resulting children is to engage the women in alcohol or drug treatment. The legislature acknowledges that treatment professionals find pretreatment services to clients to be important in engaging women in alcohol or drug treatment. The legislature further recognizes that pretreatment services should be provided at locations where chemically dependent women are likely to be found, including public health clinics and domestic violence or homeless shelters. Therefore the legislature intends to prevent the detrimental effects of alcohol or other drug use to women and their resulting infants by promoting the establishment of local programs to help facilitate a woman's entry into alcohol or other drug treatment. These programs shall provide secondary prevention services and provision of opportunities for immediate treatment so that women who seek help are welcomed rather than ostracized. [1993 c 422 § 3.]

Finding—1993 c 422: See note following RCW 66.16.110.

70.83C.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of alcohol use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(2) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(3) "Assessment" means an interview with an individual to determine if he or she is chemically dependent and in need of referral to an approved treatment program.

(4) "Chemically dependent individual" means someone suffering from alcoholism or drug addiction, or dependence on alcohol or one or more other psychoactive chemicals.

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

(6) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one family or household member against another.

(7) "Domestic violence program" means a shelter or other program which provides services to victims of domestic violence.

(8) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance,

physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruptions of social or economic functioning.

(9) "Family or household members" means a family or household member as defined in RCW 10.99.020.

(10) "Pretreatment" means the period of time prior to an individual's enrollment in alcohol or drug treatment.

(11) "Pretreatment services" means activities taking place prior to treatment that include identification of individuals using alcohol or drugs, education, assessment of their use, evaluation of need for treatment, referral to an approved treatment program, and advocacy on a client's behalf with social service agencies or others to ensure and coordinate a client's entry into treatment.

(12) "Primary prevention" means providing information about the effects of alcohol or drug use to individuals so they will avoid using these substances.

(13) "Secondary prevention" means identifying and obtaining an assessment on individuals using alcohol or other drugs for referral to treatment when indicated.

(14) "Secretary" means the secretary of the department of social and health services.

(15) "Treatment" means the broad range of emergency detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation, and career counseling, that may be extended to chemically dependent individuals and their families.

(16) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of chemically dependent individuals. [1993 c 422 § 4.]

Finding—1993 c 422: See note following RCW 66.16.110.

70.83C.020 Prevention strategies. The secretary shall develop and promote statewide secondary prevention strategies designed to increase the use of alcohol and drug treatment services by women of child-bearing age, before, during, and immediately after pregnancy. These efforts are conducted through the division of alcohol and substance abuse. The secretary shall:

(1) Promote development of three pilot demonstration projects in the state to be called pretreatment projects for women of child bearing age.

(2) Ensure that two of the projects are located in public health department clinics that provide maternity services and one is located with a domestic violence program.

(3) Hire three certified chemical dependency counselors to work as substance abuse educators in each of the three demonstration projects. The counselors may rotate between more than one clinic or domestic violence program. The chemical dependency counselor for the domestic violence program shall also be trained in domestic violence issues.

(4) Ensure that the duties and activities of the certified chemical dependency counselors include, at a minimum, the following:

(a) Identifying substance-using pregnant women in the health clinics and domestic violence programs;

(b) Educating the women and agency staff on the effects of alcohol or drugs on health, pregnancy, and unborn children;

(c) Determining the extent of the women's substance use;

(d) Evaluating the women's need for treatment;

(e) Making referrals for chemical dependency treatment if indicated;

(f) Facilitating the women's entry into treatment; and

(g) Advocating on the client's behalf with other social service agencies or others to ensure and coordinate clients into treatment.

(5) Ensure that administrative costs of the department are limited to ten percent of the funds appropriated for the project. [1993 c 422 § 5.]

Finding—1993 c 422: See note following RCW 66.16.110.

Chapter 70.83E RCW

PRENATAL NEWBORN SCREENING FOR EXPOSURE TO HARMFUL DRUGS

Sections

70.83E.010 Declaration—Policy.

70.83E.020 Screening criteria, training protocols—Development of.

70.83E.030 Department of health—Duties.

70.83E.010 Declaration—Policy. The policy of the state of Washington is to make every effort to detect as early as feasible and to prevent where possible preventable disorders resulting from parental use of alcohol and drugs. [1998 c 93 § 1.]

70.83E.020 Screening criteria, training protocols—Development of. The department of health, in consultation with appropriate medical professionals, shall develop screening criteria for use in identifying pregnant or lactating women addicted to drugs or alcohol who are at risk of producing a drug-affected baby. The department shall also develop training protocols for medical professionals related to the identification and screening of women at risk of producing a drug-affected baby. [1998 c 93 § 2.]

70.83E.030 Department of health—Duties. The department of health shall investigate the feasibility of medical protocols for laboratory testing or other screening of newborn infants for exposure to alcohol or drugs. The department of health shall consider how to improve the current system with respect to testing, considering such variables as whether such testing is available, its cost, which entity is currently responsible for ordering testing, and whether testing should be mandatory or targeted. [1998 c 93 § 3.]

Chapter 70.84 RCW

BLIND, HANDICAPPED, AND DISABLED PERSONS—"WHITE CANE LAW"

Sections

70.84.010 Declaration—Policy.

70.84.020 "Dog guide" defined.

70.84.021 "Service animal" defined.

70.84.040 Precautions for drivers of motor vehicles approaching pedestrian who is using a white cane, dog guide, or service animal.

70.84.050 Handicapped pedestrians not carrying white cane or using dog guide—Rights and privileges.

70.84.060 Unauthorized use of white cane, dog guide, or service animal.

70.84.070 Penalty for violations.

70.84.080 Employment of blind or other handicapped persons in public service.

70.84.900 Short title.

Dog guide or service animal, interfering with: RCW 9.91.170.

70.84.010 Declaration—Policy. The legislature declares:

(1) It is the policy of this state to encourage and enable the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled to participate fully in the social and economic life of the state, and to engage in remunerative employment.

(2) As citizens, the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled have the same rights as the able-bodied to the full and free use of the streets, highways, walkways, public buildings, public facilities, and other public places.

(3) The blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled are entitled to full and equal accommodations, advantages, facilities, and privileges on common carriers, airplanes, motor vehicles, railroad trains, motor buses, street cars, boats, and all other public conveyances, as well as in hotels, lodging places, places of public resort, accommodation, assemblage or amusement, and all other places to which the general public is invited, subject only to the conditions and limitations established by law and applicable alike to all persons. [1980 c 109 § 1; 1969 c 141 § 1.]

70.84.020 "Dog guide" defined. For the purpose of this chapter, the term "dog guide" means a dog that is trained for the purpose of guiding blind persons or a dog trained for the purpose of assisting hearing impaired persons. [1997 c 271 § 18; 1980 c 109 § 2; 1969 c 141 § 2.]

70.84.021 "Service animal" defined. For the purpose of this chapter, "service animal" means an animal that is trained for the purposes of assisting or accommodating a disabled person's sensory, mental, or physical disability. [1997 c 271 § 19; 1985 c 90 § 1.]

70.84.040 Precautions for drivers of motor vehicles approaching pedestrian who is using a white cane, dog guide, or service animal. The driver of a vehicle approaching a totally or partially blind pedestrian who is carrying a cane predominantly white in color (with or without a red tip), a totally or partially blind or hearing impaired pedestrian using a dog guide, or an otherwise physically disabled person using a service animal shall take all necessary precautions to avoid injury to such pedestrian. Any driver who fails to take such precaution shall be liable in damages for any injury caused such pedestrian. It shall be unlawful for the operator of any vehicle to drive into or upon any crosswalk while there is on such crosswalk, such pedestrian, crossing or attempting to cross the roadway, if such pedestrian is using a white cane, using a dog guide, or using a service animal. The failure of any such pedestrian so to signal shall not deprive him of the right of way accorded him by other laws. [1997 c 271 § 20;

1985 c 90 § 3; 1980 c 109 § 4; 1971 ex.s. c 77 § 1; 1969 c 141 § 4.]

70.84.050 Handicapped pedestrians not carrying white cane or using dog guide—Rights and privileges. A totally or partially blind pedestrian not carrying a white cane or a totally or partially blind or hearing impaired pedestrian not using a dog guide in any of the places, accommodations, or conveyances listed in RCW 70.84.010, shall have all of the rights and privileges conferred by law on other persons. [1997 c 271 § 21; 1980 c 109 § 5; 1969 c 141 § 5.]

70.84.060 Unauthorized use of white cane, dog guide, or service animal. It shall be unlawful for any pedestrian who is not totally or partially blind to use a white cane or any pedestrian who is not totally or partially blind or is not hearing impaired to use a dog guide or any pedestrian who is not otherwise physically disabled to use a service animal in any of the places, accommodations, or conveyances listed in RCW 70.84.010 for the purpose of securing the rights and privileges accorded by the chapter to totally or partially blind, hearing impaired, or otherwise physically disabled people. [1997 c 271 § 22; 1985 c 90 § 4; 1980 c 109 § 6; 1969 c 141 § 6.]

70.84.070 Penalty for violations. Any person or persons, firm or corporation, or the agent of any person or persons, firm or corporation, who denies or interferes with admittance to or enjoyment of the public facilities enumerated in RCW 70.84.010, or otherwise interferes with the rights of a totally or partially blind, hearing impaired, or otherwise physically disabled person as set forth in RCW 70.84.010 shall be guilty of a misdemeanor. [1985 c 90 § 5; 1980 c 109 § 7; 1969 c 141 § 7.]

70.84.080 Employment of blind or other handicapped persons in public service. In accordance with the policy set forth in RCW 70.84.010, the blind, the visually handicapped, the hearing impaired, and the otherwise physically disabled shall be employed in the state service, in the service of the political subdivisions of the state, in the public schools, and in all other employment supported in whole or in part by public funds on the same terms and conditions as the able-bodied, unless it is shown that the particular disability prevents the performance of the work involved. [1980 c 109 § 8; 1969 c 141 § 9.]

70.84.900 Short title. This chapter shall be known and may be cited as the "White Cane Law." [1969 c 141 § 11.]

Chapter 70.85 RCW

EMERGENCY PARTY LINE TELEPHONE CALLS— LIMITING TELEPHONE COMMUNICATION IN HOSTAGE SITUATIONS

Sections

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| 70.85.010 | Definitions. |
| 70.85.020 | Refusal to yield line—Penalty. |
| 70.85.030 | Request for line on pretext of emergency—Penalty. |
| 70.85.040 | Telephone directories—Notice. |

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| 70.85.100 | Authority to isolate telephones in barricade or hostage situation—Definitions. |
| 70.85.110 | Telephone companies to provide contacting information. |
| 70.85.120 | Liability of telephone company. |
| 70.85.130 | Applicability. |

Call to operator without charge or coin insertion be provided: RCW 80.36.225.

Fraud in operating coin-box telephone: RCW 9.26A.120.

Telecommunications companies: Chapter 80.36 RCW.

70.85.010 Definitions. "Party line" means a subscribers' line telephone circuit, consisting of two or more main telephone stations connected therewith, each station with a distinctive ring or telephone number.

"Emergency" means a situation in which property or human life are in jeopardy and the prompt summoning of aid is essential. [1953 c 25 § 1.]

70.85.020 Refusal to yield line—Penalty. Any person who shall wilfully refuse to yield or surrender the use of a party line to another person for the purpose of permitting such other person to report a fire or summon police, medical or other aid in case of emergency, shall be deemed guilty of a misdemeanor. [1953 c 25 § 2.]

70.85.030 Request for line on pretext of emergency—Penalty. Any person who shall ask for or request the use of a party line on pretext that an emergency exists, knowing that no emergency in fact exists, shall be deemed guilty of a misdemeanor. [1953 c 25 § 3.]

70.85.040 Telephone directories—Notice. After September 9, 1953, every telephone directory thereafter distributed to the members of the general public shall contain a notice which explains this chapter, such notice to be printed in type which is no smaller than any other type on the same page and to be preceded by the word "warning": PROVIDED, That the provisions of this section shall not apply to those directories distributed solely for business advertising purposes, commonly known as classified directories. [1953 c 25 § 4.]

70.85.100 Authority to isolate telephones in barricade or hostage situation—Definitions. (1) The supervising law enforcement official having jurisdiction in a geographical area who reasonably believes that a person is barricaded, or one or more persons are holding another person or persons hostage within that area may order a telephone company employee designated pursuant to RCW 70.85.110 to arrange to cut, reroute, or divert telephone lines for the purpose of preventing telephone communications between the barricaded person or hostage holder and any person other than a peace officer or a person authorized by the peace officer.

(2) As used in this section:

(a) A "hostage holder" is one who commits or attempts to commit any of the offenses described in RCW 9A.40.020, 9A.40.030, or 9A.40.040; and

(b) A "barricaded person" is one who establishes a perimeter around an area from which others are excluded and either:

- (i) Is committing or is immediately fleeing from the commission of a violent felony; or
- (ii) Is threatening or has immediately prior threatened a violent felony or suicide; or
- (iii) Is creating or has created the likelihood of serious harm within the meaning of chapter 71.05 RCW relating to mental illness. [1985 c 260 § 1; 1979 c 28 § 1.]

70.85.110 Telephone companies to provide contact-ing information. The telephone company providing service within the geographical jurisdiction of a law enforcement unit shall inform law enforcement agencies of the address and telephone number of its security office or other designated office to provide all required assistance to law enforcement officials to carry out the purpose of RCW 70.85.100 through 70.85.130. The designation shall be in writing and shall provide the telephone number or numbers through which the security representative or other telephone company official can be reached at any time. This information shall be served upon all law enforcement units having jurisdiction in a geographical area. Any change in address or telephone number or identity of the telephone company office to be contacted to provide required assistance shall be served upon all law enforcement units in the affected geographical area. [1979 c 28 § 2.]

70.85.120 Liability of telephone company. Good faith reliance on an order given under RCW 70.85.100 through 70.85.130 by a supervising law enforcement official shall constitute a complete defense to any civil or criminal action arising out of such ordered cutting, rerouting or diverting of telephone lines. [1979 c 28 § 3.]

70.85.130 Applicability. RCW 70.85.100 through 70.85.120 will govern notwithstanding the provisions of any other section of this chapter and notwithstanding the provisions of chapter 9.73 RCW. [1979 c 28 § 4.]

Chapter 70.86 RCW

EARTHQUAKE STANDARDS FOR CONSTRUCTION
(Formerly: Earthquake resistance standards)

Sections

- 70.86.010 Definitions.
- 70.86.020 Buildings to resist earthquake intensities.
- 70.86.030 Standards for design and construction.
- 70.86.040 Penalty.

70.86.010 Definitions. The word "person" includes any individual, corporation, or group of two or more individuals acting together for a common purpose, whether acting in an individual, representative, or official capacity. [1955 c 278 § 1.]

70.86.020 Buildings to resist earthquake intensities. Hospitals, schools, except one story, portable, frame school buildings, buildings designed or constructed as places of assembly accommodating more than three hundred persons; and all structures owned by the state, county, special districts, or any municipal corporation within the state of Washington shall hereafter be designed and constructed to resist probable

earthquake intensities at the location thereof in accordance with RCW 70.86.030, unless other standards of design and construction for earthquake resistance are prescribed by enactments of the legislative authority of counties, special districts, and/or municipal corporations in which the structure is constructed. [1955 c 278 § 2.]

70.86.030 Standards for design and construction.

Structural frames, exterior walls, and all appendages of the buildings described in RCW 70.86.020, whose collapse will endanger life and property shall be designed and constructed to withstand horizontal forces from any direction of not less than the following fractions of the weight of the structure and its parts acting at the centers of gravity:

Western Washington 0.05. [1955 c 278 § 3.]

70.86.040 Penalty. Any person violating any provision of this chapter shall be guilty of a misdemeanor: PROVIDED, That any person causing such a building to be built shall be entitled to rely on the certificate of a licensed professional engineer and/or registered architect that the standards of design set forth above have been met. [1955 c 278 § 4.]

Chapter 70.87 RCW

**ELEVATORS, LIFTING DEVICES,
AND MOVING WALKS**

Sections

- 70.87.010 Definitions.
- 70.87.020 Conveyances to be safe and in conformity with law.
- 70.87.030 Rules.
- 70.87.034 Additional powers of department.
- 70.87.036 Powers of attorney general.
- 70.87.040 Privately and publicly owned conveyances are subject to chapter.
- 70.87.050 Conveyances in buildings occupied by state, county, or political subdivision.
- 70.87.060 Responsibility for operation and maintenance of equipment and for periodic tests.
- 70.87.070 Serial numbers.
- 70.87.080 Permits—When required—Application for—Posting.
- 70.87.090 Operating permits—Limited permits—Duration—Posting.
- 70.87.100 Conveyance work to be performed by elevator contractors—Acceptance tests—Inspections.
- 70.87.110 Exceptions authorized.
- 70.87.120 Inspectors—Inspections and reinspections—Suspension or revocation of permit—Order to discontinue use—Penalties—Investigation by department.
- 70.87.125 Suspension or revocation of license or permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of license or permit.
- 70.87.140 Operation without permit enjoinable.
- 70.87.145 Order to discontinue operation—Notice—Conditions—Contents of order—Recision of order—Violation—Penalty—Random inspections.
- 70.87.170 Review of department action in accordance with administrative procedure act.
- 70.87.180 Violations.
- 70.87.185 Penalty for violation of chapter—Rules—Notice.
- 70.87.190 Accidents—Report and investigation—Cessation of use—Removal of damaged parts.
- 70.87.200 Exemptions.
- 70.87.205 Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement.
- 70.87.210 Disposition of revenue.
- 70.87.220 Elevator safety advisory committee.
- 70.87.230 Conveyance work—Who may perform.
- 70.87.240 Elevator contractor license, elevator mechanic license—Qualifications—Reciprocity.
- 70.87.245 Material lift mechanic license.
- 70.87.250 Licenses—Renewals—Fees—Temporary licenses—Continuing education—Records.

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| 70.87.260 | Liability not limited or assumed by state. |
| 70.87.270 | Exemptions from licensure. |
| 70.87.280 | License categories—Rules. |
| 70.87.290 | Rules—Effective date. |
| 70.87.305 | Private residence conveyances—Licensing requirements—Rules. |
| 70.87.900 | Severability. |

State building code: Chapter 19.27 RCW.

70.87.010 Definitions. For the purposes of this chapter, except where a different interpretation is required by the context:

(1) "Owner" means any person having title to or control of a conveyance, as guardian, trustee, lessee, or otherwise;

(2) "Conveyance" means an elevator, escalator, dumbwaiter, belt manlift, automobile parking elevator, moving walk, and other elevating devices, as defined in this section;

(3) "Existing installations" means an installation defined as an "installation, existing" in this chapter or in rules adopted under this chapter;

(4) "Elevator" means a hoisting or lowering machine equipped with a car or platform that moves in guides and serves two or more floors or landings of a building or structure;

(a) "Passenger elevator" means an elevator (i) on which passengers are permitted to ride and (ii) that may be used to carry freight or materials when the load carried does not exceed the capacity of the elevator;

(b) "Freight elevator" means an elevator (i) used primarily for carrying freight and (ii) on which only the operator, the persons necessary for loading and unloading, and other employees approved by the department are permitted to ride;

(c) "Sidewalk elevator" means a freight elevator that: (i) Operates between a sidewalk or other area outside the building and floor levels inside the building below the outside area, (ii) does not have a landing opening into the building at its upper limit of travel, and (iii) is not used to carry automobiles;

(d) "Hand elevator" means an elevator utilizing manual energy to move the car;

(e) "Inclined elevator" means an elevator that travels at an angle of inclination of seventy degrees or less from the horizontal;

(f) "Multideck elevator" means an elevator having two or more compartments located one immediately above the other;

(g) "Observation elevator" means an elevator designed to permit exterior viewing by passengers while the car is traveling;

(h) "Power elevator" means an elevator utilizing energy other than gravitational or manual to move the car;

(i) "Electric elevator" means an elevator where the energy is applied by means of an electric driving machine;

(j) "Hydraulic elevator" means an elevator where the energy is applied by means of a liquid under pressure in a cylinder equipped with a plunger or piston;

(k) "Direct-plunger hydraulic elevator" means a hydraulic elevator having a plunger or cylinder directly attached to the car frame or platform;

(l) "Electro-hydraulic elevator" means a direct-plunger elevator where liquid is pumped under pressure directly into the cylinder by a pump driven by an electric motor;

(m) "Maintained-pressure hydraulic elevator" means a direct-plunger elevator where liquid under pressure is available at all times for transfer into the cylinder;

(n) "Roped hydraulic elevator" means a hydraulic elevator having its plunger or piston connected to the car with wire ropes or indirectly coupled to the car by means of wire ropes and sheaves;

(o) "Rack and pinion elevator" means a power elevator, with or without a counterweight, that is supported, raised, and lowered by a motor or motors that drive a pinion or pinions on a stationary rack mounted in the hoistway;

(p) "Screw column elevator" means a power elevator having an uncounterweighted car that is supported, raised, and lowered by means of a screw thread;

(q) "Rooftop elevator" means a power passenger or freight elevator that operates between a landing at roof level and one landing below and opens onto the exterior roof level of a building through a horizontal opening;

(r) "Special purpose personnel elevator" means an elevator that is limited in size, capacity, and speed, and permanently installed in structures such as grain elevators, radio antenna, bridge towers, underground facilities, dams, power plants, and similar structures to provide vertical transportation of authorized personnel and their tools and equipment only;

(s) "Workmen's construction elevator" means an elevator that is not part of the permanent structure of a building and is used to raise and lower workers and other persons connected with, or related to, the building project;

(t) "Boat launching elevator" means a conveyance that serves a boat launching structure and a beach or water surface and is used for the carrying or handling of boats in which people ride;

(u) "Limited-use/limited-application elevator" means a power passenger elevator where the use and application is limited by size, capacity, speed, and rise, intended principally to provide vertical transportation for people with physical disabilities;

(5) "Escalator" means a power-driven, inclined, continuous stairway used for raising and lowering passengers;

(6) "Dumbwaiter" means a hoisting and lowering mechanism equipped with a car (a) that moves in guides in a substantially vertical direction, (b) the floor area of which does not exceed nine square feet, (c) the inside height of which does not exceed four feet, (d) the capacity of which does not exceed five hundred pounds, and (e) that is used exclusively for carrying materials;

(7) "Automobile parking elevator" means an elevator: (a) Located in either a stationary or horizontally moving hoistway; (b) used exclusively for parking automobiles where, during the parking process, each automobile is moved either under its own power or by means of a power-driven transfer device onto and off the elevator directly into parking spaces or cubicles in line with the elevator; and (c) in which persons are not normally stationed on any level except the receiving level;

(8) "Moving walk" means a passenger carrying device (a) on which passengers stand or walk and (b) on which the passenger carrying surface remains parallel to its direction of motion;

(9) "Belt manlift" means a power driven endless belt provided with steps or platforms and a hand hold for the transportation of personnel from floor to floor;

(10) "Department" means the department of labor and industries;

(11) "Director" means the director of the department or his or her representative;

(12) "Inspector" means an elevator inspector of the department or an elevator inspector of a municipality having in effect an elevator ordinance pursuant to RCW 70.87.200;

(13) "Permit" means a permit issued by the department: (a) To perform conveyance work, other than maintenance; or (b) to operate a conveyance;

(14) "Person" means this state, a political subdivision, any public or private corporation, any firm, or any other entity as well as an individual;

(15) "One-man capacity manlift" means a single passenger, hand-powered counterweighted device, or electric-powered device, that travels vertically in guides and serves two or more landings;

(16) "Private residence conveyance" means a conveyance installed in or on the premises of a single-family dwelling and operated for transporting persons or property from one elevation to another;

(17) "Material hoist" means a hoist that is not a part of a permanent structure used to raise or lower materials during construction, alteration, or demolition. It is not applicable to the temporary use of permanently installed personnel elevators as material hoists;

(18) "Material lift" means a lift that (a) is permanently installed, (b) is comprised of a car or platform that moves in guides, (c) serves two or more floors or landings, (d) travels in a vertical or inclined position, (e) is an isolated, self-contained lift, (f) is not part of a conveying system, and (g) is installed in a commercial or industrial area not accessible to the general public or intended to be operated by the general public;

(19) "Casket lift" means a lift that (a) is installed at a mortuary, (b) is designed exclusively for carrying of caskets, (c) moves in guides in a basically vertical direction, and (d) serves two or more floors or landings;

(20) "Wheelchair lift" means a lift that travels in a vertical or inclined direction and is designed for use by physically handicapped persons;

(21) "Stairway chair lift" means a lift that travels in a basically inclined direction and is designed for use by physically handicapped persons;

(22) "Personnel hoist" means a hoist that is not a part of a permanent structure, is installed inside or outside buildings during construction, alteration, or demolition, and used to raise or lower workers and other persons connected with, or related to, the building project. The hoist may also be used for transportation of materials;

(23) "Advisory committee" means the elevator advisory committee as described in this chapter;

(24) "Elevator helper/apprentice" means a person who works under the general direction of a licensed elevator mechanic. A license is not required to be an elevator helper/apprentice;

(25) "Elevator contractor" means any person, firm, or company that possesses an elevator contractor license in

(2004 Ed.)

accordance with this chapter and who is engaged in the business of performing conveyance work covered by this chapter;

(26) "Elevator mechanic" means any person who possesses an elevator mechanic license in accordance with this chapter and who is engaged in performing conveyance work covered by this chapter;

(27) "License" means a written license, duly issued by the department, authorizing a person, firm, or company to carry on the business of performing conveyance work or to perform conveyance work covered by this chapter;

(28) "Elevator contractor license" means a license that is issued to an elevator contractor who has met the qualification requirements established in RCW 70.87.240;

(29) "Elevator mechanic license" means a license that is issued to a person who has met the qualification requirements established in RCW 70.87.240;

(30) "Licensee" means the elevator mechanic or elevator contractor;

(31) "Conveyance work" means the alteration, construction, dismantling, erection, installation, maintenance, relocation, and wiring of a conveyance;

(32) "Alteration" means any change to equipment, including its parts, components, and/or subsystems, other than maintenance, repair, or replacement;

(33) "Maintenance" means a process of routine examination, lubrication, cleaning, servicing, and adjustment of parts, components, and/or subsystems for the purpose of ensuring performance in accordance with this chapter. "Maintenance" includes repair and replacement, but not alteration;

(34) "Repair" means the reconditioning or renewal of parts, components, and/or subsystems necessary to keep equipment in compliance with this chapter;

(35) "Replacement" means the substitution of a device, component, and/or subsystem in its entirety with a unit that is basically the same as the original for the purpose of ensuring performance in accordance with this chapter;

(36) "Public agency" means a county, incorporated city or town, municipal corporation, state agency, institution of higher education, political subdivision, or other public agency and includes any department, bureau, office, board, commission or institution of such public entities;

(37) "Platform" means a rigid surface that is maintained in a horizontal position at all times when in use, and upon which passengers stand or a load is carried. [2003 c 143 § 9; 2002 c 98 § 1; 1998 c 137 § 1; 1997 c 216 § 1; 1983 c 123 § 1; 1973 1st ex.s. c 52 § 9; 1969 ex.s. c 108 § 1; 1963 c 26 § 1.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

70.87.020 Conveyances to be safe and in conformity with law. (1) The purpose of this chapter is to provide for safety of life and limb, to promote safety awareness, and to ensure the safe design, mechanical and electrical operation, and inspection of conveyances, and performance of conveyance work, and all such operation, inspection, and conveyance work subject to the provisions of this chapter shall be reasonably safe to persons and property and in conformity with the provisions of this chapter and the applicable statutes of the state of Washington, and all orders, and rules of the

department. The use of unsafe and defective conveyances imposes a substantial probability of serious and preventable injury to employees and the public exposed to unsafe conditions. The prevention of these injuries and protection of employees and the public from unsafe conditions is in the best interest of the people of this state. Personnel performing work covered by this chapter must, by documented training or experience or both, be familiar with the operation and safety functions of the components and equipment. Training and experience must include, but not be limited to, recognizing the safety hazards and performing the procedures to which the personnel performing conveyance work covered by this chapter are assigned in conformance with the requirements of this chapter. This chapter establishes the minimum standards for personnel performing conveyance work.

(2) This chapter is not intended to prevent the use of systems, methods, or devices of equivalent or superior quality, strength, fire resistance, code effectiveness, durability, and safety to those required by this chapter, provided that there is technical documentation to demonstrate the equivalency of the system, method, or device, as prescribed in this chapter and the rules adopted under this chapter.

(3) In any suit for damages allegedly caused by a failure or malfunction of the conveyance, conformity with the rules of the department is prima facie evidence that the conveyance work, operation, and inspection is reasonably safe to persons and property. [2003 c 143 § 10; 2002 c 98 § 2; 1983 c 123 § 2; 1963 c 26 § 2.]

Part headings and captions not law—2003 c 143: "Part headings and captions used in this act are not any part of the law." [2003 c 143 § 23.]

Effective date—2003 c 143: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2003]." [2003 c 143 § 24.]

70.87.030 Rules. The department shall adopt rules governing the mechanical and electrical operation, acceptance tests, conveyance work, operation, and inspection that are necessary and appropriate and shall also adopt minimum standards governing existing installations. In the execution of this rule-making power and before the adoption of rules, the department shall consider the rules for safe conveyance work, operation, and inspection, including the American National Standards Institute Safety Code for Personnel and Material Hoists, the American Society of Mechanical Engineers Safety Code for Elevators, Dumbwaiters, and Escalators, and any amendatory or supplemental provisions thereto. The department by rule shall establish a schedule of fees to pay the costs incurred by the department for the work related to administration and enforcement of this chapter. Nothing in this chapter limits the authority of the department to prescribe or enforce general or special safety orders as provided by law.

The department may consult with: Engineering authorities and organizations concerned with standard safety codes; rules and regulations governing conveyance work, operation, and inspection; and the qualifications that are adequate, reasonable, and necessary for the elevator mechanic, contractor, and inspector. [2003 c 143 § 11; 2002 c 98 § 3; 1998 c 137 § 2; 1994 c 164 § 28; 1983 c 123 § 3; 1973 1st ex.s. c 52 § 10; 1971 c 66 § 1; 1970 ex.s. c 22 § 1; 1963 c 26 § 3.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

Effective date—1973 1st ex.s. c 52: See note following RCW 43.22.010.

70.87.034 Additional powers of department. The department also has the following powers:

(1) The department may adopt any rules necessary or helpful for the department to implement and enforce this chapter.

(2) The director may issue subpoenas for the production of persons, papers, or information in all proceedings and investigations within the scope of this chapter. If a person refuses to obey a subpoena, the director, through the attorney general, may ask the superior court to order the person to obey the subpoena.

(3) The director may take the oral or written testimony of any person. The director has the power to administer oaths.

(4) The director may make specific decisions, cease and desist orders, other orders, and rulings, including demands and findings. [1983 c 123 § 19.]

70.87.036 Powers of attorney general. On request of the department, the attorney general may:

(1) File suit to collect a penalty assessed by the department;

(2) Seek a civil injunction, show cause order, or contempt order against the person who repeatedly violates a provision of this chapter;

(3) Seek an ex parte inspection warrant if the person refuses to allow the department to inspect a conveyance;

(4) File suit asking the court to enforce a cease and desist order or a subpoena issued by the director under this chapter; and

(5) Take any other legal action appropriate and necessary for the enforcement of the provisions of this chapter.

All suits shall be brought in the district or superior court of the district or county in which the defendant resides or transacts business. In any suit or other legal action, the department may ask the court to award costs and attorney's fees. If the department prevails, the court shall award the appropriate costs and attorney's fees. [1983 c 123 § 20.]

70.87.040 Privately and publicly owned conveyances are subject to chapter. All privately owned and publicly owned conveyances are subject to the provisions of this chapter except as specifically excluded by this chapter. [1983 c 123 § 4; 1963 c 26 § 4.]

70.87.050 Conveyances in buildings occupied by state, county, or political subdivision. The conveyance work on, and the operation and inspection of any conveyance located in, or used in connection with, any building owned by the state, a county, or a political subdivision, other than those located within and owned by a city having an elevator code, shall be under the jurisdiction of the department. [2003 c 143 § 12; 2002 c 98 § 4; 1983 c 123 § 5; 1969 ex.s. c 108 § 2; 1963 c 26 § 5.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.060 Responsibility for operation and maintenance of equipment and for periodic tests. (1) The person, elevator contractor, or public agency performing conveyance work is responsible for operation and maintenance of the conveyance until the department has issued an operating permit for the conveyance, except during the period when a limited operating permit in accordance with RCW 70.87.090(2) is in effect, and is also responsible for all tests of a new, relocated, or altered conveyance until the department has issued an operating permit for the conveyance.

(2) The owner or his or her duly appointed agent shall be responsible for the safe operation and proper maintenance of the conveyance after the department has issued the operating permit and also during the period of effectiveness of any limited operating permit in accordance with RCW 70.87.090(2). The owner shall be responsible for all periodic tests required by the department. [2003 c 143 § 13; 1983 c 123 § 6; 1963 c 26 § 6.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.070 Serial numbers. All new and existing conveyances shall have a serial number painted on or attached as directed by the department. This serial number shall be assigned by the department and shown on all required permits. [1983 c 123 § 7; 1963 c 26 § 7.]

70.87.080 Permits—When required—Application for—Posting. (1) A permit shall be obtained from the department before performing work, other than maintenance, on a conveyance under the jurisdiction of the department.

(2) The installer of the conveyance shall submit an application for the permit in duplicate, in a form that the department may prescribe.

(3) The permit issued by the department shall be kept posted conspicuously at the site of installation.

(4) A permit is not required for maintenance.

(5) After the effective date of rules adopted under this chapter establishing licensing requirements, the department may issue a permit for conveyance work only to an elevator contractor unless the permit is for conveyance work on private residence conveyances. After July 1, 2004, the department may not issue a permit for conveyance work on private residence conveyances to a person other than an elevator contractor. [2003 c 143 § 14; 1983 c 123 § 8; 1963 c 26 § 8.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.090 Operating permits—Limited permits—Duration—Posting. (1) An operating permit is required for each conveyance operated in the state of Washington except during its erection by the person or firm responsible for its installation. A permit issued by the department shall be kept conspicuously posted near the conveyance.

(2) The department may permit the temporary use of a conveyance during its installation or alteration, under the authority of a limited permit issued by the department for each class of service. Limited permits shall be issued for a period not to exceed thirty days and may be renewed at the discretion of the department. This limited-use permit is to provide transportation for construction personnel, tools, and

materials only. Where a limited permit is issued, a notice bearing the information that the equipment has not been finally approved shall be conspicuously posted. [1998 c 137 § 3; 1983 c 123 § 9; 1963 c 26 § 9.]

70.87.100 Conveyance work to be performed by elevator contractors—Acceptance tests—Inspections. (1) All conveyance installations, relocations, or alterations must be performed by an elevator contractor employing an elevator mechanic.

(2) The elevator contractor employing an elevator mechanic performing such conveyance work shall notify the department before completion of the work, and shall subject the new, moved, or altered portions of the conveyance to the acceptance tests.

(3) All new, altered, or relocated conveyances for which a permit has been issued, shall be inspected for compliance with the requirements of this chapter by an authorized representative of the department. The authorized representative shall also witness the test specified. [2003 c 143 § 15; 2002 c 98 § 5; 1983 c 123 § 11; 1963 c 26 § 10.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.110 Exceptions authorized. The requirements of this chapter are intended to apply to all conveyances except as modified or waived by the department. They are intended to be modified or waived whenever any requirements are shown to be impracticable, such as involving expense not justified by the protection secured. However, the department shall not allow the modification or waiver unless equivalent or safer construction is secured in other ways. An exception applies only to the installation covered by the application for waiver. [1983 c 123 § 12; 1963 c 26 § 11.]

70.87.120 Inspectors—Inspections and reinspections—Suspension or revocation of permit—Order to discontinue use—Penalties—Investigation by department. (1) The department shall appoint and employ inspectors, as may be necessary to carry out the provisions of this chapter, under the provisions of the rules adopted by the Washington personnel resources board in accordance with chapter 41.06 RCW.

(2)(a) Except as provided in (b) of this subsection, the department shall cause all conveyances to be inspected and tested at least once each year. Inspectors have the right during reasonable hours to enter into and upon any building or premises in the discharge of their official duties, for the purpose of making any inspection or testing any conveyance contained thereon or therein. Inspections and tests shall conform with the rules adopted by the department. The department shall inspect all installations before it issues any initial permit for operation. Permits shall not be issued until the fees required by this chapter have been paid.

(b)(i) Private residence conveyances operated exclusively for single-family use shall be inspected and tested only when required under RCW 70.87.100 or as necessary for the purposes of subsection (4) of this section and shall be exempt from RCW 70.87.090 unless an annual inspection and operating permit are requested by the owner.

(ii) The department may perform additional inspections of a private residence conveyance at the request of the owner of the conveyance. Fees for these inspections shall be in accordance with the schedule of fees adopted for operating permits pursuant to RCW 70.87.030. An inspection requested under this subsection (2)(b)(ii) shall not be performed until the required fees have been paid.

(3) If inspection shows a conveyance to be in an unsafe condition, the department shall issue an inspection report in writing requiring the repairs or alterations to be made to the conveyance that are necessary to render it safe and may also suspend or revoke a permit pursuant to RCW 70.87.125 or order the operation of a conveyance discontinued pursuant to RCW 70.87.145.

(a) A penalty may be assessed under RCW 70.87.185 for failure to correct a violation within ninety days after the owner is notified in writing of inspection results.

(b) The owner may be assessed a penalty under RCW 70.87.185 for failure to submit official notification in writing to the department that all corrections have been completed.

(4) The department may investigate accidents and alleged or apparent violations of this chapter. [1998 c 137 § 4; 1997 c 216 § 2; 1993 c 281 § 61; 1983 c 123 § 13; 1970 ex.s. c 22 § 2; 1963 c 26 § 12.]

Effective date—1993 c 281: See note following RCW 41.06.022.

70.87.125 Suspension or revocation of license or permit—Grounds—Notice—Stay of suspension or revocation—Removal of suspension or reinstatement of license or permit. (1) A license issued under this chapter may be suspended, revoked, or subject to civil penalty by the department upon verification that any one or more of the following reasons exist:

(a) Any false statement as to a material matter in the application;

(b) Fraud, misrepresentation, or bribery in securing a license;

(c) Failure to notify the department and the owner or lessee of a conveyance or related mechanisms of any condition not in compliance with this chapter;

(d) A violation of any provisions of this chapter; and

(e) If the elevator contractor does not employ an individual designated as the primary point of contact with the department and who has successfully completed the elevator contractor examination. In the case of a separation of employment, termination of this relationship or designation, or death of the designated individual, the elevator contractor must, within ninety days, designate a new individual who has successfully completed the elevator contractor examination.

(2) The department may suspend or revoke a permit if:

(a) The permit was obtained through fraud or by error if, in the absence of error, the department would not have issued the permit;

(b) The conveyance for which the permit was issued has not been worked on in accordance with this chapter; or

(c) The conveyance has become unsafe.

(3) The department shall suspend any license issued under this chapter promptly after receiving notice from the department of social and health services that the holder of the license has been certified pursuant to RCW 74.20A.320 as a

person who is not in compliance with a support order. If the person has continued to meet all other license requirements during the suspension, reissuance of the license shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the person is in compliance with the order.

(4) The department shall notify in writing the owner, licensee, or person performing conveyance work, of its action and the reason for the action. The department shall send the notice by certified mail to the last known address of the owner or person. The notice shall inform the owner or person that a hearing may be requested pursuant to RCW 70.87.170.

(5)(a) If the department has suspended or revoked a permit or license because of fraud or error, and a hearing is requested, the suspension or revocation shall be stayed until the hearing is concluded and a decision is issued.

(b) If the department has revoked or suspended a license because the licensee performing the work covered by this chapter is working in a manner that does not effectively prevent injuries or deaths or protect employees and the public from unsafe conditions as is required by this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(c) If the department has revoked or suspended a permit because the conveyance is unsafe or the conveyance work is not permitted and performed in accordance with this chapter, the suspension or revocation is effective immediately and shall not be stayed by a request for a hearing.

(6) The department must remove a suspension or reinstate a revoked license if the licensee pays all the assessed civil penalties and is able to demonstrate to the department that the licensee has met all the qualifications established by this chapter.

(7) The department shall remove a suspension or reinstate a revoked permit if a conveyance is repaired or modified to bring it into compliance with this chapter. [2003 c 143 § 16; 2002 c 98 § 6; 1983 c 123 § 10.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.140 Operation without permit enjoined. Whenever any conveyance is being operated without a permit required by this chapter, the attorney general or the prosecuting attorney of the county may apply to the superior court of the county in which the conveyance is located for a temporary restraining order or a temporary or permanent injunction restraining the operation of the conveyance until the department issues a permit for the conveyance. No bond may be required from the department in such proceedings. [1983 c 123 § 14; 1963 c 26 § 14.]

70.87.145 Order to discontinue operation—Notice—Conditions—Contents of order—Recision of order—Violation—Penalty—Random inspections. (1) An authorized representative of the department may order the owner or person operating a conveyance to discontinue the operation of a conveyance, and may place a notice that states that the conveyance may not be operated on a conspicuous place in the conveyance, if:

(a) The conveyance work has not been permitted and performed in accordance with this chapter; or

(b) The conveyance has otherwise become unsafe. The order is effective immediately, and shall not be stayed by a request for a hearing.

(2) The department shall prescribe a form for the order to discontinue operation. The order shall specify why the conveyance violates this chapter or is otherwise unsafe, and shall inform the owner or operator that he or she may request a hearing pursuant to RCW 70.87.170. A request for a hearing does not stay the effect of the order.

(3) The department shall rescind the order to discontinue operation if the conveyance is fixed or modified to bring it into compliance with this chapter.

(4) An owner or a person that knowingly operates or allows the operation of a conveyance in contravention of an order to discontinue operation, or removes a notice not to operate, is:

(a) Guilty of a misdemeanor; and

(b) Subject to a civil penalty under RCW 70.87.185.

(5) The department may conduct random on-site inspections and tests on existing installations, witnessing periodic inspections and testing in order to ensure satisfactory conveyance work by persons, firms, or companies performing conveyance work, and assist in development of public awareness programs. [2003 c 143 § 17; 2002 c 98 § 7; 1983 c 123 § 15.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.170 Review of department action in accordance with administrative procedure act. (1) Any person aggrieved by an order or action of the department denying, suspending, revoking, or refusing to renew a permit or license; assessing a penalty for a violation of this chapter; or ordering the operation of a conveyance to be discontinued, may request a hearing within fifteen days after notice of the department's order or action is received. The date the hearing was requested shall be the date the request for hearing was postmarked. The party requesting the hearing must accompany the request with a certified or cashier's check for two hundred dollars payable to the department. The department shall refund the two hundred dollars if the party requesting the hearing prevails at the hearing; otherwise, the department shall retain the two hundred dollars.

If the department does not receive a timely request for hearing, the department's order or action is final and may not be appealed.

(2) If the aggrieved party requests a hearing, the department shall ask an administrative law judge to preside over the hearing. The hearing shall be conducted in accordance with chapter 34.05 RCW. [2003 c 143 § 18; 2002 c 98 § 8; 1983 c 123 § 16; 1963 c 26 § 17.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.180 Violations. (1) The performance of conveyance work, other than maintenance, or the operation of a conveyance without a permit by any person owning or having the custody, management, or operation thereof, except as provided in RCW 70.87.080 and 70.87.090, is a misdemeanor. Each day of violation is a separate offense. A prosecution may not be maintained if a person has requested the issuance or renewal of a permit but the department has not acted.

(2004 Ed.)

(2) The performance of conveyance work, other than the maintenance of conveyances as specified in RCW 70.87.270, without a license by any person is a misdemeanor. Each day of violation is a separate offense. A prosecution may not be maintained if a person has requested the issuance or renewal of a license but the department has not acted. [2003 c 143 § 19; 2002 c 98 § 9; 1983 c 123 § 17; 1963 c 26 § 18.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.185 Penalty for violation of chapter—Rules—Notice. (1) The department may assess a penalty against a person violating a provision of this chapter. The penalty shall be not more than five hundred dollars. Each day that the violation continues is a separate violation and is subject to a separate penalty.

(2) The department may not assess a penalty until it adopts rules describing the method it will use to calculate penalties for various violations.

(3) The department shall notify the violator of its action, and the reasons for its action, in writing. The department shall send the notice by certified mail to the violator's last known address. The notice shall inform the violator that a hearing may be requested under RCW 70.87.170. The hearing shall not stay the effect of the penalty. [1983 c 123 § 18.]

70.87.190 Accidents—Report and investigation—Cessation of use—Removal of damaged parts. The owner or the owner's duly authorized agent shall promptly notify the department of each accident to a person requiring the service of a physician or resulting in a disability exceeding one day, and shall afford the department every facility for investigating and inspecting the accident. The department shall without delay, after being notified, make an inspection and shall place on file a full and complete report of the accident. The report shall give in detail all material facts and information available and the cause or causes, so far as they can be determined. The report shall be open to public inspection at all reasonable hours. When an accident involves the failure or destruction of any part of the construction or the operating mechanism of a conveyance, the use of the conveyance is forbidden until it has been made safe; it has been reinspected and any repairs, changes, or alterations have been approved by the department; and a permit has been issued by the department. The removal of any part of the damaged construction or operating mechanism from the premises is forbidden until the department grants permission to do so. [1983 c 123 § 21; 1963 c 26 § 19.]

70.87.200 Exemptions. (1) The provisions of this chapter do not apply where:

(a) A conveyance is permanently removed from service or made effectively inoperative; or

(b) Lifts, man hoists, or material hoists are erected temporarily for use during construction work only and are of such a design that they must be operated by a workman stationed at the hoisting machine.

(2) Except as limited by RCW 70.87.050, municipalities having in effect an elevator code prior to June 13, 1963 may continue to assume jurisdiction over conveyance work and

may inspect, issue permits, collect fees, and prescribe minimum requirements for conveyance work and operation if the requirements are equal to the requirements of this chapter and to all rules pertaining to conveyances adopted and administered by the department. Upon the failure of a municipality having jurisdiction over conveyances to carry out the provisions of this chapter with regard to a conveyance, the department may assume jurisdiction over the conveyance. If a municipality elects not to maintain jurisdiction over certain conveyances located therein, it may enter into a written agreement with the department transferring exclusive jurisdiction of the conveyances to the department. The city may not reassume jurisdiction after it enters into such an agreement with the department. [2003 c 143 § 20; 1983 c 123 § 22; 1969 ex.s. c 108 § 4; 1963 c 26 § 20.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.205 Resolution of disputes by arbitration—Appointment of arbitrators—Procedure—Decision—Enforcement. (1) Disputes arising under RCW 70.87.200(2) shall be resolved by arbitration. The request shall be sent by certified mail.

(2) The department shall appoint one arbitrator; the municipality shall appoint one arbitrator; and the arbitrators chosen by the department and the municipality shall appoint the third arbitrator. If the two arbitrators cannot agree on the third arbitrator, the presiding judge of the Thurston county superior court, or his or her designee, shall appoint the third arbitrator.

(3) The arbitration shall be held pursuant to the procedures in chapter 7.04 RCW, except that RCW 7.04.220 shall not apply. The decision of the arbitrators is final and binding on the parties. Neither party may appeal a decision to any court.

(4) A party may petition the Thurston county superior court to enforce a decision of the arbitrators. [1983 c 123 § 23.]

70.87.210 Disposition of revenue. All moneys received or collected under the terms of this chapter shall be deposited in the general fund. [1963 c 26 § 21.]

70.87.220 Elevator safety advisory committee. (1) The department may adopt the rules necessary to establish and administer the elevator safety advisory committee. The purpose of the advisory committee is to advise the department on the adoption of rules that apply to conveyances; methods of enforcing and administering this chapter; and matters of concern to the conveyance industry and to the individual installers, owners, and users of conveyances.

(2) The advisory committee shall consist of seven persons. The director of the department or his or her designee with the advice of the chief elevator inspector shall appoint the committee members as follows:

- (a) One representative of licensed elevator contractors;
- (b) One representative of elevator mechanics licensed to perform all types of conveyance work;
- (c) One representative of owner-employed mechanics exempt from licensing requirements under RCW 70.87.270;

(d) One registered architect or professional engineer representative;

(e) One building owner or manager representative;

(f) One registered general commercial contractor representative; and

(g) One ad hoc member representing a municipality maintaining jurisdiction of conveyances in accordance with RCW 70.87.210 [70.87.200].

(3) The committee members shall serve terms of four years.

(4) The committee shall meet on the third Tuesday of February, May, August, and November of each year, and at other times at the discretion of the chief elevator inspector. The committee members shall serve without per diem or travel expenses.

(5) The chief elevator inspector shall be the secretary for the advisory committee. [2003 c 143 § 7; 2002 c 98 § 11.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.230 Conveyance work—Who may perform. Except as provided in RCW 70.87.270, a person may not perform conveyance work within the state unless he or she is an elevator mechanic who is regularly employed by and is working: (1) For an owner exempt from licensing requirements under RCW 70.87.270 and performing maintenance; (2) for a public agency performing maintenance; or (3) under the direct supervision of an elevator contractor. A person, firm, public agency, or company is not required to be an elevator contractor for removing or dismantling conveyances that are destroyed as a result of a complete demolition of a secured building or structure or where the building is demolished back to the basic support structure whereby no access is permitted therein to endanger the safety and welfare of a person. [2003 c 143 § 1; 2002 c 98 § 10.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.240 Elevator contractor license, elevator mechanic license—Qualifications—Reciprocity. (1) Any person, firm, public agency, or company wishing to engage in the business of performing conveyance work within the state must apply for an elevator contractor license with the department on a form provided by the department and be a registered general or specialty contractor under chapter 18.27 RCW.

(2) Except as provided by RCW 70.87.270, any person wishing to perform conveyance work within the state must apply for an elevator mechanic license with the department on a form provided by the department.

(3) An elevator contractor license may not be granted to any person or firm who does not possess the following qualifications:

(a) Five years' experience performing conveyance work, as verified by current and previous elevator contractors licensed to do business; or

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(4) Except as provided in subsection (5) of this section, RCW 70.87.305, and 70.87.245, an elevator mechanic

license may not be granted to any person who does not possess the following qualifications:

(a) An acceptable combination of documented experience and education credits: Not less than three years' experience performing conveyance work, as verified by current and previous employers licensed to do business in this state or public agency employers; and

(b) Satisfactory completion of a written examination administered by the department on this chapter and the rules adopted under this chapter.

(5) Any person who furnishes the department with acceptable proof that he or she has performed conveyance work in the category for which a license is sought shall upon making application for a license and paying the license fee receive a license without an examination. The person must have:

(a) Worked without direct and immediate supervision for a general or specialty contractor registered under chapter 18.27 RCW and engaged in the business of performing conveyance work in this state. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(b) Worked without direct and immediate supervision for an owner exempt from licensing requirements under RCW 70.87.270 or a public agency as an individual responsible for maintenance of conveyances owned by the owner exempt from licensing requirements under RCW 70.87.270 or the public agency. This employment may not be less than each and all of the three years immediately before March 1, 2004. The person must apply within ninety days after the effective date of rules adopted under this chapter establishing licensing requirements;

(c) Obtained a certificate of completion and successfully passed the mechanic examination of a nationally recognized training program for the elevator industry such as the national elevator industry educational program or its equivalent; or

(d) Obtained a certificate of completion of an apprenticeship program for an elevator mechanic, having standards substantially equal to those of this chapter, and registered with the Washington state apprenticeship and training council.

(6) A license must be issued to an individual holding a valid license from a state having entered into a reciprocal agreement with the department and having standards substantially equal to those of this chapter, upon application and without examination. [2004 c 66 § 2; 2003 c 143 § 2; 2002 c 98 § 12.]

Findings—2004 c 66: See note following RCW 70.87.305.

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.245 Material lift mechanic license. A material lift mechanic license to perform conveyance work on material lifts subject to WAC 296-96-05010 may be granted to any person who possesses the following qualifications:

(1) The person: (a) Must be employed by an elevator contractor that complies with subsections (2) and (3) of this section; (b) must have successfully completed the training described in subsection (2) of this section; and (c) after successfully completing such training, must have passed a writ-

(2004 Ed.)

ten examination administered by the department that is designed to demonstrate competency with regard to conveyance work on material lifts;

(2) The employer must provide the persons specified in subsection (1) of this section adequate training, including any training provided by the manufacturer, ensuring worker safety and adherence to the published operating specifications of the conveyance manufacturer; and

(3) The employer must maintain: (a) A conveyance work log identifying the equipment, describing the conveyance work performed, and identifying the person who performed the conveyance work; (b) a training log describing the course of study applicable to each conveyance and identifying each employee who has successfully completed the training described in subsection (2) of this section and when such training was completed; and (c) a record evidencing that the employer has notified the conveyance owner in writing that the conveyance is not designed to, is not intended to, and should not be used to convey workers. [2003 c 143 § 3.]

Part headings and captions not law—Effective date—2003 c 143: See notes following RCW 70.87.020.

70.87.250 Licenses—Renewals—Fees—Temporary licenses—Continuing education—Records. (1) Upon approval of an application, the department may issue a license that is biennially renewable. The fee for the license and for any renewal shall be set by the department in rule.

(2) The department may issue temporary elevator mechanic licenses. These temporary elevator mechanic licenses will be issued to those certified as qualified and competent by licensed elevator contractors. The company shall furnish proof of competency as the department may require. Each license must recite that it is valid for a period of thirty days from the date of issuance and for such particular conveyance or geographical areas as the department may designate, and otherwise entitles the licensee to the rights and privileges of an elevator mechanic license issued in this chapter. A temporary elevator mechanic license may be renewed by the department and a fee as established in rule must be charged for any temporary elevator mechanic license or renewal.

(3) The renewal of all licenses granted under this section is conditioned upon the submission of a certificate of completion of a course designed to ensure the continuing education of licensees on new and existing rules of the department. The course must consist of not less than eight hours of instruction that must be attended and completed within one year immediately preceding any license renewal.

(4) The courses must be taught by instructors through continuing education providers that may include, but are not limited to, association seminars and labor training programs. The department must approve the continuing education providers. All instructors must be approved by the department and are exempt from the requirements of subsection (3) of this section with regard to his or her application for license renewal, provided that such applicant was qualified as an instructor at any time during the one year immediately preceding the scheduled date for such renewal.

(5) A licensee who is unable to complete the continuing education course required under this section before the expiration of his or her license due to a temporary disability may

apply for a waiver from the department. This will be on a form provided by the department and signed under the pains and penalties of perjury and accompanied by a certified statement from a competent physician attesting to the temporary disability. Upon the termination of the temporary disability, the licensee must submit to the department a certified statement from the same physician, if practicable, attesting to the termination of the temporary disability. At which time a waiver sticker, valid for ninety days, must be issued to the licensee and affixed to his or her license.

(6) Approved training providers must keep uniform records, for a period of ten years, of attendance of licensees and these records must be available for inspection by the department at its request. Approved training providers are responsible for the security of all attendance records and certificates of completion. However, falsifying or knowingly allowing another to falsify attendance records or certificates of completion constitutes grounds for suspension or revocation of the approval required under this section. [2003 c 143 § 21; 2002 c 98 § 13.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.260 Liability not limited or assumed by state.

This chapter cannot be construed to relieve or lessen the responsibility or liability of any person, firm, or corporation owning, operating, controlling, testing, inspecting, or performing conveyance work on any conveyance or other related mechanisms covered by this chapter for damages to person or property caused by any defect therein, nor does the state assume any such liability or responsibility therefore or any liability to any person for whatever reason whatsoever by the adoption of this chapter or any acts or omissions arising hereunder. [2003 c 143 § 22; 2002 c 98 § 14.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.270 Exemptions from licensure. (1) The licensing requirements of this chapter do not apply to the maintenance of conveyances specified in (a) of this subsection if a person specified in (b) of this subsection performs the maintenance and the owner complies with the requirements specified in (c) and (d) of this subsection.

(a) The conveyance: (i) Must be a conveyance other than a passenger elevator to which the general public has access; and (ii) must be located in a facility in which agricultural products are stored, food products are processed, goods are manufactured, energy is generated, or similar industrial or agricultural processes are performed.

(b) The person performing the maintenance: (i) Must be regularly employed by the owner; (ii) must have completed the training described in (c) of this subsection; and (iii) must have attained journey level status in an electrical or mechanical trade, but only if the employer has or uses an established journey level program to train its electrical or mechanical trade employees and the employees perform maintenance in the course of their regular employment.

(c) The owner must provide the persons specified in (b) of this subsection adequate training to ensure worker safety and adherence to the published operating specifications of the

conveyance manufacturer, the applicable provisions of this chapter, and any rules adopted under this chapter.

(d) The owner also must maintain both a maintenance log and a training log. The maintenance log must describe maintenance work performed on the conveyance and identify the person who performed the work. The training log must describe the course of study provided to the persons specified in (b) of this subsection, including whether it is general or conveyance specific, and when the persons completed the course of study.

(2) It is a violation of chapter 49.17 RCW for an owner or an employer: (a) To allow a conveyance exempt from the licensing requirements of this chapter under subsection (1) of this section to be maintained by a person other than a person specified in subsection (1)(b) of this section or a licensee; or (b) to fail to maintain the logs required under subsection (1)(d) of this section. [2003 c 143 § 4.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.280 License categories—Rules. In order to effectively administer and implement the elevator mechanic licensing of this chapter, the department may establish elevator mechanic license categories in rule. [2003 c 143 § 5.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.290 Rules—Effective date. The department of labor and industries may not adopt rules to implement chapter 98, Laws of 2002, and to implement chapter 143, Laws of 2003 that take effect before March 1, 2004. [2003 c 143 § 6.]

Part headings and captions not law—Effective date—2003 c 143:
See notes following RCW 70.87.020.

70.87.305 Private residence conveyances—Licensing requirements—Rules. (1) The department shall, by rule, establish licensing requirements for conveyance work performed on private residence conveyances. These rules shall include an exemption from licensing for maintenance work on private residence conveyances performed by an owner or at the direction of the owner, provided the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public. However, maintenance work performed on private residence conveyances located in or at adult family homes licensed under chapter 70.128 RCW, boarding homes licensed under chapter 18.20 RCW, or similarly licensed caregiving facilities must comply with the licensing requirements of this chapter.

(2) The rules adopted under this section take effect July 1, 2004. [2004 c 66 § 3.]

Findings—2004 c 66: "The legislature finds that individuals performing conveyance work on private residence conveyances must be licensed by the department of labor and industries. However, the licensing requirements for this type of work need not be to the same level as those established for conveyance work in circumstances where the general public has access to the conveyances. The legislature further finds that the department of labor and industries should be given the authority to develop the licensing requirements for this type of work using the normal rule-making process established under chapter 34.05 RCW. Lastly, the legislature finds that private residence conveyance maintenance work that is performed by an owner or at the direction of the owner is exempt from licensing if the owner resides in the residence at which the conveyance is located and the conveyance is not accessible to the general public." [2004 c 66 § 1.]

70.87.900 Severability. If any provision of this chapter or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances, is not affected. [1983 c 123 § 24; 1963 c 26 § 22.]

Chapter 70.90 RCW

WATER RECREATION FACILITIES

(Formerly: Swimming pools)

Sections

| | |
|-----------|---|
| 70.90.101 | Legislative findings. |
| 70.90.110 | Definitions. |
| 70.90.120 | Adoption of rules governing safety, sanitation, and water quality—Exceptions. |
| 70.90.125 | Regulation by local boards of health. |
| 70.90.140 | Enforcement. |
| 70.90.150 | Fees. |
| 70.90.160 | Modification or construction of facility—Permit required—Submission of plans. |
| 70.90.170 | Operating permit—Renewal. |
| 70.90.180 | State and local health jurisdictions—Chapter not basis for liability. |
| 70.90.190 | Reporting of injury, disease, or death. |
| 70.90.200 | Civil penalties. |
| 70.90.205 | Criminal penalties. |
| 70.90.210 | Adjudicative proceeding—Notice. |
| 70.90.230 | Insurance required. |
| 70.90.240 | Sale of spas, pools, and tubs—Operating instructions and health caution required. |
| 70.90.250 | Application of chapter. |
| 70.90.910 | Severability—1986 c 236. |
| 70.90.911 | Severability—1987 c 222. |

70.90.101 Legislative findings. The legislature finds that water recreation facilities are an important source of recreation for the citizens of this state. To promote the public health, safety, and welfare, the legislature finds it necessary to continue to regulate these facilities. [1987 c 222 § 1.]

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

(1) "Water recreation facility" means any artificial basin or other structure containing water used or intended to be used for recreation, bathing, relaxation, or swimming, where body contact with the water occurs or is intended to occur and includes auxiliary buildings and appurtenances. The term includes, but is not limited to:

(a) Conventional swimming pools, wading pools, and spray pools;

(b) Recreational water contact facilities as defined in this chapter;

(c) Spa pools and tubs using hot water, cold water, mineral water, air induction, or hydrojets; and

(d) Any area designated for swimming in natural waters with artificial boundaries within the waters.

(2) "Recreational water contact facility" means an artificial water associated facility with design and operational features that provide patron recreational activity which is different from that associated with a conventional swimming pool and purposefully involves immersion of the body partially or totally in the water, and that includes but is not limited to, water slides, wave pools, and water lagoons.

(2004 Ed.)

(3) "Local health officer" means the health officer of the city, county, or city-county department or district or a representative authorized by the local health officer.

(4) "Secretary" means the secretary of health.

(5) "Person" means an individual, firm, partnership, co-partnership, corporation, company, association, club, government entity, or organization of any kind.

(6) "Department" means the department of health.

(7) "Board" means the state board of health. [1991 c 3 § 352; 1987 c 222 § 2; 1986 c 236 § 2.]

70.90.120 Adoption of rules governing safety, sanitation, and water quality—Exceptions. (1) The board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, governing safety, sanitation, and water quality for water recreation facilities. The rules shall include but not be limited to requirements for design; operation; injury and illness reporting; biological and chemical contamination standards; water quality monitoring; inspection; permit application and issuance; and enforcement procedures. However, a water recreation facility intended for the exclusive use of residents of any apartment house complex or of a group of rental housing units of less than fifteen living units, or of a mobile home park, or of a condominium complex or any group or association of less than fifteen home owners shall not be subject to preconstruction design review, routine inspection, or permit or fee requirements; and water treatment of hydroelectric reservoirs or natural streams, creeks, lakes, or irrigation canals shall not be required.

(2) In adopting rules under subsection (1) of this section regarding the operation or design of a recreational water contact facility, the board shall review and consider any recommendations made by the recreational water contact facility advisory committee. [1987 c 222 § 5; 1986 c 236 § 3.]

70.90.125 Regulation by local boards of health. Nothing in this chapter shall prohibit any local board of health from establishing and enforcing any provisions governing safety, sanitation, and water quality for any water recreation facility, regardless of ownership or use, in addition to those rules established by the state board of health under this chapter. [1987 c 222 § 6.]

70.90.140 Enforcement. The secretary shall enforce the rules adopted under this chapter. The secretary may develop joint plans of responsibility with any local health jurisdiction to administer this chapter. [1986 c 236 § 5.]

70.90.150 Fees. (1) Local health officers may establish and collect fees sufficient to cover their costs incurred in carrying out their duties under this chapter and the rules adopted under this chapter.

(2) The department may establish and collect fees sufficient to cover its costs incurred in carrying out its duties under this chapter. The fees shall be deposited in the state general fund.

(3) A person shall not be required to submit fees at both the state and local levels. [1986 c 236 § 6.]

70.90.160 Modification or construction of facility—Permit required—Submission of plans. A permit is required for any modification to or construction of any recreational water contact facility after June 11, 1986, and for any other water recreation facility after July 26, 1987. Water recreation facilities existing on July 26, 1987, which do not comply with the design and construction requirements established by the state board of health under this chapter may continue to operate without modification to or replacement of the existing physical plant, provided the water quality, sanitation, and life saving equipment are in compliance with the requirements established under this chapter. However, if any modifications are made to the physical plant of an existing water recreation facility the modifications shall comply with the requirements established under this chapter. The plans and specifications for the modification or construction shall be submitted to the applicable local authority or the department as applicable, but a person shall not be required to submit plans at both the state and local levels or apply for both a state and local permit. The plans shall be reviewed and may be approved or rejected or modifications or conditions imposed consistent with this chapter as the public health or safety may require, and a permit shall be issued or denied within thirty days of submittal. [1987 c 222 § 7; 1986 c 236 § 7.]

70.90.170 Operating permit—Renewal. An operating permit from the department or local health officer, as applicable, is required for each water recreation facility operated in this state. The permit shall be renewed annually. The permit shall be conspicuously displayed at the water recreation facility. [1987 c 222 § 8; 1986 c 236 § 8.]

70.90.180 State and local health jurisdictions—Chapter not basis for liability. Nothing in this chapter or the rules adopted under this chapter creates or forms the basis for any liability: (1) On the part of the state and local health jurisdictions, or their officers, employees, or agents, for any injury or damage resulting from the failure of the owner or operator of water recreation facilities to comply with this chapter or the rules adopted under this chapter; or (2) by reason or in consequence of any act or omission in connection with the implementation or enforcement of this chapter or the rules adopted under this chapter on the part of the state and local health jurisdictions, or by their officers, employees, or agents.

All actions of local health officers and the secretary shall be deemed an exercise of the state's police power. [1987 c 222 § 9; 1986 c 236 § 9.]

70.90.190 Reporting of injury, disease, or death. Any person operating a water recreation facility shall report to the local health officer or the department any serious injury, communicable disease, or death occurring at or caused by the water recreation facility. [1987 c 222 § 10; 1986 c 236 § 10.]

70.90.200 Civil penalties. County, city, or town legislative authorities and the secretary, as applicable, may establish civil penalties for a violation of this chapter or the rules adopted under this chapter not to exceed five hundred dollars. Each day upon which a violation occurs constitutes a separate

violation. A person violating this chapter may be enjoined from continuing the violation. [1986 c 236 § 11.]

70.90.205 Criminal penalties. The violation of any provisions of this chapter and any rules adopted under this chapter shall be a misdemeanor punishable by a fine of not more than five hundred dollars. [1987 c 222 § 11.]

70.90.210 Adjudicative proceeding—Notice. (1) Any person aggrieved by an order of the department or by the imposition of a civil fine by the department has the right to an adjudicative proceeding. RCW 43.70.095 governs department notice of a civil fine and a person's right to an adjudicative proceeding.

(2) Any person aggrieved by an order of a local health officer or by the imposition of a civil fine by the officer has the right to appeal. The hearing is governed by the local health jurisdiction's administrative appeals process. Notice shall be provided by the local health jurisdiction consistent with its due process requirements. [1991 c 3 § 354; 1989 c 175 § 130; 1986 c 236 § 12.]

Effective date—1989 c 175: See note following RCW 34.05.010.

70.90.230 Insurance required. (1) A recreational water contact facility shall not be operated within the state unless the owner or operator has purchased insurance in an amount not less than one hundred thousand dollars against liability for bodily injury to or death of one or more persons in any one accident arising out of the use of the recreational water contact facility.

(2) The board may require a recreational water contact facility to purchase insurance in addition to the amount required in subsection (1) of this section. [1986 c 236 § 14.]

70.90.240 Sale of spas, pools, and tubs—Operating instructions and health caution required. Every seller of spas, pools and tubs under RCW 70.90.110(1) (a) and (c) shall furnish to the purchaser a complete set of operating instructions which shall include detailed instructions on the safe use of the spa, pool, or tub and for the proper treatment of water to reduce health risks to the purchaser. Included in the instructions shall be information about the health effects of hot water and a specific caution and explanation of the health effects of hot water on pregnant women. [1987 c 222 § 4.]

70.90.250 Application of chapter. This chapter applies to all water recreation facilities regardless of whether ownership is public or private and regardless of whether the intended use is commercial or private, except that this chapter shall not apply to:

- (1) Any water recreation facility for the sole use of residents and invited guests at a single family dwelling;
- (2) Therapeutic water facilities operated exclusively for physical therapy; and
- (3) Steam baths and saunas. [1987 c 222 § 3.]

70.90.910 Severability—1986 c 236. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1986 c 236 § 17.]

70.90.911 Severability—1987 c 222. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 222 § 13.]

**Chapter 70.92 RCW
PROVISIONS IN BUILDINGS FOR AGED AND
HANDICAPPED PERSONS**

Sections

- 70.92.100 Legislative intent.
- 70.92.110 Buildings and structures to which standards and specifications apply—Exemptions.
- 70.92.120 Handicap symbol—Display—Signs showing location of entrance for handicapped.
- 70.92.130 Definitions.
- 70.92.140 Minimum standards for facilities—Adoption—Facilities to be included.
- 70.92.150 Standards adopted by other states to be considered—Majority vote.
- 70.92.160 Waiver from compliance with standards.
- 70.92.170 Personal wireless service facilities—Rules.

Making buildings and facilities accessible to and usable by handicapped persons: RCW 19.27.031(5).

70.92.100 Legislative intent. It is the intent of the legislature that, notwithstanding any law to the contrary, plans and specifications for the erection of buildings through the use of public or private funds shall make special provisions for elderly or physically disabled persons. [1975 1st ex.s. c 110 § 1.]

70.92.110 Buildings and structures to which standards and specifications apply—Exemptions. The standards and specifications adopted under this chapter shall, as provided in this section, apply to buildings, structures, or portions thereof used primarily for group A-1 through group U-1 occupancies, except for group R-3 occupancies, as defined in the Uniform Building Code, 1994 edition, published by the International Conference of Building Officials. All such buildings, structures, or portions thereof, which are constructed, substantially remodeled, or substantially rehabilitated after July 1, 1976, shall conform to the standards and specifications adopted under this chapter: PROVIDED, That the following buildings, structures, or portions thereof shall be exempt from this chapter:

- (1) Buildings, structures, or portions thereof for which construction contracts have been awarded prior to July 1, 1976;
- (2) Any building, structure, or portion thereof in respect to which the administrative authority deems, after considering all circumstances applying thereto, that full compliance is impracticable: PROVIDED, That, such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: PROVIDED FURTHER, That the board of appeals provided for in chapter 1 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to

(2004 Ed.)

grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein;

(3) Any building or structure used solely for dwelling purposes and which contains not more than two dwelling units;

(4) Any building or structure not used primarily for group A-1 through group U-1 occupancies, except for group R-3 occupancies, as set forth in the Uniform Building Code, 1994 edition, published by the International Conference of Building Officials; or

(5) Apartment houses with ten or fewer units. [1995 c 343 § 3; 1989 c 14 § 9; 1975 1st ex.s. c 110 § 2.]

70.92.120 Handicap symbol—Display—Signs showing location of entrance for handicapped. All buildings built in accordance with the standards and specifications provided for in this chapter, and containing facilities that are in compliance therewith, shall display the following symbol which is known as the International Symbol of Access.



Such symbol shall be white on a blue background and shall indicate the location of facilities designed for the physically disabled or elderly. When a building contains an entrance other than the main entrance which is ramped or level for use by physically disabled or elderly persons, a sign with the symbol showing its location shall be posted at or near the main entrance which shall be visible from the adjacent public sidewalk or way. [1995 c 343 § 4; 1975 1st ex.s. c 110 § 3.]

70.92.130 Definitions. As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

- (1) "Administrative authority" means the building department of each county, city, or town of this state;
- (2) "Substantially remodeled or substantially rehabilitated" means any alteration or restoration of a building or structure within any twelve-month period, the cost of which exceeds sixty percent of the value of the particular building or structure;

(3) "Council" means the state building code council. [1995 c 343 § 5; 1975 1st ex.s. c 110 § 4.]

70.92.140 Minimum standards for facilities—Adoption—Facilities to be included. The *state building code advisory council shall adopt minimum standards by rule and regulation for the provision of facilities in buildings and structures to accommodate the elderly, as well as physically disabled persons, which shall include but not be limited to standards for:

- (1) Ramps;
- (2) Doors and doorways;
- (3) Stairs;
- (4) Floors;
- (5) Entrances;
- (6) Toilet rooms and paraphernalia therein;
- (7) Water fountains;
- (8) Public telephones;
- (9) Elevators;
- (10) Switches and levers for the control of light, ventilation, windows, mirrors, etc.;
- (11) Plaques identifying such facilities;
- (12) Turnstiles and revolving doors;
- (13) Kitchen facilities, where appropriate;
- (14) Grading of approaches to entrances;
- (15) Parking facilities;
- (16) Seating facilities, where appropriate, in buildings where people normally assemble. [1975 1st ex.s. c 110 § 5.]

***Reviser's note:** The "state building code advisory council" was redesignated the "state building code council" by 1985 c 360 § 11. See RCW 19.27.070.

70.92.150 Standards adopted by other states to be considered—Majority vote. The council in adopting these minimum standards shall consider minimum standards adopted by both law and rule and regulation in other states and the government of the United States: PROVIDED, That no standards adopted by the council pursuant to RCW 70.92.100 through 70.92.160 shall take effect until July 1, 1976. The council shall adopt such standards by majority vote pursuant to the provisions of chapter 34.05 RCW. [1995 c 343 § 6; 1975 1st ex.s. c 110 § 6.]

70.92.160 Waiver from compliance with standards. The administrative authority of any jurisdiction may grant a waiver from compliance with any standard adopted hereunder for a particular building or structure if it determines that compliance with the particular standard is impractical: PROVIDED, That such a determination shall be made no later than at the time of issuance of the building permit for the construction, remodeling, or rehabilitation: PROVIDED FURTHER, That the board of appeals provided for in chapter 1 of the Uniform Building Code shall have jurisdiction to hear and decide appeals from any decision by the administrative authority regarding a waiver or failure to grant a waiver from compliance with the standards adopted pursuant to RCW 70.92.100 through 70.92.160. The provisions of the Uniform Building Code regarding the appeals process shall govern the appeals herein. [1995 c 343 § 7; 1975 1st ex.s. c 110 § 7.]

70.92.170 Personal wireless service facilities—Rules.

(1) The state building code council shall amend its rules under chapter 70.92 RCW, to the extent practicable while still maintaining the certification of those regulations under the federal Americans with disabilities act, to exempt personal wireless services equipment shelters, or the room or enclosure housing equipment for personal wireless service facilities, that meet the following conditions: (a) The shelter is not staffed; and (b) to conduct maintenance activities, employees who visit the shelter must be able to climb.

(2) For the purposes of this section, "personal wireless service facilities" means facilities for the provision of personal wireless services. [1996 c 323 § 5.]

Findings—1996 c 323: See note following RCW 43.70.600.

Chapter 70.93 RCW

WASTE REDUCTION, RECYCLING, AND MODEL LITTER CONTROL ACT

(Formerly: Model litter control and recycling act)

Sections

| | |
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| 70.93.010 | Legislative findings. |
| 70.93.020 | Declaration of purpose. |
| 70.93.030 | Definitions. |
| 70.93.040 | Administrative procedure act—Application to chapter. |
| 70.93.050 | Enforcement of chapter. |
| 70.93.060 | Littering prohibited—Penalties—Litter cleanup restitution payment. |
| 70.93.070 | Collection of fines and forfeitures. |
| 70.93.080 | Notice to public—Contents of chapter—Required. |
| 70.93.090 | Litter receptacles—Use of anti-litter symbol—Distribution—Placement—Violations—Penalties. |
| 70.93.095 | Marinas and airports—Recycling. |
| 70.93.097 | Transported waste must be covered or secured. |
| 70.93.110 | Removal of litter—Responsibility. |
| 70.93.180 | Waste reduction, recycling, and litter control account—Distribution. |
| 70.93.200 | Department of ecology—Administration of anti-litter and recycling programs—Guidelines—Report to legislature. |
| 70.93.210 | Waste reduction, anti-litter, and recycling campaign—Industrial cooperation requested. |
| 70.93.220 | Litter collection programs—Department of ecology—Coordinating agency—Use of funds—Reporting. |
| 70.93.230 | Violations of chapter—Penalties. |
| 70.93.250 | Funding to local governments—Reports. |
| 70.93.900 | Severability—1971 ex.s. c 307. |
| 70.93.910 | Alternative to Initiative 40—Placement on ballot—Force and effect of chapter. |
| 70.93.920 | Severability—1979 c 94. |

Reviser's note: Throughout chapter 70.93 RCW, the term "this 1971 amendatory act" has been changed to "this chapter"; "this 1971 amendatory act" [1971 ex.s. c 307] consists of this chapter, the 1971 amendment to RCW 46.61.655 and the repeal of RCW 9.61.120, 9.66.060, 9.66.070, and 46.61.650.

Local adopt-a-highway programs: RCW 47.40.105.

Solid waste management, recovery and recycling: Chapter 70.95 RCW.

State parks: RCW 79A.05.045.

70.93.010 Legislative findings. (1) The legislature finds:

(a) Washington state is experiencing rapid population growth and its citizens are increasingly mobile;

(b) There is a fundamental need for a healthful, clean, and beautiful environment;

(c) The proliferation and accumulation of litter discarded throughout this state impairs this need and constitutes a public health hazard;

(d) There is a need to conserve energy and natural resources, and the effective litter control and recovery and

recycling of litter materials will serve to accomplish such conservation;

(e) In addition to effective litter control, there must be effective programs to accomplish waste reduction, the state's highest waste management priority; and

(f) There must also be effective systems to accomplish all components of recycling, including collection and processing.

(2) Recognizing the multifaceted nature of the state's solid waste management problems, the legislation enacted in 1971 and entitled the "Model Litter Control and Recycling Act" is hereby renamed the "waste reduction, recycling, and model litter control act." [1998 c 257 § 1; 1992 c 175 § 1; 1979 c 94 § 1; 1971 ex.s. c 307 § 1.]

Effective date—1992 c 175: See RCW 82.19.900.

70.93.020 Declaration of purpose. The purpose of this chapter is to accomplish litter control, increase waste reduction, and stimulate all components of recycling throughout this state by delegating to the department of ecology the authority to:

(1) Conduct a permanent and continuous program to control and remove litter from this state to the maximum practical extent possible;

(2) Recover and recycle waste materials related to litter and littering;

(3) Foster public and private recycling of recyclable materials;

(4) Increase public awareness of the need for waste reduction, recycling, and litter control; and

(5) Coordinate the litter collection efforts and expenditure of funds for litter collection by other agencies identified in this chapter.

It is further the intent and purpose of this chapter to create jobs for employment of youth in litter cleanup and related activities and to stimulate and encourage small, private recycling centers. This program shall include the compatible goal of recovery of recyclable materials to conserve energy and natural resources wherever practicable. Every other department of state government and all local governmental units and agencies of this state shall cooperate with the department of ecology in the administration and enforcement of this chapter. The intent of this chapter is to add to and to coordinate existing recycling and litter control and removal efforts and not terminate or supplant such efforts. [1998 c 257 § 2; 1992 c 175 § 2; 1991 c 319 § 101; 1979 c 94 § 2; 1975-'76 2nd ex.s. c 41 § 7; 1971 ex.s. c 307 § 2.]

Effective date—1992 c 175: See RCW 82.19.900.

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

Severability—1975-'76 2nd ex.s. c 41: See RCW 70.95.911.

Solid waste disposal, recovery and recycling: Chapter 70.95 RCW.

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

(1) "Conveyance" means a boat, airplane, or vehicle.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(2004 Ed.)

(4) "Disposable package or container" means all packages or containers defined as such by rules adopted by the department of ecology.

(5) "Junk vehicle" has the same meaning as defined in RCW 46.55.010.

(6) "Litter" means all waste material including but not limited to disposable packages or containers thrown or deposited as herein prohibited and solid waste that is illegally dumped, but not including the wastes of the primary processes of mining, logging, sawmilling, farming, or manufacturing. "Litter" includes the material described in subsection (10) of this section as "potentially dangerous litter."

(7) "Litter bag" means a bag, sack, or other container made of any material which is large enough to serve as a receptacle for litter inside the vehicle or watercraft of any person. It is not necessarily limited to the state approved litter bag but must be similar in size and capacity.

(8) "Litter receptacle" means those containers adopted by the department of ecology and which may be standardized as to size, shape, capacity, and color and which shall bear the state anti-litter symbol, as well as any other receptacles suitable for the depositing of litter.

(9) "Person" means any political subdivision, government agency, municipality, industry, public or private corporation, copartnership, association, firm, individual, or other entity whatsoever.

(10) "Potentially dangerous litter" means litter that is likely to injure a person or cause damage to a vehicle or other property. "Potentially dangerous litter" means:

(a) Cigarettes, cigars, or other tobacco products that are capable of starting a fire;

(b) Glass;

(c) A container or other product made predominantly or entirely of glass;

(d) A hypodermic needle or other medical instrument designed to cut or pierce;

(e) Raw human waste, including soiled baby diapers, regardless of whether or not the waste is in a container of any sort; and

(f) Nails or tacks.

(11) "Public place" means any area that is used or held out for use by the public whether owned or operated by public or private interests.

(12) "Recycling" means transforming or remanufacturing waste materials into a finished product for use other than landfill disposal or incineration.

(13) "Recycling center" means a central collection point for recyclable materials.

(14) "To litter" means a single or cumulative act of disposing of litter.

(15) "Vehicle" includes every device capable of being moved upon a public highway and in, upon, or by which any persons or property is or may be transported or drawn upon a public highway, excepting devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(16) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

(17) "Watercraft" means any boat, ship, vessel, barge, or other floating craft. [2003 c 337 § 2; 2000 c 154 § 1; 1998 c 257 § 3; 1991 c 319 § 102; 1979 c 94 § 3; 1971 ex.s. c 307 § 3.]

Findings—2003 c 337: See note following RCW 70.93.060.

Severability—2000 c 154: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 154 § 5.]

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

70.93.040 Administrative procedure act—Application to chapter. In addition to his other powers and duties, the director shall have the power to propose and to adopt pursuant to chapter 34.05 RCW rules and regulations necessary to carry out the provisions, purposes, and intent of this chapter. [1971 ex.s. c 307 § 4.]

70.93.050 Enforcement of chapter. The director shall designate trained employees of the department to be vested with police powers to enforce and administer the provisions of this chapter and all rules adopted thereunder. The director shall also have authority to contract with other state and local governmental agencies having law enforcement capabilities for services and personnel reasonably necessary to carry out the enforcement provisions of this chapter. In addition, state patrol officers, fish and wildlife officers, fire wardens, deputy fire wardens and forest rangers, sheriffs and marshals and their deputies, and police officers, and those employees of the department of ecology and the parks and recreation commission vested with police powers all shall enforce the provisions of this chapter and all rules adopted thereunder and are hereby empowered to issue citations to and/or arrest without warrant, persons violating any provision of this chapter or any of the rules adopted hereunder. All of the foregoing enforcement officers may serve and execute all warrants, citations, and other process issued by the courts in enforcing the provisions of this chapter and rules adopted hereunder. In addition, mailing by registered mail of such warrant, citation, or other process to his or her last known place of residence shall be deemed as personal service upon the person charged. [2001 c 253 § 8; 1980 c 78 § 132; 1979 c 94 § 4; 1971 ex.s. c 307 § 5.]

Effective date—Intent, construction—Savings—Severability—1980 c 78: See notes following RCW 77.04.010.

70.93.060 Littering prohibited—Penalties—Litter cleanup restitution payment. (1) It is a violation of this section to abandon a junk vehicle upon any property. In addition, no person shall throw, drop, deposit, discard, or otherwise dispose of litter upon any public property in the state or upon private property in this state not owned by him or her or in the waters of this state whether from a vehicle or otherwise including but not limited to any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley except:

(a) When the property is designated by the state or its agencies or political subdivisions for the disposal of garbage and refuse, and the person is authorized to use such property for that purpose;

(b) Into a litter receptacle in a manner that will prevent litter from being carried away or deposited by the elements upon any part of the private or public property or waters.

(2)(a) Except as provided in subsection (4) of this section, it is a class 3 civil infraction as provided in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(c) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the law enforcement agency investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(d) If a junk vehicle is abandoned in violation of this section, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle.

(3) If the violation occurs in a state park, the court shall, in addition to any other penalties assessed, order the person to perform twenty-four hours of community restitution in the state park where the violation occurred if the state park has stated an intent to participate as provided in RCW 79A.05.050.

(4) It is a class 1 civil infraction as provided in RCW 7.80.120 for a person to discard, in violation of this section, potentially dangerous litter in any amount. [2003 c 337 § 3; 2002 c 175 § 45; 2001 c 139 § 1; 2000 c 154 § 2; 1997 c 159 § 1; 1996 c 263 § 1; 1993 c 292 § 1; 1983 c 277 § 1; 1979 ex.s. c 39 § 1; 1971 ex.s. c 307 § 6.]

Findings—2003 c 337: "(1) The legislature finds that the littering of potentially dangerous products poses a greater danger to the public safety than other classes of litter. Broken glass, human waste, and other dangerous materials along roadways, within parking lots, and on pedestrian, bicycle, and recreation trails elevates the risk to public safety, such as vehicle tire punctures, and the risk to the community volunteers who spend their time gathering and properly disposing of the litter left behind by others. As such, the legislature finds that a higher penalty should be imposed on those who improperly dispose of potentially dangerous products, such as is imposed on those who improperly dispose of tobacco products.

(2) The legislature further finds that litter is a nuisance, and, in order to alleviate such a nuisance, counties must be provided statutory authority to declare what shall be a nuisance, to abate a nuisance, and to impose and col-

lect fines upon parties who may create, cause, or commit a nuisance." [2003 c 337 § 1.]

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

Severability—2000 c 154: See note following RCW 70.93.030.

Lighted material, etc.—Receptacles in conveyances: RCW 76.04.455.

Throwing materials on highway prohibited—Removal: RCW 46.61.645.

70.93.070 Collection of fines and forfeitures. The director may prescribe the procedures for the collection of penalties, costs, and other charges allowed by chapter 7.80 RCW for violations of this chapter. [1996 c 263 § 2; 1993 c 292 § 2; 1983 c 277 § 2; 1971 ex.s. c 307 § 7.]

70.93.080 Notice to public—Contents of chapter—Required. Pertinent portions of this chapter shall be posted along the public highways of this state and in all campgrounds and trailer parks, at all entrances to state parks, forest lands, and recreational areas, at all public beaches, and at other public places in this state where persons are likely to be informed of the existence and content of this chapter and the penalties for violating its provisions. [1971 ex.s. c 307 § 8.]

70.93.090 Litter receptacles—Use of anti-litter symbol—Distribution—Placement—Violations—Penalties. The department shall design and the director shall adopt by rule or regulation one or more types of litter receptacles which are reasonably uniform as to size, shape, capacity and color, for wide and extensive distribution throughout the public places of this state. Each such litter receptacle shall bear an anti-litter symbol as designed and adopted by the department. In addition, all litter receptacles shall be designed to attract attention and to encourage the depositing of litter.

Litter receptacles of the uniform design shall be placed along the public highways of this state and at all parks, campgrounds, trailer parks, drive-in restaurants, gasoline service stations, tavern parking lots, shopping centers, grocery store parking lots, parking lots of major industrial firms, marinas, boat launching areas, boat moorage and fueling stations, public and private piers, beaches and bathing areas, and such other public places within this state as specified by rule or regulation of the director adopted pursuant to chapter 34.05 RCW. The number of such receptacles required to be placed as specified herein shall be determined by a formula related to the need for such receptacles.

It shall be the responsibility of any person owning or operating any establishment or public place in which litter receptacles of the uniform design are required by this section to procure and place such receptacles at their own expense on the premises in accord with rules and regulations adopted by the department.

Any person, other than a political subdivision, government agency, or municipality, who fails to place such litter receptacles on the premises in the numbers required by rule or regulation of the department, violating the provisions of this section or rules or regulations adopted thereunder shall be subject to a fine of ten dollars for each day of violation. [1998 c 257 § 4; 1979 c 94 § 5; 1971 ex.s. c 307 § 9.]

70.93.095 Marinas and airports—Recycling. (1) Each marina with thirty or more slips and each airport provid-

(2004 Ed.)

ing regularly scheduled commercial passenger service shall provide adequate recycling receptacles on, or adjacent to, its facility. The receptacles shall be clearly marked for the disposal of at least two of the following recyclable materials: Aluminum, glass, newspaper, plastic, and tin.

(2) Marinas and airports subject to this section shall not be required to provide recycling receptacles until the city or county in which it is located adopts a waste reduction and recycling element of a solid waste management plan pursuant to RCW 70.95.090. [1991 c 11 § 2.]

70.93.097 Transported waste must be covered or secured. (1) By January 1, 1994, each county or city with a staffed transfer station or landfill in its jurisdiction shall adopt an ordinance to reduce litter from vehicles. The ordinance shall require the operator of a vehicle transporting solid waste to a staffed transfer station or landfill to secure or cover the vehicle's waste in a manner that will prevent spillage. The ordinance may provide exemptions for vehicle operators transporting waste that is unlikely to spill from a vehicle.

The ordinance shall, in the absence of an exemption, require a fee, in addition to other landfill charges, for a person arriving at a staffed landfill or transfer station without a cover on the vehicle's waste or without the waste secured.

(2) The fee collected under subsection (1) of this section shall be deposited, no less often than quarterly, with the city or county in which the landfill or transfer station is located.

(3) A vehicle transporting sand, dirt, or gravel in compliance with the provisions of RCW 46.61.655 shall not be required to secure or cover a load pursuant to ordinances adopted under this section. [1993 c 399 § 1.]

70.93.110 Removal of litter—Responsibility. Responsibility for the removal of litter from receptacles placed at parks, beaches, campgrounds, trailer parks, and other public places shall remain upon those state and local agencies performing litter removal. Removal of litter from litter receptacles placed on private property which is used by the public shall remain the responsibility of the owner of such private property. [1971 ex.s. c 307 § 11.]

70.93.180 Waste reduction, recycling, and litter control account—Distribution. (1) There is hereby created an account within the state treasury to be known as the "waste reduction, recycling, and litter control account". Moneys in the account may be spent only after appropriation. Expenditures from the waste reduction, recycling, and litter control account shall be used as follows:

(a) Fifty percent to the department of ecology, for use by the departments of ecology, natural resources, revenue, transportation, and corrections, and the parks and recreation commission, for use in litter collection programs, to be distributed under RCW 70.93.220. The amount to the department of ecology shall also be used for a central coordination function for litter control efforts statewide, for the biennial litter survey under RCW 70.93.200(8), and for statewide public awareness programs under RCW 70.93.200(7). The amount to the department shall also be used to defray the costs of administering the funding, coordination, and oversight of

local government programs for waste reduction, litter control, and recycling, so that local governments can apply one hundred percent of their funding to achieving program goals. The amount to the department of revenue shall be used to enforce compliance with the litter tax imposed in chapter 82.19 RCW;

(b) Twenty percent to the department for local government funding programs for waste reduction, litter control, and recycling activities by cities and counties under RCW 70.93.250, to be administered by the department of ecology; and

(c) Thirty percent to the department of ecology for waste reduction and recycling efforts.

(2) All taxes imposed in RCW 82.19.010 and fines and bail forfeitures collected or received pursuant to this chapter shall be deposited in the waste reduction, recycling, and litter control account and used for the programs under subsection (1) of this section.

(3) Not less than five percent and no more than ten percent of the amount appropriated into the waste reduction, recycling, and litter control account every biennium shall be reserved for capital needs, including the purchase of vehicles for transporting crews and for collecting litter and solid waste. Capital funds shall be distributed among state agencies and local governments according to the same criteria provided in RCW 70.93.220 for the remainder of the funds, so that the most effective waste reduction, litter control, and recycling programs receive the most funding. The intent of this subsection is to provide funds for the purchase of equipment that will enable the department to account for the greatest return on investment in terms of reaching a zero litter goal. [1998 c 257 § 5; 1992 c 175 § 8; 1991 sp.s. c 13 § 40; 1985 c 57 § 68; 1983 c 277 § 3; 1971 ex.s. c 307 § 18.]

Effective date—1992 c 175: See RCW 82.19.900.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

70.93.200 Department of ecology—Administration of anti-litter and recycling programs—Guidelines—Report to legislature. In addition to the foregoing, the department of ecology shall:

(1) Serve as the coordinating agency between the various industry organizations seeking to aid in the waste reduction, anti-litter, and recycling efforts;

(2) Serve as the coordinating and administrating agency for all state agencies and local governments receiving funds for waste reduction, litter control, and recycling under this chapter;

(3) Recommend to the governing bodies of all local governments that they adopt ordinances similar to the provisions of this chapter;

(4) Cooperate with all local governments to accomplish coordination of local waste reduction, anti-litter, and recycling efforts;

(5) Encourage, organize, and coordinate all voluntary local waste reduction, anti-litter, and recycling campaigns seeking to focus the attention of the public on the programs of this state to reduce waste, control and remove litter, and foster recycling;

(6) Investigate the availability of, and apply for funds available from any private or public source to be used in the program outlined in this chapter;

(7) Develop statewide programs by working with local governments, payers of the waste reduction, recycling, and litter control tax, and industry organizations that are active in waste reduction, anti-litter, and recycling efforts to increase public awareness of and participation in recycling and to stimulate and encourage local private recycling centers, public participation in recycling and research and development in the field of litter control, and recycling, removal, and disposal of litter-related recycling materials;

(8) Conduct a biennial statewide litter survey targeted at litter composition, sources, demographics, and geographic trends; and

(9) Provide a biennial summary of all waste reduction, litter control, and recycling efforts statewide including those of the department of ecology, and other state agencies and local governments funded for such programs under this chapter. This report is due to the legislature in March of even-numbered years. [1998 c 257 § 8; 1979 c 94 § 7; 1971 ex.s. c 307 § 20.]

70.93.210 Waste reduction, anti-litter, and recycling campaign—Industrial cooperation requested. To aid in the statewide waste reduction, anti-litter, and recycling campaign, the state legislature requests that the payers of the waste reduction, recycling, and litter control tax and the various industry organizations which are active in waste reduction, anti-litter, and recycling efforts provide active cooperation with the department of ecology so that additional effect may be given to the waste reduction, anti-litter, and recycling campaign of the state of Washington. [1998 c 257 § 9; 1979 c 94 § 8; 1971 ex.s. c 307 § 21.]

70.93.220 Litter collection programs—Department of ecology—Coordinating agency—Use of funds—Reporting. (1) The department of ecology is the coordinating and administrative agency working with the departments of natural resources, revenue, transportation, and corrections, and the parks and recreation commission in developing a biennial budget request for funds for the various agencies' litter collection programs.

(2) Funds may be used to meet the needs of efficient and effective litter collection and illegal dumping programs identified by the various agencies. The department shall develop criteria for evaluating the effectiveness and efficiency of the waste reduction, litter control, and recycling programs being administered by the various agencies listed in RCW 70.93.180, and shall distribute funds according to the effectiveness and efficiency of those programs. In addition, the department shall approve funding requests for efficient and effective waste reduction, litter control, and recycling programs, provide funds, and monitor the results of all agency programs.

(3) All agencies are responsible for reporting information on their litter collection programs, as requested by the department of ecology. Beginning in the year 2000, this information shall be provided to the department by March of

even-numbered years. In 1998, this information shall be provided by July 1st.

(4) By December 1998, and in every even-numbered year thereafter, the department shall provide a report to the legislature summarizing biennial waste reduction, litter control, and recycling activities by state agencies and submitting the coordinated litter budget request of all agencies. [1998 c 257 § 6.]

70.93.230 Violations of chapter—Penalties. Every person convicted of a violation of this chapter for which no penalty is specially provided for shall be punished by a fine of not more than fifty dollars for each such violation. [1983 c 277 § 4; 1971 ex.s. c 307 § 23.]

70.93.250 Funding to local governments—Reports.

(1) The department shall provide funding to local units of government to establish, conduct, and evaluate community restitution and other programs for waste reduction, litter and illegal dump cleanup, and recycling. Programs eligible for funding under this section shall include, but not be limited to, programs established pursuant to RCW 72.09.260.

(2) Funds may be offered for costs associated with community waste reduction, litter cleanup and prevention, and recycling activities. The funding program must be flexible, allowing local governments to use funds broadly to meet their needs to reduce waste, control litter and illegal dumping, and promote recycling. Local governments are required to contribute resources or in-kind services. The department shall evaluate funding requests from local government according to the same criteria as those developed in RCW 70.93.220, provide funds according to the effectiveness and efficiency of local government litter control programs, and monitor the results of all local government programs under this section.

(3) Local governments shall report information as requested by the department in funding agreements entered into by the department and a local government. The department shall report to the appropriate standing committees of the legislature by December of even-numbered years on the effectiveness of local government waste reduction, litter, and recycling programs funded under this section. [2002 c 175 § 46. Prior: 1998 c 257 § 10; 1998 c 245 § 128; 1990 c 66 § 3.]

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

Findings—Intent—1990 c 66: See note following RCW 72.09.260.

70.93.900 Severability—1971 ex.s. c 307. If any provision of this 1971 amendatory act or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1971 ex.s. c 307 § 25.]

70.93.910 Alternative to Initiative 40—Placement on ballot—Force and effect of chapter. This 1971 amendatory act constitutes an alternative to Initiative 40. The secretary of state is directed to place this 1971 amendatory act on the ballot in conjunction with Initiative 40 at the next general election.

This 1971 amendatory act shall continue in force and effect until the secretary of state certifies the election results

(2004 Ed.)

on this 1971 amendatory act. If affirmatively approved at the general election, this 1971 amendatory act shall continue in effect thereafter. [1971 ex.s. c 307 § 27.]

Reviser's note: Chapter 70.93 RCW [1971 ex.s. c 307] was approved and validated at the November 7, 1972, general election as Alternative Initiative Measure 40B.

70.93.920 Severability—1979 c 94. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 c 94 § 11.]

Chapter 70.94 RCW

WASHINGTON CLEAN AIR ACT

Sections

| | |
|-----------|--|
| 70.94.011 | Declaration of public policies and purpose. |
| 70.94.015 | Air pollution control account—Air operating permit account. |
| 70.94.017 | Air pollution control account—Subaccount distribution. |
| 70.94.025 | Pollution control hearings board of the state of Washington as affecting chapter 70.94 RCW. |
| 70.94.030 | Definitions. |
| 70.94.033 | Environmental excellence program agreements—Effect on chapter. |
| 70.94.035 | Technical assistance program for regulated community. |
| 70.94.037 | Transportation activities—"Conformity" determination requirements. |
| 70.94.040 | Causing or permitting air pollution unlawful—Exception. |
| 70.94.041 | Exception—Burning wood at historic structure. |
| 70.94.053 | Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations. |
| 70.94.055 | Air pollution control authority may be activated by counties, when. |
| 70.94.057 | Multicounty authority may be formed by contiguous counties—Name. |
| 70.94.068 | Merger of active and inactive authorities to form multicounty or regional authority—Procedure. |
| 70.94.069 | Merger of active and inactive authorities to form multicounty or regional authority—Reorganization of board of directors—Rules and regulations. |
| 70.94.070 | Resolutions activating authorities—Contents—Filings—Effective date of operation. |
| 70.94.081 | Powers and duties of authorities. |
| 70.94.085 | Cost-reimbursement agreements. |
| 70.94.091 | Excess tax levy authorized—Election, procedure, expense. |
| 70.94.092 | Air pollution control authority—Fiscal year—Adoption of budget—Contents. |
| 70.94.093 | Methods for determining proportion of supplemental income to be paid by component cities, towns and counties—Payment. |
| 70.94.094 | Designation of authority treasurer and auditor—Duties. |
| 70.94.095 | Assessed valuation of taxable property, certification by county assessors. |
| 70.94.096 | Authorization to borrow money. |
| 70.94.097 | Special air pollution studies—Contracts for conduct of. |
| 70.94.100 | Air pollution control authority—Board of directors—Composition—Term. |
| 70.94.110 | City selection committees. |
| 70.94.120 | City selection committees—Meetings, notice, recording officer—Alternative mail balloting—Notice. |
| 70.94.130 | Air pollution control authority—Board of directors—Powers, quorum, officers, compensation. |
| 70.94.141 | Air pollution control authority—Powers and duties of activated authority. |
| 70.94.142 | Subpoena powers—Witnesses, expenses and mileage—Rules and regulations. |
| 70.94.143 | Federal aid. |
| 70.94.151 | Classification of air contaminant sources—Registration—Fee—Registration program defined. |
| 70.94.152 | Notice may be required of construction of proposed new contaminant source—Submission of plans—Approval, disapproval—Emission control—"De minimis new sources" defined. |
| 70.94.153 | Existing stationary source—Replacement or substantial alteration of emission control technology. |

- 70.94.154 RACT requirements.
- 70.94.155 Control of emissions—Bubble concept—Schedules of compliance.
- 70.94.157 Preemption of uniform building and fire codes.
- 70.94.161 Operating permits for air contaminant sources—Generally—Fees, report to legislature.
- 70.94.162 Annual fees from operating permit program source to cover cost of program.
- 70.94.163 Source categories not required to have a permit—Recommendations.
- 70.94.165 Gasoline recovery devices—Limitation on requiring.
- 70.94.170 Air pollution control authority control officer.
- 70.94.181 Variances—Application for—Considerations—Limitations—Renewals—Review.
- 70.94.200 Investigation of conditions by control officer or department—Entering private, public property.
- 70.94.205 Confidentiality of records and information.
- 70.94.211 Enforcement actions by air authority—Notice to violators.
- 70.94.221 Order final unless appealed to pollution control hearings board.
- 70.94.230 Rules of authority supersede local rules, regulations, etc.—Exceptions.
- 70.94.231 Air pollution control authority—Dissolution of prior districts—Continuation of rules and regulations until superseded.
- 70.94.240 Air pollution control advisory council.
- 70.94.260 Dissolution of authority—Deactivation of authority.
- 70.94.262 Withdrawal from multicounty authority.
- 70.94.331 Powers and duties of department.
- 70.94.332 Enforcement actions by department—Notice to violators.
- 70.94.335 Hazardous substance remedial actions—Procedural requirements not applicable.
- 70.94.350 Contracts, agreements for use of personnel by department—Reimbursement—Merit system regulations waived.
- 70.94.370 Powers and rights of governmental units and persons are not limited by act or recommendations.
- 70.94.380 Emission control requirements.
- 70.94.385 State financial aid—Application for—Requirements.
- 70.94.390 Hearing upon activation of authority—Finding—Assumption of jurisdiction by department—Expenses.
- 70.94.395 Air contaminant sources—Regulation by department; authorities may be more stringent—Hearing—Standards.
- 70.94.400 Order activating authority—Filing—Hearing—Amendment of order.
- 70.94.405 Air pollution control authority—Review by department of program.
- 70.94.410 Air pollution control authority—Assumption of control by department.
- 70.94.420 State departments and agencies to cooperate with department and authorities.
- 70.94.422 Department of health powers regarding radionuclides—Energy facility site evaluation council authority over permit program sources.
- 70.94.425 Restraining orders—Injunctions.
- 70.94.430 Penalties.
- 70.94.431 Civil penalties—Excusable excess emissions.
- 70.94.435 Additional means for enforcement of chapter.
- 70.94.440 Short title.
- 70.94.445 Air pollution control facilities—Tax exemptions and credits.
- 70.94.450 Wood stoves—Policy.
- 70.94.453 Wood stoves—Definitions.
- 70.94.455 Residential and commercial construction—Burning and heating device standards.
- 70.94.457 Solid fuel burning devices—Emission performance standards.
- 70.94.460 Sale of unapproved wood stoves—Prohibited.
- 70.94.463 Sale of unapproved wood stoves—Penalty.
- 70.94.467 Sale of unapproved wood stoves—Application of law to advertising media.
- 70.94.470 Residential solid fuel burning devices—Opacity levels—Enforcement and public education.
- 70.94.473 Limitations on burning wood for heat.
- 70.94.475 Liability of condominium owners' association or resident association.
- 70.94.477 Limitations on use of solid fuel burning devices.
- 70.94.480 Wood stove education program.
- 70.94.483 Wood stove education and enforcement account created—Fee imposed on solid fuel burning device sales.
- 70.94.510 Policy to cooperate with federal government.
- 70.94.521 Transportation demand management—Findings.
- 70.94.524 Transportation demand management—Definitions.
- 70.94.527 Transportation demand management—Requirements for counties and cities.
- 70.94.531 Transportation demand management—Requirements for employers.
- 70.94.534 Transportation demand management—Jurisdictions' review and penalties.
- 70.94.537 Transportation demand management—Commute trip reduction task force.
- 70.94.541 Transportation demand management—Technical assistance team.
- 70.94.544 Transportation demand management—Use of funds.
- 70.94.547 Transportation demand management—Intent—State leadership.
- 70.94.551 Transportation demand management—State agency plan.
- 70.94.600 Reports of authorities to department of ecology—Contents.
- 70.94.610 Burning used oil fuel in land-based facilities.
- 70.94.620 Metals mining and milling operations permits—Inspections by department of ecology.
- 70.94.630 Sulfur dioxide abatement account—Coal-fired thermal electric generation facilities—Application—Determination and assessment of progress—Certification of pollution level—Reimbursement—Time limit for and extension of account.
- 70.94.640 Odors caused by agricultural activities consistent with good agricultural practices exempt from chapter.
- 70.94.645 Ammonia emissions from use as agricultural or silvicultural fertilizer—Regulation prohibited.
- 70.94.650 Burning permits for weed abatement, fire fighting instruction, or agriculture activities—Issuance—Agricultural burning practices and research task force—Exemption for aircraft crash fire rescue training activities.
- 70.94.651 Burning permits for regeneration of rare and endangered plants; Indian ceremonies.
- 70.94.654 Delegation of permit issuance and enforcement to political subdivisions.
- 70.94.656 Open burning of grasses grown for seed—Alternatives—Studies—Deposit of permit fees in special grass seed burning account—Procedures—Limitations—Report.
- 70.94.660 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Issuance.
- 70.94.665 Silvicultural forest burning—Reduce statewide emissions—Exemption—Monitoring program.
- 70.94.670 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris.
- 70.94.690 Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits.
- 70.94.700 Rules and regulations.
- 70.94.710 Air pollution episodes—Legislative finding—Declaration of policy.
- 70.94.715 Air pollution episodes—Episode avoidance plan—Contents—Source emission reduction plans—Authority—Considered orders.
- 70.94.720 Air pollution episodes—Declaration of air pollution emergency by governor.
- 70.94.725 Air pollution episodes—Restraining orders, temporary injunctions to enforce orders—Procedure.
- 70.94.730 Air pollution episodes—Orders to be effective immediately.
- 70.94.743 Outdoor burning—Areas where prohibited—Exceptions—Use for management of storm or flood-related debris—Silvicultural burning.
- 70.94.745 Limited outdoor burning—Program—Exceptions.
- 70.94.750 Limited outdoor burning—Permits issued by political subdivisions—Types of fires permitted.
- 70.94.755 Limited outdoor burning—Establishment of program.
- 70.94.760 Limited outdoor burning—Construction.
- 70.94.765 Limited outdoor burning—Authority of local air pollution control authority or department of ecology to allow outdoor fires not restricted.
- 70.94.775 Outdoor burning—Fires prohibited—Exceptions.
- 70.94.780 Outdoor burning—Permits issued by political subdivisions.
- 70.94.785 Plans approved pursuant to federal clean air act—Enforcement authority.
- 70.94.800 Legislative declaration—Intent.
- 70.94.805 Definitions.
- 70.94.820 Monitoring by department of ecology.
- 70.94.850 Emission credits banking program—Amount of credit.
- 70.94.860 Department of ecology may accept delegation of programs.
- 70.94.875 Evaluation of information on acid deposition in Pacific Northwest—Establishment of critical levels—Notification of legislature.
- 70.94.880 Establishment of critical deposition and acidification levels—Considerations.
- 70.94.892 Carbon dioxide mitigation—Fees.
- 70.94.901 Construction—1967 c 238.

- 70.94.902 Construction, repeal of RCW 70.94.061 through 70.94.066—Saving.
- 70.94.904 Effective dates—1991 c 199.
- 70.94.905 Severability—1991 c 199.
- 70.94.906 Captions not law.
- 70.94.911 Severability—1967 c 238.
- 70.94.950 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years.
- 70.94.960 Clean fuel matching grants for public transit, vehicle mechanics, and refueling infrastructure.
- 70.94.970 Chlorofluorocarbons—Ozone—Refrigerants regulated.
- 70.94.980 Refrigerants—Unlawful acts.
- 70.94.990 Refrigerants—Rules—Enforcement provisions, limitations.
- 70.94.996 Grant program for ride sharing.

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

Pollution Disclosure Act of 1971: Chapter 90.52 RCW.

Tax exemptions and credits for air pollution control facilities: Chapter 82.34 RCW.

Washington clean indoor air act: Chapter 70.160 RCW.

70.94.011 Declaration of public policies and purpose.

It is declared to be the public policy to preserve, protect, and enhance the air quality for current and future generations. Air is an essential resource that must be protected from harmful levels of pollution. Improving air quality is a matter of statewide concern and is in the public interest. It is the intent of this chapter to secure and maintain levels of air quality that protect human health and safety, including the most sensitive members of the population, to comply with the requirements of the federal clean air act, to prevent injury to plant, animal life, and property, to foster the comfort and convenience of Washington's inhabitants, to promote the economic and social development of the state, and to facilitate the enjoyment of the natural attractions of the state.

It is further the intent of this chapter to protect the public welfare, to preserve visibility, to protect scenic, aesthetic, historic, and cultural values, and to prevent air pollution problems that interfere with the enjoyment of life, property, or natural attractions.

Because of the extent of the air pollution problem the legislature finds it necessary to return areas with poor air quality to levels adequate to protect health and the environment as expeditiously as possible but no later than December 31, 1995. Further, it is the intent of this chapter to prevent any areas of the state with acceptable air quality from reaching air contaminant levels that are not protective of human health and the environment.

The legislature recognizes that air pollution control projects may affect other environmental media. In selecting air pollution control strategies state and local agencies shall support those strategies that lessen the negative environmental impact of the project on all environmental media, including air, water, and land.

The legislature further recognizes that energy efficiency and energy conservation can help to reduce air pollution and shall therefore be considered when making decisions on air pollution control strategies and projects.

It is the policy of the state that the costs of protecting the air resource and operating state and local air pollution control programs shall be shared as equitably as possible among all sources whose emissions cause air pollution.

It is also declared as public policy that regional air pollution control programs are to be encouraged and supported to

(2004 Ed.)

the extent practicable as essential instruments for the securing and maintenance of appropriate levels of air quality.

To these ends it is the purpose of this chapter to safeguard the public interest through an intensive, progressive, and coordinated statewide program of air pollution prevention and control, to provide for an appropriate distribution of responsibilities, and to encourage coordination and cooperation between the state, regional, and local units of government, to improve cooperation between state and federal government, public and private organizations, and the concerned individual, as well as to provide for the use of all known, available, and reasonable methods to reduce, prevent, and control air pollution.

The legislature recognizes that the problems and effects of air pollution cross political boundaries, are frequently regional or interjurisdictional in nature, and are dependent upon the existence of human activity in areas having common topography and weather conditions conducive to the buildup of air contaminants. In addition, the legislature recognizes that air pollution levels are aggravated and compounded by increased population, and its consequences. These changes often result in increasingly serious problems for the public and the environment.

The legislature further recognizes that air emissions from thousands of small individual sources are major contributors to air pollution in many regions of the state. As the population of a region grows, small sources may contribute an increasing proportion of that region's total air emissions. It is declared to be the policy of the state to achieve significant reductions in emissions from those small sources whose aggregate emissions constitute a significant contribution to air pollution in a particular region.

It is the intent of the legislature that air pollution goals be incorporated in the missions and actions of state agencies. [1991 c 199 § 102; 1973 1st ex.s. c 193 § 1; 1969 ex.s. c 168 § 1; 1967 c 238 § 1.]

Finding—1991 c 199: "The legislature finds that ambient air pollution is the most serious environmental threat in Washington state. Air pollution causes significant harm to human health; damages the environment, including trees, crops, and animals; causes deterioration of equipment and materials; contributes to water pollution; and degrades the quality of life.

Over three million residents of Washington state live where air pollution levels are considered unhealthy. Of all toxic chemicals released into the environment more than half enter our breathing air. Citizens of Washington state spend hundreds of millions of dollars annually to offset health, environmental, and material damage caused by air pollution. The legislature considers such air pollution levels, costs, and damages to be unacceptable.

It is the intent of this act that the implementation of programs and regulations to control air pollution shall be the primary responsibility of the department of ecology and local air pollution control authorities." [1991 c 199 § 101.]

Alternative fuel and solar powered vehicles—1991 c 199: "The department of ecology shall contract with Western Washington University for the biennium ending June 30, 1993, for research and development of alternative fuel and solar powered vehicles. A report on the progress of such research shall be presented to the standing environmental committees and the department by January 1, 1994." [1991 c 199 § 230.]

70.94.015 Air pollution control account—Air operating permit account. (1) The air pollution control account is established in the state treasury. All receipts collected by or on behalf of the department from RCW 70.94.151(2), and receipts from nonpermit program sources under RCW 70.94.152(1) and 70.94.154(7), and all receipts from RCW

70.94.650, 70.94.660, *82.44.020(2), and *82.50.405 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only to develop and implement the provisions of chapters 70.94 and 70.120 RCW.

(2) The amounts collected and allocated in accordance with this section shall be expended upon appropriation except as otherwise provided in this section and in accordance with the following limitations:

Portions of moneys received by the department of ecology from the air pollution control account shall be distributed by the department to local authorities based on:

(a) The level and extent of air quality problems within such authority's jurisdiction;

(b) The costs associated with implementing air pollution regulatory programs by such authority; and

(c) The amount of funding available to such authority from other sources, whether state, federal, or local, that could be used to implement such programs.

(3) The air operating permit account is created in the custody of the state treasurer. All receipts collected by or on behalf of the department from permit program sources under RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7) shall be deposited into the account. Expenditures from the account may be used only for the activities described in RCW 70.94.152(1), 70.94.161, 70.94.162, and 70.94.154(7). Moneys in the account may be spent only after appropriation. [1998 c 321 § 33 (Referendum Bill No. 49, approved November 3, 1998); 1993 c 252 § 1; 1991 c 199 § 228.]

***Reviser's note:** RCW 82.44.020 and 82.50.405 were repealed by 2000 1st sp.s. c 1 § 2.

Purpose—Severability—1998 c 321: See notes following RCW 82.14.045.

Contingent effective dates—1998 c 321 §§ 23-42: See note following RCW 35.58.410.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.017 Air pollution control account—Subaccount distribution. (Expires July 1, 2008.) (1) Money deposited in the segregated subaccount of the air pollution control account under RCW 46.68.020(2) shall be distributed as follows:

(a) Eighty-five percent shall be distributed to air pollution control authorities created under this chapter. The money must be distributed in direct proportion with the amount of fees imposed under RCW 46.12.080, 46.12.170, and 46.12.181 that are collected within the boundaries of each authority. However, an amount in direct proportion with those fees collected in counties for which no air pollution control authority exists must be distributed to the department.

(b) The remaining fifteen percent shall be distributed to the department.

(2) Money distributed to air pollution control authorities and the department under subsection (1) of this section must be used as follows:

(a) Eighty-five percent of the money received by an air pollution control authority or the department must be used to retrofit school buses with exhaust emission control devices or to provide funding for fueling infrastructure necessary to allow school bus fleets to use alternative, cleaner fuels.

(b) The remaining fifteen percent may be used by the air pollution control authority or department to reduce vehicle air contaminant emissions and clean up air pollution, or reduce and monitor toxic air contaminants.

(3) Money in the air pollution control account may be spent by the department only after appropriation.

(4) The department shall provide a report to the legislative transportation committees on the progress of the implementation of this section by December 31, 2004. [2003 c 264 § 1.]

Expiration date—2003 c 264 §§ 1 and 3: See note following RCW 90.56.335.

70.94.025 Pollution control hearings board of the state of Washington as affecting chapter 70.94 RCW. See chapter 43.21B RCW.

70.94.030 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter shall have the following meanings:

(1) "Air contaminant" means dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substance, or any combination thereof.

(2) "Air pollution" is presence in the outdoor atmosphere of one or more air contaminants in sufficient quantities and of such characteristics and duration as is, or is likely to be, injurious to human health, plant or animal life, or property, or which unreasonably interfere with enjoyment of life and property. For the purpose of this chapter, air pollution shall not include air contaminants emitted in compliance with chapter 17.21 RCW.

(3) "Air quality standard" means an established concentration, exposure time, and frequency of occurrence of an air contaminant or multiple contaminants in the ambient air which shall not be exceeded.

(4) "Ambient air" means the surrounding outside air.

(5) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(6) "Best available control technology" (BACT) means an emission limitation based on the maximum degree of reduction for each air pollutant subject to regulation under this chapter emitted from or that results from any new or modified stationary source, that the permitting authority, on a case-by-case basis, taking into account energy, environmental, and economic impacts and other costs, determines is achievable for such a source or modification through application of production processes and available methods, systems, and techniques, including fuel cleaning, clean fuels, or treatment or innovative fuel combustion techniques for control of each such pollutant. In no event shall application of "best available control technology" result in emissions of any pollutants that will exceed the emissions allowed by any applicable standard under 40 C.F.R. Part 60 and Part 61, as they exist on July 25, 1993, or their later enactments as adopted by reference by the director by rule. Emissions from any source utilizing clean fuels, or any other means, to comply with this subsection shall not be allowed to increase above levels that would have been required under the definition of BACT as it

existed prior to enactment of the [federal] clean air act amendments of 1990.

(7) "Best available retrofit technology" (BART) means an emission limitation based on the degree of reduction achievable through the application of the best system of continuous emission reduction for each pollutant that is emitted by an existing stationary facility. The emission limitation must be established, on a case-by-case basis, taking into consideration the technology available, the costs of compliance, the energy and nonair quality environmental impacts of compliance, any pollution control equipment in use or in existence at the source, the remaining useful life of the source, and the degree of improvement in visibility that might reasonably be anticipated to result from the use of the technology.

(8) "Board" means the board of directors of an authority.

(9) "Control officer" means the air pollution control officer of any authority.

(10) "Department" or "ecology" means the department of ecology.

(11) "Emission" means a release of air contaminants into the ambient air.

(12) "Emission standard" and "emission limitation" mean a requirement established under the federal clean air act or this chapter that limits the quantity, rate, or concentration of emissions of air contaminants on a continuous basis, including any requirement relating to the operation or maintenance of a source to assure continuous emission reduction, and any design, equipment, work practice, or operational standard adopted under the federal clean air act or this chapter.

(13) "Lowest achievable emission rate" (LAER) means for any source that rate of emissions that reflects:

(a) The most stringent emission limitation that is contained in the implementation plan of any state for such class or category of source, unless the owner or operator of the proposed source demonstrates that such limitations are not achievable; or

(b) The most stringent emission limitation that is achieved in practice by such class or category of source, whichever is more stringent.

In no event shall the application of this term permit a proposed new or modified source to emit any pollutant in excess of the amount allowable under applicable new source performance standards.

(14) "Modification" means any physical change in, or change in the method of operation of, a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted. The term modification shall be construed consistent with the definition of modification in Section 7411, Title 42, United States Code, and with rules implementing that section.

(15) "Multicounty authority" means an authority which consists of two or more counties.

(16) "New source" means (a) the construction or modification of a stationary source that increases the amount of any air contaminant emitted by such source or that results in the emission of any air contaminant not previously emitted, and (b) any other project that constitutes a new source under the federal clean air act.

(17) "Permit program source" means a source required to apply for or to maintain an operating permit under RCW 70.94.161.

(18) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(19) "Reasonably available control technology" (RACT) means the lowest emission limit that a particular source or source category is capable of meeting by the application of control technology that is reasonably available considering technological and economic feasibility. RACT is determined on a case-by-case basis for an individual source or source category taking into account the impact of the source upon air quality, the availability of additional controls, the emission reduction to be achieved by additional controls, the impact of additional controls on air quality, and the capital and operating costs of the additional controls. RACT requirements for a source or source category shall be adopted only after notice and opportunity for comment are afforded.

(20) "Silvicultural burning" means burning of wood fiber on forest land consistent with the provisions of RCW 70.94.660.

(21) "Source" means all of the emissions units including quantifiable fugitive emissions, that are located on one or more contiguous or adjacent properties, and are under the control of the same person, or persons under common control, whose activities are ancillary to the production of a single product or functionally related group of products.

(22) "Stationary source" means any building, structure, facility, or installation that emits or may emit any air contaminant. [1993 c 252 § 2; 1991 c 199 § 103; 1987 c 109 § 33; 1979 c 141 § 119; 1969 ex.s. c 168 § 2; 1967 ex.s. c 61 § 1; 1967 c 238 § 2; 1957 c 232 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Capitions—1987 c 109: See notes following RCW 43.21B.001.

70.94.033 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 21.]

Purpose—1997 c 381: See RCW 43.21K.005.

70.94.035 Technical assistance program for regulated community. The department shall establish a technical assistance unit within its air quality program, consistent with the federal clean air act, to provide the regulated community, especially small businesses with:

(1) Information on air pollution laws, rules, compliance methods, and technologies;

(2) Information on air pollution prevention methods and technologies, and prevention of accidental releases;

(3) Assistance in obtaining permits and developing emission reduction plans;

(4) Information on the health and environmental effects of air pollution.

No representatives of the department designated as part of the technical assistance unit created in this section may have any enforcement authority. Staff of the technical assistance unit who provide on-site consultation at an industrial or commercial facility and who observe violations of air quality rules shall immediately inform the owner or operator of the facility of such violations. On-site consultation visits shall not be regarded as an inspection or investigation and no notices or citations may be issued or civil penalties assessed during such a visit. However, violations shall be reported to the appropriate enforcement agency and the facility owner or operator shall be notified that the violations will be reported. No enforcement action shall be taken by the enforcement agency for violations reported by technical assistance unit staff unless and until the facility owner or operator has been provided reasonable time to correct the violation. Violations that place any person in imminent danger of death or substantial bodily harm or cause physical damage to the property of another in an amount exceeding one thousand dollars may result in immediate enforcement action by the appropriate enforcement agency. [1991 c 199 § 308.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.037 Transportation activities—"Conformity" determination requirements. In areas subject to a state implementation plan, no state agency, metropolitan planning organization, or local government shall approve or fund a transportation plan, program, or project within or that affects a nonattainment area unless a determination has been made that the plan, program, or project conforms with the state implementation plan for air quality as required by the federal clean air act.

Conformity determination shall be made by the state or local government or metropolitan planning organization administering or developing the plan, program, or project.

No later than eighteen months after May 15, 1991, the director of the department of ecology and the secretary of transportation, in consultation with other state, regional, and local agencies as appropriate, shall adopt by rule criteria and guidance for demonstrating and assuring conformity of plans, programs, and projects that are wholly or partially federally funded.

A project with a scope that is limited to preservation or maintenance, or both, shall be exempted from a conformity determination requirement. [1991 c 199 § 219.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.040 Causing or permitting air pollution unlawful—Exception. Except where specified in a variance permit, as provided in RCW 70.94.181, it shall be unlawful for any person to cause air pollution or permit it to be caused in violation of this chapter, or of any ordinance, resolution, rule or regulation validly promulgated hereunder. [1980 c 175 § 2; 1967 c 238 § 3; 1957 c 232 § 4.]

70.94.041 Exception—Burning wood at historic structure. Except as otherwise provided in this section, any building or structure listed on the national register of historic sites, structures, or buildings established pursuant to 80 Stat. 915, 16 U.S.C. Sec. 470a, or on the state register established

pursuant to RCW 27.34.220, shall be permitted to burn wood as it would have when it was a functioning facility as an authorized exception to the provisions of this chapter. Such burning of wood shall not be exempted from the provisions of RCW 70.94.710 through 70.94.730. [1991 c 199 § 506; 1983 c 3 § 175; 1977 ex.s. c 38 § 1.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.053 Air pollution control authorities created—Activated authorities, composition, meetings—Delineation of air pollution regions, considerations. (1) In each county of the state there is hereby created an air pollution control authority, which shall bear the name of the county within which it is located. The boundaries of each authority shall be coextensive with the boundaries of the county within which it is located. An authority shall include all incorporated and unincorporated areas of the county within which it is located.

(2) Except as provided in RCW 70.94.262, all authorities which are presently activated authorities shall carry out the duties and exercise the powers provided in this chapter. Those activated authorities which encompass contiguous counties are declared to be and directed to function as a multicounty authority.

(3) All other air pollution control authorities are hereby designated as inactive authorities.

(4) The boards of those authorities designated as activated authorities by this chapter shall be comprised of such individuals as is provided in RCW 70.94.100. [1995 c 135 § 5. Prior: 1991 c 363 § 143; 1991 c 199 § 701; 1991 c 125 § 1; prior: 1987 c 505 § 60; 1987 c 109 § 34; 1979 c 141 § 120; 1967 c 238 § 4.]

Intent—1995 c 135: See note following RCW 29A.08.760.

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

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.055 Air pollution control authority may be activated by counties, when. The legislative authority of any county may activate an air pollution control authority following a public hearing on its own motion, or upon a filing of a petition signed by one hundred property owners within the county. If the county legislative authority determines as a result of the public hearing that:

(1) Air pollution exists or is likely to occur; and

(2) The city or town ordinances, or county resolutions, or their enforcement, are inadequate to prevent or control air pollution,

it may by resolution activate an air pollution control authority or combine with a contiguous county or counties to form a multicounty air pollution control authority. [1995 c 135 § 6. Prior: 1991 c 363 § 144; 1991 c 199 § 702; 1967 c 238 § 5.]

Intent—1995 c 135: See note following RCW 29A.08.760.

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

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.057 Multicounty authority may be formed by contiguous counties—Name. The boards of county commissioners of two or more contiguous counties may, by joint resolution, combine to form a multicounty air pollution control authority. Boundaries of such authority shall be coextensive with the boundaries of the counties forming the authority.

The name of the multicounty authority shall bear the names of the counties making up such multicounty authority or a name adopted by the board of such multicounty authority. [1967 c 238 § 6.]

70.94.068 Merger of active and inactive authorities to form multicounty or regional authority—Procedure. The respective boards of county commissioners of two or more contiguous counties may merge any combination of their several inactive or activated authorities to form one activated multicounty authority. Upon a determination that the purposes of this chapter will be served by such merger, each board of county commissioners may adopt the resolution providing for such merger. Such resolution shall become effective only when a similar resolution is adopted by the other contiguous county or counties comprising the proposed authority. The boundaries of such authority shall be coextensive with the boundaries of the counties within which it is located. [1969 ex.s. c 168 § 3; 1967 c 238 § 11.]

70.94.069 Merger of active and inactive authorities to form multicounty or regional authority—Reorganization of board of directors—Rules and regulations. Whenever there occurs a merger of an inactive authority with an activated authority or authorities, or of two activated authorities to form a multicounty authority, the board of directors shall be reorganized as provided in RCW 70.94.100, 70.94.110, and 70.94.120.

In the case of the merger of two or more activated authorities the rules and regulations of each authority shall continue in effect and shall be enforced within the jurisdiction of each until such time as the board of directors adopts rules and regulations applicable to the newly formed multicounty authority.

In the case of the merger of an inactive authority with an activated authority or authorities, upon approval of such merger by the board or boards of county commissioners of the county or counties comprising the existing activated authority or authorities, the rules and regulations of the activated authority or authorities shall remain in effect until superseded by the rules and regulations of the multicounty authority as provided in RCW 70.94.230. [1969 ex.s. c 168 § 4; 1967 c 238 § 12.]

70.94.070 Resolutions activating authorities—Contents—Filings—Effective date of operation. The resolution or resolutions activating an air pollution authority shall specify the name of the authority and participating political bodies; the authority's principal place of business; the territory included within it; and the effective date upon which such authority shall begin to transact business and exercise its powers. In addition, such resolution or resolutions may specify the amount of money to be contributed annually by each political subdivision, or a method of dividing expenses of the

air pollution control program. Upon the adoption of a resolution or resolutions calling for the activation of an authority or the merger of an inactive or activated authority or several activated authorities to form a multicounty authority, the governing body of each shall cause a certified copy of each such ordinance or resolution to be filed in the office of the secretary of state of the state of Washington. From and after the date of filing with the secretary of state a certified copy of each such resolution, or resolutions, or the date specified in such resolution or resolutions, whichever is later, the authority may begin to function and may exercise its powers.

Any authority activated by the provisions of this chapter shall cause a certified copy of all information required by this section to be filed in the office of the secretary of state of the state of Washington. [1969 ex.s. c 168 § 5; 1967 c 238 § 13; 1957 c 232 § 7.]

70.94.081 Powers and duties of authorities. An activated authority shall be deemed a municipal corporation; have right to perpetual succession; adopt and use a seal; may sue and be sued in the name of the authority in all courts and in all proceedings; and, may receive, account for, and disburse funds, employ personnel, and acquire or dispose of any interest in real or personal property within or without the authority in the furtherance of its purposes. [1969 ex.s. c 168 § 6; 1967 c 238 § 14.]

70.94.085 Cost-reimbursement agreements. (1) An authority may enter into a written cost-reimbursement agreement with a permit applicant to recover from the applicant the reasonable costs incurred by the authority in carrying out the requirements of this chapter, as well as the requirements of other relevant laws, as they relate to permit coordination, environmental review, application review, technical studies, and permit processing. The cost-reimbursement agreement shall identify the specific tasks, costs, and schedule for work to be conducted under the agreement.

(2) The written cost-reimbursement agreement shall be negotiated with the permit applicant. Under the provisions of a cost-reimbursement agreement, funds from the applicant shall be used by the air pollution control authority to contract with an independent consultant to carry out the work covered by the cost-reimbursement agreement. The air pollution control authority may also use funds provided under a cost-reimbursement agreement to assign current staff to review the work of the consultant, to provide necessary technical assistance when an independent consultant with comparable technical skills is unavailable, and to recover reasonable and necessary direct and indirect costs that arise from processing the permit. The air pollution control authority shall, in developing the agreement, ensure that final decisions that involve policy matters are made by the agency and not by the consultant. The air pollution control authority shall make an estimate of the number of permanent staff hours to process the permits, and shall contract with consultants to replace the time and functions committed by these permanent staff to the project. The billing process shall provide for accurate time and cost accounting and may include a billing cycle that provides for progress payments. Use of cost-reimbursement agreements shall not reduce the current level of staff avail-

able to work on permits not covered by cost-reimbursement agreements. The air pollution control authority may not use any funds under a cost-reimbursement agreement to replace or supplant existing funding. The provisions of chapter 42.52 RCW apply to any cost-reimbursement agreement, and to any person hired as a result of a cost-reimbursement agreement. Members of the air pollution control authority's board of directors shall be considered as state officers, and employees of the air pollution control authority shall be considered as state employees, for the sole purpose of applying the restrictions of chapter 42.52 RCW to this section.

(3) An air pollution control authority may not enter into any new cost-reimbursement agreements on or after July 1, 2007. The authority may continue to administer any cost-reimbursement agreement that was entered into before July 1, 2007, until the project is completed. [2003 c 70 § 5; 2000 c 251 § 6.]

Intent—Captions not law—Effective date—2000 c 251: See notes following RCW 43.21A.690.

70.94.091 Excess tax levy authorized—Election, procedure, expense. An activated authority shall have the power to levy additional taxes in excess of the constitutional and/or statutory tax limitations for any of the authorized purposes of such activated authority, not in excess of twenty-five cents per thousand dollars of assessed value a year when authorized so to do by the electors of such authority by a three-fifths majority of those voting on the proposition at a special election, to be held in the year in which the levy is made, in the manner set forth in Article VII, section 2 (a) of the Constitution of this state, as amended by Amendment 59 and as thereafter amended. Nothing herein shall be construed to prevent holding the foregoing special election at the same time as that fixed for a general election. The expense of all special elections held pursuant to this section shall be paid by the authority. [1973 1st ex.s. c 195 § 84; 1969 ex.s. c 168 § 7; 1967 c 238 § 15.]

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

70.94.092 Air pollution control authority—Fiscal year—Adoption of budget—Contents. Notwithstanding the provisions of RCW 1.16.030, the budget year of each activated authority shall be the fiscal year beginning July 1st and ending on the following June 30th. On or before the fourth Monday in June of each year, each activated authority shall adopt a budget for the following fiscal year. The activated authority budget shall contain adequate funding and provide for staff sufficient to carry out the provisions of all applicable ordinances, resolutions, and local regulations related to the reduction, prevention, and control of air pollution. The legislature acknowledges the need for the state to provide reasonable funding to local authorities to carry out the requirements of this chapter. The budget shall contain an estimate of all revenues to be collected during the following budget year, including any surplus funds remaining unexpended from the preceding year. The remaining funds required to meet budget expenditures, if any, shall be designated as "supplemental income" and shall be obtained from the component cities, towns, and counties in the manner provided in this chapter. The affirmative vote of three-fourths of

all members of the board shall be required to authorize emergency expenditures. [1991 c 199 § 703; 1975 1st ex.s. c 106 § 1; 1969 ex.s. c 168 § 8; 1967 c 238 § 16.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.093 Methods for determining proportion of supplemental income to be paid by component cities, towns and counties—Payment. (1) Each component city or town shall pay such proportion of the supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as provided in subsection (1)(c) of this section:

(a) Each component city or town shall pay such proportion of the supplemental income as the assessed valuation of property within its limits bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component city or town shall pay such proportion of the supplemental income as the total population of such city or town bears to the total population of the activated authority. The population of the city or town shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: PROVIDED, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(2) Each component county shall pay such proportion of such supplemental income to the authority as determined by either one of the following prescribed methods or by a combination of fifty percent of one and fifty percent of the other as prescribed in subsection (2)(c) of this section:

(a) Each component county shall pay such proportion of such supplemental income as the assessed valuation of the property within the unincorporated area of such county lying within the activated authority bears to the total assessed valuation of taxable property within the activated authority.

(b) Each component county shall pay such proportion of the supplemental income as the total population of the unincorporated area of such county bears to the total population of the activated authority. The population of the county shall be determined by the most recent census, estimate or survey by the federal bureau of census or any state board or commission authorized to make such a census, estimate or survey.

(c) A combination of the methods prescribed in (a) and (b) of this subsection: PROVIDED, That such combination shall be of fifty percent of the method prescribed in (a) of this subsection and fifty percent of the method prescribed in (b) of this subsection.

(3) In making such determination of the assessed valuation of property in the component cities, towns and counties, the board shall use the last available assessed valuations. The board shall certify to each component city, town and county, prior to the fourth Monday in June of each year, the share of the supplemental income to be paid by such component city, town or county for the next calendar year. The latter shall then include such amount in its budget for the ensuing calendar year, and during such year shall pay to the activated

authority, in equal quarterly installments, the amount of its supplemental share. [1969 ex.s. c 168 § 9; 1967 c 238 § 17.]

70.94.094 Designation of authority treasurer and auditor—Duties. The treasurer of each component city, town or county shall create a separate fund into which shall be paid all money collected from taxes or from any other available sources, levied by or obtained for the activated authority on property or on any other available sources in such city, town or county and such money shall be forwarded quarterly by the treasurer of each such city, town or county to the treasurer of the county designated by the board as the authority treasurer. The treasurer of the county so designated to serve as treasurer of the authority shall establish and maintain such funds as may be authorized by the board. Money shall be disbursed from such funds upon warrants drawn by the auditor of the county designated by the board as the authority auditor as authorized by the board. The respective county shall be reimbursed by the board for services rendered by the treasurer and auditor of the respective county in connection with the receipt and disbursement of such funds. [1969 ex.s. c 168 § 10; 1967 c 238 § 18.]

70.94.095 Assessed valuation of taxable property, certification by county assessors. It shall be the duty of the assessor of each component county to certify annually to the board the aggregate assessed valuation of all taxable property in all incorporated and unincorporated areas situated in any activated authority as the same appears from the last assessment roll of his county. [1969 ex.s. c 168 § 11; 1967 c 238 § 19.]

70.94.096 Authorization to borrow money. An activated authority shall have the power when authorized by a majority of all members of the board to borrow money from any component city, town or county and such cities, towns and counties are hereby authorized to make such loans or advances on such terms as may be mutually agreed upon by the board and the legislative bodies of any such component city, town or county to provide funds to carry out the purposes of the activated authority. [1969 ex.s. c 168 § 12; 1967 c 238 § 20.]

70.94.097 Special air pollution studies—Contracts for conduct of. In addition to paying its share of the supplemental income of the activated authority, each component city, town, or county shall have the power to contract with such authority and expend funds for the conduct of special studies, investigations, plans, research, advice, or consultation relating to air pollution and its causes, effects, prevention, abatement, and control as such may affect any area within the boundaries of the component city, town, or county, and which could not be performed by the authority with funds otherwise available to it. Any component city, town or county which contracts for the conduct of such special air pollution studies, investigations, plans, research, advice or consultation with any entity other than the activated authority shall require that such an entity consult with the activated authority. [1975 1st ex.s. c 106 § 2.]

(2004 Ed.)

70.94.100 Air pollution control authority—Board of directors—Composition—Term. (1) The governing body of each authority shall be known as the board of directors.

(2) In the case of an authority comprised of one county the board shall be comprised of two appointees of the city selection committee, at least one of whom shall represent the city having the most population in the county, and two representatives to be designated by the board of county commissioners. In the case of an authority comprised of two, three, four, or five counties, the board shall be comprised of one appointee from each county, who shall represent the city having the most population in such county, to be designated by the mayor and city council of such city, and one representative from each county to be designated by the board of county commissioners of each county making up the authority. In the case of an authority comprised of six or more counties, the board shall be comprised of one representative from each county to be designated by the board of county commissioners of each county making up the authority, and three appointees, one each from the three largest cities within the local authority's jurisdiction to be appointed by the mayor and city council of such city.

(3) If the board of an authority otherwise would consist of an even number, the members selected as above provided shall agree upon and elect an additional member who shall be either a member of the governing body of one of the towns, cities or counties comprising the authority, or a private citizen residing in the authority.

(4) The terms of office of board members shall be four years.

(5) Wherever a member of a board has a potential conflict of interest in an action before the board, the member shall declare to the board the nature of the potential conflict prior to participating in the action review. The board shall, if the potential conflict of interest, in the judgment of a majority of the board, may prevent the member from a fair and objective review of the case, remove the member from participation in the action. [1991 c 199 § 704; 1989 c 150 § 1; 1969 ex.s. c 168 § 13; 1967 c 238 § 21; 1957 c 232 § 10.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.110 City selection committees. There shall be a separate and distinct city selection committee for each county making up an authority. The membership of such committee shall consist of the mayor of each incorporated city and town within such county. A majority of the members of each city selection committee shall constitute a quorum. [1967 c 238 § 22; 1963 c 27 § 1; 1957 c 232 § 11.]

70.94.120 City selection committees—Meetings, notice, recording officer—Alternative mail balloting—Notice. (1) The city selection committee of each county which is included within an authority shall meet within one month after the activation of such authority for the purpose of making its initial appointments to the board of such authority and thereafter whenever necessary for the purpose of making succeeding appointments. All meetings shall be held upon at least two weeks written notice given by the county auditor to each member of the city selection committee of each county and he shall give such notice upon request of any member of such committee. A similar notice shall be given to the general

public by a publication of such notice in a newspaper of general circulation in such authority. The county auditor shall act as recording officer, maintain its records and give appropriate notice of its proceedings and actions.

(2) As an alternative to meeting in accordance with subsection (1) of this section, the county auditor may mail ballots by certified mail to the members of the city selection committee, specifying a date by which to complete the ballot, and a date by which to return the completed ballot. Each mayor who chooses to participate in the balloting shall write in the choice for appointment, sign the ballot, and return the ballot to the county auditor. Each completed ballot shall be date-stamped upon receipt by the mayor or staff of the mayor of the city or town. The timely return of completed ballots by a majority of the members of each city selection committee constitutes a quorum and the common choice by a majority of the quorum constitutes a valid appointment.

(3) Balloting shall be preceded by at least two weeks' written notice, given by the county auditor to each member of the city selection committee. A similar notice shall be given to the general public by publication in a newspaper of general circulation in the authority. [1995 c 261 § 2; 1969 ex.s. c 168 § 14; 1967 c 238 § 23; 1957 c 232 § 12.]

70.94.130 Air pollution control authority—Board of directors—Powers, quorum, officers, compensation. The board shall exercise all powers of the authority except as otherwise provided. The board shall conduct its first meeting within thirty days after all of its members have been appointed or designated as provided in RCW 70.94.100. The board shall meet at least ten times per year. All meetings shall be publicly announced prior to their occurrence. All meetings shall be open to the public. A majority of the board shall constitute a quorum for the transaction of business and shall be necessary for any action taken by the board. The board shall elect from its members a chair and such other officers as may be necessary. Any member of the board may designate a regular alternate to serve on the board in his or her place with the same authority as the member when he or she is unable to attend. In no event may a regular alternate serve as the permanent chair. Each member of the board, or his or her representative, shall receive from the authority compensation consistent with such authority's rates (but not to exceed one thousand dollars per year) for time spent in the performance of duties under this chapter, plus the actual and necessary expenses incurred by the member in such performance. The board may appoint a control officer, and any other personnel, and shall determine their salaries, and pay same, together with any other proper indebtedness, from authority funds. [1998 c 342 § 1; 1991 c 199 § 705; 1969 ex.s. c 168 § 15; 1967 c 238 § 24; 1957 c 232 § 13.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.141 Air pollution control authority—Powers and duties of activated authority. The board of any activated authority in addition to any other powers vested in them by law, shall have power to:

(1) Adopt, amend and repeal its own rules and regulations, implementing this chapter and consistent with it, after consideration at a public hearing held in accordance with

chapter 42.30 RCW. Rules and regulations shall also be adopted in accordance with the notice and adoption procedures set forth in RCW 34.05.320, those provisions of RCW 34.05.325 that are not in conflict with chapter 42.30 RCW, and with the procedures of RCW 34.05.340, *34.05.355 through 34.05.380, and with chapter 34.08 RCW, except that rules shall not be published in the Washington Administrative Code. Judicial review of rules adopted by an authority shall be in accordance with Part V of chapter 34.05 RCW. An air pollution control authority shall not be deemed to be a state agency.

(2) Hold hearings relating to any aspect of or matter in the administration of this chapter not prohibited by the provisions of chapter 62, Laws of 1970 ex. sess. and in connection therewith issue subpoenas to compel the attendance of witnesses and the production of evidence, administer oaths and take the testimony of any person under oath.

(3) Issue such orders as may be necessary to effectuate the purposes of this chapter and enforce the same by all appropriate administrative and judicial proceedings subject to the rights of appeal as provided in chapter 62, Laws of 1970 ex. sess.

(4) Require access to records, books, files and other information specific to the control, recovery or release of air contaminants into the atmosphere.

(5) Secure necessary scientific, technical, administrative and operational services, including laboratory facilities, by contract or otherwise.

(6) Prepare and develop a comprehensive plan or plans for the prevention, abatement and control of air pollution within its jurisdiction.

(7) Encourage voluntary cooperation by persons or affected groups to achieve the purposes of this chapter.

(8) Encourage and conduct studies, investigation and research relating to air pollution and its causes, effects, prevention, abatement and control.

(9) Collect and disseminate information and conduct educational and training programs relating to air pollution.

(10) Advise, consult, cooperate and contract with agencies and departments and the educational institutions of the state, other political subdivisions, industries, other states, interstate or interlocal agencies, and the United States government, and with interested persons or groups.

(11) Consult, upon request, with any person proposing to construct, install, or otherwise acquire an air contaminant source or device or system for the control thereof, concerning the efficacy of such device or system, or the air pollution problems which may be related to the source, device or system. Nothing in any such consultation shall be construed to relieve any person from compliance with this chapter, ordinances, resolutions, rules and regulations in force pursuant thereto, or any other provision of law.

(12) Accept, receive, disburse and administer grants or other funds or gifts from any source, including public and private agencies and the United States government for the purpose of carrying out any of the functions of this chapter. [1991 c 199 § 706; 1970 ex.s. c 62 § 56; 1969 ex.s. c 168 § 16; 1967 c 238 § 25.]

***Reviser's note:** RCW 34.05.355 was repealed by 1995 c 403 § 305.

Finding—1991 c 199: See note following RCW 70.94.011.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.142 Subpoena powers—Witnesses, expenses and mileage—Rules and regulations. In connection with the subpoena powers given in RCW 70.94.141(2):

(1) In any hearing held under RCW 70.94.181 and 70.94.221, the board or the department, and their authorized agents:

(a) Shall issue a subpoena upon the request of any party and, to the extent required by rule or regulation, upon a statement or showing of general relevance and reasonable scope of the evidence sought;

(b) May issue a subpoena upon their own motion.

(2) The subpoena powers given in RCW 70.94.141(2) shall be statewide in effect.

(3) Witnesses appearing under the compulsion of a subpoena in a hearing before the board or the department shall be paid the same fees and mileage that are provided for witnesses in the courts of this state. Such fees and mileage, and the cost of duplicating records required to be produced by subpoena issued upon the motion of the board or department, shall be paid by the board or department. Such fees and mileage, and the cost of producing records required to be produced by subpoena issued upon the request of a party, shall be paid by that party.

(4) If an individual fails to obey the subpoena, or obeys the subpoena but refuses to testify when required concerning any matter under examination or investigation or the subject of the hearing, the board or department shall file its written report thereof and proof of service of its subpoena, in any court of competent jurisdiction in the county where the examination, hearing or investigation is being conducted. Thereupon, the court shall forthwith cause the individual to be brought before it and, upon being satisfied that the subpoena is within the jurisdiction of the board or department and otherwise in accordance with law, shall punish him as if the failure or refusal related to a subpoena from or testimony in that court.

(5) The department may make such rules and regulations as to the issuance of its own subpoenas as are not inconsistent with the provisions of this chapter. [1987 c 109 § 35; 1969 ex.s. c 168 § 17; 1967 c 238 § 26.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.143 Federal aid. Any authority exercising the powers and duties prescribed in this chapter may make application for, receive, administer, and expend any federal aid, under federal legislation from any agency of the federal government, for the prevention and control of air pollution or the development and administration of programs related to air pollution control and prevention, as permitted by RCW 70.94.141(12): PROVIDED, That any such application shall be submitted to and approved by the department. The department shall adopt rules and regulations establishing standards for such approval and shall approve any such application, if it is consistent with this chapter, and any other applicable requirements of law. [1987 c 109 § 36; 1969 ex.s. c 168 § 18; 1967 c 238 § 27.]

(2004 Ed.)

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.151 Classification of air contaminant sources—Registration—Fee—Registration program defined. (1) The board of any activated authority or the department, may classify air contaminant sources, by ordinance, resolution, rule or regulation, which in its judgment may cause or contribute to air pollution, according to levels and types of emissions and other characteristics which cause or contribute to air pollution, and may require registration or reporting or both for any such class or classes. Classifications made pursuant to this section may be for application to the area of jurisdiction of such authority, or the state as a whole or to any designated area within the jurisdiction, and shall be made with special reference to effects on health, economic and social factors, and physical effects on property.

(2) Except as provided in subsection (3) of this section, any person operating or responsible for the operation of air contaminant sources of any class for which the ordinances, resolutions, rules or regulations of the department or board of the authority, require registration and reporting shall register therewith and make reports containing information as may be required by such department or board concerning location, size and height of contaminant outlets, processes employed, nature of the contaminant emission and such other information as is relevant to air pollution and available or reasonably capable of being assembled. The department or board may require that such registration be accompanied by a fee and may determine the amount of such fee for such class or classes: PROVIDED, That the amount of the fee shall only be to compensate for the costs of administering such registration program which shall be defined as initial registration and annual or other periodic reports from the source owner providing information directly related to air pollution registration, on-site inspections necessary to verify compliance with registration requirements, data storage and retrieval systems necessary for support of the registration program, emission inventory reports and emission reduction credits computed from information provided by sources pursuant to registration program requirements, staff review, including engineering analysis for accuracy and currentness, of information provided by sources pursuant to registration program requirements, clerical and other office support provided in direct furtherance of the registration program, and administrative support provided in directly carrying out the registration program: PROVIDED FURTHER, That any such registration made with either the board or the department shall preclude a further registration with any other board or the department.

All registration program fees collected by the department shall be deposited in the air pollution control account. All registration program fees collected by the local air authorities shall be deposited in their respective treasuries.

(3) If a registration or report has been filed for a grain warehouse or grain elevator as required under this section, registration, reporting, or a registration program fee shall not, after January 1, 1997, again be required under this section for the warehouse or elevator unless the capacity of the warehouse or elevator as listed as part of the license issued for the facility has been increased since the date the registration or reporting was last made. If the capacity of the warehouse or

[Title 70 RCW—page 177]

elevator listed as part of the license is increased, any registration or reporting required for the warehouse or elevator under this section must be made by the date the warehouse or elevator receives grain from the first harvest season that occurs after the increase in its capacity is listed in the license.

For the purposes of this subsection, a "grain warehouse" or "grain elevator" is an establishment classified in standard industrial classification (SIC) code 5153 for wholesale trade; and a "license" is a license issued by the department of agriculture licensing a facility as a grain warehouse or grain elevator under chapter 22.09 RCW or a license issued by the federal government licensing a facility as a grain warehouse or grain elevator for purposes similar to those of licensure for the facility under chapter 22.09 RCW.

This subsection does not apply to a grain warehouse or grain elevator if the warehouse or elevator handles more than ten million bushels of grain annually. [1997 c 410 § 1; 1993 c 252 § 3; 1987 c 109 § 37; 1984 c 88 § 2; 1969 ex.s. c 168 § 19; 1967 c 238 § 28.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.152 Notice may be required of construction of proposed new contaminant source—Submission of plans—Approval, disapproval—Emission control—"De minimis new sources" defined. (1) The department of ecology or board of any authority may require notice of the establishment of any proposed new sources except single family and duplex dwellings or de minimis new sources as defined in rules adopted under subsection (11) of this section. The department of ecology or board may require such notice to be accompanied by a fee and determine the amount of such fee: PROVIDED, That the amount of the fee may not exceed the cost of reviewing the plans, specifications, and other information and administering such notice: PROVIDED FURTHER, That any such notice given or notice of construction application submitted to either the board or to the department of ecology shall preclude a further submittal of a duplicate application to any board or to the department of ecology.

(2) The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of processing a notice of construction application and a methodology for tracking revenues and expenditures. All new source fees collected by the delegated local air authorities from sources shall be deposited in the dedicated accounts of their respective treasuries. All new source fees collected by the department from sources shall be deposited in the air pollution control account.

(3) Within thirty days of receipt of a notice of construction application, the department of ecology or board may require, as a condition precedent to the establishment of the new source or sources covered thereby, the submission of plans, specifications, and such other information as it deems necessary to determine whether the proposed new source will be in accord with applicable rules and regulations in force under this chapter. If on the basis of plans, specifications, or other information required under this section the department of ecology or board determines that the proposed new source will not be in accord with this chapter or the applicable ordinances, resolutions, rules, and regulations adopted under this

chapter, it shall issue an order denying permission to establish the new source. If on the basis of plans, specifications, or other information required under this section, the department of ecology or board determines that the proposed new source will be in accord with this chapter, and the applicable rules and regulations adopted under this chapter, it shall issue an order of approval for the establishment of the new source or sources, which order may provide such conditions as are reasonably necessary to assure the maintenance of compliance with this chapter and the applicable rules and regulations adopted under this chapter. Every order of approval under this chapter must be reviewed prior to issuance by a professional engineer or staff under the supervision of a professional engineer in the employ of the department of ecology or board.

(4) The determination required under subsection (3) of this section shall include a determination of whether the operation of the new air contaminant source at the location proposed will cause any ambient air quality standard to be exceeded.

(5) New source review of a modification shall be limited to the emission unit or units proposed to be modified and the air contaminants whose emissions would increase as a result of the modification.

(6) Nothing in this section shall be construed to authorize the department of ecology or board to require the use of emission control equipment or other equipment, machinery, or devices of any particular type, from any particular supplier, or produced by any particular manufacturer.

(7) Any features, machines, and devices constituting parts of or called for by plans, specifications, or other information submitted pursuant to subsection (1) or (3) of this section shall be maintained and operate in good working order.

(8) The absence of an ordinance, resolution, rule, or regulation, or the failure to issue an order pursuant to this section shall not relieve any person from his or her obligation to comply with applicable emission control requirements or with any other provision of law.

(9) Within thirty days of receipt of a notice of construction application the department of ecology or board shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within sixty days of receipt of a complete application the department or board shall either (a) issue a final decision on the application, or (b) for those projects subject to public notice, initiate notice and comment on a proposed decision, followed as promptly as possible by a final decision. A person seeking approval to construct or modify a source that requires an operating permit may elect to integrate review of the operating permit application or amendment required by RCW 70.94.161 and the notice of construction application required by this section. A notice of construction application designated for integrated review shall be processed in accordance with operating permit program procedures and deadlines.

(10) A notice of construction approval required under subsection (3) of this section shall include a determination that the new source will achieve best available control technology. If more stringent controls are required under federal law, the notice of construction shall include a determination that the new source will achieve the more stringent federal

requirements. Nothing in this subsection is intended to diminish other state authorities under this chapter.

(11) No person is required to submit a notice of construction or receive approval for a new source that is deemed by the department of ecology or board to have de minimis impact on air quality. The department of ecology shall adopt and periodically update rules identifying categories of de minimis new sources. The department of ecology may identify de minimis new sources by category, size, or emission thresholds.

(12) For purposes of this section, "de minimis new sources" means new sources with trivial levels of emissions that do not pose a threat to human health or the environment. [1996 c 67 § 1; 1996 c 29 § 1; 1993 c 252 § 4; 1991 c 199 § 302; 1973 1st ex.s. c 193 § 2; 1969 ex.s. c 168 § 20; 1967 c 238 § 29.]

Reviser's note: This section was amended by 1996 c 29 § 1 and by 1996 c 67 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Finding—1991 c 199: See note following RCW 70.94.011.

Use of emission credits to be consistent with new source review program:
RCW 70.94.850.

70.94.153 Existing stationary source—Replacement or substantial alteration of emission control technology.

Any person proposing to replace or substantially alter the emission control technology installed on an existing stationary source emission unit shall file a notice of construction application with the jurisdictional permitting authority. For projects not otherwise reviewable under RCW 70.94.152, the permitting authority may (1) require that the owner or operator employ reasonably available control technology for the affected emission unit and (2) may prescribe reasonable operation and maintenance conditions for the control equipment. Within thirty days of receipt of an application for notice of construction under this section the permitting authority shall either notify the applicant in writing that the application is complete or notify the applicant in writing of all additional information necessary to complete the application. Within thirty days of receipt of a complete application the permitting authority shall either issue an order of approval or a proposed RACT determination for the proposed project. Construction shall not commence on a project subject to review under this section until the permitting authority issues a final order of approval. However, any notice of construction application filed under this section shall be deemed to be approved without conditions if the permitting authority takes no action within thirty days of receipt of a complete application for a notice of construction. [1991 c 199 § 303.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.154 RACT requirements. (1) RACT as defined in RCW 70.94.030 is required for existing sources except as otherwise provided in RCW 70.94.331(9).

(2) RACT for each source category containing three or more sources shall be determined by rule except as provided in subsection (3) of this section.

(3) Source-specific RACT determinations may be performed under any of the following circumstances:

(a) As authorized by RCW 70.94.153;

(b) When required by the federal clean air act;

(c) For sources in source categories containing fewer than three sources;

(d) When an air quality problem, for which the source is a contributor, justifies a source-specific RACT determination prior to development of a categorical RACT rule; or

(e) When a source-specific RACT determination is needed to address either specific air quality problems for which the source is a significant contributor or source-specific economic concerns.

(4) By January 1, 1994, ecology shall develop a list of sources and source categories requiring RACT review and a schedule for conducting that review. Ecology shall review the list and schedule within six months of receiving the initial operating permit applications and at least once every five years thereafter. In developing the list to determine the schedule of RACT review, ecology shall consider emission reductions achievable through the use of new available technologies and the impacts of those incremental reductions on air quality, the remaining useful life of previously installed control equipment, the impact of the source or source category on air quality, the number of years since the last BACT, RACT, or LAER determination for that source and other relevant factors. Prior to finalizing the list and schedule, ecology shall consult with local air authorities, the regulated community, environmental groups, and other interested individuals and organizations. The department and local authorities shall revise RACT requirements, as needed, based on the review conducted under this subsection.

(5) In determining RACT, ecology and local authorities shall utilize the factors set forth in RCW 70.94.030 and shall consider RACT determinations and guidance made by the federal environmental protection agency, other states and local authorities for similar sources, and other relevant factors. In establishing or revising RACT requirements, ecology and local authorities shall address, where practicable, all air contaminants deemed to be of concern for that source or source category.

(6) Emission standards and other requirements contained in rules or regulatory orders in effect at the time of operating permit issuance or renewal shall be considered RACT for purposes of permit issuance or renewal. RACT determinations under subsections (2) and (3) of this section shall be incorporated into operating permits as provided in RCW 70.94.161 and rules implementing that section.

(7) The department and local air authorities are authorized to assess and collect a fee to cover the costs of developing, establishing, or reviewing categorical or case-by-case RACT requirements. The fee shall apply to determinations of RACT requirements as defined under this section and RCW 70.94.331(9). The amount of the fee may not exceed the direct and indirect costs of establishing the requirement for the particular source or the pro rata portion of the direct and indirect costs of establishing the requirement for the relevant source category. The department shall, after opportunity for public review and comment, adopt rules that establish a workload-driven process for determination and review of the fee covering the direct and indirect costs of its RACT determinations and a methodology for tracking revenues and expenditures. All such RACT determination fees collected by the delegated local air authorities from sources shall be

deposited in the dedicated accounts of their respective treasuries. All such RACT fees collected by the department from sources shall be deposited in the air pollution control account. [1996 c 29 § 2; 1993 c 252 § 8.]

70.94.155 Control of emissions—Bubble concept—Schedules of compliance. (1) As used in subsection (3) of this section, the term "bubble" means an air pollution control system which permits aggregate measurements of allowable emissions, for a single category of pollutant, for emissions points from a specified emissions-generating facility or facilities. Individual point source emissions levels from such specified facility or facilities may be modified provided that the aggregate limit for the specified sources is not exceeded.

(2) Whenever any regulation relating to emission standards or other requirements for the control of emissions is adopted which provides for compliance with such standards or requirements no later than a specified time after the date of adoption of the regulation, the appropriate activated air pollution control authority or, if there be none, the department of ecology shall, by permit or regulatory order, issue to air contaminant sources subject to the standards or requirements, schedules of compliance setting forth timetables for the achievement of compliance as expeditiously as practicable, but in no case later than the time specified in the regulation. Interim dates in such schedules for the completion of steps of progress toward compliance shall be as enforceable as the final date for full compliance therein.

(3) Wherever requirements necessary for the attainment of air quality standards or, where such standards are not exceeded, for the maintenance of air quality can be achieved through the use of a control program involving the bubble concept, such program may be authorized by a regulatory order or orders or permit issued to the air contaminant source or sources involved. Such order or permit shall only be authorized after the control program involving the bubble concept is accepted by [the] United States environmental protection agency as part of an approved state implementation plan. Any such order or permit provision shall restrict total emissions within the bubble to no more than would otherwise be allowed in the aggregate for all emitting processes covered. The orders or permits provided for by this subsection shall be issued by the department or the authority with jurisdiction. If the bubble involves interjurisdictional approval, concurrence in the total program must be secured from each regulatory entity concerned. [1991 c 199 § 305; 1981 c 224 § 1; 1973 1st ex.s. c 193 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

Use of emission credits to be consistent with bubble program: RCW 70.94.850.

70.94.157 Preemption of uniform building and fire codes. The department and local air pollution control authorities shall preempt the application of chapter 9 of the uniform building code and article 80 of the uniform fire code by other state agencies and local governments for the purposes of controlling outdoor air pollution from industrial and commercial sources, except where authorized by chapter 199, Laws of 1991. Actions by other state agencies and local governments under article 80 of the uniform fire code to take immediate action in response to an emission that presents a physical haz-

ard or imminent health hazard are not preempted. [1991 c 199 § 315.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.161 Operating permits for air contaminant sources—Generally—Fees, report to legislature. The department of ecology, or board of an authority, shall require renewable permits for the operation of air contaminant sources subject to the following conditions and limitations:

(1) Permits shall be issued for a term of five years. A permit may be modified or amended during its term at the request of the permittee, or for any reason allowed by the federal clean air act. The rules adopted pursuant to subsection (2) of this section shall include rules for permit amendments and modifications. The terms and conditions of a permit shall remain in effect after the permit itself expires if the permittee submits a timely and complete application for permit renewal.

(2)(a) Rules establishing the elements for a statewide operating permit program and the process for permit application and renewal consistent with federal requirements shall be established by the department by January 1, 1993. The rules shall provide that every proposed permit must be reviewed prior to issuance by a professional engineer or staff under the direct supervision of a professional engineer in the employ of the permitting authority. The permit program established by these rules shall be administered by the department and delegated local air authorities. Rules developed under this subsection shall not preclude a delegated local air authority from including in a permit its own more stringent emission standards and operating restrictions.

(b) The board of any local air pollution control authority may apply to the department of ecology for a delegation order authorizing the local authority to administer the operating permit program for sources under that authority's jurisdiction. The department shall, by order, approve such delegation, if the department finds that the local authority has the technical and financial resources, to discharge the responsibilities of a permitting authority under the federal clean air act. A delegation request shall include adequate information about the local authority's resources to enable the department to make the findings required by this subsection; provided, any delegation order issued under this subsection shall take effect ninety days after the environmental protection agency authorizes the local authority to issue operating permits under the federal clean air act.

(c) Except for the authority granted the energy facility site evaluation council to issue permits for the new construction, reconstruction, or enlargement or operation of new energy facilities under chapter 80.50 RCW, the department may exercise the authority, as delegated by the environmental protection agency, to administer Title IV of the federal clean air act as amended and to delegate such administration to local authorities as applicable pursuant to (b) of this subsection.

(3) In establishing technical standards, defined in RCW 70.94.030, the permitting authority shall consider and, if found to be appropriate, give credit for waste reduction within the process.

(4) Operating permits shall apply to all sources (a) where required by the federal clean air act, and (b) for any source that may cause or contribute to air pollution in such quantity as to create a threat to the public health or welfare. Subsection (b) of this subsection is not intended to apply to small businesses except when both of the following limitations are satisfied: (i) The source is in an area exceeding or threatening to exceed federal or state air quality standards; and (ii) the department provides a reasonable justification that requiring a source to have a permit is necessary to meet a federal or state air quality standard, or to prevent exceeding a standard in an area threatening to exceed the standard. For purposes of this subsection "areas threatening to exceed air quality standards" shall mean areas projected by the department to exceed such standards within five years. Prior to identifying threatened areas the department shall hold a public hearing or hearings within the proposed areas.

(5) Sources operated by government agencies are not exempt under this section.

(6) Within one hundred eighty days after the United States environmental protection agency approves the state operating permit program, a person required to have a permit shall submit to the permitting authority a compliance plan and permit application, signed by a responsible official, certifying the accuracy of the information submitted. Until permits are issued, existing sources shall be allowed to operate under presently applicable standards and conditions provided that such sources submit complete and timely permit applications.

(7) All draft permits shall be subject to public notice and comment. The rules adopted pursuant to subsection (2) of this section shall specify procedures for public notice and comment. Such procedures shall provide the permitting agency with an opportunity to respond to comments received from interested parties prior to the time that the proposed permit is submitted to the environmental protection agency for review pursuant to section 505(a) of the federal clean air act. In the event that the environmental protection agency objects to a proposed permit pursuant to section 505(b) of the federal clean air act, the permitting authority shall not issue the permit, unless the permittee consents to the changes required by the environmental protection agency.

(8) The procedures contained in chapter 43.21B RCW shall apply to permit appeals. The pollution control hearings board may stay the effectiveness of any permit issued under this section during the pendency of an appeal filed by the permittee, if the permittee demonstrates that compliance with the permit during the pendency of the appeal would require significant expenditures that would not be necessary in the event that the permittee prevailed on the merits of the appeal.

(9) After the effective date of any permit program promulgated under this section, it shall be unlawful for any person to: (a) Operate a permitted source in violation of any requirement of a permit issued under this section; or (b) fail to submit a permit application at the time required by rules adopted under subsection (2) of this section.

(10) Each air operating permit shall state the origin of and specific legal authority for each requirement included therein. Every requirement in an operating permit shall be based upon the most stringent of the following requirements:

(a) The federal clean air act and rules implementing that act, including provision of the approved state implementation plan;

(b) This chapter and rules adopted thereunder;

(c) In permits issued by a local air pollution control authority, the requirements of any order or regulation adopted by that authority;

(d) Chapter 70.98 RCW and rules adopted thereunder; and

(e) Chapter 80.50 RCW and rules adopted thereunder.

(11) Consistent with the provisions of the federal clean air act, the permitting authority may issue general permits covering categories of permitted sources, and temporary permits authorizing emissions from similar operations at multiple temporary locations.

(12) Permit program sources within the territorial jurisdiction of an authority delegated the operating permit program shall file their permit applications with that authority, except that permit applications for sources regulated on a statewide basis pursuant to RCW 70.94.395 shall be filed with the department. Permit program sources outside the territorial jurisdiction of a delegated authority shall file their applications with the department. Permit program sources subject to chapter 80.50 RCW shall, irrespective of their location, file their applications with the energy facility site evaluation council.

(13) When issuing operating permits to coal fired electric generating plants, the permitting authority shall establish requirements consistent with Title IV of the federal clean air act.

(14)(a) The department and the local air authorities are authorized to assess and to collect, and each source emitting one hundred tons or more per year of a regulated pollutant shall pay an interim assessment to fund the development of the operating permit program during fiscal year 1994.

(b) The department shall conduct a workload analysis and prepare an operating permit program development budget for fiscal year 1994. The department shall allocate among all sources emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 the costs identified in its program development budget according to a three-tiered model, with each of the three tiers being equally weighted, based upon:

(i) The number of sources;

(ii) The complexity of sources; and

(iii) The size of sources, as measured by the quantity of each regulated pollutant emitted by the source.

(c) Each local authority and the department shall collect from sources under their respective jurisdictions the interim fee determined by the department and shall remit the fee to the department.

(d) Each local authority may, in addition, allocate its fiscal year 1994 operating permit program development costs among the sources under its jurisdiction emitting one hundred tons or more per year of a regulated pollutant during calendar year 1992 and may collect an interim fee from these sources. A fee assessed pursuant to this subsection (14)(d) shall be collected at the same time as the fee assessed pursuant to (c) of this subsection.

(e) The fees assessed to a source under this subsection shall be limited to the first seven thousand five hundred tons for each regulated pollutant per year.

(15) The department shall determine the persons liable for the fee imposed by subsection (14) of this section, compute the fee, and provide by November 1 of 1993 the identity of the fee payer with the computation of the fee to each local authority and to the department of revenue for collection. The department of revenue shall collect the fee computed by the department from the fee payers under the jurisdiction of the department. The administrative, collection, and penalty provisions of chapter 82.32 RCW shall apply to the collection of the fee by the department of revenue. The department shall provide technical assistance to the department of revenue for decisions made by the department of revenue pursuant to RCW 82.32.160 and 82.32.170. All interim fees collected by the department of revenue on behalf of the department and all interim fees collected by local authorities on behalf of the department shall be deposited in the air operating permit account. The interim fees collected by the local air authorities to cover their permit program development costs under subsection (14)(d) of this section shall be deposited in the dedicated accounts of their respective treasuries.

All fees identified in this section shall be due and payable on March 1 of 1994, except that the local air pollution control authorities may adopt by rule an earlier date on which fees are to be due and payable. The section 5, chapter 252, Laws of 1993 amendments to RCW 70.94.161 do not have the effect of terminating, or in any way modifying, any liability, civil or criminal, incurred pursuant to the provisions of RCW 70.94.161 (15) and (17) as they existed prior to July 25, 1993.

(16) For sources or source categories not required to obtain permits under subsection (4) of this section, the department or local authority may establish by rule control technology requirements. If control technology rule revisions are made by the department or local authority under this subsection, the department or local authority shall consider the remaining useful life of control equipment previously installed on existing sources before requiring technology changes. The department or any local air authority may issue a general permit, as authorized under the federal clean air act, for such sources.

(17) RCW 70.94.151 shall not apply to any permit program source after the effective date of United States environmental protection agency approval of the state operating permit program. [1993 c 252 § 5; 1991 c 199 § 301.]

Finding—1991 c 199: See note following RCW 70.94.011.

Air operating permit account: RCW 70.94.015.

70.94.162 Annual fees from operating permit program source to cover cost of program. (1) The department and delegated local air authorities are authorized to determine, assess, and collect, and each permit program source shall pay, annual fees sufficient to cover the direct and indirect costs of implementing a state operating permit program approved by the United States environmental protection agency under the federal clean air act. However, a source that receives its operating permit from the United States environmental protection agency shall not be considered a permit

program source so long as the environmental protection agency continues to act as the permitting authority for that source. Each permitting authority shall develop by rule a fee schedule allocating among its permit program sources the costs of the operating permit program, and may, by rule, establish a payment schedule whereby periodic installments of the annual fee are due and payable more frequently. All operating permit program fees collected by the department shall be deposited in the air operating permit account. All operating permit program fees collected by the delegated local air authorities shall be deposited in their respective air operating permit accounts or other accounts dedicated exclusively to support of the operating permit program. The fees assessed under this subsection shall first be due not less than forty-five days after the United States environmental protection agency delegates to the department the authority to administer the operating permit program and then annually thereafter.

The department shall establish, by rule, procedures for administrative appeals to the department regarding the fee assessed pursuant to this subsection.

(2) The fee schedule developed by each permitting authority shall fully cover and not exceed both its permit administration costs and the permitting authority's share of statewide program development and oversight costs.

(a) Permit administration costs are those incurred by each permitting authority, including the department, in administering and enforcing the operating permit program with respect to sources under its jurisdiction. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program and to the sources permitted by a permitting authority, including, where applicable, sources subject to a general permit:

(i) Preapplication assistance and review of an application and proposed compliance plan for a permit, permit revision, or renewal;

(ii) Source inspections, testing, and other data-gathering activities necessary for the development of a permit, permit revision, or renewal;

(iii) Acting on an application for a permit, permit revision, or renewal, including the costs of developing an applicable requirement as part of the processing of a permit, permit revision, or renewal, preparing a draft permit and fact sheet, and preparing a final permit, but excluding the costs of developing BACT, LAER, BART, or RACT requirements for criteria and toxic air pollutants;

(iv) Notifying and soliciting, reviewing and responding to comment from the public and contiguous states and tribes, conducting public hearings regarding the issuance of a draft permit and other costs of providing information to the public regarding operating permits and the permit issuance process;

(v) Modeling necessary to establish permit limits or to determine compliance with permit limits;

(vi) Reviewing compliance certifications and emissions reports and conducting related compilation and reporting activities;

(vii) Conducting compliance inspections, complaint investigations, and other activities necessary to ensure that a source is complying with permit conditions;

(viii) Administrative enforcement activities and penalty assessment, excluding the costs of proceedings before the

pollution control hearings board and all costs of judicial enforcement;

(ix) The share attributable to permitted sources of the development and maintenance of emissions inventories;

(x) The share attributable to permitted sources of ambient air quality monitoring and associated recording and reporting activities;

(xi) Training for permit administration and enforcement;

(xii) Fee determination, assessment, and collection, including the costs of necessary administrative dispute resolution and penalty collection;

(xiii) Required fiscal audits, periodic performance audits, and reporting activities;

(xiv) Tracking of time, revenues and expenditures, and accounting activities;

(xv) Administering the permit program including the costs of clerical support, supervision, and management;

(xvi) Provision of assistance to small businesses under the jurisdiction of the permitting authority as required under section 507 of the federal clean air act; and

(xvii) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(b) Development and oversight costs are those incurred by the department in developing and administering the state operating permit program, and in overseeing the administration of the program by the delegated local permitting authorities. Costs associated with the following activities are fee eligible as these activities relate to the operating permit program:

(i) Review and determinations necessary for delegation of authority to administer and enforce a permit program to a local air authority under RCW 70.94.161(2) and 70.94.860;

(ii) Conducting fiscal audits and periodic performance audits of delegated local authorities, and other oversight functions required by the operating permit program;

(iii) Administrative enforcement actions taken by the department on behalf of a permitting authority, including those actions taken by the department under RCW 70.94.785, but excluding the costs of proceedings before the pollution control hearings board and all costs of judicial enforcement;

(iv) Determination and assessment with respect to each permitting authority of the fees covering its share of the costs of development and oversight;

(v) Training and assistance for permit program administration and oversight, including training and assistance regarding technical, administrative, and data management issues;

(vi) Development of generally applicable regulations or guidance regarding the permit program or its implementation or enforcement;

(vii) State codification of federal rules or standards for inclusion in operating permits;

(viii) Preparation of delegation package and other activities associated with submittal of the state permit program to the United States environmental protection agency for approval, including ongoing coordination activities;

(ix) General administration and coordination of the state permit program, related support activities, and other agency indirect costs, including necessary data management and quality assurance;

(x) Required fiscal audits and periodic performance audits of the department, and reporting activities;

(xi) Tracking of time, revenues and expenditures, and accounting activities;

(xii) Public education and outreach related to the operating permit program, including the maintenance of a permit register;

(xiii) The share attributable to permitted sources of compiling and maintaining emissions inventories;

(xiv) The share attributable to permitted sources of ambient air quality monitoring, related technical support, and associated recording activities;

(xv) The share attributable to permitted sources of modeling activities;

(xvi) Provision of assistance to small business as required under section 507 of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule;

(xvii) Provision of services by the department of revenue and the office of the state attorney general and other state agencies in support of permit program administration;

(xviii) A one-time revision to the state implementation plan to make those administrative changes necessary to ensure coordination of the state implementation plan and the operating permit program; and

(xix) Other activities required by operating permit regulations issued by the United States environmental protection agency under the federal clean air act.

(3) The responsibility for operating permit fee determination, assessment, and collection is to be shared by the department and delegated local air authorities as follows:

(a) Each permitting authority, including the department, acting in its capacity as a permitting authority, shall develop a fee schedule and mechanism for collecting fees from the permit program sources under its jurisdiction; the fees collected by each authority shall be sufficient to cover its costs of permit administration and its share of the department's costs of development and oversight. Each delegated local authority shall remit to the department its share of the department's development and oversight costs.

(b) Only those local air authorities to whom the department has delegated the authority to administer the program pursuant to RCW 70.94.161(2) (b) and (c) and 70.94.860 shall have the authority to administer and collect operating permit fees. The department shall retain the authority to administer and collect such fees with respect to the sources within the jurisdiction of a local air authority until the effective date of program delegation to that air authority.

(c) The department shall allocate its development and oversight costs among all permitting authorities, including the department, in proportion to the number of permit program sources under the jurisdiction of each authority, except that extraordinary costs or other costs readily attributable to a specific permitting authority may be assessed that authority. For purposes of this subsection, all sources covered by a single general permit shall be treated as one source.

(4) The department and each delegated local air authority shall adopt by rule a general permit fee schedule for sources under their respective jurisdictions after such time as the department adopts provisions for general permit issuance. Within ninety days of the time that the department adopts a

general permit fee schedule, the department shall report to the relevant standing committees of the legislature regarding the general permit fee schedules adopted by the department and by the delegated local air authorities. The permit administration costs of each general permit shall be allocated equitably among only those sources subject to that general permit. The share of development and oversight costs attributable to each general permit shall be determined pursuant to subsection (3)(c) of this section.

(5) The fee schedule developed by the department shall allocate among the sources for whom the department acts as a permitting authority, other than sources subject to a general permit, those portions of the department's permit administration costs and the department's share of the development and oversight costs which the department does not plan to recover under its general permit fee schedule or schedules as follows:

(a) The department shall allocate its permit administration costs and its share of the development and oversight costs not recovered through general permit fees according to a three-tiered model based upon:

(i) The number of permit program sources under its jurisdiction;

(ii) The complexity of permit program sources under its jurisdiction; and

(iii) The size of permit program sources under its jurisdiction, as measured by the quantity of each regulated pollutant emitted by the source.

(b) Each of the three tiers shall be equally weighted.

(c) The department may, in addition, allocate activities-based costs readily attributable to a specific source to that source under RCW 70.94.152(1) and 70.94.154(7).

The quantity of each regulated pollutant emitted by a source shall be determined based on the annual emissions during the most recent calendar year for which data is available.

(6) The department shall, after opportunity for public review and comment, adopt rules that establish a process for development and review of its operating permit program fee schedule, a methodology for tracking program revenues and expenditures and, for both the department and the delegated local air authorities, a system of fiscal audits, reports, and periodic performance audits.

(a) The fee schedule development and review process shall include the following:

(i) The department shall conduct a biennial workload analysis. The department shall provide the opportunity for public review of and comment on the workload analysis. The department shall review and update its workload analysis during each biennial budget cycle, taking into account information gathered by tracking previous revenues, time, and expenditures and other information obtained through fiscal audits and performance audits.

(ii) The department shall prepare a biennial budget based upon the resource requirements identified in the workload analysis for that biennium. In preparing the budget, the department shall take into account the projected operating permit account balance at the start of the biennium. The department shall provide the opportunity for public review of and comment on the proposed budget. The department shall review and update its budget each biennium.

(iii) The department shall develop a fee schedule allocating the department's permit administration costs and its share of the development and oversight costs among the department's permit program sources using the methodology described in subsection (5) of this section. The department shall provide the opportunity for public review of and comment on the allocation methodology and fee schedule. The department shall provide procedures for administrative resolution of disputes regarding the source data on which allocation determinations are based; these procedures shall be designed such that resolution occurs prior to the completion of the allocation process. The department shall review and update its fee schedule annually.

(b) The methodology for tracking revenues and expenditures shall include the following:

(i) The department shall develop a system for tracking revenues and expenditures that provides the maximum practicable information. At a minimum, revenues from fees collected under the operating permit program shall be tracked on a source-specific basis and time and expenditures required to administer the program shall be tracked on the basis of source categories and functional categories. Each general permit will be treated as a separate source category for tracking and accounting purposes.

(ii) The department shall use the information obtained from tracking revenues, time, and expenditures to modify the workload analysis required in subsection (6)(a) of this section.

(iii) The information obtained from tracking revenues, time, and expenditures shall not provide a basis for challenge to the amount of an individual source's fee.

(c) The system of fiscal audits, reports, and periodic performance audits shall include the following:

(i) The department and the delegated local air authorities shall prepare annual reports and shall submit the reports to, respectively, the appropriate standing committees of the legislature and the board of directors of the local air authority.

(ii) The department shall arrange for fiscal audits and routine performance audits and for periodic intensive performance audits of each permitting authority and of the department.

(7) Each local air authority requesting delegation shall, after opportunity for public review and comment, publish regulations which establish a process for development and review of its operating permit program fee schedule, and a methodology for tracking its revenues and expenditures. These regulations shall be submitted to the department for review and approval as part of the local authority's delegation request.

(8) As used in this section and in RCW 70.94.161(14), "regulated pollutant" shall have the same meaning as defined in section 502(b) of the federal clean air act as it exists on July 25, 1993, or its later enactment as adopted by reference by the director by rule.

(9) Fee structures as authorized under this section shall remain in effect until such time as the legislature authorizes an alternative structure following receipt of the report required by this subsection. [1998 c 245 § 129; 1993 c 252 § 6.]

70.94.163 Source categories not required to have a permit—Recommendations. The department shall prepare recommendations to reduce air emissions for source categories not generally required to have a permit under RCW 70.94.161. Such recommendations shall not require any action by the owner or operator of a source and shall be consistent with rules adopted under chapter 70.95C RCW. The recommendations shall include but not be limited to: Process changes, product substitution, equipment modifications, hazardous substance use reduction, recycling, and energy efficiency. [1991 c 199 § 304.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.165 Gasoline recovery devices—Limitation on requiring. (1) A gasoline vapor recovery device that captures vapors during vehicle fueling may only be required at a service station, or any other gasoline dispensing facility supplying fuel to the general public, in any of the following circumstances:

(a) The facility sells in excess of six hundred thousand gallons of gasoline per year and is located in a county, any part of which is designated as nonattainment for ozone under the federal clean air act, 42 U.S.C. Sec. 7407; or

(b) The facility sells in excess of six hundred thousand gallons of gasoline per year and is located in a county where a maintenance plan has been adopted by a local air pollution control authority or the department of ecology that includes gasoline vapor recovery devices as a control strategy; or

(c) From March 30, 1996, until December 31, 1998, in any facility that sells in excess of one million two hundred thousand gallons of gasoline per year and is located in an ozone-contributing county. For purposes of this section, an ozone-contributing county means a county in which the emissions have contributed to the formation of ozone in any county where violations of federal ozone standards have been measured, and includes: Cowlitz, Island, Kitsap, Lewis, Skagit, Thurston, Wahkiakum, and Whatcom counties; or

(d) After December 31, 1998, in any facility that sells in excess of eight hundred forty thousand gallons of gasoline per year and is located in any county, no part of which is designated as nonattainment for ozone under the federal clean air act, 42 U.S.C. Sec. 7407, provided that the department of ecology determines by December 31, 1997, that the use of gasoline vapor control devices in the county is important to achieving or maintaining attainment status in any other county.

(2) This section does not preclude the department of ecology or any local air pollution authority from requiring a gasoline vapor recovery device that captures vapors during vehicle refueling as part of the regulation of sources as provided in RCW 70.94.152, 70.94.331, or 70.94.141 or where required under 42 U.S.C. Sec. 7412. [1996 c 294 § 1.]

Effective date—1996 c 294: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 30, 1996]." [1996 c 294 § 2.]

70.94.170 Air pollution control authority control officer. Any activated authority which has adopted an ordinance, resolution, or valid rules and regulations as provided herein for the control and prevention of air pollution shall

(2004 Ed.)

appoint a full time control officer, whose sole responsibility shall be to observe and enforce the provisions of this chapter and all orders, ordinances, resolutions, or rules and regulations of such activated authority pertaining to the control and prevention of air pollution. [1991 c 199 § 707; 1969 ex.s. c 168 § 21; 1967 c 238 § 30; 1957 c 232 § 17.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.181 Variances—Application for—Considerations—Limitations—Renewals—Review. (1) Any person who owns or is in control of any plant, building, structure, establishment, process or equipment may apply to the department of ecology or appropriate local authority board for a variance from rules or regulations governing the quality, nature, duration or extent of discharges of air contaminants. The application shall be accompanied by such information and data as the department of ecology or board may require. The department of ecology or board may grant such variance, provided that variances to state rules shall require the department's approval prior to being issued by a local authority board. The total time period for a variance and renewal of such variance shall not exceed one year. Variances may be issued by either the department or a local board but only after public hearing or due notice, if the department or board finds that:

(a) The emissions occurring or proposed to occur do not endanger public health or safety or the environment; and

(b) Compliance with the rules or regulations from which variance is sought would produce serious hardship without equal or greater benefits to the public.

(2) No variance shall be granted pursuant to this section until the department of ecology or board has considered the relative interests of the applicant, other owners of property likely to be affected by the discharges, and the general public.

(3) Any variance or renewal thereof shall be granted within the requirements of subsection (1) of this section and under conditions consistent with the reasons therefor, and within the following limitations:

(a) If the variance is granted on the ground that there is no practicable means known or available for the adequate prevention, abatement or control of the pollution involved, it shall be only until the necessary means for prevention, abatement or control become known and available, and subject to the taking of any substitute or alternate measures that the department of ecology or board may prescribe.

(b) If the variance is granted on the ground that compliance with the particular requirement or requirements from which variance is sought will require the taking of measures which, because of their extent or cost, must be spread over a considerable period of time, it shall be for a period not to exceed such reasonable time as, in the view of the department of ecology or board is requisite for the taking of the necessary measures. A variance granted on the ground specified herein shall contain a timetable for the taking of action in an expeditious manner and shall be conditioned on adherence to such timetable.

(c) If the variance is granted on the ground that it is justified to relieve or prevent hardship of a kind other than that provided for in (a) and (b) of this subsection, it shall be for not more than one year.

(4) Any variance granted pursuant to this section may be renewed on terms and conditions and for periods which would be appropriate on initial granting of a variance. If complaint is made to the department of ecology or board on account of the variance, no renewal thereof shall be granted unless following a public hearing on the complaint on due notice the department or board finds that renewal is justified. No renewal shall be granted except on application therefor. Any such application shall be made at least sixty days prior to the expiration of the variance. Immediately upon receipt of an application for renewal, the department of ecology or board shall give public notice of such application in accordance with rules of the department of ecology or board.

(5) A variance or renewal shall not be a right of the applicant or holder thereof but shall be granted at the discretion of the department of ecology or board. However, any applicant adversely affected by the denial or the terms and conditions of the granting of an application for a variance or renewal of a variance by the department of ecology or board may obtain judicial review thereof under the provisions of chapter 34.05 RCW as now or hereafter amended.

(6) Nothing in this section and no variance or renewal granted pursuant hereto shall be construed to prevent or limit the application of the emergency provisions and procedures of RCW 70.94.710 through 70.94.730 to any person or his or her property.

(7) An application for a variance, or for the renewal thereof, submitted to the department of ecology or board pursuant to this section shall be approved or disapproved by the department or board within sixty-five days of receipt unless the applicant and the department of ecology or board agree to a continuance.

(8) Variances approved under this section shall not be included in orders or permits provided for in RCW 70.94.161 or 70.94.152 until such time as the variance has been accepted by the United States environmental protection agency as part of an approved state implementation plan. [1991 c 199 § 306; 1983 c 3 § 176; 1974 ex.s. c 59 § 1; 1969 ex.s. c 168 § 22; 1967 c 238 § 31.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.200 Investigation of conditions by control officer or department—Entering private, public property. For the purpose of investigating conditions specific to the control, recovery or release of air contaminants into the atmosphere, a control officer, the department, or their duly authorized representatives, shall have the power to enter at reasonable times upon any private or public property, excepting nonmultiple unit private dwellings housing two families or less. No person shall refuse entry or access to any control officer, the department, or their duly authorized representatives, who requests entry for the purpose of inspection, and who presents appropriate credentials; nor shall any person obstruct, hamper or interfere with any such inspection. [1987 c 109 § 38; 1979 c 141 § 121; 1967 c 238 § 32; 1957 c 232 § 20.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.205 Confidentiality of records and information. Whenever any records or other information, other than

ambient air quality data or emission data, furnished to or obtained by the department of ecology or the board of any authority under this chapter, relate to processes or production unique to the owner or operator, or is likely to affect adversely the competitive position of such owner or operator if released to the public or to a competitor, and the owner or operator of such processes or production so certifies, such records or information shall be only for the confidential use of the department of ecology or board. Nothing herein shall be construed to prevent the use of records or information by the department of ecology or board in compiling or publishing analyses or summaries relating to the general condition of the outdoor atmosphere: PROVIDED, That such analyses or summaries do not reveal any information otherwise confidential under the provisions of this section: PROVIDED FURTHER, That emission data furnished to or obtained by the department of ecology or board shall be correlated with applicable emission limitations and other control measures and shall be available for public inspection during normal business hours at offices of the department of ecology or board. [1991 c 199 § 307; 1973 1st ex.s. c 193 § 4; 1969 ex.s. c 168 § 23; 1967 c 238 § 33.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.211 Enforcement actions by air authority—Notice to violators. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 or 70.94.431 a local air authority shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order directing that necessary corrective action be taken within a reasonable time. In lieu of an order, the board or the control officer may require that the alleged violator or violators appear before the board for a hearing. Every notice of violation shall offer to the alleged violator an opportunity to meet with the local air authority prior to the commencement of enforcement action. [1991 c 199 § 309; 1974 ex.s. c 69 § 4; 1970 ex.s. c 62 § 57; 1969 ex.s. c 168 § 24; 1967 c 238 § 34.]

Finding—1991 c 199: See note following RCW 70.94.011.

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

Appeal of orders under RCW 70.94.211: RCW 43.21B.310.

70.94.221 Order final unless appealed to pollution control hearings board. Any order issued by the board or by the control officer, shall become final unless such order is appealed to the hearings board as provided in chapter 43.21B RCW. [1970 ex.s. c 62 § 58; 1969 ex.s. c 168 § 25; 1967 c 238 § 35.]

Savings—Effective date—Severability—1970 ex.s. c 62: See notes following RCW 43.21A.010.

70.94.230 Rules of authority supersede local rules, regulations, etc.—Exceptions. The rules and regulations hereafter adopted by an authority under the provisions of this chapter shall supersede the existing rules, regulations, resolutions and ordinances of any of the component bodies included within said authority in all matters relating to the

control and enforcement of air pollution as contemplated by this chapter: PROVIDED, HOWEVER, That existing rules, regulations, resolutions and ordinances shall remain in effect until such rules, regulations, resolutions and ordinances are superseded as provided in this section: PROVIDED FURTHER, That nothing herein shall be construed to supersede any local county, or city ordinance or resolution, or any provision of the statutory or common law pertaining to nuisance; nor to affect any aspect of employer-employee relationship relating to conditions in a place of work, including without limitation, statutes, rules or regulations governing industrial health and safety standards or performance standards incorporated in zoning ordinances or resolutions of the component bodies where such standards relating to air pollution control or air quality containing requirements not less stringent than those of the authority. [1969 ex.s. c 168 § 28; 1967 c 238 § 38; 1957 c 232 § 23.]

70.94.231 Air pollution control authority—Dissolution of prior districts—Continuation of rules and regulations until superseded. Upon the date that an authority begins to exercise its powers and functions, all rules and regulations in force on such date shall remain in effect until superseded by the rules and regulations of the authority as provided in RCW 70.94.230. [1991 c 199 § 708; 1969 ex.s. c 168 § 29; 1967 c 238 § 39.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.240 Air pollution control advisory council. The board of any authority may appoint an air pollution control advisory council to advise and consult with such board, and the control officer in effectuating the purposes of this chapter. The council shall consist of at least five appointed members who are residents of the authority and who are preferably skilled and experienced in the field of air pollution control, chemistry, meteorology, public health, or a related field, at least one of whom shall serve as a representative of industry and one of whom shall serve as a representative of the environmental community. The chair of the board of any such authority shall serve as ex officio member of the council and be its chair. Each member of the council shall receive from the authority per diem and travel expenses in an amount not to exceed that provided for the state board in this chapter (but not to exceed one thousand dollars per year) for each full day spent in the performance of his or her duties under this chapter. [1991 c 199 § 709; 1969 ex.s. c 168 § 30; 1967 c 238 § 41; 1957 c 232 § 24.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.260 Dissolution of authority—Deactivation of authority. An air pollution control authority may be deactivated prior to the term provided in the original or subsequent agreement by the county or counties comprising such authority upon the adoption by the board, following a hearing held upon ten days notice, to said counties, of a resolution for dissolution or deactivation and upon the approval by the legislative authority of each county comprising the authority. In such event, the board shall proceed to wind up the affairs of the authority and pay all indebtedness thereof. Any surplus of funds shall be paid over to the counties comprising the

authority in proportion to their last contribution. Upon the completion of the process of closing the affairs of the authority, the board shall by resolution entered in its minutes declare the authority deactivated and a certified copy of such resolution shall be filed with the secretary of state and the authority shall be deemed inactive. [1979 ex.s. c 30 § 12; 1969 ex.s. c 168 § 31; 1967 c 238 § 43; 1957 c 232 § 26.]

70.94.262 Withdrawal from multicounty authority.

(1) Any county that is part of a multicounty authority, pursuant to RCW 70.94.053, may withdraw from the multicounty authority after January 1, 1992, if the county wishes to provide for air quality protection and regulation by an alternate air quality authority. A withdrawing county shall:

- (a) Create its own single county authority;
- (b) Join another existing multicounty authority with which its boundaries are contiguous;
- (c) Join with one or more contiguous inactive authorities to operate as a new multicounty authority; or
- (d) Become an inactive authority and subject to regulation by the department of ecology.

(2) In order to withdraw from an existing multicounty authority, a county shall make arrangements, by interlocal agreement, for division of assets and liabilities and the appropriate release of any and all interest in assets of the multicounty authority.

(3) In order to effectuate any of the alternate arrangements in subsection (1) of this section, the procedures of this chapter to create an air pollution control authority shall be met and the actions must be taken at least six months prior to the effective date of withdrawal. The rules of the original multicounty authority shall continue in force for the withdrawing county until such time as all conditions to create an air pollution control authority have been met.

(4) At the effective date of a county's withdrawal, the remaining counties shall reorganize and reconstitute the legislative authority pursuant to this chapter. The air pollution control regulations of the existing multicounty authority shall remain in force and effect after the reorganization.

(5) If a county elects to withdraw from an existing multicounty authority, the air pollution control regulations shall remain in effect for the withdrawing county until suspended by the adoption of rules, regulations, or ordinances adopted under one of the alternatives of subsection (1) of this section. A county shall initiate proceedings to adopt such rules, regulations, or ordinances on or before the effective date of the county's withdrawal. [1991 c 125 § 2.]

70.94.331 Powers and duties of department. (1) The department shall have all the powers as provided in RCW 70.94.141.

(2) The department, in addition to any other powers vested in it by law after consideration at a public hearing held in accordance with chapters 42.30 and 34.05 RCW shall:

- (a) Adopt rules establishing air quality objectives and air quality standards;
- (b) Adopt emission standards which shall constitute minimum emission standards throughout the state. An authority may enact more stringent emission standards, except for emission performance standards for new wood stoves and

opacity levels for residential solid fuel burning devices which shall be statewide, but in no event may less stringent standards be enacted by an authority without the prior approval of the department after public hearing and due notice to interested parties;

(c) Adopt by rule air quality standards and emission standards for the control or prohibition of emissions to the outdoor atmosphere of radionuclides, dust, fumes, mist, smoke, other particulate matter, vapor, gas, odorous substances, or any combination thereof. Such requirements may be based upon a system of classification by types of emissions or types of sources of emissions, or combinations thereof, which it determines most feasible for the purposes of this chapter. However, an industry, or the air pollution control authority having jurisdiction, can choose, subject to the submittal of appropriate data that the industry has quantified, to have any limit on the opacity of emissions from a source whose emission standard is stated in terms of a weight of particulate per unit volume of air (e.g., grains per dry standard cubic foot) be based on the applicable particulate emission standard for that source, such that any violation of the opacity limit accurately indicates a violation of the applicable particulate emission standard. Any alternative opacity limit provided by this section that would result in increasing air contaminants emissions in any nonattainment area shall only be granted if equal or greater emission reductions are provided for by the same source obtaining the revised opacity limit. A reasonable fee may be assessed to the industry to which the alternate opacity standard would apply. The fee shall cover only those costs to the air pollution control authority which are directly related to the determination on the acceptability of the alternate opacity standard, including testing, oversight and review of data.

(3) The air quality standards and emission standards may be for the state as a whole or may vary from area to area or source to source, except that emission performance standards for new wood stoves and opacity levels for residential solid fuel burning devices shall be statewide, as may be appropriate to facilitate the accomplishment of the objectives of this chapter and to take necessary or desirable account of varying local conditions of population concentration, the existence of actual or reasonably foreseeable air pollution, topographic and meteorologic conditions and other pertinent variables.

(4) The department is directed to cooperate with the appropriate agencies of the United States or other states or any interstate agencies or international agencies with respect to the control of air pollution and air contamination, or for the formulation for the submission to the legislature of interstate air pollution control compacts or agreements.

(5) The department is directed to conduct or cause to be conducted a continuous surveillance program to monitor the quality of the ambient atmosphere as to concentrations and movements of air contaminants and conduct or cause to be conducted a program to determine the quantity of emissions to the atmosphere.

(6) The department shall enforce the air quality standards and emission standards throughout the state except where a local authority is enforcing the state regulations or its own regulations which are more stringent than those of the state.

(7) The department shall encourage local units of government to handle air pollution problems within their respec-

tive jurisdictions; and, on a cooperative basis provide technical and consultative assistance therefor.

(8) The department shall have the power to require the addition to or deletion of a county or counties from an existing authority in order to carry out the purposes of this chapter. No such addition or deletion shall be made without the concurrence of any existing authority involved. Such action shall only be taken after a public hearing held pursuant to the provisions of chapter 34.05 RCW.

(9) The department shall establish rules requiring sources or source categories to apply reasonable and available control methods. Such rules shall apply to those sources or source categories that individually or collectively contribute the majority of statewide air emissions of each regulated pollutant. The department shall review, and if necessary, update its rules every five years to ensure consistency with current reasonable and available control methods. The department shall have adopted rules required under this subsection for all sources by July 1, 1996.

For the purposes of this section, "reasonable and available control methods" shall include but not be limited to, changes in technology, processes, or other control strategies. [1991 c 199 § 710; 1988 c 106 § 1. Prior: 1987 c 405 § 13; 1987 c 109 § 39; 1985 c 372 § 4; 1969 ex.s. c 168 § 34; 1967 c 238 § 46.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1985 c 372: See note following RCW 70.98.050.

70.94.332 Enforcement actions by department—Notice to violators. At least thirty days prior to the commencement of any formal enforcement action under RCW 70.94.430 and 70.94.431, the department of ecology shall cause written notice to be served upon the alleged violator or violators. The notice shall specify the provision of this chapter or the rule or regulation alleged to be violated, and the facts alleged to constitute a violation thereof, and may include an order that necessary corrective action be taken within a reasonable time. In lieu of an order, the department may require that the alleged violator or violators appear before it for the purpose of providing the department information pertaining to the violation or the charges complained of. Every notice of violation shall offer to the alleged violator an opportunity to meet with the department prior to the commencement of enforcement action. [1991 c 199 § 711; 1987 c 109 § 18; 1967 c 238 § 47.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Appeal of orders under RCW 70.94.332: RCW 43.21B.310.

70.94.335 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The

department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 15.]

Severability—1994 c 257: See note following RCW 36.70A.270.

70.94.350 Contracts, agreements for use of personnel by department—Reimbursement—Merit system regulations waived. The department is authorized to contract for or otherwise agree to the use of personnel of municipal corporations or other agencies or private persons; and the department is further authorized to reimburse such municipal corporations or agencies for the employment of such personnel. Merit system regulations or standards for the employment of personnel may be waived for personnel hired under contract as provided for in this section. The department shall provide, within available appropriations, for the scientific, technical, legal, administrative, and other necessary services and facilities for performing the functions under this chapter. [1987 c 109 § 40; 1979 c 141 § 122; 1967 c 238 § 45; 1961 c 188 § 6.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.370 Powers and rights of governmental units and persons are not limited by act or recommendations. No provision of this chapter or any recommendation of the state board or of any local or regional air pollution program is a limitation:

(1) On the power of any city, town or county to declare, prohibit and abate nuisances.

(2) On the power of the secretary of social and health services to provide for the protection of the public health under any authority presently vested in that office or which may be hereafter prescribed by law.

(3) On the power of a state agency in the enforcement, or administration of any provision of law which it is specifically permitted or required to enforce or administer.

(4) On the right of any person to maintain at any time any appropriate action for relief against any air pollution. [1979 c 141 § 123; 1967 c 238 § 59; 1961 c 188 § 8.]

70.94.380 Emission control requirements. (1) Every activated authority operating an air pollution control program shall have requirements for the control of emissions which are no less stringent than those adopted by the department of ecology for the geographic area in which such air pollution control program is located. Less stringent requirements than compelled by this section may be included in a local or regional air pollution control program only after approval by the department of ecology following demonstration to the satisfaction of the department of ecology that the proposed requirements are consistent with the purposes of this chapter: PROVIDED, That such approval shall be preceded by public hearing, of which notice has been given in accordance with chapter 42.30 RCW. The department of ecology, upon receiving evidence that conditions have changed or that additional information is relevant to a decision with respect to the requirements for emission control, may, after public hearing

(2004 Ed.)

on due notice, withdraw any approval previously given to a less stringent local or regional requirement.

[(2)] Nothing in this chapter shall be construed to prevent a local or regional air pollution control authority from adopting and enforcing more stringent emission control requirements than those adopted by the department of ecology and applicable within the jurisdiction of the local or regional air pollution control authority, except that the emission performance standards for new wood stoves and the opacity levels for residential solid fuel burning devices shall be statewide. [1987 c 405 § 14; 1979 ex.s. c 30 § 13; 1969 ex.s. c 168 § 36; 1967 c 238 § 50.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.385 State financial aid—Application for—Requirements. (1) Any authority may apply to the department for state financial aid. The department shall annually establish the amount of state funds available for the local authorities taking into consideration available federal and state funds. The establishment of funding amounts shall be consistent with federal requirements and local maintenance of effort necessary to carry out the provisions of this chapter. Any such aid shall be expended from the general fund or from other appropriations as the legislature may provide for this purpose: PROVIDED, That federal funds shall be utilized to the maximum unless otherwise approved by the department: PROVIDED FURTHER, That the amount of state funds provided to local authorities during the previous year shall not be reduced without a public notice or public hearing held by the department if requested by the affected local authority, unless such changes are the direct result of a reduction in the available federal funds for air pollution control programs.

(2) Before any such application is approved and financial aid is given or approved by the department, the authority shall demonstrate to the satisfaction of the department that it is fulfilling the requirements of this chapter. If the department has not adopted ambient air quality standards and objectives as permitted by RCW 70.94.331, the authority shall demonstrate to the satisfaction of the department that it is acting in good faith and doing all that is possible and reasonable to control and prevent air pollution within its jurisdictional boundaries and to carry out the purposes of this chapter.

(3) The department shall adopt rules requiring the submission of such information by each authority including the submission of its proposed budget and a description of its program in support of the application for state financial aid as necessary to enable the department to determine the need for state aid. [1991 c 199 § 712; 1987 c 109 § 41; 1969 ex.s. c 168 § 37; 1967 c 238 § 51.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.390 Hearing upon activation of authority—Finding—Assumption of jurisdiction by department—Expenses. The department may, at any time and on its own motion, hold a hearing to determine if the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist in any

area of the state. Notice of such hearing shall be conducted in accordance with chapter 42.30 RCW and chapter 34.05 RCW. If at such hearing the department finds that air pollution exists or is likely to occur in a particular area, and that the purposes of this chapter and the public interest will be best served by the activation of an authority it shall designate the boundaries of such area and set forth in a report to the appropriate county or counties recommendations for the activation of an authority: PROVIDED, That if at such hearing the department determines that the activation of an authority is not practical or feasible for the reason that a local or regional air pollution control program cannot be successfully established or operated due to unusual circumstances and conditions, but that the control and/or prevention of air pollution is necessary for the purposes of this chapter and the public interest, it may assume jurisdiction and so declare by order. Such order shall designate the geographic area in which, and the effective date upon which, the department will exercise jurisdiction for the control and/or prevention of air pollution. The department shall exercise its powers and duties in the same manner as if it had assumed authority under RCW 70.94.410.

All expenses incurred by the department in the control and prevention of air pollution in any county pursuant to the provisions of RCW 70.94.390 and 70.94.410 shall constitute a claim against such county. The department shall certify the expenses to the auditor of the county, who promptly shall issue his warrant on the county treasurer payable out of the current expense fund of the county. In the event that the amount in the current expense fund of the county is not adequate to meet the expenses incurred by the department, the department shall certify to the state treasurer that they have a prior claim on any money in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer as provided in RCW 82.08.170. In the event that the amount in the "liquor excise tax fund" that is to be apportioned to that county by the state treasurer is not adequate to meet the expenses incurred by the department, the department shall certify to the state treasurer that they have a prior claim on any excess funds from the liquor revolving fund that are to be distributed to that county as provided in RCW 66.08.190 through 66.08.220. All moneys that are collected as provided in this section shall be placed in the general fund in the account of the office of air programs of the department. [1987 c 109 § 42; 1969 ex.s. c 168 § 38; 1967 c 238 § 52.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.395 Air contaminant sources—Regulation by department; authorities may be more stringent—Hearing—Standards. If the department finds, after public hearing upon due notice to all interested parties, that the emissions from a particular type or class of air contaminant source should be regulated on a statewide basis in the public interest and for the protection of the welfare of the citizens of the state, it may adopt and enforce rules to control and/or prevent the emission of air contaminants from such source. An authority may, after public hearing and a finding by the board of a need for more stringent rules than those adopted by the department under this section, propose the adoption of such rules by the department for the control of emissions from the

particular type or class of air contaminant source within the geographical area of the authority. The department shall hold a public hearing and shall adopt the proposed rules within the area of the requesting authority, unless it finds that the proposed rules are inconsistent with the rules adopted by the department under this section. When such standards are adopted by the department it shall delegate solely to the requesting authority all powers necessary for their enforcement at the request of the authority. If after public hearing the department finds that the regulation on a statewide basis of a particular type or class of air contaminant source is no longer required for the public interest and the protection of the welfare of the citizens of the state, the department may relinquish exclusive jurisdiction over such source. [1991 c 199 § 713; 1987 c 109 § 43; 1969 ex.s. c 168 § 39; 1967 c 238 § 53.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.400 Order activating authority—Filing—Hearing—Amendment of order. If, at the end of ninety days after the department issues a report as provided for in RCW 70.94.390, to appropriate county or counties recommending the activation of an authority such county or counties have not performed those actions recommended by the department, and the department is still of the opinion that the activation of an authority is necessary for the prevention, abatement and control of air pollution which exists or is likely to exist, then the department may, at its discretion, issue an order activating an authority. Such order, a certified copy of which shall be filed with the secretary of state, shall specify the participating county or counties and the effective date by which the authority shall begin to function and exercise its powers. Any authority activated by order of the department shall choose the members of its board as provided in RCW 70.94.100 and begin to function in the same manner as if it had been activated by resolutions of the county or counties included within its boundaries. The department may, upon due notice to all interested parties, conduct a hearing in accordance with chapter 42.30 RCW and chapter 34.05 RCW within six months after the order was issued to review such order and to ascertain if such order is being carried out in good faith. At such time the department may amend any such order issued if it is determined by the department that such order is being carried out in bad faith or the department may take the appropriate action as is provided in RCW 70.94.410. [1987 c 109 § 44; 1969 ex.s. c 168 § 40; 1967 c 238 § 54.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.405 Air pollution control authority—Review by department of program. At any time after an authority has been activated for no less than one year, the department may, on its own motion, conduct a hearing held in accordance with chapters 42.30 and 34.05 RCW, to determine whether or not the air pollution prevention and control program of such authority is being carried out in good faith and is as effective as possible. If at such hearing the department finds that such authority is not carrying out its air pollution control or prevention program in good faith, is not doing all that is possible and reasonable to control and/or prevent air pollution within

the geographical area over which it has jurisdiction, or is not carrying out the provisions of this chapter, it shall set forth in a report or order to the appropriate authority: (1) Its recommendations as to how air pollution prevention and/or control might be more effectively accomplished; and (2) guidelines which will assist the authority in carrying out the recommendations of the department. [1991 c 199 § 714; 1987 c 109 § 45; 1969 ex.s. c 168 § 41; 1967 c 238 § 55.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.410 Air pollution control authority—Assumption of control by department. (1) If, after thirty days from the time that the department issues a report or order to an authority under RCW 70.94.400 and 70.94.405, such authority has not taken action which indicates that it is attempting in good faith to implement the recommendations or actions of the department as set forth in the report or order, the department may, by order, declare as null and void any or all ordinances, resolutions, rules or regulations of such authority relating to the control and/or prevention of air pollution, and at such time the department shall become the sole body with authority to make and enforce rules and regulations for the control and/or prevention of air pollution within the geographical area of such authority. If this occurs, the department may assume all those powers which are given to it by law to effectuate the purposes of this chapter. The department may, by order, continue in effect and enforce provisions of the ordinances, resolutions, or rules of such authority which are not less stringent than those requirements which the department may have found applicable to the area under RCW 70.94.331, until such time as the department adopts its own rules. Any rules promulgated by the department shall be subject to the provisions of chapter 34.05 RCW. Any enforcement actions shall be subject to RCW 43.21B.300 or 43.21B.310.

(2) No provision of this chapter is intended to prohibit any authority from reestablishing its air pollution control program which meets with the approval of the department and which complies with the purposes of this chapter and with applicable rules and orders of the department.

(3) Nothing in this chapter shall prevent the department from withdrawing the exercise of its jurisdiction over an authority upon its own motion if the department has found at a hearing held in accordance with chapters 42.30 and 34.05 RCW, that the air pollution prevention and control program of such authority will be carried out in good faith, that such program will do all that is possible and reasonable to control and/or prevent air pollution within the geographical area over which it has jurisdiction, and that the program complies with the provisions of this chapter. Upon the withdrawal of the department, the department shall prescribe certain recommendations as to how air pollution prevention and/or control is to be effectively accomplished and guidelines which will assist the authority in carrying out the recommendations of the department. [1991 c 199 § 715; 1987 c 109 § 46; 1969 ex.s. c 168 § 42; 1967 c 238 § 56.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

(2004 Ed.)

70.94.420 State departments and agencies to cooperate with department and authorities. It is declared to be the intent of the legislature of the state of Washington that any state department or agency having jurisdiction over any building, installation, other property, or other activity creating or likely to create significant air pollution shall cooperate with the department and with air pollution control agencies in preventing and/or controlling the pollution of the air in any area insofar as the discharge of air contaminants from or by such building, installation, other property, or activity may cause or contribute to pollution of the air in such area. Such state department or agency shall comply with the provisions of this chapter and with any ordinance, resolution, rule or regulation issued hereunder in the same manner as any other person subject to such laws or rules. [1991 c 199 § 716; 1987 c 109 § 47; 1969 ex.s. c 168 § 44; 1967 c 238 § 58.]

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.422 Department of health powers regarding radionuclides—Energy facility site evaluation council authority over permit program sources. (1) The department of health shall have all the enforcement powers as provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to emissions of radionuclides. This section does not preclude the department of ecology from exercising its authority under this chapter.

(2) Permits for energy facilities subject to chapter 80.50 RCW shall be issued by the energy facility site evaluation council. However, the permits become effective only if the governor approves an application for certification and executes a certification agreement under chapter 80.50 RCW. The council shall have all powers necessary to administer an operating permits program pertaining to such facilities, consistent with applicable air quality standards established by the department or local air pollution control authorities, or both, and to obtain the approval of the United States environmental protection agency. The council's powers include, but are not limited to, all of the enforcement powers provided in RCW 70.94.332, 70.94.425, 70.94.430, 70.94.431 (1) through (7), and 70.94.435 with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. To the extent not covered under RCW 80.50.071, the council may collect fees as granted to delegated local air authorities under RCW 70.94.152, 70.94.161 (14) and (15), 70.94.162, and 70.94.154(7) with respect to permit program sources required to obtain certification from the council under chapter 80.50 RCW. The council and the department shall each establish procedures that provide maximum coordination and avoid duplication between the two agencies in carrying out the requirements of this chapter. [1993 c 252 § 7.]

70.94.425 Restraining orders—Injunctions. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation or order issued thereunder, the governing body or board of the department, after notice to such person and an opportunity to com-

ply, may petition the superior court of the county wherein the violation is alleged to be occurring or to have occurred for a restraining order or a temporary or permanent injunction or another appropriate order. [1987 c 109 § 48; 1967 c 238 § 60.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.430 Penalties. (1) Any person who knowingly violates any of the provisions of chapter 70.94 or 70.120 RCW, or any ordinance, resolution, or regulation in force pursuant thereto is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than ten thousand dollars, or by imprisonment in the county jail for not more than one year, or by both for each separate violation.

(2) Any person who negligently releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who at the time negligently places another person in imminent danger of death or substantial bodily harm is guilty of a gross misdemeanor and shall, upon conviction, be punished by a fine of not more than ten thousand dollars, or by imprisonment for not more than one year, or both.

(3) Any person who knowingly releases into the ambient air any substance listed by the department of ecology as a hazardous air pollutant, other than in compliance with the terms of an applicable permit or emission limit, and who knows at the time that he or she thereby places another person in imminent danger of death or substantial bodily harm, is guilty of a class C felony and shall, upon conviction, be punished by a fine of not less than fifty thousand dollars, or by imprisonment for not more than five years, or both.

(4) Any person who knowingly fails to disclose a potential conflict of interest under RCW 70.94.100 is guilty of a gross misdemeanor, and upon conviction thereof shall be punished by a fine of not more than five thousand dollars. [2003 c 53 § 355; 1991 c 199 § 310; 1984 c 255 § 1; 1973 1st ex.s. c 176 § 1; 1967 c 238 § 61.]

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

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.431 Civil penalties—Excusable excess emissions. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, and in addition to or as an alternate to any other penalty provided by law, any person who violates any of the provisions of chapter 70.94 RCW, chapter 70.120 RCW, or any of the rules in force under such chapters may incur a civil penalty in an amount not to exceed ten thousand dollars per day for each violation. Each such violation shall be a separate and distinct offense, and in case of a continuing violation, each day's continuance shall be a separate and distinct violation.

Any person who fails to take action as specified by an order issued pursuant to this chapter shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance.

(2) Penalties incurred but not paid shall accrue interest, beginning on the ninety-first day following the date that the

penalty becomes due and payable, at the highest rate allowed by RCW 19.52.020 on the date that the penalty becomes due and payable. If violations or penalties are appealed, interest shall not begin to accrue until the thirty-first day following final resolution of the appeal.

The maximum penalty amounts established in this section may be increased annually to account for inflation as determined by the state office of the economic and revenue forecast council.

(3) Each act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the same penalty. The penalties provided in this section shall be imposed pursuant to RCW 43.21B.300.

(4) All penalties recovered under this section by the department shall be paid into the state treasury and credited to the air pollution control account established in RCW 70.94.015 or, if recovered by the authority, shall be paid into the treasury of the authority and credited to its funds. If a prior penalty for the same violation has been paid to a local authority, the penalty imposed by the department under subsection (1) of this section shall be reduced by the amount of the payment.

(5) To secure the penalty incurred under this section, the state or the authority shall have a lien on any vessel used or operated in violation of this chapter which shall be enforced as provided in RCW 60.36.050.

(6) Public or private entities that are recipients or potential recipients of department grants, whether for air quality related activities or not, may have such grants rescinded or withheld by the department for failure to comply with provisions of this chapter.

(7) In addition to other penalties provided by this chapter, persons knowingly under-reporting emissions or other information used to set fees, or persons required to pay emission or permit fees who are more than ninety days late with such payments may be subject to a penalty equal to three times the amount of the original fee owed.

(8) By January 1, 1992, the department shall develop rules for excusing excess emissions from enforcement action if such excess emissions are unavoidable. The rules shall specify the criteria and procedures for the department and local air authorities to determine whether a period of excess emissions is excusable in accordance with the state implementation plan. [1995 c 403 § 630; 1991 c 199 § 311; 1990 c 157 § 1; 1987 c 109 § 19; 1984 c 255 § 2; 1973 1st ex.s. c 176 § 2; 1969 ex.s. c 168 § 53.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Finding—1991 c 199: See note following RCW 70.94.011.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.435 Additional means for enforcement of chapter. As an additional means of enforcing this chapter, the governing body or board may accept an assurance of discontinuance of any act or practice deemed in violation of this chapter or of any ordinance, resolution, rule or regulation adopted pursuant hereto, from any person engaging in, or

who has engaged in, such act or practice. Any such assurance shall specify a time limit during which such discontinuance is to be accomplished. Failure to perform the terms of any such assurance shall constitute prima facie proof of a violation of this chapter or the ordinances, resolutions, rules or regulations, or order issued pursuant thereto, which make the alleged act or practice unlawful for the purpose of securing any injunction or other relief from the superior court as provided in RCW 70.94.425. [1967 c 238 § 62.]

70.94.440 Short title. This chapter may be known and cited as the "Washington Clean Air Act". [1967 c 238 § 63.]

Short title—1991 c 199: "This chapter shall be known and may be cited as the clean air Washington act." [1991 c 199 § 721.]

70.94.445 Air pollution control facilities—Tax exemptions and credits. See chapter 82.34 RCW.

70.94.450 Wood stoves—Policy. In the interest of the public health and welfare and in keeping with the objectives of RCW 70.94.011, the legislature declares it to be the public policy of the state to control, reduce, and prevent air pollution caused by wood stove emissions. It is the state's policy to reduce wood stove emissions by encouraging the department of ecology to continue efforts to educate the public about the effects of wood stove emissions, other heating alternatives, and the desirability of achieving better emission performance and heating efficiency from wood stoves. The legislature further declares that: (1) The purchase of certified wood stoves will not solve the problem of pollution caused by wood stove emissions; and (2) the reduction of air pollution caused by wood stove emissions will only occur when wood stove users adopt proper methods of wood burning. [1987 c 405 § 1.]

Severability—1987 c 405: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 405 § 18.]

70.94.453 Wood stoves—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.94.453 through *70.94.487:

(1) "Department" means the department of ecology.

(2) "Wood stove" means a solid fuel burning device other than a fireplace not meeting the requirements of RCW 70.94.457, including any fireplace insert, wood stove, wood burning heater, wood stick boiler, coal-fired furnace, coal stove, or similar device burning any solid fuel used for aesthetic or space-heating purposes in a private residence or commercial establishment, which has a heat input less than one million British thermal units per hour. The term "wood stove" does not include wood cook stoves.

(3) "Fireplace" means: (a) Any permanently installed masonry fireplace; or (b) any factory-built metal solid fuel burning device designed to be used with an open combustion chamber and without features to control the air to fuel ratio.

(4) "New wood stove" means: (a) A wood stove that is sold at retail, bargained, exchanged, or given away for the first time by the manufacturer, the manufacturer's dealer or agency, or a retailer; and (b) has not been so used to have become what is commonly known as "second hand" within the ordinary meaning of that term.

(2004 Ed.)

(5) "Solid fuel burning device" means any device for burning wood, coal, or any other nongaseous and nonliquid fuel, including a wood stove and fireplace.

(6) "Authority" means any air pollution control agency whose jurisdictional boundaries are coextensive with the boundaries of one or more counties.

(7) "Opacity" means the degree to which an object seen through a plume is obscured, stated as a percentage. The methods approved by the department in accordance with RCW 70.94.331 shall be used to establish opacity for the purposes of this chapter. [1987 c 405 § 2.]

***Reviser's note:** RCW 70.94.487 was repealed by 1988 c 186 § 16, effective June 30, 1988.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.455 Residential and commercial construction—Burning and heating device standards. After January 1, 1992, no used solid fuel burning device shall be installed in new or existing buildings unless such device is either Oregon department of environmental quality phase II or United States environmental protection agency certified or a pellet stove either certified or exempt from certification by the United States environmental protection agency.

(1) By July 1, 1992, the state building code council shall adopt rules requiring an adequate source of heat other than wood stoves in all new and substantially remodeled residential and commercial construction. This rule shall apply (a) to areas designated by a county to be an urban growth area under chapter 36.70A RCW; and (b) to areas designated by the environmental protection agency as being in nonattainment for particulate matter.

(2) For purposes of this section, "substantially remodeled" means any alteration or restoration of a building exceeding sixty percent of the appraised value of such building within a twelve-month period. [1991 c 199 § 503.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.457 Solid fuel burning devices—Emission performance standards. The department of ecology shall establish by rule under chapter 34.05 RCW:

(1) Statewide emission performance standards for new solid fuel burning devices. Notwithstanding any other provision of this chapter which allows an authority to adopt more stringent emission standards, no authority shall adopt any emission standard for new solid fuel burning devices other than the statewide standard adopted by the department under this section.

(a) After January 1, 1995, no solid fuel burning device shall be offered for sale in this state to residents of this state that does not meet the following particulate air contaminant emission standards under the test methodology of the United States environmental protection agency in effect on January 1, 1991, or an equivalent standard under any test methodology adopted by the United States environmental protection agency subsequent to such date: (i) Two and one-half grams per hour for catalytic wood stoves; and (ii) four and one-half grams per hour for all other solid fuel burning devices. For purposes of this subsection, "equivalent" shall mean the emissions limits specified in this subsection multiplied by a statistically reliable conversion factor determined by the

department that compares the difference between the emission test methodology established by the United States environmental protection agency prior to May 15, 1991, with the test methodology adopted subsequently by the agency. Subsection (a) of this subsection does not apply to fireplaces.

(b) After January 1, 1997, no fireplace, except masonry fireplaces, shall be offered for sale unless such fireplace meets the 1990 United States environmental protection agency standards for wood stoves or equivalent standard that may be established by the state building code council by rule. Prior to January 1, 1997, the state building code council shall establish by rule a methodology for the testing of factory-built fireplaces. The methodology shall be designed to achieve a particulate air emission standard equivalent to the 1990 United States environmental protection agency standard for wood stoves. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers.

(c) Prior to January 1, 1997, the state building code council shall establish by rule design standards for the construction of new masonry fireplaces in Washington state. In developing the rules, the council shall include on the technical advisory committee at least one representative from the masonry fireplace builders and at least one representative of the factory-built fireplace manufacturers. It shall be the goal of the council to develop design standards that generally achieve reductions in particulate air contaminant emissions commensurate with the reductions being achieved by factory-built fireplaces at the time the standard is established.

(d) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991.

(e) Subsection (1)(a) of this section shall not apply to fireplaces.

(f) Notwithstanding (a) of this subsection, the department is authorized to adopt, by rule, emission standards adopted by the United States environmental protection agency for new wood stoves sold at retail. For solid fuel burning devices for which the United States environmental protection agency has not established emission standards, the department may exempt or establish, by rule, statewide standards including emission levels and test procedures for such devices and such emission levels and test procedures shall be equivalent to emission levels per pound per hour burned for other new wood stoves and fireplaces regulated under this subsection.

(2) A program to:

(a) Determine whether a new solid fuel burning device complies with the statewide emission performance standards established in subsection (1) of this section; and

(b) Approve the sale of devices that comply with the statewide emission performance standards. [1995 c 205 § 3; 1991 c 199 § 501; 1987 c 405 § 4.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.460 Sale of unapproved wood stoves—Prohibited. After July 1, 1988, no person shall sell, offer to sell, or knowingly advertise to sell a new wood stove in this state to a resident of this state unless the wood stove has been approved by the department under the program established under RCW 70.94.457. [1995 c 205 § 4; 1987 c 405 § 7.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.463 Sale of unapproved wood stoves—Penalty. After July 1, 1988, any person who sells, offers to sell, or knowingly advertises to sell a new wood stove in this state in violation of RCW 70.94.460 shall be subject to the penalties and enforcement actions under this chapter. [1987 c 405 § 8.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.467 Sale of unapproved wood stoves—Application of law to advertising media. Nothing in RCW 70.94.460 or 70.94.463 shall apply to a radio station, television station, publisher, printer, or distributor of a newspaper, magazine, billboard, or other advertising medium that accepts advertising in good faith and without knowledge of its violation of RCW 70.94.453 through *70.94.487. [1987 c 405 § 12.]

***Reviser's note:** RCW 70.94.487 was repealed by 1988 c 186 § 16, effective June 30, 1988.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.470 Residential solid fuel burning devices—Opacity levels—Enforcement and public education. (1) The department shall establish, by rule under chapter 34.05 RCW, (a) a statewide opacity level of twenty percent for residential solid fuel burning devices for the purpose of enforcement on a complaint basis and (b) a statewide opacity of ten percent for purposes of public education.

(2) Notwithstanding any other provision of this chapter which may allow an authority to adopt a more stringent opacity level, no authority shall adopt or enforce an opacity level for solid fuel burning devices other than established in this section.

(3) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991. [1991 c 199 § 502; 1987 c 405 § 5.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.473 Limitations on burning wood for heat. (1) Any person in a residence or commercial establishment which has an adequate source of heat without burning wood shall:

(a) Not burn wood in any solid fuel burning device whenever the department has determined under RCW 70.94.715 that any air pollution episode exists in that area;

(b) Not burn wood in any solid fuel burning device except those which are either Oregon department of environmental quality phase II or United States environmental protection agency certified or certified by the department under RCW 70.94.457(1) or a pellet stove either certified or issued

an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, in the geographical area and for the period of time that a first stage of impaired air quality has been determined, by the department or any authority, for that area. A first stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of sixty micrograms per cubic meter measured on a twenty-four hour average or when carbon monoxide is at an ambient level of eight parts of contaminant per million parts of air by volume measured on an eight-hour average; and

(c) Not burn wood in any solid fuel burning device in a geographical area and for the period of time that a second stage of impaired air quality has been determined by the department or any authority, for that area. A second stage of impaired air quality is reached when particulates ten microns and smaller in diameter are at an ambient level of one hundred five micrograms per cubic meter measured on a twenty-four hour average.

(2) Actions of the department and local air pollution control authorities under this section shall preempt actions of other state agencies and local governments for the purposes of controlling air pollution from solid fuel burning devices, except where authorized by chapter 199, Laws of 1991. [1998 c 342 § 8; 1995 c 205 § 1; 1991 c 199 § 504; 1990 c 128 § 2; 1987 c 405 § 6.]

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.475 Liability of condominium owners' association or resident association. A condominium owners' association or an association formed by residents of a multiple-family dwelling are not liable for violations of RCW 70.94.473 by a resident of a condominium or multiple-family dwelling. The associations shall cooperate with local air pollution control authorities to acquaint residents with the provisions of this section. [1990 c 157 § 2.]

70.94.477 Limitations on use of solid fuel burning devices. (1) Unless allowed by rule, under chapter 34.05 RCW, a person shall not cause or allow any of the following materials to be burned in any residential solid fuel burning device:

- (a) Garbage;
- (b) Treated wood;
- (c) Plastics;
- (d) Rubber products;
- (e) Animals;
- (f) Asphaltic products;
- (g) Waste petroleum products;
- (h) Paints; or
- (i) Any substance, other than properly seasoned fuel wood, which normally emits dense smoke or obnoxious odors.

(2) For the sole purpose of a contingency measure to meet the requirements of section 172(c)(9) of the federal clean air act, a local authority or the department may prohibit the use of solid fuel burning devices, except fireplaces as defined in RCW 70.94.453(3), wood stoves meeting the standards set forth in RCW 70.94.457 or pellet stoves either cer-

tified or issued an exemption by the United States environmental protection agency in accordance with Title 40, Part 60 of the code of federal regulations, if the United States environmental protection agency, in consultation with the department and the local authority makes written findings that:

(a) The area has failed to make reasonable further progress or attain or maintain a national ambient air quality standard; and

(b) Emissions from solid fuel burning devices from a particular geographic area are a contributing factor to such failure to make reasonable further progress or attain or maintain a national ambient air quality standard.

A prohibition issued by a local authority or the department under this subsection shall not apply to a person in a residence or commercial establishment that does not have an adequate source of heat without burning wood. [1995 c 205 § 2; 1990 c 128 § 3; 1987 c 405 § 9.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.480 Wood stove education program. (1) The department of ecology shall establish a program to educate wood stove dealers and the public about:

(a) The effects of wood stove emissions on health and air quality;

(b) Methods of achieving better efficiency and emission performance from wood stoves;

(c) Wood stoves that have been approved by the department;

(d) The benefits of replacing inefficient wood stoves with stoves approved under RCW 70.94.457.

(2) Persons selling new wood stoves shall distribute and verbally explain educational materials describing when a stove can and cannot be legally used to customers purchasing new wood stoves. [1990 c 128 § 6; 1987 c 405 § 3.]

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.483 Wood stove education and enforcement account created—Fee imposed on solid fuel burning device sales. (1) The wood stove education and enforcement account is hereby created in the state treasury. Money placed in the account shall include all money received under subsection (2) of this section and any other money appropriated by the legislature. Money in the account shall be spent for the purposes of the wood stove education program established under RCW 70.94.480 and for enforcement of the wood stove program, and shall be subject to legislative appropriation. However, during the 2003-05 fiscal biennium, the legislature may transfer from the wood stove education and enforcement account to the air pollution control account such amounts as specified in the omnibus operating budget bill.

(2) The department of ecology, with the advice of the advisory committee, shall set a flat fee of thirty dollars, on the retail sale, as defined in RCW 82.04.050, of each solid fuel burning device after January 1, 1992. The fee shall be imposed upon the consumer and shall not be subject to the retail sales tax provisions of chapters 82.08 and 82.12 RCW. The fee may be adjusted annually above thirty dollars to account for inflation as determined by the state office of the economic and revenue forecast council. The fee shall be collected by the department of revenue in conjunction with the

retail sales tax under chapter 82.08 RCW. If the seller fails to collect the fee herein imposed or fails to remit the fee to the department of revenue in the manner prescribed in chapter 82.08 RCW, the seller shall be personally liable to the state for the amount of the fee. The collection provisions of chapter 82.32 RCW shall apply. The department of revenue shall deposit fees collected under this section in the wood stove education and enforcement account. [2003 1st sp.s. c 25 § 932; 1991 sp.s. c 13 §§ 64, 65; 1991 c 199 § 505; 1990 c 128 § 5; 1987 c 405 § 10.]

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

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Finding—1991 c 199: See note following RCW 70.94.011.

Severability—1987 c 405: See note following RCW 70.94.450.

70.94.510 Policy to cooperate with federal government. It is declared to be the policy of the state of Washington through the department of ecology to cooperate with the federal government in order to insure the coordination of the provisions of the federal and state clean air acts, and the department is authorized and directed to implement and enforce the provisions of this chapter in carrying out this policy as follows:

(1) To accept and administer grants from the federal government for carrying out the provisions of this chapter.

(2) To take all action necessary to secure to the state the benefits of the federal clean air act. [1987 c 109 § 49; 1969 ex.s. c 168 § 45.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

70.94.521 Transportation demand management—Findings. The legislature finds that automotive traffic in Washington's metropolitan areas is the major source of emissions of air contaminants. This air pollution causes significant harm to public health, causes damage to trees, plants, structures, and materials and degrades the quality of the environment.

Increasing automotive traffic is also aggravating traffic congestion in Washington's metropolitan areas. This traffic congestion imposes significant costs on Washington's businesses, governmental agencies, and individuals in terms of lost working hours and delays in the delivery of goods and services. Traffic congestion worsens automobile-related air pollution, increases the consumption of fuel, and degrades the habitability of many of Washington's cities and suburban areas. The capital and environmental costs of fully accommodating the existing and projected automobile traffic on roads and highways are prohibitive. Decreasing the demand for vehicle trips is significantly less costly and at least as effective in reducing traffic congestion and its impacts as constructing new transportation facilities such as roads and bridges, to accommodate increased traffic volumes.

The legislature also finds that increasing automotive transportation is a major factor in increasing consumption of gasoline and, thereby, increasing reliance on imported sources of petroleum. Moderating the growth in automotive travel is essential to stabilizing and reducing dependence on

imported petroleum and improving the nation's energy security.

The legislature further finds that reducing the number of commute trips to work made via single-occupant cars and light trucks is an effective way of reducing automobile-related air pollution, traffic congestion, and energy use. Major employers have significant opportunities to encourage and facilitate reducing single-occupant vehicle commuting by employees. In addition, the legislature also recognizes the importance of increasing individual citizens' awareness of air quality, energy consumption, and traffic congestion, and the contribution individual actions can make towards addressing these issues.

The intent of this chapter is to require local governments in those counties experiencing the greatest automobile-related air pollution and traffic congestion to develop and implement plans to reduce single-occupant vehicle commute trips. Such plans shall require major employers and employers at major worksites to implement programs to reduce single-occupant vehicle commuting by employees at major worksites. Local governments in counties experiencing significant but less severe automobile-related air pollution and traffic congestion may implement such plans. State agencies shall implement programs to reduce single-occupant vehicle commuting at all major worksites throughout the state. [1997 c 250 § 1; 1991 c 202 § 10.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.524 Transportation demand management—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "A major employer" means a private or public employer that employs one hundred or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for at least twelve continuous months during the year.

(2) "Major worksite" means a building or group of buildings that are on physically contiguous parcels of land or on parcels separated solely by private or public roadways or rights of way, and at which there are one hundred or more full-time employees of one or more employers, who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays, for at least twelve continuous months.

(3) "Commute trip reduction zones" mean areas, such as census tracts or combinations of census tracts, within a jurisdiction that are characterized by similar employment density, population density, level of transit service, parking availability, access to high occupancy vehicle facilities, and other factors that are determined to affect the level of single occupancy vehicle commuting.

(4) "Commute trip" means trips made from a worker's home to a worksite during the peak period of 6:00 a.m. to 9:00 a.m. on weekdays.

(5) "Proportion of single-occupant vehicle commute trips" means the number of commute trips made by single-occupant automobiles divided by the number of full-time employees.

(6) "Commute trip vehicle miles traveled per employee" means the sum of the individual vehicle commute trip lengths

in miles over a set period divided by the number of full-time employees during that period.

(7) "Base year" means the year January 1, 1992, through December 31, 1992, on which goals for vehicle miles traveled and single-occupant vehicle trips shall be based. Base year goals may be determined using the 1990 journey-to-work census data projected to the year 1992 and shall be consistent with the growth management act. The task force shall establish a method to be used by jurisdictions to determine reductions of vehicle miles traveled. [1991 c 202 § 11.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.527 Transportation demand management—Requirements for counties and cities. (1) Each county with a population over one hundred fifty thousand, and each city or town within those counties containing a major employer shall, by October 1, 1992, adopt by ordinance and implement a commute trip reduction plan for all major employers. The plan shall be developed in cooperation with local transit agencies, regional transportation planning organizations as established in RCW 47.80.020, major employers, and the owners of and employers at major worksites. The plan shall be designed to achieve reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee by employees of major public and private sector employers in the jurisdiction.

(2) All other counties, and cities and towns in those counties, may adopt and implement a commute trip reduction plan.

(3) The department of ecology may, after consultation with the department of transportation, as part of the state implementation plan for areas that do not attain the national ambient air quality standards for carbon monoxide or ozone, require municipalities other than those identified in subsection (1) of this section to adopt and implement commute trip reduction plans if the department determines that such plans are necessary for attainment of said standards.

(4) A commute trip reduction plan shall be consistent with the guidelines established under RCW 70.94.537 and shall include but is not limited to (a) goals for reductions in the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee; (b) designation of commute trip reduction zones; (c) requirements for major public and private sector employers to implement commute trip reduction programs; (d) a commute trip reduction program for employees of the county, city, or town; (e) a review of local parking policies and ordinances as they relate to employers and major worksites and any revisions necessary to comply with commute trip reduction goals and guidelines; (f) an appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain waiver or modification of those requirements; and (g) means for determining base year values of the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee and progress toward meeting commute trip reduction plan goals on an annual basis. Goals which are established shall take into account existing transportation demand management efforts which are made by major

employers. Each jurisdiction shall ensure that employers shall receive full credit for the results of transportation demand management efforts and commute trip reduction programs which have been implemented by major employers prior to the base year. The goals for miles traveled per employee for all major employers shall not be less than a fifteen percent reduction from the worksite base year value or the base year value for the commute trip reduction zone in which their worksite is located by January 1, 1995, twenty percent reduction from the base year values by January 1, 1997, twenty-five percent reduction from the base year values by January 1, 1999, and a thirty-five percent reduction from the base year values by January 1, 2005.

(5) A county, city, or town may, as part of its commute trip reduction plan, require commute trip reduction programs for employers with ten or more full time employees at major worksites in federally designated nonattainment areas for carbon monoxide and ozone. The county, city or town shall develop the programs in cooperation with affected employers and provide technical assistance to the employers in implementing such programs.

(6) The commute trip reduction plans adopted by counties, cities, and towns under this chapter shall be consistent with and may be incorporated in applicable state or regional transportation plans and local comprehensive plans and shall be coordinated, and consistent with, the commute trip reduction plans of counties, cities, or towns with which the county, city, or town has, in part, common borders or related regional issues. Such regional issues shall include assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction. Counties, cities, or towns adopting commute trip reduction plans may enter into agreements through the inter-local cooperation act or by resolution or ordinance as appropriate with other jurisdictions, local transit agencies, or regional transportation planning organizations to coordinate the development and implementation of such plans. Transit agencies shall work with counties, cities, and towns to take into account the location of major employer worksites when planning transit service changes or the expansion of public transportation services. Counties, cities, or towns adopting a commute trip reduction plan shall review it annually and revise it as necessary to be consistent with applicable plans developed under RCW 36.70A.070.

(7) Each county, city, or town implementing a commute trip reduction program shall, within thirty days submit a summary of its plan along with certification of adoption to the commute trip reduction task force established under RCW 70.94.537.

(8) Each county, city, or town implementing a commute trip reduction program shall submit an annual progress report to the commute trip reduction task force established under RCW 70.94.537. The report shall be due July 1, 1994, and each July 1st thereafter through July 1, 2006. The report shall describe progress in attaining the applicable commute trip reduction goals for each commute trip reduction zone and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction task force.

(9) Any waivers or modifications of the requirements of a commute trip reduction plan granted by a jurisdiction shall

be submitted for review to the commute trip reduction task force established under RCW 70.94.537. The commute trip reduction task force may not deny the granting of a waiver or modification of the requirements of a commute trip reduction plan by a jurisdiction but they may notify the jurisdiction of any comments or objections.

(10) Each county, city, or town implementing a commute trip reduction program shall count commute trips eliminated through work-at-home options or alternate work schedules as one and two-tenths vehicle trips eliminated for the purpose of meeting trip reduction goals.

(11) Each county, city, or town implementing a commute trip reduction program shall ensure that employers that have modified their employees' work schedules so that some or all employees are not scheduled to arrive at work between 6:00 a.m. and 9:00 a.m. are provided credit when calculating single-occupancy vehicle use and vehicle miles traveled at that worksite. This credit shall be awarded if implementation of the schedule change was an identified element in that worksite's approved commute trip reduction program or if the schedule change occurred because of impacts associated with chapter 36.70A RCW, the growth management act.

(12) Plans implemented under this section shall not apply to commute trips for seasonal agricultural employees.

(13) Plans implemented under this section shall not apply to construction worksites when the expected duration of the construction project is less than two years. [1997 c 250 § 2; 1996 c 186 § 513; 1991 c 202 § 12.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.531 Transportation demand management—Requirements for employers. (1) Not more than six months after the adoption of the commute trip reduction plan by a jurisdiction, each major employer in that jurisdiction shall develop a commute trip reduction program and shall submit a description of that program to the jurisdiction for review. The program shall be implemented not more than six months after submission to the jurisdiction.

(2) A commute trip reduction program shall consist of, at a minimum (a) designation of a transportation coordinator and the display of the name, location, and telephone number of the coordinator in a prominent manner at each affected worksite; (b) regular distribution of information to employees regarding alternatives to single-occupant vehicle commuting; (c) an annual review of employee commuting and reporting of progress toward meeting the single-occupant vehicle reduction goals to the county, city, or town consistent with the method established in the commute trip reduction plan; and (d) implementation of a set of measures designed to achieve the applicable commute trip reduction goals adopted by the jurisdiction. Such measures may include but are not limited to:

(i) Provision of preferential parking or reduced parking charges, or both, for high occupancy vehicles;

(ii) Instituting or increasing parking charges for single-occupant vehicles;

(iii) Provision of commuter ride matching services to facilitate employee ridesharing for commute trips;

(iv) Provision of subsidies for transit fares;

(v) Provision of vans for van pools;

(vi) Provision of subsidies for car pooling or van pooling;

(vii) Permitting the use of the employer's vehicles for car pooling or van pooling;

(viii) Permitting flexible work schedules to facilitate employees' use of transit, car pools, or van pools;

(ix) Cooperation with transportation providers to provide additional regular or express service to the worksite;

(x) Construction of special loading and unloading facilities for transit, car pool, and van pool users;

(xi) Provision of bicycle parking facilities, lockers, changing areas, and showers for employees who bicycle or walk to work;

(xii) Provision of a program of parking incentives such as a rebate for employees who do not use the parking facility;

(xiii) Establishment of a program to permit employees to work part or full time at home or at an alternative worksite closer to their homes;

(xiv) Establishment of a program of alternative work schedules such as compressed work week schedules which reduce commuting; and

(xv) Implementation of other measures designed to facilitate the use of high-occupancy vehicles such as on-site day care facilities and emergency taxi services.

(3) Employers or owners of worksites may form or utilize existing transportation management associations to assist members in developing and implementing commute trip reduction programs.

(4) Employers shall make a good faith effort towards achievement of the goals identified in RCW 70.94.527(4)(g). [1997 c 250 § 3; (1995 2nd sp.s. c 14 § 530 expired June 30, 1997); 1991 c 202 § 13.]

Expiration date—1995 2nd sp.s. c 14 §§ 511-523, 528-533: See note following RCW 43.105.017.

Effective dates—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Severability—1995 2nd sp.s. c 14: See note following RCW 43.105.017.

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.534 Transportation demand management—Jurisdictions' review and penalties. (1) Each jurisdiction implementing a commute trip reduction plan under this chapter or as part of a plan or ordinance developed under RCW 36.70A.070 shall review each employer's initial commute trip reduction program to determine if the program is likely to meet the applicable commute trip reduction goals. The employer shall be notified by the jurisdiction of its findings. If the jurisdiction finds that the program is not likely to meet the applicable commute trip reduction goals, the jurisdiction will work with the employer to modify the program as necessary. The jurisdiction shall complete review of each employer's initial commute trip reduction program within three months of receipt.

(2) Employers implementing commute trip reduction programs are expected to undertake good faith efforts to achieve the goals outlined in RCW 70.94.527(4). Employers

are considered to be making a good faith effort if the following conditions have been met:

(a) The employer has met the minimum requirements identified in RCW 70.94.531; and

(b) The employer is working collaboratively with its jurisdiction to continue its existing program or is developing and implementing program modifications likely to result in improvements to the program over an agreed upon length of time.

(3) Each jurisdiction shall annually review each employer's progress and good faith efforts toward meeting the applicable commute trip reduction goals. If an employer makes a good faith effort, as defined in this section, but is not likely to meet the applicable commute trip reduction goals, the jurisdiction shall work collaboratively with the employer to make modifications to the commute trip reduction program. Failure of an employer to reach the applicable commute trip reduction goals is not a violation of this chapter.

(4) If an employer fails to make a good faith effort and fails to meet the applicable commute trip reduction goals, the jurisdiction shall work collaboratively with the employer to propose modifications to the program and shall direct the employer to revise its program within thirty days to incorporate those modifications or modifications which the jurisdiction determines to be equivalent.

(5) Each jurisdiction implementing a commute trip reduction plan pursuant to this chapter may impose civil penalties, in the manner provided in chapter 7.80 RCW, for failure by an employer to implement a commute trip reduction program or to modify its commute trip reduction program as required in subsection (4) of this section. No major employer may be held liable for civil penalties for failure to reach the applicable commute trip reduction goals. No major employer shall be liable for civil penalties under this chapter if failure to achieve a commute trip reduction program goal was the result of an inability to reach agreement with a certified collective bargaining agent under applicable laws where the issue was raised by the employer and pursued in good faith.

(6) Jurisdictions shall notify major employers of the procedures for applying for goal modification or exemption from the commute trip reduction requirements based on the guidelines established by the commute trip reduction task force. [1997 c 250 § 4; 1991 c 202 § 14.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.537 Transportation demand management—Commute trip reduction task force. (1) A twenty-eight member state commute trip reduction task force is established as follows:

(a) The secretary of the department of transportation or the secretary's designee who shall serve as chair;

(b) The director of the department of ecology or the director's designee;

(c) The director of the department of community, trade, and economic development or the director's designee;

(d) The director of the department of general administration or the director's designee;

(e) Three representatives from counties appointed by the governor from a list of at least six recommended by the Washington state association of counties;

(f) Three representatives from cities and towns appointed by the governor from a list of at least six recommended by the association of Washington cities;

(g) Three representatives from transit agencies appointed by the governor from a list of at least six recommended by the Washington state transit association;

(h) Twelve representatives of employers at or owners of major worksites in Washington appointed by the governor from a list recommended by the association of Washington business or other statewide business associations representing major employers, provided that every affected county shall have at least one representative; and

(i) Three citizens appointed by the governor.

Members of the commute trip reduction task force shall serve without compensation but shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. Members appointed by the governor shall be compensated in accordance with RCW 43.03.220. The task force has all powers necessary to carry out its duties as prescribed by this chapter. The task force shall be dissolved on July 1, 2006.

(2) By March 1, 1992, the commute trip reduction task force shall establish guidelines for commute trip reduction plans. The guidelines are intended to ensure consistency in commute trip reduction plans and goals among jurisdictions while fairly taking into account differences in employment and housing density, employer size, existing and anticipated levels of transit service, special employer circumstances, and other factors the task force determines to be relevant. The guidelines shall include:

(a) Criteria for establishing commute trip reduction zones;

(b) Methods and information requirements for determining base year values of the proportion of single-occupant vehicle commute trips and the commute trip vehicle miles traveled per employee and progress toward meeting commute trip reduction plan goals;

(c) Model commute trip reduction ordinances;

(d) Methods for assuring consistency in the treatment of employers who have worksites subject to the requirements of this chapter in more than one jurisdiction;

(e) An appeals process by which major employers, who as a result of special characteristics of their business or its locations would be unable to meet the requirements of a commute trip reduction plan, may obtain a waiver or modification of those requirements and criteria for determining eligibility for waiver or modification;

(f) Methods to ensure that employers shall receive full credit for the results of transportation demand management efforts and commute trip reduction programs which have been implemented by major employers prior to the base year;

(g) Alternative commute trip reduction goals for major employers which cannot meet the goals of this chapter because of the unique nature of their business;

(h) Alternative commute trip reduction goals for major employers whose worksites change and who contribute substantially to traffic congestion in a trip reduction zone; and

(i) Methods to insure that employers receive credit for scheduling changes enacted pursuant to the criteria identified in RCW 70.94.527(11).

(3) The task force shall work with jurisdictions, major employers, and other parties to develop and implement a public awareness campaign designed to increase the effectiveness of local commute trip reduction programs and support achievement of the objectives identified in this chapter.

(4) The task force shall assess the commute trip reduction options available to employers other than major employers and make recommendations to the legislature by October 1, 1992. The recommendations shall include the minimum size of employer who shall be required to implement trip reduction programs and the appropriate methods those employers can use to accomplish trip reduction goals.

(5) The task force shall review progress toward implementing commute trip reduction plans and programs and the costs and benefits of commute trip reduction plans and programs and shall make recommendations to the legislature by December 1, 1995, December 1, 1999, December 1, 2001, December 1, 2003, and December 1, 2005. In assessing the costs and benefits, the task force shall consider the costs of not having implemented commute trip reduction plans and programs. The task force shall examine other transportation demand management programs nationally and incorporate its findings into its recommendations to the legislature. The recommendations shall address the need for continuation, modification, or termination or any or all requirements of this chapter. The recommendations made December 1, 1995, shall include recommendations regarding extension of the requirements of this chapter to employers with fifty or more full-time employees at a single worksite who begin their regular work day between 6:00 a.m. and 9:00 a.m. on weekdays for more than twelve continuous months. [1997 c 250 § 5; 1996 c 186 § 514; 1995 c 399 § 188; 1991 c 202 § 15.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

Commute trip reduction incentives: RCW 82.67.050.

70.94.541 Transportation demand management—Technical assistance team. (1) A technical assistance team shall be established under the direction of the department of transportation and include representatives of the department of ecology. The team shall provide staff support to the commute trip reduction task force in carrying out the requirements of RCW 70.94.537 and to the department of general administration in carrying out the requirements of RCW 70.94.551.

(2) The team shall provide technical assistance to counties, cities, and towns, the department of general administration, other state agencies, and other employers in developing and implementing commute trip reduction plans and programs. The technical assistance shall include: (a) Guidance in determining base and subsequent year values of single-occupant vehicle commuting proportion and commute trip reduction vehicle miles traveled to be used in determining progress in attaining plan goals; (b) developing model plans and programs appropriate to different situations; and (c) providing consistent training and informational materials for the implementation of commute trip reduction programs. Model plans and programs, training and informational materials

shall be developed in cooperation with representatives of local governments, transit agencies, and employers.

(3) In carrying out this section the department of transportation may contract with statewide associations representing cities, towns, and counties to assist cities, towns, and counties in implementing commute trip reduction plans and programs. [1996 c 186 § 515; 1991 c 202 § 16.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.544 Transportation demand management—Use of funds. A portion of the funds made available for the purposes of this chapter shall be used to fund the commute trip reduction task force in carrying out the responsibilities of RCW 70.94.541, and the interagency technical assistance team, including the activities authorized under RCW 70.94.541(2), and to assist counties, cities, and towns implementing commute trip reduction plans. [2001 c 74 § 1; 1991 c 202 § 17.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.547 Transportation demand management—Intent—State leadership. The legislature hereby recognizes the state's crucial leadership role in establishing and implementing effective commute trip reduction programs. Therefore, it is the policy of the state that the department of general administration and other state agencies shall aggressively develop substantive programs to reduce commute trips by state employees. Implementation of these programs will reduce energy consumption, congestion in urban areas, and air and water pollution associated with automobile travel. [1991 c 202 § 18.]

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

70.94.551 Transportation demand management—State agency plan. (1) The director of general administration, with the concurrence of an interagency task force established for the purposes of this section, shall coordinate a commute trip reduction plan for state agencies which are phase 1 major employers by January 1, 1993. The task force shall include representatives of the departments of transportation and ecology and such other departments as the director of general administration determines to be necessary to be generally representative of state agencies. The state agency plan shall be consistent with the requirements of RCW 70.94.527 and 70.94.531 and shall be developed in consultation with state employees, local and regional governments, local transit agencies, the business community, and other interested groups. The plan shall consider and recommend policies applicable to all state agencies including but not limited to policies regarding parking and parking charges, employee incentives for commuting by other than single-occupant automobiles, flexible and alternative work schedules, alternative worksites, and the use of state-owned vehicles for car and van pools. The plan shall also consider the costs and benefits to state agencies of achieving commute trip reductions and consider mechanisms for funding state agency commute trip

reduction programs. The department shall, within thirty days, submit a summary of its plan along with certification of adoption to the commute trip reduction task force established under RCW 70.94.537.

(2) Not more than three months after the adoption of the commute trip reduction plan, each state agency shall, for each facility which is a major employer, develop a commute trip reduction program. The program shall be designed to meet the goals of the commute trip reduction plan of the county, city, or town or, if there is no local commute trip reduction plan, the state. The program shall be consistent with the policies of the state commute trip reduction plan and RCW 70.94.531. The agency shall submit a description of that program to the local jurisdiction implementing a commute trip reduction plan or, if there is no local commute trip reduction plan, to the department of general administration. The program shall be implemented not more than three months after submission to the department. Annual reports required in RCW 70.94.531(2)(c) shall be submitted to the local jurisdiction implementing a commute trip reduction plan and to the department of general administration. An agency which is not meeting the applicable commute trip reduction goals shall, to the extent possible, modify its program to comply with the recommendations of the local jurisdiction or the department of general administration.

(3) State agencies sharing a common location may develop and implement a joint commute trip reduction program or may delegate the development and implementation of the commute trip reduction program to the department of general administration.

(4) The department of general administration in consultation with the state technical assistance team shall review the initial commute trip reduction program of each state agency subject to the commute trip reduction plan for state agencies to determine if the program is likely to meet the applicable commute trip reduction goals and notify the agency of any deficiencies. If it is found that the program is not likely to meet the applicable commute trip reduction goals, the team will work with the agency to modify the program as necessary.

(5) For each agency subject to the state agency commute trip reduction plan, the department of general administration in consultation with the technical assistance team shall annually review progress toward meeting the applicable commute trip reduction goals. If it appears an agency is not meeting or is not likely to meet the applicable commute trip reduction goals, the team shall work with the agency to make modifications to the commute trip reduction program.

(6) The department of general administration shall submit an annual progress report for state agencies subject to the state agency commute trip reduction plan to the commute trip reduction task force established under RCW 70.94.537. The report shall be due April 1, 1993, and each April 1st through 2006. The report shall report progress in attaining the applicable commute trip reduction goals for each commute trip reduction zone and shall highlight any problems being encountered in achieving the goals. The information shall be reported in a form established by the commute trip reduction task force. [1997 c 250 § 6; 1996 c 186 § 516; 1991 c 202 § 19.]

(2004 Ed.)

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Captions not law—Effective date—Severability—1991 c 202: See notes following RCW 47.50.010.

State vehicle parking account: RCW 43.01.225.

70.94.600 Reports of authorities to department of ecology—Contents. All authorities in the state shall submit quarterly reports to the department of ecology detailing the current status of air pollution control regulations in the authority and, by county, the progress made toward bringing all sources in the authority into compliance with authority standards. [1979 ex.s. c 30 § 14; 1969 ex.s. c 168 § 52.]

70.94.610 Burning used oil fuel in land-based facilities. (1) Except as provided in subsection (2) of this section, a person may not burn used oil as fuel in a land-based facility or in state waters unless the used oil meets the following standards:

- (a) Cadmium: 2 ppm maximum
- (b) Chromium: 10 ppm maximum
- (c) Lead: 100 ppm maximum
- (d) Arsenic: 5 ppm maximum
- (e) Total halogens: 1000 ppm maximum
- (f) Polychlorinated biphenyls: 2 ppm maximum
- (g) Ash: .1 percent maximum
- (h) Sulfur: 1.0 percent maximum
- (i) Flash point: 100 degrees Fahrenheit minimum.

(2) This section shall not apply to: (a) Used oil burned in space heaters if the space heater has a maximum heat output of not greater than 0.5 million btu's per hour or used oil burned in facilities permitted by the department or a local air pollution control authority; or (b) ocean-going vessels.

(3) This section shall not apply to persons in the business of collecting used oil from residences when under authorization by a city, county, or the utilities and transportation commission. [1991 c 319 § 311.]

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

70.94.620 Metals mining and milling operations permits—Inspections by department of ecology. If a metals mining and milling operation is issued a permit pursuant to this chapter, then it will be subject to special inspection requirements. The department of ecology shall inspect these mining operations at least quarterly in order to ensure that the operation is in compliance with the conditions of any permit issued to it pursuant to this chapter. The department shall conduct additional inspections during the construction phase of the mining and milling operation in order to ensure compliance with this chapter. [1994 c 232 § 18.]

Severability—1994 c 232: See RCW 78.56.900.

Effective date—1994 c 232 §§ 6-8 and 18-22: See RCW 78.56.902.

70.94.630 Sulfur dioxide abatement account—Coal-fired thermal electric generation facilities—Application—Determination and assessment of progress—Certification of pollution level—Reimbursement—Time limit for and extension of account. (1) The sulfur dioxide abatement account is created. All receipts from subsection (2) of this section must be deposited in the account. Expenditures in

the account may be used only for the purposes of subsection (3) of this section. Only the director of revenue or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures.

(2) Upon application by the owners of a generation facility, the department of ecology shall make a determination of whether the owners are making initial progress in the construction of air pollution control facilities. Evidence of initial progress may include, but is not limited to, engineering work, agreements to proceed with construction, contracts to purchase, or contracts for construction of air pollution control facilities. However, if the owners' progress is impeded due to actions caused by regulatory delays or by defensive litigation, certification of initial progress may not be withheld.

Upon certification of initial progress by the department of ecology and after January 1, 1999, an amount equal to all sales and use taxes paid under chapters 82.08, 82.12, and 82.14 RCW, that were obtained from the sales of coal to, or use of coal by, a business for use at a generation facility shall be deposited in the account under RCW 82.32.392.

By June 1st of each year during construction of the air pollution control facilities and during the verification period required in RCW 82.08.811(2)(d) and 82.12.811(2)(d), the department of ecology shall make an assessment regarding the continued progress of the pollution control facilities. Evidence of continued progress may include, but is not limited to, acquisition of construction material, visible progress on construction, or other actions that have occurred that would verify progress under general construction time tables. The treasurer shall continue to deposit an amount equal to the tax revenues to the sulfur dioxide abatement account unless the department of ecology fails to certify that reasonable progress has been made during the previous year. The operator of a generation facility shall file documentation accompanying its combined monthly excise tax return that identifies all sales and use tax payments made by the owners for coal used at the generation facility during the reporting period.

(3) When a generation facility emits no more than ten thousand tons of sulfur dioxide during a consecutive twelve-month period, the department of ecology shall certify this to the department of revenue and the state treasurer by the end of the following month. Within thirty days of receipt of certification under this subsection, the department of revenue shall approve the tax exemption application and the director or the director's designee shall authorize the release of any moneys in the sulfur dioxide abatement account to the operator of the generation facility. The operator shall disburse the payment among the owners of record according to the terms of their contractual agreement.

(4)(a) If the department of revenue has not approved a tax exemption under RCW 82.08.811 and 82.12.811 by March 1, 2005, any moneys in the sulfur dioxide abatement account shall be transferred to the general fund and the appropriate local governments in accordance with chapter 82.14 RCW, and the sulfur dioxide abatement account shall cease to exist after March 1, 2005.

(b) The dates in (a) of this subsection must be extended if the owners of a generation facility have experienced difficulties in complying with this section, or RCW 82.08.811,

*82.08.812, 82.12.811, *82.12.812, and 82.32.392, due to actions caused by regulatory delays or by defensive litigation.

(5) For the purposes of this section:

(a) "Air pollution control facilities" means any treatment works, control devices and disposal systems, machinery, equipment, structure, property, property improvements and accessories, that are installed or acquired for the primary purpose of reducing, controlling, or disposing of industrial waste that, if released to the outdoor atmosphere, could cause air pollution, or that are required to meet regulatory requirements applicable to their construction, installation, or operation; and

(b) "Generation facility" means a coal-fired thermal electric generation facility placed in operation after December 3, 1969, and before July 1, 1975. [1997 c 368 § 10.]

*Reviser's note: RCW 82.08.812 and 82.12.812 were repealed by 2000 c 4 § 1.

Findings—Intent—Rules adoption—Severability—Effective date—1997 c 368: See notes following RCW 82.08.810.

70.94.640 Odors caused by agricultural activities consistent with good agricultural practices exempt from chapter.

(1) Odors caused by agricultural activity consistent with good agricultural practices on agricultural land are exempt from the requirements of this chapter unless they have a substantial adverse effect on public health. In determining whether agricultural activity is consistent with good agricultural practices, the department of ecology or board of any authority shall consult with a recognized third-party expert in the activity prior to issuing any notice of violation.

(2) Any notice of violation issued under this chapter pertaining to odors caused by agricultural activity shall include a statement as to why the activity is inconsistent with good agricultural practices, or a statement that the odors have substantial adverse effect on public health.

(3) In any appeal to the pollution control hearings board or any judicial appeal, the agency issuing a final order pertaining to odors caused by agricultural activity shall prove the activity is inconsistent with good agricultural practices or that the odors have a substantial adverse impact on public health.

(4) If a person engaged in agricultural activity on a contiguous piece of agricultural land sells or has sold a portion of that land for residential purposes, the exemption of this section shall not apply.

(5) As used in this section:

(a) "Agricultural activity" means the growing, raising, or production of horticultural or viticultural crops, berries, poultry, livestock, grain, mint, hay, and dairy products.

(b) "Good agricultural practices" means economically feasible practices which are customary among or appropriate to farms and ranches of a similar nature in the local area.

(c) "Agricultural land" means at least five acres of land devoted primarily to the commercial production of livestock or agricultural commodities. [1981 c 297 § 30.]

Legislative finding, intent—1981 c 297: "The legislature finds that agricultural land is essential to providing citizens with food and fiber and to insuring aesthetic values through the preservation of open spaces in our state. The legislature further finds that government regulations can cause agricultural land to be converted to nonagricultural uses. The legislature intends that agricultural activity consistent with good practices be protected from government over-regulation." [1981 c 297 § 29.]

Reviser's note: The above legislative finding and intent section apparently applies to sections 30 and 31 of chapter 297, Laws of 1981, which sections have been codified pursuant to legislative direction as RCW 70.94.640 and 90.48.450, respectively.

Severability—1981 c 297: See note following RCW 15.36.201.

70.94.645 Ammonia emissions from use as agricultural or silvicultural fertilizer—Regulation prohibited. The department shall not regulate ammonia emissions resulting from the storage, distribution, transport, or application of ammonia for use as an agricultural or silvicultural fertilizer. [1996 c 204 § 2.]

70.94.650 Burning permits for weed abatement, fire fighting instruction, or agriculture activities—Issuance—Agricultural burning practices and research task force—Exemption for aircraft crash fire rescue training activities. (1) Any person who proposes to set fires in the course of:

(a) Weed abatement;

(b) Instruction in methods of fire fighting, except training to fight structural fires as provided in RCW 52.12.150 or training to fight aircraft crash rescue fires as provided in subsection (5) of this section, and except forest fire training; or

(c) Agricultural activities,

shall obtain a permit from an air pollution control authority, the department of ecology, or a local entity delegated permitting authority under RCW 70.94.654. General permit criteria of statewide applicability shall be established by the department, by rule, after consultation with the various air pollution control authorities. Permits shall be issued under this section based on seasonal operations or by individual operations, or both. All permits shall be conditioned to insure that the public interest in air, water, and land pollution and safety to life and property is fully considered. In addition to any other requirements established by the department to protect air quality pursuant to other laws, applicants for permits must show that the setting of fires as requested is the most reasonable procedure to follow in safeguarding life or property under all circumstances or is otherwise reasonably necessary to successfully carry out the enterprise in which the applicant is engaged, or both. All burning permits will be designed to minimize air pollution insofar as practical. Nothing in this section shall relieve the applicant from obtaining permits, licenses, or other approvals required by any other law. An application for a permit to set fires in the course of agricultural burning for controlling diseases, insects, weed abatement or development of physiological conditions conducive to increased crop yield, shall be acted upon within seven days from the date such application is filed. The department of ecology and local air authorities shall provide convenient methods for issuance and oversight of agricultural burning permits. The department and local air authorities shall, through agreement, work with counties and cities to provide convenient methods for granting permission for agricultural burning, including telephone, facsimile transmission, issuance from local city or county offices, or other methods. A local air authority administering the permit program under this subsection (1)(c) shall not limit the number of days of allowable agricultural burning, but may consider the time of year, meteorological conditions, and other criteria specified

(2004 Ed.)

in rules adopted by the department to implement this subsection (1)(c).

(2) Permit fees shall be assessed for burning under this section and shall be collected by the department of ecology, the appropriate local air authority, or a local entity delegated permitting authority pursuant to RCW 70.94.654 at the time the permit is issued. All fees collected shall be deposited in the air pollution control account created in RCW 70.94.015, except for that portion of the fee necessary to cover local costs of administering a permit issued under this section. Fees shall be set by rule by the permitting agency at the level determined by the task force created by subsection (4) of this section, but shall not exceed two dollars and fifty cents per acre to be burned. After fees are established by rule, any increases in such fees shall be limited to annual inflation adjustments as determined by the state office of the economic and revenue forecast council.

(3) Conservation districts and the Washington State University agricultural extension program in conjunction with the department shall develop public education material for the agricultural community identifying the health and environmental effects of agricultural outdoor burning and providing technical assistance in alternatives to agricultural outdoor burning.

(4) An agricultural burning practices and research task force shall be established under the direction of the department. The task force shall be composed of a representative from the department who shall serve as chair; one representative of eastern Washington local air authorities; three representatives of the agricultural community from different agricultural pursuits; one representative of the department of agriculture; two representatives from universities or colleges knowledgeable in agricultural issues; one representative of the public health or medical community; and one representative of the conservation districts. The task force shall identify best management practices for reducing air contaminant emissions from agricultural activities and provide such information to the department and local air authorities. The task force shall determine the level of fees to be assessed by the permitting agency pursuant to subsection (2) of this section, based upon the level necessary to cover the costs of administering and enforcing the permit programs, to provide funds for research into alternative methods to reduce emissions from such burning, and to the extent possible be consistent with fees charged for such burning permits in neighboring states. The fee level shall provide, to the extent possible, for lesser fees for permittees who use best management practices to minimize air contaminant emissions. The task force shall identify research needs related to minimizing emissions from agricultural burning and alternatives to such burning. Further, the task force shall make recommendations to the department on priorities for spending funds provided through this chapter for research into alternative methods to reduce emissions from agricultural burning.

(5) A permit is not required under this section, or under RCW 70.94.743 through 70.94.780, from an air pollution control authority, the department, or any local entity with delegated permit authority, for aircraft crash rescue fire training activities meeting the following conditions:

(a) Fire fighters participating in the training fires must be limited to those who provide fire fighting support to an air-

port that is either certified by the federal aviation administration or operated in support of military or governmental activities;

(b) The fire training may not be conducted during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715 for the area where training is to be conducted;

(c) The number of training fires allowed per year without a permit shall be the minimum number necessary to meet federal aviation administration or other federal safety requirements;

(d) The facility shall use current technology and be operated in a manner that will minimize, to the extent possible, the air contaminants generated during operation; and

(e) Prior to the commencement of the aircraft fire training, the organization conducting training shall notify both the: (i) Local fire district or fire department; and (ii) air pollution control authority, department of ecology, or local entity delegated permitting authority under RCW 70.94.654, having jurisdiction within the area where training is to be conducted.

Written approval from the department or a local air pollution control authority shall be obtained prior to the initial operation of aircraft crash rescue fire training. Such approval will be granted to fire training activities meeting the conditions in this subsection.

(6) Aircraft crash rescue fire training activities conducted in compliance with *this subsection are not subject to the prohibition, in RCW 70.94.775(1), of outdoor fires containing petroleum products and are not considered outdoor burning under RCW 70.94.743 through 70.94.780.

(7) To provide for fire fighting instruction in instances not governed by subsection (6) of this section, or other actions to protect public health and safety, the department or a local air pollution control authority may issue permits that allow limited burning of prohibited materials listed in RCW 70.94.775(1). [1998 c 43 § 1. Prior: 1995 c 362 § 1; 1995 c 58 § 1; 1994 c 28 § 2; 1993 c 353 § 1; 1991 c 199 § 408; 1971 ex.s. c 232 § 1.]

*Reviser's note: The reference to "this subsection" appears to be erroneous, and should instead refer to subsection (5) of this section.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.651 Burning permits for regeneration of rare and endangered plants; Indian ceremonies. Nothing contained in this chapter shall prohibit fires necessary: (1) To promote the regeneration of rare and endangered plants found within natural area preserves as identified under chapter 79.70 RCW; and (2) for Indian ceremonies or for the sending of smoke signals if part of a religious ritual. Permits issued for burning under this section shall be drafted to minimize emissions including denial of permission to burn during periods of adverse meteorological conditions. [1991 c 199 § 407.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.654 Delegation of permit issuance and enforcement to political subdivisions. Whenever an air pollution control authority, or the department of ecology for areas outside the jurisdictional boundaries of an activated air pollution

control authority, shall find that any fire protection agency, county, or conservation district is capable of effectively administering the issuance and enforcement of permits for any or all of the kinds of burning identified in RCW 70.94.650 and desirous of doing so, the authority or the department of ecology, as appropriate, may delegate powers necessary for the issuance or enforcement, or both, of permits for any or all of the kinds of burning to the fire protection agency, county, or conservation district. Such delegation may be withdrawn by the authority or the department of ecology upon finding that the fire protection agency, county, or conservation district is not effectively administering the permit program. [1993 c 353 § 2; 1991 c 199 § 409; 1973 1st ex.s. c 193 § 6.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.656 Open burning of grasses grown for seed—Alternatives—Studies—Deposit of permit fees in special grass seed burning account—Procedures—Limitations—Report. It is hereby declared to be the policy of this state that strong efforts should be made to minimize adverse effects on air quality from the open burning of field and turf grasses grown for seed. To such end this section is intended to promote the development of economical and practical alternate agricultural practices to such burning, and to provide for interim regulation of such burning until practical alternates are found.

(1) The department shall approve of a study or studies for the exploration and identification of economical and practical alternate agricultural practices to the open burning of field and turf grasses grown for seed. Any study conducted pursuant to this section shall be conducted by Washington State University. The university may not charge more than eight percent for administrative overhead. Prior to the issuance of any permit for such burning under RCW 70.94.650, there shall be collected a fee not to exceed one dollar per acre of crop to be burned. Any such fees received by any authority shall be transferred to the department of ecology. The department of ecology shall deposit all such acreage fees in a special grass seed burning research account, hereby created, in the state treasury.

(2) The department shall allocate moneys annually from this account for the support of any approved study or studies as provided for in subsection (1) of this section. Whenever the department of ecology shall conclude that sufficient reasonably available alternates to open burning have been developed, and at such time as all costs of any studies have been paid, the grass seed burning research account shall be dissolved, and any money remaining therein shall revert to the general fund. The fee collected under subsection (1) of this section shall constitute the research portion of fees required under RCW 70.94.650 for open burning of grass grown for seed.

(3) Whenever on the basis of information available to it, the department after public hearings have been conducted wherein testimony will be received and considered from interested parties wishing to testify shall conclude that any procedure, program, technique, or device constitutes a practical alternate agricultural practice to the open burning of field or turf grasses grown for seed, the department shall, by order,

certify approval of such alternate. Thereafter, in any case which any such approved alternate is reasonably available, the open burning of field and turf grasses grown for seed shall be disallowed and no permit shall issue therefor.

(4) Until approved alternates become available, the department or the authority may limit the number of acres on a pro rata basis among those affected for which permits to burn will be issued in order to effectively control emissions from this source.

(5) Permits issued for burning of field and turf grasses may be conditioned to minimize emissions insofar as practical, including denial of permission to burn during periods of adverse meteorological conditions.

(6) By November 1, 1996, and every two years thereafter until grass seed burning is prohibited, Washington State University may prepare a brief report assessing the potential of the university's research to result in economical and practical alternatives to grass seed burning. [1998 c 245 § 130; 1995 c 261 § 1; 1991 sp.s. c 13 § 28; 1991 c 199 § 413; 1990 c 113 § 1; 1985 c 57 § 69; 1973 1st ex.s. c 193 § 7.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective date—1985 c 57: See note following RCW 18.04.105.

Grass burning research advisory committee: Chapter 43.21E RCW.

70.94.660 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Issuance. (1) The department of natural resources shall have the responsibility for issuing and regulating burning permits required by it relating to the following activities for the protection of life or property and/or for the public health, safety, and welfare:

- (a) Abating a forest fire hazard;
- (b) Prevention of a fire hazard;
- (c) Instruction of public officials in methods of forest fire fighting;
- (d) Any silvicultural operation to improve the forest lands of the state; and

(e) Silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas.

(2) The department of natural resources shall not retain such authority, but it shall be the responsibility of the appropriate fire protection agency for permitting and regulating outdoor burning on lands where the department of natural resources does not have fire protection responsibility.

(3) Permit fees shall be assessed for silvicultural burning under the jurisdiction of the department of natural resources and collected by the department of natural resources as provided for in this section. All fees shall be deposited in the air pollution control account, created in RCW 70.94.015. The legislature shall appropriate to the department of natural resources funds from the air pollution control account to enforce and administer the program under RCW 70.94.665 and 70.94.660, 70.94.670, and 70.94.690. Fees shall be set by rule by the department of natural resources at the level necessary to cover the costs of the program after receiving recommendations on such fees from the public and the forest fire

advisory board established by RCW 76.04.145. [1991 c 199 § 404; 1971 ex.s. c 232 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

Burning permits, issuance, air pollution a factor: RCW 76.04.205.

Disposal of forest debris: RCW 76.04.650.

70.94.665 Silvicultural forest burning—Reduce statewide emissions—Exemption—Monitoring program. (1) The department of natural resources shall administer a program to reduce statewide emissions from silvicultural forest burning so as to achieve the following minimum objectives:

(a) Twenty percent reduction by December 31, 1994 providing a ceiling for emissions until December 31, 2000; and

(b) Fifty percent reduction by December 31, 2000 providing a ceiling for emissions thereafter.

Reductions shall be calculated from the average annual emissions level from calendar years 1985 to 1989, using the same methodology for both reduction and base year calculations.

(2) The department of natural resources, within twelve months after May 15, 1991, shall develop a plan, based upon the existing smoke management agreement to carry out the programs as described in this section in the most efficient, cost-effective manner possible. The plan shall be developed in consultation with the department of ecology, public and private landowners engaged in silvicultural forest burning, and representatives of the public.

The plan shall recognize the variations in silvicultural forest burning including, but not limited to, a landowner's responsibility to abate an extreme fire hazard under chapter 76.04 RCW and other objectives of burning, including abating and preventing a fire hazard, geographic region, climate, elevation and slope, proximity to populated areas, and diversity of land ownership. The plan shall establish priorities that the department of natural resources shall use to allocate allowable emissions, including but not limited to, silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. The plan shall also recognize the real costs of the emissions program and recommend equitable fees to cover the costs of the program.

The emission reductions in this section are to apply to all forest lands including those owned and managed by the United States. If the United States does not participate in implementing the plan, the departments of natural resources and ecology shall use all appropriate and available methods or enforcement powers to ensure participation.

The plan shall include a tracking system designed to measure the degree of progress toward the emission reductions goals set in this section. The department of natural resources shall report annually to the department of ecology and the legislature on the status of the plan, emission reductions and progress toward meeting the objectives specified in this section, and the goals of this chapter and chapter 76.04 RCW.

(3) If the December 31, 1994, emission reductions targets in this section are not met, the department of natural resources, in consultation with the department of ecology,

shall use its authority granted in this chapter and chapter 76.04 RCW to immediately limit emissions from such burning to the 1994 target levels and limit silvicultural forest burning in subsequent years to achieve equal annual incremental reductions so as to achieve the December 31, 2000, target level. If, as a result of the program established in this section, the emission reductions are met in 1994, but are not met by December 31, 2000, the department of natural resources in consultation with the department of ecology shall immediately limit silvicultural forest burning to reduce emissions from such burning to the December 31, 2000, target level in all subsequent years.

(4) Emissions from silvicultural burning in eastern Washington that is conducted for the purpose of restoring forest health or preventing the additional deterioration of forest health are exempt from the reduction targets and calculations in this section if the following conditions are met:

(a) The landowner submits a written request to the department identifying the location of the proposed burning and the nature of the forest health problem to be corrected. The request shall include a brief description of alternatives to silvicultural burning and reasons why the landowner believes the alternatives not to be appropriate.

(b) The department determines that the proposed silvicultural burning operation is being conducted to restore forest health or prevent additional deterioration to forest health; meets the requirements of the state smoke management plan to protect public health, visibility, and the environment; and will not be conducted during an air pollution episode or during periods of impaired air quality in the vicinity of the proposed burn.

(c) Upon approval of the request by the department and before burning, the landowner is encouraged to notify the public in the vicinity of the burn of the general location and approximate time of ignition.

(5) The department of ecology may conduct a limited, seasonal ambient air quality monitoring program to measure the effects of forest health burning conducted under subsection (4) of this section. The monitoring program may be developed in consultation with the department of natural resources, private and public forest landowners, academic experts in forest health issues, and the general public. [1995 c 143 § 1; 1991 c 199 § 403.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.670 Burning permits for abating or prevention of forest fire hazards, management of ecosystems, instruction or silvicultural operations—Conditions for issuance and use of permits—Air quality standards to be met—Alternate methods to lessen forest debris. The department of natural resources in granting burning permits for fires for the purposes set forth in RCW 70.94.660 shall condition the issuance and use of such permits to comply with air quality standards established by the department of ecology after full consultation with the department of natural resources. Such burning shall not cause the state air quality standards to be exceeded in the ambient air up to two thousand feet above ground level over critical areas designated by the department of ecology, otherwise subject to air pollution from other sources. Air quality standards shall be established

and published by the department of ecology which shall also establish a procedure for advising the department of natural resources when and where air contaminant levels exceed or threaten to exceed the ambient air standards over such critical areas. The air quality shall be quantitatively measured by the department of ecology or the appropriate local air pollution control authority at established monitoring stations over such designated areas. Further, such permitted burning shall not cause damage to public health or the environment. All permits issued under this section shall be subject to all applicable fees, permitting, penalty, and enforcement provisions of this chapter. The department of natural resources shall set forth smoke dispersal objectives designed consistent with this section to minimize any air pollution from such burning and the procedures necessary to meet those objectives.

The department of natural resources shall encourage more intense utilization in logging and alternative silviculture practices to reduce the need for burning. The department of natural resources shall, whenever practical, encourage landowners to develop and use alternative acceptable disposal methods subject to the following priorities: (1) Slash production minimization, (2) slash utilization, (3) nonburning disposal, (4) silvicultural burning. Such alternative methods shall be evaluated as to the relative impact on air, water, and land pollution, public health, and their financial feasibility.

The department of natural resources shall not issue burning permits and shall revoke previously issued permits at any time in any area where the department of ecology or local board has declared a stage of impaired air quality as defined in RCW 70.94.473. [1991 c 199 § 405; 1971 ex.s. c 232 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.690 Cooperation between department of natural resources and state, local, or regional air pollution authorities—Withholding of permits. In the regulation of outdoor burning not included in RCW 70.94.660 requiring permits from the department of natural resources, said department and the state, local, or regional air pollution control authorities will cooperate in regulating such burning so as to minimize insofar as possible duplicate inspections and separate permits while still accomplishing the objectives and responsibilities of the respective agencies. The department of natural resources shall include any local authority's burning regulations with permits issued where applicable pursuant to RCW *70.94.740 through 70.94.775. The department shall develop agreements with all local authorities to coordinate regulations.

Permits shall be withheld by the department of natural resources when so requested by the department of ecology if a forecast, alert, warning, or emergency condition exists as defined in the episode criteria of the department of ecology. [1991 c 199 § 406; 1971 ex.s. c 232 § 5.]

***Reviser's note:** RCW 70.94.740 was repealed by 1991 c 199 § 718.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.700 Rules and regulations. The department of natural resources and the department of ecology may adopt rules and regulations necessary to implement their respective responsibilities under the provisions of RCW 70.94.650 through 70.94.700. [1971 ex.s. c 232 § 6.]

70.94.710 Air pollution episodes—Legislative finding—Declaration of policy. The legislature finds that whenever meteorological conditions occur which reduce the effective volume of air into which air contaminants are introduced, there is a high danger that normal operations at air contaminant sources in the area affected will be detrimental to public health or safety. Whenever such conditions, herein denominated as air pollution episodes, are forecast, there is a need for rapid short-term emission reduction in order to avoid adverse health or safety consequences.

Therefore, it is declared to be the policy of this state that an episode avoidance plan should be developed and implemented for the temporary reduction of emissions during air pollution episodes.

It is further declared that power should be vested in the governor to issue emergency orders for the reduction or discontinuance of emissions when such emissions and weather combine to create conditions imminently dangerous to public health and safety. [1971 ex.s. c 194 § 1.]

70.94.715 Air pollution episodes—Episode avoidance plan—Contents—Source emission reduction plans—Authority—Considered orders. The department of ecology is hereby authorized to develop an episode avoidance plan providing for the phased reduction of emissions whenever and whenever an air pollution episode is forecast. Such an episode avoidance plan shall conform with any applicable federal standards and shall be effective statewide. The episode avoidance plan may be implemented on an area basis in accordance with the occurrence of air pollution episodes in any given area.

The department of ecology may delegate authority to adopt source emission reduction plans and authority to implement all stages of occurrence up to and including the warning stage, and all intermediate stages up to the warning stage, in any area of the state, to the air pollution control authority with jurisdiction therein.

The episode avoidance plan, which shall be established by regulation in accordance with chapter 34.05 RCW, shall include, but not be limited to the following:

(1) The designation of episode criteria and stages, the occurrence of which will require the carrying out of pre-planned episode avoidance procedures. The stages of occurrence shall be (a) forecast, (b) alert, (c) warning, (d) emergency, and such intermediate stages as the department shall designate. "Forecast" means the presence of meteorological conditions that are conducive to accumulation of air contaminants and is the first stage of an episode. The department shall not call a forecast episode prior to the department or an authority calling a first stage impaired air quality condition as provided by RCW 70.94.473(1)(b) or calling a single-stage impaired air quality condition as provided by *RCW 70.94.473(2). "Alert" means concentration of air contaminants at levels at which short-term health effects may occur, and is the second stage of an episode. "Warning" means concentrations are continuing to degrade, contaminant concentrations have reached a level which, if maintained, can result in damage to health, and additional control actions are needed and is the third level of an episode. "Emergency" means the air quality is posing an imminent and substantial endangerment to public health and is the fourth level of an episode;

(2) The requirement that persons responsible for the operation of air contaminant sources prepare and obtain approval from the director of source emission reduction plans, consistent with good operating practice and safe operating procedures, for reducing emissions during designated episode stages;

(3) Provision for the director of the department of ecology or his authorized representative, or the air pollution control officer if implementation has been delegated, on the satisfaction of applicable criteria, to declare and terminate the forecast, alert, warning and all intermediate stages, up to the warning episode stage, such declarations constituting orders for action in accordance with applicable source emission reduction plans;

(4) Provision for the governor to declare and terminate the emergency stage and all intermediate stages above the warning episode stage, such declarations constituting orders in accordance with applicable source emission reduction plans;

(5) Provisions for enforcement by state and local police, personnel of the departments of ecology and social and health services, and personnel of local air pollution control agencies; and

(6) Provisions for reduction or discontinuance of emissions immediately, consistent with good operating practice and safe operating procedures, under an air pollution emergency as provided in RCW 70.94.720.

Source emission reduction plans shall be considered orders of the department and shall be subject to appeal to the pollution control hearings board according to the procedure in chapter 43.21B RCW. [1990 c 128 § 4; 1971 ex.s. c 194 § 2.]

*Reviser's note: RCW 70.94.473 was amended by 1995 c 205 § 1, which deleted subsection (2).

70.94.720 Air pollution episodes—Declaration of air pollution emergency by governor. Whenever the governor finds that emissions from the operation of one or more air contaminant sources is causing imminent danger to public health or safety, he may declare an air pollution emergency and may order the person or persons responsible for the operation of such air contaminant source or sources to reduce or discontinue emissions consistent with good operating practice, safe operating procedures and source emission reduction plans, if any, adopted by the department of ecology or any local air pollution control authority to which the department of ecology has delegated authority to adopt emission reduction plans. Orders authorized by this section shall be in writing and may be issued without prior notice or hearing. In the absence of the governor, any findings, declarations and orders authorized by this section may be made and issued by his authorized representative. [1971 ex.s. c 194 § 3.]

70.94.725 Air pollution episodes—Restraining orders, temporary injunctions to enforce orders—Procedure. Whenever any order has been issued pursuant to RCW 70.94.710 through 70.94.730, the attorney general, upon request from the governor, the director of the department of ecology, an authorized representative of either, or the attorney for a local air pollution control authority upon request of the control officer, shall petition the superior court of the

county in which is located the air contaminant source for which such order was issued for a temporary restraining order requiring the immediate reduction or discontinuance of emissions from such source.

Upon request of the party to whom a temporary restraining order is directed, the court shall schedule a hearing thereon at its earliest convenience, at which time the court may withdraw the restraining order or grant such temporary injunction as is reasonably necessary to prevent injury to the public health or safety. [1971 ex.s. c 194 § 4.]

70.94.730 Air pollution episodes—Orders to be effective immediately. Orders issued to declare any stage of an air pollution episode avoidance plan under RCW 70.94.715, and to declare an air pollution emergency, under RCW 70.94.720, and orders to persons responsible for the operation of an air contaminant source to reduce or discontinue emissions, according to RCW 70.94.715 and 70.94.720 shall be effective immediately and shall not be stayed pending completion of review. [1971 ex.s. c 194 § 5.]

70.94.743 Outdoor burning—Areas where prohibited—Exceptions—Use for management of storm or flood-related debris—Silvicultural burning. (1) Consistent with the policy of the state to reduce outdoor burning to the greatest extent practical:

(a) Outdoor burning shall not be allowed in any area of the state where federal or state ambient air quality standards are exceeded for pollutants emitted by outdoor burning.

(b) Outdoor burning shall not be allowed in any urban growth area as defined by RCW 36.70A.030, or any city of the state having a population greater than ten thousand people if such cities are threatened to exceed state or federal air quality standards, and alternative disposal practices consistent with good solid waste management are reasonably available or practices eliminating production of organic refuse are reasonably available. In no event shall such burning be allowed after December 31, 2000, except that within the urban growth areas for cities having a population of less than five thousand people, that are neither within nor contiguous with any non-attainment or maintenance area designated under the federal clean air act, in no event shall such burning be allowed after December 31, 2006.

(c) Notwithstanding any other provision of this section, outdoor burning may be allowed for the exclusive purpose of managing storm or flood-related debris. The decision to allow burning shall be made by the entity with permitting jurisdiction as determined under RCW 70.94.660 or 70.94.755. If outdoor burning is allowed in areas subject to (a) or (b) of this subsection, a permit shall be required, and a fee may be collected to cover the expenses of administering and enforcing the permit. All conditions and restrictions pursuant to RCW 70.94.750(1) and 70.94.775 apply to outdoor burning allowed under this section.

(d)(i) Outdoor burning that is normal, necessary, and customary to ongoing agricultural activities, that is consistent with agricultural burning authorized under RCW 70.94.650 and 70.94.656, is allowed within the urban growth area as defined in (b) of this subsection if the burning is not conducted during air quality episodes, or where a determination

of impaired air quality has been made as provided in RCW 70.94.473, and the agricultural activities preceded the designation as an urban growth area.

(ii) Outdoor burning of cultivated orchard trees, whether or not agricultural crops will be replanted on the land, shall be allowed as an ongoing agricultural activity under this section if a local horticultural pest and disease board formed under chapter 15.09 RCW, an extension office agent with Washington State University that has horticultural experience, or an entomologist employed by the department of agriculture, has determined in writing that burning is an appropriate method to prevent or control the spread of horticultural pests or diseases.

(2) "Outdoor burning" means the combustion of material of any type in an open fire or in an outdoor container without providing for the control of combustion or the control of emissions from the combustion.

(3) This section shall not apply to silvicultural burning used to improve or maintain fire dependent ecosystems for rare plants or animals within state, federal, and private natural area preserves, natural resource conservation areas, parks, and other wildlife areas. [2004 c 213 § 1; 2001 1st sp.s. c 12 § 1; 1998 c 68 § 1; 1997 c 225 § 1; 1991 c 199 § 402.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.745 Limited outdoor burning—Program—Exceptions. (1) It shall be the responsibility and duty of the department of natural resources, department of ecology, department of agriculture, fire districts, and local air pollution control authorities to establish, through regulations, ordinances, or policy, a limited burning permit program.

(2) The permit program shall apply to residential and land clearing burning in the following areas:

(a) In the nonurban areas of any county with an unincorporated population of greater than fifty thousand; and

(b) In any city and urban growth area that is not otherwise prohibited from burning pursuant to RCW 70.94.743.

(3) The permit program shall apply only to land clearing burning in the nonurban areas of any county with an unincorporated population of less than fifty thousand.

(4) The permit program may be limited to a general permit by rule, or by verbal, written, or electronic approval by the permitting entity.

(5) Notwithstanding any other provision of this section, neither a permit nor the payment of a fee shall be required for outdoor burning for the purpose of disposal of tumbleweeds blown by wind. Such burning shall not be conducted during an air pollution episode or any stage of impaired air quality declared under *RCW 70.94.714. This subsection (5) shall only apply within counties with a population less than two hundred fifty thousand.

(6) Burning shall be prohibited in an area when an alternate technology or method of disposing of the organic refuse is available, reasonably economical, and less harmful to the environment. It is the policy of this state to foster and encourage development of alternate methods or technology for disposing of or reducing the amount of organic refuse.

(7) Incidental agricultural burning must be allowed without applying for any permit and without the payment of any fee if:

(a) The burning is incidental to commercial agricultural activities;

(b) The operator notifies the local fire department within the area where the burning is to be conducted;

(c) The burning does not occur during an air pollution episode or any stage of impaired air quality declared under RCW 70.94.715; and

(d) Only the following items are burned:

(i) Orchard prunings;

(ii) Organic debris along fence lines or irrigation or drainage ditches; or

(iii) Organic debris blown by wind.

(8) As used in this section, "nonurban areas" are unincorporated areas within a county that is not designated as an urban growth area under chapter 36.70A RCW.

(9) Nothing in this section shall require fire districts to enforce air quality requirements related to outdoor burning, unless the fire district enters into an agreement with the department of ecology, department of natural resources, a local air pollution control authority, or other appropriate entity to provide such enforcement. [1995 c 206 § 1; 1991 c 199 § 401; 1972 ex.s. c 136 § 2.]

***Reviser's note:** The reference to RCW 70.94.714 appears erroneous. Reference to RCW 70.94.715 was apparently intended.

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.750 Limited outdoor burning—Permits issued by political subdivisions—Types of fires permitted. The following outdoor fires described in this section may be burned subject to the provisions of this chapter and also subject to city ordinances, county resolutions, rules of fire districts and laws, and rules enforced by the department of natural resources if a permit has been issued by a fire protection agency, county, or conservation district:

(1) Fires consisting of leaves, clippings, prunings and other yard and gardening refuse originating on lands immediately adjacent and in close proximity to a human dwelling and burned on such lands by the property owner or his or her designee.

(2) Fires consisting of residue of a natural character such as trees, stumps, shrubbery or other natural vegetation arising from land clearing projects or agricultural pursuits for pest or disease control; provided the fires described in this subsection may be prohibited in those areas having a general population density of one thousand or more persons per square mile. [1991 c 199 § 412; 1972 ex.s. c 136 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.755 Limited outdoor burning—Establishment of program. Each activated air pollution control authority, and the department of ecology in those areas outside the jurisdictional boundaries of an activated air pollution control authority, shall establish, through regulations, ordinances, or policy, a program implementing the limited burning policy authorized by RCW 70.94.743 through 70.94.765. [1997 c 225 § 2; 1972 ex.s. c 136 § 4.]

70.94.760 Limited outdoor burning—Construction. Nothing contained in RCW *70.94.740 through 70.94.765 is intended to alter or change the provisions of RCW 70.94.660,

(2004 Ed.)

70.94.710 through 70.94.730, and 76.04.205. [1986 c 100 § 55; 1972 ex.s. c 136 § 5.]

***Reviser's note:** RCW 70.94.740 was repealed by 1991 c 199 § 718.

70.94.765 Limited outdoor burning—Authority of local air pollution control authority or department of ecology to allow outdoor fires not restricted. Nothing in RCW *70.94.740 through 70.94.765 shall be construed as prohibiting a local air pollution control authority or the department of ecology in those areas outside the jurisdictional boundaries of an activated pollution control authority from allowing the burning of outdoor fires. [1972 ex.s. c 136 § 6.]

***Reviser's note:** RCW 70.94.740 was repealed by 1991 c 199 § 718.

70.94.775 Outdoor burning—Fires prohibited—Exceptions. Except as provided in RCW 70.94.650(5), no person shall cause or allow any outdoor fire:

(1) Containing garbage, dead animals, asphalt, petroleum products, paints, rubber products, plastics, or any substance other than natural vegetation that normally emits dense smoke or obnoxious odors. Agricultural heating devices that otherwise meet the requirements of this chapter shall not be considered outdoor fires under this section;

(2) During a forecast, alert, warning or emergency condition as defined in RCW 70.94.715 or impaired air quality condition as defined in RCW 70.94.473. [1995 c 362 § 2; 1991 c 199 § 410; 1974 ex.s. c 164 § 1; 1973 2nd ex.s. c 11 § 1; 1973 1st ex.s. c 193 § 9.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.780 Outdoor burning—Permits issued by political subdivisions. In addition to any other powers granted to them by law, the fire protection agency, county, or conservation district issuing burning permits shall regulate or prohibit outdoor burning as necessary to prevent or abate the nuisances caused by such burning. No fire protection agency, county, or conservation district may issue a burning permit in an area where the department or local board has declared any stage of impaired air quality per RCW 70.94.473 or any stage of an air pollution episode. All burning permits issued shall be subject to all applicable fee, permitting, penalty, and enforcement provisions of this chapter. The permitted burning shall not cause damage to public health or the environment.

Any entity issuing a permit under this section may charge a fee at the level necessary to recover the costs of administering and enforcing the permit program. [1991 c 199 § 411; 1973 1st ex.s. c 193 § 10.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.785 Plans approved pursuant to federal clean air act—Enforcement authority. Notwithstanding any provision of the law to the contrary, except RCW 70.94.660 through 70.94.690, the department of ecology, upon its approval of any plan (or part thereof) required or permitted under the federal clean air act, shall have the authority to enforce all regulatory provisions within such plan (or part thereof): PROVIDED, That departmental enforcement of any such provision which is within the power of an activated

authority to enforce shall be initiated only, when with respect to any source, the authority is not enforcing the provisions and then only after written notice is given the authority. [1973 1st ex.s. c 193 § 11.]

70.94.800 Legislative declaration—Intent. The legislature recognizes that:

(1) Acid deposition resulting from commercial, industrial or other emissions of sulphur dioxide and nitrogen oxides pose a threat to the delicate balance of the state's ecological systems, particularly in alpine lakes that are known to be highly sensitive to acidification;

(2) Failure to act promptly and decisively to mitigate or eliminate this danger may soon result in untold and irreparable damage to the fish, forest, wildlife, agricultural, water, and recreational resources of this state;

(3) There is a direct correlation between emissions of sulphur dioxides and nitrogen oxides and increases in acid deposition;

(4) Acidification is cumulative; and

(5) Once an environment is acidified, it is difficult, if not impossible, to restore the natural balance.

It is therefore the intent of the legislature to provide for early detection of acidification and the resulting environmental degradation through continued monitoring of acid deposition levels and trends, and major source changes, so that the legislature can take any necessary action to prevent environmental degradation resulting from acid deposition. [1985 c 456 § 1; 1984 c 277 § 1.]

70.94.805 Definitions. As used in RCW 70.94.800 through *70.94.825, the following terms have the following meanings.

(1) "Acid deposition" means wet or dry deposition from the atmosphere of chemical compounds with a pH of less than 5.6.

(2) "Critical level of acid deposition and lake, stream, and soil acidification" means the level at which irreparable damage may occur unless corrective action is taken. [1985 c 456 § 2; 1984 c 277 § 2.]

*Reviser's note: RCW 70.94.810, 70.94.815, and 70.94.825 were repealed by 1991 c 199 § 718.

70.94.820 Monitoring by department of ecology. The department of ecology shall maintain a program of periodic monitoring of acid rain deposition and lake, stream, and soil acidification to ensure early detection of acidification and environmental degradation. [1987 c 505 § 61; 1985 c 456 § 5; 1984 c 277 § 6.]

70.94.850 Emission credits banking program—Amount of credit. The department of ecology and the local boards may implement an emission credits banking program. For the purposes of this section, an emission credits banking program means a program whereby an air contaminant source which reduces emissions of a given air contaminant by an amount greater than that required by applicable law, regulation, or order is granted credit for a given amount, which credit shall be administered by a credit bank operated by the appropriate agency. The amount of the credit shall be

determined by the department or local board with jurisdiction, but it shall be less than the amount of the emissions reduction. The credit may be used, traded, sold, or otherwise expended for purposes established by regulation of state or local agencies consistent with the provisions of the prevention of significant deterioration program under RCW 70.94.860, the bubble program under RCW 70.94.155, and the new source review program under RCW 70.94.152, if there will be no net adverse impact on air quality. [1984 c 164 § 1.]

70.94.860 Department of ecology may accept delegation of programs. The department of ecology may accept delegation of programs as provided for in the federal clean air act. Subject to federal approval, the department may, in turn, delegate such programs to the local authority with jurisdiction in a given area. [1991 c 199 § 312; 1984 c 164 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.875 Evaluation of information on acid deposition in Pacific Northwest—Establishment of critical levels—Notification of legislature. The department of ecology, in consultation with the appropriate committees of the house of representatives and of the senate, shall:

(1) Continue evaluation of information and research on acid deposition in the Pacific Northwest region;

(2) Establish critical levels of acid deposition and lake, stream, and soil acidification; and

(3) Notify the legislature if acid deposition or lake, stream, and soil acidification reaches the levels established under subsection (2) of this section. [1991 c 199 § 313; 1985 c 456 § 3.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.880 Establishment of critical deposition and acidification levels—Considerations. In establishing critical levels of acid deposition and lake, stream, and soil acidification, the department of ecology shall consider:

(1) Current acid deposition and lake, stream, and soil acidification levels;

(2) Changes in acid deposition and lake, stream, and soil acidification levels;

(3) Effects of acid deposition and lake, stream, and soil acidification on the environment; and

(4) The need to prevent environmental degradation. [1985 c 456 § 4.]

70.94.892 Carbon dioxide mitigation—Fees. (1) For fossil-fueled electric generation facilities having more than twenty-five thousand kilowatts station generating capability but less than three hundred fifty thousand kilowatts station generating capability, except for fossil-fueled floating thermal electric generation facilities under the jurisdiction of the energy facility site evaluation council pursuant to RCW 80.50.010, the department or authority shall implement a carbon dioxide mitigation program consistent with the requirements of chapter 80.70 RCW.

(2) For mitigation projects conducted directly by or under the control of the applicant, the department or local air authority shall approve or deny the mitigation plans, as part

of its action to approve or deny an application submitted under RCW 70.94.152 based upon whether or not the mitigation plan is consistent with the requirements of chapter 80.70 RCW.

(3) The department or authority may determine, assess, and collect fees sufficient to cover the costs to review and approve or deny the carbon dioxide mitigation plan components of an order of approval issued under RCW 70.94.152. The department or authority may also collect fees sufficient to cover its additional costs to monitor conformance with the carbon dioxide mitigation plan components of the registration and air operating permit programs authorized in RCW 70.94.151 and 70.94.161. The department or authority shall track its costs related to review, approval, and monitoring conformance with carbon dioxide mitigation plans. [2004 c 224 § 8.]

70.94.901 Construction—1967 c 238. This 1967 amendatory act shall not be construed to create in any way nor to enlarge, diminish or otherwise affect in any way any private rights in any civil action for damages. Any determination that there has been a violation of the provisions of this 1967 amendatory act or of any ordinance, rule, regulation or order issued pursuant thereto, shall not create by reason thereof any presumption or finding of fact or of law for use in any lawsuit brought by a private citizen. [1967 c 238 § 65.]

70.94.902 Construction, repeal of RCW 70.94.061 through 70.94.066—Saving. The following acts or parts of acts are each repealed:

(1) Section 7, chapter 238, Laws of 1967, and RCW 70.94.061;

(2) Section 8, chapter 238, Laws of 1967, and RCW 70.94.062;

(3) Section 9, chapter 238, Laws of 1967, and RCW 70.94.064; and

(4) Section 10, chapter 238, Laws of 1967, and RCW 70.94.066.

Such repeals shall not be construed as affecting any authority in existence on April 24, 1969, nor as affecting any action, activities or proceedings initiated by such authority prior hereto, nor as affecting any civil or criminal proceedings instituted by such authority, nor any rule, regulation, resolution, ordinance, or order promulgated by such authority, nor any administrative action taken by such authority, nor the term of office, or appointment or employment of any person appointed or employed by such authority. [1969 ex.s. c 168 § 46.]

70.94.904 Effective dates—1991 c 199. Sections 602 and 603 of this act shall take effect July 1, 1992. Sections 202 through 209 of this act shall take effect January 1, 1993. Sections 210 and 505 of this act shall take effect January 1, 1992.

The remainder of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately. [1991 c 199 § 717.]

70.94.905 Severability—1991 c 199. If any provision of this act or its application to any person or circumstance is

(2004 Ed.)

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 199 § 719.]

70.94.906 Captions not law. Captions and headings as used in this act constitute no part of the law. [1991 c 199 § 720.]

70.94.911 Severability—1967 c 238. If any phrase, clause, subsection or section of this 1967 amendatory act shall be declared unconstitutional or invalid by any court of competent jurisdiction, it shall be conclusively presumed that the legislature would have enacted this act without the phrase, clause, subsection or section so held unconstitutional or invalid and the remainder of the act shall not be affected as a result of said part being held unconstitutional or invalid. [1967 c 238 § 64.]

70.94.950 Disincorporation of district located in county with a population of two hundred ten thousand or more and inactive for five years. See chapter 57.90 RCW.

70.94.960 Clean fuel matching grants for public transit, vehicle mechanics, and refueling infrastructure. The department may disburse matching grants from funds provided by the legislature from the air pollution control account, created in RCW 70.94.015, to units of local government to partially offset the additional cost of purchasing "clean fuel" and/or operating "clean-fuel vehicles" provided that such vehicles are used for public transit. Publicly owned school buses are considered public transit for the purposes of this section. The department may also disburse grants to vocational-technical institutes for the purpose of establishing programs to certify clean-fuel vehicle mechanics. The department may also distribute grants to Washington State University for the purpose of furthering the establishment of clean fuel refueling infrastructure. [1996 c 186 § 517; 1991 c 199 § 218.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Finding—1991 c 199: See note following RCW 70.94.011.

Clean fuel: RCW 70.120.210.

Refueling: RCW 80.28.280.

State vehicles: RCW 43.19.637.

70.94.970 Chlorofluorocarbons—Ozone—Refrigerants regulated. (1) Regulated refrigerant means a class I or class II substance as listed in Title VI of section 602 of the federal clean air act amendments of November 15, 1990.

(2) A person who services or repairs or disposes of a motor vehicle air conditioning system; commercial or industrial air conditioning, heating, or refrigeration system; or consumer appliance shall use refrigerant extraction equipment to recover regulated refrigerant that would otherwise be released into the atmosphere. This subsection does not apply to off-road commercial equipment.

(3) Upon request, the department shall provide information and assistance to persons interested in collecting, transporting, or recycling regulated refrigerants.

(4) The willful release of regulated refrigerant from a source listed in subsection (2) of this section is prohibited. [1991 c 199 § 602.]

Finding—1991 c 199: "The legislature finds that:

(1) The release of chlorofluorocarbons and other ozone-depleting chemicals into the atmosphere contributes to the destruction of stratospheric ozone and threatens plant and animal life with harmful overexposure to ultraviolet radiation;

(2) The technology and equipment to extract and recover chlorofluorocarbons and other ozone-depleting chemicals from air conditioners, refrigerators, and other appliances are available;

(3) A number of nonessential consumer products contain ozone-depleting chemicals; and

(4) Unnecessary releases of chlorofluorocarbons and other ozone-depleting chemicals from these sources should be eliminated." [1991 c 199 § 601.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.980 Refrigerants—Unlawful acts. No person may sell, offer for sale, or purchase any of the following:

(1) A regulated refrigerant in a container designed for consumer recharge of a motor vehicle air conditioning system or consumer appliance during repair or service. This subsection does not apply to a regulated refrigerant purchased for the recharge of the air conditioning system of off-road commercial or agricultural equipment and sold or offered for sale at an establishment which specializes in the sale of off-road commercial or agricultural equipment or parts or service for such equipment;

(2) Nonessential consumer products that contain chlorofluorocarbons or other ozone-depleting chemicals, and for which substitutes are readily available. Products affected under this subsection shall include, but are not limited to, party streamers, tire inflators, air horns, noise makers, and chlorofluorocarbon-containing cleaning sprays designed for noncommercial or nonindustrial cleaning of electronic or photographic equipment. [1991 c 199 § 603.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.990 Refrigerants—Rules—Enforcement provisions, limitations. The department shall adopt rules to implement RCW 70.94.970 and 70.94.980. Rules shall include but not be limited to minimum performance specifications for refrigerant extraction equipment, as well as procedures for enforcing RCW 70.94.970 and 70.94.980.

Enforcement provisions adopted by the department shall not include penalties or fines in areas where equipment to collect or recycle regulated refrigerants is not readily available. [1991 c 199 § 604.]

Finding—1991 c 199: See note following RCW 70.94.011.

70.94.996 Grant program for ride sharing. (Expires January 1, 2014.) (1) To the extent that funds are appropriated, the department of transportation shall administer a performance-based grant program for private employers, public agencies, nonprofit organizations, developers, and property managers who provide financial incentives for ride sharing in vehicles carrying two or more persons, for using public transportation, for using car sharing, or for using nonmotorized commuting, including telework, before July 1, 2013, to their own or other employees.

[Title 70 RCW—page 212]

(2) The amount of the grant will be determined based on the value to the transportation system of the vehicle trips reduced. The commute trip reduction task force shall develop an award rate giving priority to applications achieving the greatest reduction in trips and commute miles per public dollar requested and considering the following criteria: The local cost of providing new highway capacity, congestion levels, and geographic distribution.

(3) No private employer, public agency, nonprofit organization, developer, or property manager is eligible for grants under this section in excess of one hundred thousand dollars in any fiscal year.

(4) The total of grants provided under this section may not exceed seven hundred fifty thousand dollars in any fiscal year. However, this subsection does not apply during the 2003-2005 fiscal biennium.

(5) The department of transportation shall report to the department of revenue by the 15th day of each month the aggregate monetary amount of grants provided under this section in the prior month and the identity of the recipients of those grants.

(6) The source of funds for this grant program is the multimodal transportation account.

(7) This section expires January 1, 2014. [2004 c 229 § 501; 2003 c 364 § 9.]

Severability—2004 c 229: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 229 § 507.]

Effective date—2004 c 229: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 31, 2004]." [2004 c 229 § 508.]

Effective date—Contingency—Captions not law—2003 c 364: See notes following RCW 82.70.020.

Chapter 70.95 RCW

SOLID WASTE MANAGEMENT—REDUCTION AND RECYCLING

Sections

| | |
|-----------|--|
| 70.95.010 | Legislative finding—Priorities—Goals. |
| 70.95.020 | Purpose. |
| 70.95.030 | Definitions. |
| 70.95.040 | Solid waste advisory committee—Members—Meetings—Travel expenses—"Governor's award of excellence." |
| 70.95.050 | Solid waste advisory committee—Staff services and facilities. |
| 70.95.055 | Environmental excellence program agreements—Effect on chapter. |
| 70.95.060 | Standards for solid waste handling—Areas—Landfill location. |
| 70.95.065 | Inert waste landfills. |
| 70.95.070 | Review of standards prior to adoption—Revisions, additions and modifications—Factors. |
| 70.95.075 | Implementation of standards—Assessment—Analyses—Proposals. |
| 70.95.080 | County comprehensive solid waste management plan—Joint plans—Duties of cities. |
| 70.95.090 | County and city comprehensive solid waste management plans—Contents. |
| 70.95.092 | County and city comprehensive solid waste management plans—Levels of service, reduction and recycling. |
| 70.95.094 | County and city comprehensive solid waste management plans—Review and approval process. |
| 70.95.096 | Utilities and transportation commission to review local plan's assessment of cost impacts on rates. |
| 70.95.100 | Technical assistance for plan preparation—Guidelines—Informational materials and programs. |

(2004 Ed.)

- 70.95.110 Maintenance of plans—Review, revisions—Implementation of source separation programs.
- 70.95.130 Financial aid to counties and cities.
- 70.95.140 Matching requirements.
- 70.95.150 Contracts with counties to assure proper expenditures.
- 70.95.160 Local board of health regulations to implement the comprehensive plan—Section not to be construed to authorize counties to operate system.
- 70.95.163 Local health departments may contract with the department of ecology.
- 70.95.165 Solid waste disposal facility siting—Site review—Local solid waste advisory committees—Membership.
- 70.95.167 Private businesses involvement in source separated materials—Local solid waste advisory committee to examine.
- 70.95.170 Permit for solid waste handling facility—Required.
- 70.95.180 Permit for solid waste handling facility—Applications, fee.
- 70.95.185 Permit for solid waste disposal site or facilities—Review by department—Appeal of issuance—Validity of permits issued after June 7, 1984.
- 70.95.190 Permit for solid waste handling facility—Renewal—Appeal—Validity of renewal—Review fees.
- 70.95.200 Permit for solid waste disposal site or facilities—Suspension.
- 70.95.205 Exemption from solid waste permit requirements—Waste-derived soil amendments—Application—Revocation of exemption—Appeal.
- 70.95.210 Hearing—Appeal—Denial, suspension—When effective.
- 70.95.212 Solid waste collection companies—Notice of changes in tipping fees and disposal rate schedules.
- 70.95.215 Landfill disposal facilities—Reserve accounts required by July 1, 1987—Exception—Rules.
- 70.95.217 Waste generated outside the state—Findings.
- 70.95.218 Waste generated outside the state—Solid waste disposal site facility reporting requirements—Fees.
- 70.95.220 Financial aid to jurisdictional health departments—Applications—Allocations.
- 70.95.230 Financial aid to jurisdictional health departments—Matching funds requirements.
- 70.95.235 Diversion of recyclable material—Penalty.
- 70.95.240 Unlawful to dump or deposit solid waste without permit—Penalties—Litter cleanup restitution payment.
- 70.95.250 Name appearing on waste material—Presumption.
- 70.95.255 Disposal of sewage sludge or septic tank sludge prohibited—Exemptions—Uses of sludge material permitted.
- 70.95.260 Duties of department—State solid waste management plan—Assistance—Coordination—Tire recycling.
- 70.95.263 Additional powers and duties of department.
- 70.95.265 Department to cooperate with public and private departments, agencies and associations.
- 70.95.267 Department authorized to disburse referendum 26 (chapter 43.83A RCW) fund for local government solid waste projects.
- 70.95.268 Department authorized to disburse funds under chapter 43.99F RCW for local government solid waste projects.
- 70.95.270 Hazardous substance remedial actions—Procedural requirements not applicable.
- 70.95.280 Determination of best solid waste management practices—Department to develop method to monitor waste stream—Collectors to report quantity and quality of waste—Confidentiality of proprietary information.
- 70.95.285 Solid waste stream analysis.
- 70.95.290 Solid waste stream evaluation.
- 70.95.295 Analysis and evaluation to be incorporated in state solid waste management plan.
- 70.95.300 Solid waste—Beneficial uses—Permitting requirement exemptions.
- 70.95.305 Solid waste handling permit—Exemption from requirements—Application of section—Rules.
- 70.95.310 Rules—Department "deferring" to other permits—Application of section.
- 70.95.315 Penalty.
- 70.95.320 Construction.
- 70.95.500 Disposal of vehicle tires outside designated area prohibited—Penalty—Exemption.
- 70.95.510 Fee on the retail sale of new replacement vehicle tires.
- 70.95.530 Vehicle tire recycling account—Use.
- 70.95.535 Disposition of fee.
- 70.95.540 Cooperation with department to aid tire recycling.
- 70.95.545 Tire recycling—Report.
- 70.95.550 Waste tires—Definitions.
- 70.95.555 Waste tires—License for transport or storage business—Requirements.
- 70.95.560 Waste tires—Violation of RCW 70.95.555—Penalty.
- 70.95.565 Waste tires—Contracts with unlicensed persons prohibited.
- 70.95.600 Educational material promoting household waste reduction and recycling.
- 70.95.610 Battery disposal—Restrictions—Violators subject to fine—"Vehicle battery" defined.
- 70.95.620 Identification procedure for persons accepting used vehicle batteries.
- 70.95.630 Requirements for accepting used batteries by retailers of vehicle batteries—Notice.
- 70.95.640 Retail core charge.
- 70.95.650 Vehicle battery wholesalers—Obligations regarding used batteries—Noncompliance procedure.
- 70.95.660 Department to distribute printed notice—Issuance of warnings and citations—Fines.
- 70.95.670 Rules.
- 70.95.700 Solid waste incineration or energy recovery facility—Environmental impact statement requirements.
- 70.95.710 Incineration of medical waste.
- 70.95.715 Sharps waste—Drop-off sites—Pharmacy return program.
- 70.95.720 Closure of energy recovery and incineration facilities—Recordkeeping requirements.
- 70.95.810 Composting food and yard wastes—Grants and study.
- 70.95.900 Authority and responsibility of utilities and transportation commission not changed.
- 70.95.901 Severability—1989 c 431.
- 70.95.902 Section captions not law—1989 c 431.
- 70.95.903 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation.
- 70.95.910 Severability—1969 ex.s. c 134.
- 70.95.911 Severability—1975-'76 2nd ex.s. c 41.
- Airports: RCW 70.93.095.*
- Commercial fertilizer: Chapter 15.54 RCW.*
- Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.*
- Marinas: RCW 70.93.095.*
- Solid waste collection tax: Chapter 82.18 RCW.*
- State parks: RCW 79A.05.045.*
- Waste reduction, recycling, litter control: Chapter 70.93 RCW.*

70.95.010 Legislative finding—Priorities—Goals.

The legislature finds:

(1) Continuing technological changes in methods of manufacture, packaging, and marketing of consumer products, together with the economic and population growth of this state, the rising affluence of its citizens, and its expanding industrial activity have created new and ever-mounting problems involving disposal of garbage, refuse, and solid waste materials resulting from domestic, agricultural, and industrial activities.

(2) Traditional methods of disposing of solid wastes in this state are no longer adequate to meet the ever-increasing problem. Improper methods and practices of handling and disposal of solid wastes pollute our land, air and water resources, blight our countryside, adversely affect land values, and damage the overall quality of our environment.

(3) Considerations of natural resource limitations, energy shortages, economics and the environment make necessary the development and implementation of solid waste recovery and/or recycling plans and programs.

(4) Waste reduction must become a fundamental strategy of solid waste management. It is therefore necessary to change manufacturing and purchasing practices and waste generation behaviors to reduce the amount of waste that becomes a governmental responsibility.

(5) Source separation of waste must become a fundamental strategy of solid waste management. Collection and handling strategies should have, as an ultimate goal, the source separation of all materials with resource value or environmental hazard.

(6)(a) It should be the goal of every person and business to minimize their production of wastes and to separate recyclable or hazardous materials from mixed waste.

(b) It is the responsibility of state, county, and city governments to provide for a waste management infrastructure to fully implement waste reduction and source separation strategies and to process and dispose of remaining wastes in a manner that is environmentally safe and economically sound. It is further the responsibility of state, county, and city governments to monitor the cost-effectiveness and environmental safety of combusting separated waste, processing mixed municipal solid waste, and recycling programs.

(c) It is the responsibility of county and city governments to assume primary responsibility for solid waste management and to develop and implement aggressive and effective waste reduction and source separation strategies.

(d) It is the responsibility of state government to ensure that local governments are providing adequate source reduction and separation opportunities and incentives to all, including persons in both rural and urban areas, and nonresidential waste generators such as commercial, industrial, and institutional entities, recognizing the need to provide flexibility to accommodate differing population densities, distances to and availability of recycling markets, and collection and disposal costs in each community; and to provide county and city governments with adequate technical resources to accomplish this responsibility.

(7) Environmental and economic considerations in solving the state's solid waste management problems requires strong consideration by local governments of regional solutions and intergovernmental cooperation.

(8) The following priorities for the collection, handling, and management of solid waste are necessary and should be followed in descending order as applicable:

- (a) Waste reduction;
- (b) Recycling, with source separation of recyclable materials as the preferred method;
- (c) Energy recovery, incineration, or landfill of separated waste;
- (d) Energy recovery, incineration, or landfill of mixed municipal solid wastes.

(9) It is the state's goal to achieve a fifty percent recycling rate by 2007.

(10) It is the state's goal that programs be established to eliminate residential or commercial yard debris in landfills by 2012 in those areas where alternatives to disposal are readily available and effective.

(11) Steps should be taken to make recycling at least as affordable and convenient to the ratepayer as mixed waste disposal.

(12) It is necessary to compile and maintain adequate data on the types and quantities of solid waste that are being generated and to monitor how the various types of solid waste are being managed.

(13) Vehicle batteries should be recycled and the disposal of vehicle batteries into landfills or incinerators should be discontinued.

(14) Excessive and nonrecyclable packaging of products should be avoided.

(15) Comprehensive education should be conducted throughout the state so that people are informed of the need to reduce, source separate, and recycle solid waste.

(16) All governmental entities in the state should set an example by implementing aggressive waste reduction and recycling programs at their workplaces and by purchasing products that are made from recycled materials and are recyclable.

(17) To ensure the safe and efficient operations of solid waste disposal facilities, it is necessary for operators and regulators of landfills and incinerators to receive training and certification.

(18) It is necessary to provide adequate funding to all levels of government so that successful waste reduction and recycling programs can be implemented.

(19) The development of stable and expanding markets for recyclable materials is critical to the long-term success of the state's recycling goals. Market development must be encouraged on a state, regional, and national basis to maximize its effectiveness. The state shall assume primary responsibility for the development of a multifaceted market development program to carry out the purposes of this act.

(20) There is an imperative need to anticipate, plan for, and accomplish effective storage, control, recovery, and recycling of discarded tires and other problem wastes with the subsequent conservation of resources and energy. [2002 c 299 § 3; 1989 c 431 § 1; 1985 c 345 § 1; 1984 c 123 § 1; 1975-76 2nd ex.s. c 41 § 1; 1969 ex.s. c 134 § 1.]

70.95.020 Purpose. The purpose of this chapter is to establish a comprehensive statewide program for solid waste handling, and solid waste recovery and/or recycling which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of this state. To this end it is the purpose of this chapter:

(1) To assign primary responsibility for adequate solid waste handling to local government, reserving to the state, however, those functions necessary to assure effective programs throughout the state;

(2) To provide for adequate planning for solid waste handling by local government;

(3) To provide for the adoption and enforcement of basic minimum performance standards for solid waste handling;

(4) To encourage the development and operation of waste recycling facilities needed to accomplish the management priority of waste recycling, and to promote consistency in the requirements for such facilities throughout the state;

(5) To provide technical and financial assistance to local governments in the planning, development, and conduct of solid waste handling programs;

(6) To encourage storage, proper disposal, and recycling of discarded vehicle tires and to stimulate private recycling programs throughout the state; and

(7) To encourage the development and operation of waste recycling facilities and activities needed to accomplish the management priority of waste recycling and to promote consistency in the permitting requirements for such facilities and activities throughout the state.

It is the intent of the legislature that local governments be encouraged to use the expertise of private industry and to contract with private industry to the fullest extent possible to

carry out solid waste recovery and/or recycling programs. [1998 c 156 § 1; 1998 c 90 § 1; 1985 c 345 § 2; 1975-'76 2nd ex.s. c 41 § 2; 1969 ex.s. c 134 § 2.]

Reviser's note: This section was amended by 1998 c 90 § 1 and by 1998 c 156 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

70.95.030 Definitions. As used in this chapter, unless the context indicates otherwise:

- (1) "City" means every incorporated city and town.
- (2) "Commission" means the utilities and transportation commission.
- (3) "Committee" means the state solid waste advisory committee.
- (4) "Composted material" means organic solid waste that has been subjected to controlled aerobic degradation at a solid waste facility in compliance with the requirements of this chapter. Natural decay of organic solid waste under uncontrolled conditions does not result in composted material.
- (5) "Department" means the department of ecology.
- (6) "Director" means the director of the department of ecology.
- (7) "Disposal site" means the location where any final treatment, utilization, processing, or deposit of solid waste occurs.
- (8) "Energy recovery" means a process operating under federal and state environmental laws and regulations for converting solid waste into usable energy and for reducing the volume of solid waste.
- (9) "Functional standards" means criteria for solid waste handling expressed in terms of expected performance or solid waste handling functions.
- (10) "Incineration" means a process of reducing the volume of solid waste operating under federal and state environmental laws and regulations by use of an enclosed device using controlled flame combustion.
- (11) "Inert waste landfill" means a landfill that receives only inert waste, as determined under RCW 70.95.065, and includes facilities that use inert wastes as a component of fill.
- (12) "Jurisdictional health department" means city, county, city-county, or district public health department.
- (13) "Landfill" means a disposal facility or part of a facility at which solid waste is placed in or on land and which is not a land treatment facility.
- (14) "Local government" means a city, town, or county.
- (15) "Modify" means to substantially change the design or operational plans including, but not limited to, removal of a design element previously set forth in a permit application or the addition of a disposal or processing activity that is not approved in the permit.
- (16) "Multiple family residence" means any structure housing two or more dwelling units.
- (17) "Person" means individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.
- (18) "Recyclable materials" means those solid wastes that are separated for recycling or reuse, such as papers, metals, and glass, that are identified as recyclable material pursuant to a local comprehensive solid waste plan.

(2004 Ed.)

ant to a local comprehensive solid waste plan. Prior to the adoption of the local comprehensive solid waste plan, adopted pursuant to RCW 70.95.110(2), local governments may identify recyclable materials by ordinance from July 23, 1989.

(19) "Recycling" means transforming or remanufacturing waste materials into usable or marketable materials for use other than landfill disposal or incineration.

(20) "Residence" means the regular dwelling place of an individual or individuals.

(21) "Sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials, generated from a wastewater treatment system, that does not meet the requirements of chapter 70.95J RCW.

(22) "Soil amendment" means any substance that is intended to improve the physical characteristics of the soil, except composted material, commercial fertilizers, agricultural liming agents, unmanipulated animal manures, unmanipulated vegetable manures, food wastes, food processing wastes, and materials exempted by rule of the department, such as biosolids as defined in chapter 70.95J RCW and wastewater as regulated in chapter 90.48 RCW.

(23) "Solid waste" or "wastes" means all putrescible and nonputrescible solid and semisolid wastes including, but not limited to, garbage, rubbish, ashes, industrial wastes, swill, sewage sludge, demolition and construction wastes, abandoned vehicles or parts thereof, and recyclable materials.

(24) "Solid waste handling" means the management, storage, collection, transportation, treatment, utilization, processing, and final disposal of solid wastes, including the recovery and recycling of materials from solid wastes, the recovery of energy resources from solid wastes or the conversion of the energy in solid wastes to more useful forms or combinations thereof.

(25) "Source separation" means the separation of different kinds of solid waste at the place where the waste originates.

(26) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, or watercourse and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, or watercourse, except devices moved by human or animal power or used exclusively upon stationary rails or tracks.

(27) "Waste-derived soil amendment" means any soil amendment as defined in this chapter that is derived from solid waste as defined in RCW 70.95.030, but does not include biosolids or biosolids products regulated under chapter 70.95J RCW or wastewaters regulated under chapter 90.48 RCW.

(28) "Waste reduction" means reducing the amount or toxicity of waste generated or reusing materials.

(29) "Yard debris" means plant material commonly created in the course of maintaining yards and gardens, and through horticulture, gardening, landscaping, or similar activities. Yard debris includes but is not limited to grass clippings, leaves, branches, brush, weeds, flowers, roots, windfall fruit, vegetable garden debris, holiday trees, and tree prunings four inches or less in diameter. [2004 c 101 § 1; 2002 c 299 § 4; 1998 c 36 § 17; 1997 c 213 § 1; 1992 c 174 §

16; 1991 c 298 § 2; 1989 c 431 § 2; 1985 c 345 § 3; 1984 c 123 § 2; 1975-'76 2nd ex.s. c 41 § 3; 1970 ex.s. c 62 § 60; 1969 ex.s. c 134 § 3.]

Intent—1998 c 36: See RCW 15.54.265.

Short title—1998 c 36: See note following RCW 15.54.265.

Finding—1991 c 298: "The legislature finds that curbside recycling services should be provided in multiple family residences. The county and city comprehensive solid waste management plans should include provisions for such service." [1991 c 298 § 1.]

Solid waste disposal—Powers and duties of state board of health as to environmental contaminants: RCW 43.20.050.

70.95.040 Solid waste advisory committee—Members—Meetings—Travel expenses—"Governor's award of excellence." (1) There is created a solid waste advisory committee to provide consultation to the department of ecology concerning matters covered by this chapter. The committee shall advise on the development of programs and regulations for solid and dangerous waste handling, resource recovery, and recycling, and shall supply recommendations concerning methods by which existing solid and dangerous waste handling, resource recovery, and recycling practices and the laws authorizing them may be supplemented and improved.

(2) The committee shall consist of at least eleven members, including the assistant director for waste management programs within the department. The director shall appoint members with due regard to the interests of the public, local government, tribes, agriculture, industry, public health, recycling industries, solid waste collection industries, and resource recovery industries. The term of appointment shall be determined by the director. The committee shall elect its own chair and meet at least four times a year, in accordance with such rules of procedure as it shall establish. Members shall receive no compensation for their services but shall be reimbursed their travel expenses while engaged in business of the committee in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended.

(3) The committee shall each year recommend to the governor a recipient for a "governor's award of excellence" which the governor shall award for outstanding achievement by an industry, company, or individual in the area of hazardous waste or solid waste management. [1991 c 319 § 401; 1987 c 115 § 1; 1982 c 108 § 1; 1977 c 10 § 1. Prior: 1975-'76 2nd ex.s. c 41 § 9; 1975-'76 2nd ex.s. c 34 § 160; 1969 ex.s. c 134 § 4.]

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

Toxic metals—Report—1991 c 319: See note following RCW 70.95G.005.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.95.050 Solid waste advisory committee—Staff services and facilities. The department shall furnish necessary staff services and facilities required by the solid waste advisory committee. [1969 ex.s. c 134 § 5.]

70.95.055 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter,

including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 22.]

Purpose—1997 c 381: See RCW 43.21K.005.

70.95.060 Standards for solid waste handling—Areas—Landfill location. (1) The department shall adopt rules establishing minimum functional standards for solid waste handling, consistent with the standards specified in this section. The department may classify areas of the state with respect to population density, climate, geology, and other relevant factors bearing on solid waste disposal standards.

(2) In addition to the minimum functional standards adopted by the department under subsection (1) of this section, each landfill facility whose area at its design capacity will exceed one hundred acres and whose horizontal height at design capacity will average one hundred feet or more above existing site elevations shall comply with the standards of this subsection. This subsection applies only to wholly new solid waste landfill facilities, no part or unit of which has had construction commence before April 27, 1999.

(a) No landfill specified in this subsection may be located:

(i) So that the active area is closer than five miles to any national park or a public or private nonprofit zoological park displaying native animals in their native habitats; or

(ii) Over a sole source aquifer designated under the federal safe drinking water act, if such designation was effective before January 1, 1999.

(b) Each landfill specified in this subsection (2) shall be constructed with an impermeable berm around the entire perimeter of the active area of the landfill of such height, thickness, and design as will be sufficient to contain all material disposed in the event of a complete failure of the structural integrity of the landfill. [1999 c 116 § 1; 1969 ex.s. c 134 § 6.]

Effective date—1999 c 116: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 27, 1999]." [1999 c 116 § 2.]

70.95.065 Inert waste landfills. (1) The department shall, as part of the minimum functional standards for solid waste handling required under RCW 70.95.060, develop specific criteria for the types of solid wastes that are allowed to be received by inert waste landfills that seek to continue operation after February 10, 2003.

(2) The criteria for inert waste developed under this section must, at a minimum, contain a list of substances that an inert waste landfill located in a county with fewer than forty-five thousand residents is permitted to receive if it was operational before February 10, 2003, and is located at a site with a five-year annual rainfall of twenty-five inches or less. The substances permitted for the inert waste landfills satisfying the criteria listed in this subsection must include the following types of solid waste if the waste has not been tainted, through exposure from chemical, physical, biological, or radiological substances, such that it presents a threat to human health or the environment greater than that inherent to the material:

- (a) Cured concrete, including any embedded steel reinforcing and wood;
 - (b) Asphaltic materials, including road construction asphalt;
 - (c) Brick and masonry;
 - (d) Ceramic materials produced from fired clay or porcelain;
 - (e) Glass;
 - (f) Stainless steel and aluminum; and
 - (g) Other materials as defined in chapter 173-350 WAC.
- (3) The department shall work with the owner or operators of landfills that do not meet the minimum functional standards for inert waste landfills to explore and implement appropriate means of transition into a limited purpose landfill that is able to accept additional materials as specified in WAC 173-350-400. [2004 c 101 § 2.]

70.95.070 Review of standards prior to adoption—Revisions, additions and modifications—Factors. The solid waste advisory committee shall review prior to adoption and shall recommend revisions, additions, and modifications to the minimum functional standards governing solid waste handling relating, but not limited to, the following:

- (1) Vector production and sustenance.
- (2) Air pollution (coordinated with regulations of the department of ecology).
- (3) Pollution of surface and ground waters (coordinated with the regulations of the department of ecology).
- (4) Hazards to service or disposal workers or to the public.
- (5) Prevention of littering.
- (6) Adequacy and adaptability of disposal sites to population served.
- (7) Design and operation of disposal sites.
- (8) Recovery and/or recycling of solid waste. [1975-'76 2nd ex.s. c 41 § 4; 1969 ex.s. c 134 § 7.]

70.95.075 Implementation of standards—Assessment—Analyses—Proposals. In order to implement the minimum functional standards for solid waste handling, evaluate the effectiveness of the minimum functional standards, evaluate the cost of implementation, and develop a mechanism to finance the implementation, the department shall prepare:

- (1) An assessment of local health agencies' information on all existing permitted landfill sites, including (a) measures taken and facilities installed at each landfill to mitigate surface water and ground water contamination, (b) proposed measures taken and facilities to be constructed at each landfill to mitigate surface water and ground water contamination, and (c) the costs of such measures and facilities;
- (2) An analysis of the effectiveness of the minimum functional standards for new landfills in lessening surface water and ground water contamination, and a comparison with the effectiveness of the prior standards;
- (3) An analysis of the costs of conforming with the new functional standards for new landfills compared with the costs of conforming to the prior standards; and
- (4) Proposals for methods of financing the costs of conforming with the new functional standards. [1986 c 81 § 1.]

(2004 Ed.)

70.95.080 County comprehensive solid waste management plan—Joint plans—Duties of cities. Each county within the state, in cooperation with the various cities located within such county, shall prepare a coordinated, comprehensive solid waste management plan. Such plan may cover two or more counties.

Each city shall:

- (1) Prepare and deliver to the county auditor of the county in which it is located its plan for its own solid waste management for integration into the comprehensive county plan; or
- (2) Enter into an agreement with the county pursuant to which the city shall participate in preparing a joint city-county plan for solid waste management; or
- (3) Authorize the county to prepare a plan for the city's solid waste management for inclusion in the comprehensive county plan.

Two or more cities may prepare a plan for inclusion in the county plan. With prior notification of its home county of its intent, a city in one county may enter into an agreement with a city in an adjoining county, or with an adjoining county, or both, to prepare a joint plan for solid waste management to become part of the comprehensive plan of both counties.

After consultation with representatives of the cities and counties, the department shall establish a schedule for the development of the comprehensive plans for solid waste management. In preparing such a schedule, the department shall take into account the probable cost of such plans to the cities and counties.

Local governments shall not be required to include a hazardous waste element in their solid waste management plans. [1985 c 448 § 17; 1969 ex.s. c 134 § 8.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.95.090 County and city comprehensive solid waste management plans—Contents. Each county and city comprehensive solid waste management plan shall include the following:

- (1) A detailed inventory and description of all existing solid waste handling facilities including an inventory of any deficiencies in meeting current solid waste handling needs.
- (2) The estimated long-range needs for solid waste handling facilities projected twenty years into the future.
- (3) A program for the orderly development of solid waste handling facilities in a manner consistent with the plans for the entire county which shall:
 - (a) Meet the minimum functional standards for solid waste handling adopted by the department and all laws and regulations relating to air and water pollution, fire prevention, flood control, and protection of public health;
 - (b) Take into account the comprehensive land use plan of each jurisdiction;
 - (c) Contain a six year construction and capital acquisition program for solid waste handling facilities; and
 - (d) Contain a plan for financing both capital costs and operational expenditures of the proposed solid waste management system.
- (4) A program for surveillance and control.

(5) A current inventory and description of solid waste collection needs and operations within each respective jurisdiction which shall include:

(a) Any franchise for solid waste collection granted by the utilities and transportation commission in the respective jurisdictions including the name of the holder of the franchise and the address of his or her place of business and the area covered by the franchise;

(b) Any city solid waste operation within the county and the boundaries of such operation;

(c) The population density of each area serviced by a city operation or by a franchised operation within the respective jurisdictions;

(d) The projected solid waste collection needs for the respective jurisdictions for the next six years.

(6) A comprehensive waste reduction and recycling element that, in accordance with the priorities established in RCW 70.95.010, provides programs that (a) reduce the amount of waste generated, (b) provide incentives and mechanisms for source separation, and (c) establish recycling opportunities for the source separated waste.

(7) The waste reduction and recycling element shall include the following:

(a) Waste reduction strategies;

(b) Source separation strategies, including:

(i) Programs for the collection of source separated materials from residences in urban and rural areas. In urban areas, these programs shall include collection of source separated recyclable materials from single and multiple family residences, unless the department approves an alternative program, according to the criteria in the planning guidelines. Such criteria shall include: Anticipated recovery rates and levels of public participation, availability of environmentally sound disposal capacity, access to markets for recyclable materials, unreasonable cost impacts on the ratepayer over the six-year planning period, utilization of environmentally sound waste reduction and recycling technologies, and other factors as appropriate. In rural areas, these programs shall include but not be limited to drop-off boxes, buy-back centers, or a combination of both, at each solid waste transfer, processing, or disposal site, or at locations convenient to the residents of the county. The drop-off boxes and buy-back centers may be owned or operated by public, nonprofit, or private persons;

(ii) Programs to monitor the collection of source separated waste at nonresidential sites where there is sufficient density to sustain a program;

(iii) Programs to collect yard waste, if the county or city submitting the plan finds that there are adequate markets or capacity for composted yard waste within or near the service area to consume the majority of the material collected; and

(iv) Programs to educate and promote the concepts of waste reduction and recycling;

(c) Recycling strategies, including a description of markets for recyclables, a review of waste generation trends, a description of waste composition, a discussion and description of existing programs and any additional programs needed to assist public and private sector recycling, and an implementation schedule for the designation of specific materials to be collected for recycling, and for the provision of recycling collection services;

(d) Other information the county or city submitting the plan determines is necessary.

(8) An assessment of the plan's impact on the costs of solid waste collection. The assessment shall be prepared in conformance with guidelines established by the utilities and transportation commission. The commission shall cooperate with the Washington state association of counties and the association of Washington cities in establishing such guidelines.

(9) A review of potential areas that meet the criteria as outlined in RCW 70.95.165. [1991 c 298 § 3; 1989 c 431 § 3; 1984 c 123 § 5; 1971 ex.s. c 293 § 1; 1969 ex.s. c 134 § 9.]

Finding—1991 c 298: See note following RCW 70.95.030.

Certain provisions not to detract from utilities and transportation commission powers, duties, and functions: RCW 80.01.300.

70.95.092 County and city comprehensive solid waste management plans—Levels of service, reduction and recycling. Levels of service shall be defined in the waste reduction and recycling element of each local comprehensive solid waste management plan and shall include the services set forth in RCW 70.95.090. In determining which service level is provided to residential and nonresidential waste generators in each community, counties and cities shall develop clear criteria for designating areas as urban or rural. In designating urban areas, local governments shall consider the planning guidelines adopted by the department, total population, population density, and any applicable land use or utility service plans. [1989 c 431 § 4.]

70.95.094 County and city comprehensive solid waste management plans—Review and approval process. (1) The department and local governments preparing plans are encouraged to work cooperatively during plan development. Each county and city preparing a comprehensive solid waste management plan shall submit a preliminary draft plan to the department for technical review. The department shall review and comment on the draft plan within one hundred twenty days of receipt. The department's comments shall state specific actions or revisions that must be completed for plan approval.

(2) Each final draft solid waste management plan shall be submitted to the department for approval. The department will limit its comments on the final draft plans to those issues identified during its review of the draft plan and any other changes made between submittal of the preliminary draft and final draft plans. Disapproval of the local comprehensive solid waste management plan shall be supported by specific findings. A final draft plan shall be deemed approved if the department does not disapprove it within forty-five days of receipt.

(3) If the department disapproves a plan or any plan amendments, the submitting entity may appeal the decision under the procedures of Part IV of chapter 34.05 RCW. An administrative law judge shall preside over the appeal. The appeal shall be limited to review of the specific findings which supported the disapproval under subsection (2) of this section. [1989 c 431 § 8.]

70.95.096 Utilities and transportation commission to review local plan's assessment of cost impacts on rates. Upon receipt, the department shall immediately provide the utilities and transportation commission with a copy of each preliminary draft local comprehensive solid waste management plan. Within forty-five days after receiving a plan, the commission shall have reviewed the plan's assessment of solid waste collection cost impacts on rates charged by solid waste collection companies regulated under chapter 81.77 RCW and shall advise the county or city submitting the plan and the department of the probable effect of the plan's recommendations on those rates. [1989 c 431 § 12.]

70.95.100 Technical assistance for plan preparation—Guidelines—Informational materials and programs. (1) The department or the commission, as appropriate, shall provide to counties and cities technical assistance including, but not limited to, planning guidelines, in the preparation, review, and revision of solid waste management plans required by this chapter. Guidelines prepared under this section shall be consistent with the provisions of this chapter. Guidelines for the preparation of the waste reduction and recycling element of the comprehensive solid waste management plan shall be completed by the department by March 15, 1990. These guidelines shall provide recommendations to local government on materials to be considered for designation as recyclable materials. The state solid waste management plan prepared pursuant to RCW 70.95.260 shall be consistent with these guidelines.

(2) The department shall be responsible for development and implementation of a comprehensive statewide public information program designed to encourage waste reduction, source separation, and recycling by the public. The department shall operate a toll free hot line to provide the public information on waste reduction and recycling.

(3) The department shall provide technical assistance to local governments in the development and dissemination of informational materials and related activities to assure recognition of unique local waste reduction and recycling programs.

(4) Local governments shall make all materials and information developed with the assistance grants provided under RCW 70.95.130 available to the department for potential use in other areas of the state. [1989 c 431 § 6; 1984 c 123 § 6; 1969 ex.s. c 134 § 10.]

70.95.110 Maintenance of plans—Review, revisions—Implementation of source separation programs.

(1) The comprehensive county solid waste management plans and any comprehensive city solid waste management plans prepared in accordance with RCW 70.95.080 shall be maintained in a current condition and reviewed and revised periodically by counties and cities as may be required by the department. Upon each review such plans shall be extended to show long-range needs for solid waste handling facilities for twenty years in the future, and a revised construction and capital acquisition program for six years in the future. Each revised solid waste management plan shall be submitted to the department.

Each plan shall be reviewed and revised within five years of July 1, 1984, and thereafter shall be reviewed, and

revised if necessary according to the schedule provided in subsection (2) of this section.

(2) Cities and counties preparing solid waste management plans shall submit the waste reduction and recycling element required in RCW 70.95.090 and any revisions to other elements of its comprehensive solid waste management plan to the department no later than:

(a) July 1, 1991, for class one areas: PROVIDED, That portions relating to multiple family residences shall be submitted no later than July 1, 1992;

(b) July 1, 1992, for class two areas; and

(c) July 1, 1994, for class three areas.

Thereafter, each plan shall be reviewed and revised, if necessary, at least every five years. Nothing in chapter 431, Laws of 1989 shall prohibit local governments from submitting a plan prior to the dates listed in this subsection.

(3) The classes of areas are defined as follows:

(a) Class one areas are the counties of Spokane, Snohomish, King, Pierce, and Kitsap and all the cities therein.

(b) Class two areas are all other counties located west of the crest of the Cascade mountains and all the cities therein.

(c) Class three areas are the counties east of the crest of the Cascade mountains and all the cities therein, except for Spokane county.

(4) Cities and counties shall begin implementing the programs to collect source separated materials no later than one year following the adoption and approval of the waste reduction and recycling element and these programs shall be fully implemented within two years of approval. [1991 c 298 § 4; 1989 c 431 § 5; 1984 c 123 § 7; 1969 ex.s. c 134 § 11.]

Finding—1991 c 298: See note following RCW 70.95.030.

70.95.130 Financial aid to counties and cities. Any county may apply to the department on a form prescribed thereby for financial aid for the preparation of the comprehensive county plan for solid waste management required by RCW 70.95.080. Any city electing to prepare an independent city plan, a joint city plan, or a joint county-city plan for solid waste management for inclusion in the county comprehensive plan may apply for financial aid for such purpose through the county. Every city application for financial aid for planning shall be filed with the county auditor and shall be included as a part of the county's application for financial aid. Any city preparing an independent plan shall provide for disposal sites wholly within its jurisdiction.

The department shall allocate to the counties and cities applying for financial aid for planning, such funds as may be available pursuant to legislative appropriations or from any federal grants for such purpose.

The department shall determine priorities and allocate available funds among the counties and cities applying for aid according to criteria established by regulations of the department considering population, urban development, environmental effects of waste disposal, existing waste handling practices, and the local justification of their proposed expenditures. [1969 ex.s. c 134 § 13.]

70.95.140 Matching requirements. Counties and cities shall match their planning aid allocated by the director by an amount not less than twenty-five percent of the estimated

cost of such planning. Any federal planning aid made directly to a county or city shall not be considered either a state or local contribution in determining local matching requirements. Counties and cities may meet their share of planning costs by cash and contributed services. [1969 ex.s. c 134 § 14.]

70.95.150 Contracts with counties to assure proper expenditures. Upon the allocation of planning funds as provided in RCW 70.95.130, the department shall enter into a contract with each county receiving a planning grant. The contract shall include such provisions as the director may deem necessary to assure the proper expenditure of such funds including allocations made to cities. The sum allocated to a county shall be paid to the treasurer of such county. [1969 ex.s. c 134 § 15.]

70.95.160 Local board of health regulations to implement the comprehensive plan—Section not to be construed to authorize counties to operate system. Each county, or any city, or jurisdictional board of health shall adopt regulations or ordinances governing solid waste handling implementing the comprehensive solid waste management plan covering storage, collection, transportation, treatment, utilization, processing and final disposal including but not limited to the issuance of permits and the establishment of minimum levels and types of service for any aspect of solid waste handling. County regulations or ordinances adopted regarding levels and types of service shall not apply within the limits of any city where the city has by local ordinance determined that the county shall not exercise such powers within the corporate limits of the city. Such regulations or ordinances shall assure that solid waste storage and disposal facilities are located, maintained, and operated in a manner so as properly to protect the public health, prevent air and water pollution, are consistent with the priorities established in RCW 70.95.010, and avoid the creation of nuisances. Such regulations or ordinances may be more stringent than the minimum functional standards adopted by the department. Regulations or ordinances adopted by counties, cities, or jurisdictional boards of health shall be filed with the department.

Nothing in this section shall be construed to authorize the operation of a solid waste collection system by counties. [1989 c 431 § 10; 1988 c 127 § 29; 1969 ex.s. c 134 § 16.]

70.95.163 Local health departments may contract with the department of ecology. Any jurisdictional health department and the department of ecology may enter into an agreement providing for the exercise by the department of ecology of any power that is specified in the contract and that is granted to the jurisdictional health department under this chapter. However, the jurisdictional health department shall have the approval of the legislative authority or authorities it serves before entering into any such agreement with the department of ecology. [1989 c 431 § 16.]

70.95.165 Solid waste disposal facility siting—Site review—Local solid waste advisory committees—Membership. (1) Each county or city siting a solid waste disposal

facility shall review each potential site for conformance with the standards as set by the department for:

- (a) Geology;
- (b) Ground water;
- (c) Soil;
- (d) Flooding;
- (e) Surface water;
- (f) Slope;
- (g) Cover material;
- (h) Capacity;
- (i) Climatic factors;
- (j) Land use;
- (k) Toxic air emissions; and
- (l) Other factors as determined by the department.

(2) The standards in subsection (1) of this section shall be designed to use the best available technology to protect the environment and human health, and shall be revised periodically to reflect new technology and information.

(3) Each county shall establish a local solid waste advisory committee to assist in the development of programs and policies concerning solid waste handling and disposal and to review and comment upon proposed rules, policies, or ordinances prior to their adoption. Such committees shall consist of a minimum of nine members and shall represent a balance of interests including, but not limited to, citizens, public interest groups, business, the waste management industry, and local elected public officials. The members shall be appointed by the county legislative authority. A county or city shall not apply for funds from the state and local improvements revolving account, Waste Disposal Facilities, 1980, under chapter 43.99F RCW, for the preparation, update, or major amendment of a comprehensive solid waste management plan unless the plan or revision has been prepared with the active assistance and participation of a local solid waste advisory committee. [1989 c 431 § 11; 1984 c 123 § 4.]

70.95.167 Private businesses involvement in source separated materials—Local solid waste advisory committee to examine. (1) Each local solid waste advisory committee shall conduct one or more meetings for the purpose of determining how local private recycling and solid waste collection businesses may participate in the development and implementation of programs to collect source separated materials from residences, and to process and market materials collected for recycling. The meetings shall include local private recycling businesses, private solid waste collection companies operating within the jurisdiction, and the local solid waste planning agencies. The meetings shall be held during the development of the waste reduction and recycling element or no later than one year prior to the date that a jurisdiction is required [to] submit the element under RCW 70.95.110(2).

(2) The meeting requirement under subsection (1) of this section shall apply whenever a city or county develops or amends the waste reduction and recycling element required under this chapter. Jurisdictions having approved waste reduction and recycling elements or having initiated a process for the selection of a service provider as of May 21, 1991, do not have to comply with the requirements of subsection

tion (1) of this section until the next revisions to the waste reduction and recycling element are made or required.

(3) After the waste reduction and recycling element is approved by the local legislative authority but before it is submitted to the department for approval, the local solid waste advisory committee shall hold at least one additional meeting to review the element.

(4) For the purpose of this section, "private recycling business" means any private for-profit or private not-for-profit business that engages in the processing and marketing of recyclable materials. [1991 c 319 § 402.]

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

70.95.170 Permit for solid waste handling facility—Required. Except as provided otherwise in RCW 70.95.305 or 70.95.310, after approval of the comprehensive solid waste plan by the department no solid waste handling facility or facilities shall be maintained, established, or modified until the county, city, or other person operating such site has obtained a permit pursuant to RCW 70.95.180 or 70.95.190. [1998 c 156 § 3; 1997 c 213 § 2; 1969 ex.s. c 134 § 17.]

70.95.180 Permit for solid waste handling facility—Applications, fee. (1) Applications for permits to operate a new or modified solid waste handling facility shall be on forms prescribed by the department and shall contain a description of the proposed facilities and operations at the site, plans and specifications for any new or additional facilities to be constructed, and such other information as the jurisdictional health department may deem necessary in order to determine whether the site and solid waste disposal facilities located thereon will comply with local and state regulations.

(2) Upon receipt of an application for a permit to establish or modify a solid waste handling facility, the jurisdictional health department shall refer one copy of the application to the department which shall report its findings to the jurisdictional health department.

(3) The jurisdictional health department shall investigate every application as may be necessary to determine whether a proposed or modified site and facilities meet all solid waste, air, and other applicable laws and regulations, and conforms with the approved comprehensive solid waste handling plan, and complies with all zoning requirements.

(4) When the jurisdictional health department finds that the permit should be issued, it shall issue such permit. Every application shall be approved or disapproved within ninety days after its receipt by the jurisdictional health department.

(5) The jurisdictional board of health may establish reasonable fees for permits and renewal of permits. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid. [1997 c 213 § 3; 1988 c 127 § 30; 1969 ex.s. c 134 § 18.]

70.95.185 Permit for solid waste disposal site or facilities—Review by department—Appeal of issuance—Validity of permits issued after June 7, 1984. Every permit issued by a jurisdictional health department under RCW

70.95.180 shall be reviewed by the department to ensure that the proposed site or facility conforms with:

(1) All applicable laws and regulations including the minimal functional standards for solid waste handling; and

(2) The approved comprehensive solid waste management plan.

The department shall review the permit within thirty days after the issuance of the permit by the jurisdictional health department. The department may appeal the issuance of the permit by the jurisdictional health department to the pollution control hearings board, as described in chapter 43.21B RCW, for noncompliance with subsection (1) or (2) of this section.

No permit issued pursuant to RCW 70.95.180 after June 7, 1984, shall be considered valid unless it has been reviewed by the department. [1984 c 123 § 8.]

70.95.190 Permit for solid waste handling facility—Renewal—Appeal—Validity of renewal—Review fees.

(1) Every permit for an existing solid waste handling facility issued pursuant to RCW 70.95.180 shall be renewed at least every five years on a date established by the jurisdictional health department having jurisdiction of the site and as specified in the permit. If a permit is to be renewed for longer than one year, the local jurisdictional health department may hold a public hearing before making such a decision. Prior to renewing a permit, the health department shall conduct a review as it deems necessary to assure that the solid waste handling facility or facilities located on the site continues to meet minimum functional standards of the department, applicable local regulations, and are not in conflict with the approved solid waste management plan. A jurisdictional health department shall approve or disapprove a permit renewal within forty-five days of conducting its review. The department shall review and may appeal the renewal as set forth for the approval of permits in RCW 70.95.185.

(2) The jurisdictional board of health may establish reasonable fees for permits reviewed under this section. All permit fees collected by the health department shall be deposited in the treasury and to the account from which the health department's operating expenses are paid. [1998 c 156 § 4; 1997 c 213 § 4; 1984 c 123 § 9; 1969 ex.s. c 134 § 19.]

70.95.200 Permit for solid waste disposal site or facilities—Suspension.

Any permit for a solid waste disposal site issued as provided herein shall be subject to suspension at any time the jurisdictional health department determines that the site or the solid waste disposal facilities located on the site are being operated in violation of this chapter, or the regulations of the department or local laws and regulations. [1969 ex.s. c 134 § 20.]

70.95.205 Exemption from solid waste permit requirements—Waste-derived soil amendments—Application—Revocation of exemption—Appeal.

(1) Waste-derived soil amendments that meet the standards and criteria in this section may apply for exemption from solid waste permitting as required under RCW 70.95.170. The application shall be submitted to the department in a format determined

by the department or an equivalent format. The application shall include:

(a) Analytical data showing that the waste-derived soil amendments meet standards established under RCW 15.54.800; and

(b) Other information deemed appropriate by the department to protect human health and the environment.

(2) After receipt of an application, the department shall review it to determine whether the application is complete, and forward a copy of the complete application to all interested jurisdictional health departments for review and comment. Within forty-five days, the jurisdictional health departments shall forward their comments and any other information they deem relevant to the department, which shall then give final approval or disapproval of the application. Every complete application shall be approved or disapproved by the department within ninety days after receipt.

(3) The department, after providing opportunity for comments from the jurisdictional health departments, may at any time revoke an exemption granted under this section if the quality or use of the waste-derived soil amendment changes or the management, storage, or end use of the waste-derived soil amendment constitutes a threat to human health or the environment.

(4) Any aggrieved party may appeal the determination by the department in subsection (2) or (3) of this section to the pollution control hearings board. [1998 c 36 § 18.]

Intent—1998 c 36: See RCW 15.54.265.

Short title—1998 c 36: See note following RCW 15.54.265.

70.95.210 Hearing—Appeal—Denial, suspension—When effective. Whenever the jurisdictional health department denies a permit or suspends a permit for a solid waste disposal site, it shall, upon request of the applicant or holder of the permit, grant a hearing on such denial or suspension within thirty days after the request therefor is made. Notice of the hearing shall be given [to] all interested parties including the county or city having jurisdiction over the site and the department. Within thirty days after the hearing, the health officer shall notify the applicant or the holder of the permit in writing of his determination and the reasons therefor. Any party aggrieved by such determination may appeal to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days after receipt of notice of the determination of the health officer. The hearings board shall hold a hearing in accordance with the provisions of the Administrative Procedure Act, chapter 34.05 RCW. If the jurisdictional health department denies a permit renewal or suspends a permit for an operating waste recycling facility that receives waste from more than one city or county, and the applicant or holder of the permit requests a hearing or files an appeal under this section, the permit denial or suspension shall not be effective until the completion of the appeal process under this section, unless the jurisdictional health department declares that continued operation of the waste recycling facility poses a very probable threat to human health and the environment. [1998 c 90 § 3; 1987 c 109 § 21; 1969 ex.s. c 134 § 21.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

[Title 70 RCW—page 222]

70.95.212 Solid waste collection companies—Notice of changes in tipping fees and disposal rate schedules. To provide solid waste collection companies with sufficient time to prepare and submit tariffs and rate filings for public comment and commission approval, the owner or operator of a transfer station, landfill, or facility used to burn solid waste shall provide seventy-five days' notice to solid waste collection companies of any change in tipping fees and disposal rate schedules. The notice period shall begin on the date individual notice to a collection company is delivered to the company or is postmarked.

A collection company may agree to a shorter notice period: PROVIDED, That such agreement by a company shall not affect the notice requirements for rate filings under RCW 81.28.050.

The owner of a transfer station, landfill or facility used to burn solid waste may agree to provide companies with a longer notice period.

"Solid waste collection companies" as used in this section means the companies regulated by the commission pursuant to chapter 81.77 RCW. [1993 c 300 § 3.]

70.95.215 Landfill disposal facilities—Reserve accounts required by July 1, 1987—Exception—Rules.

(1) By July 1, 1987, each holder or applicant of a permit for a landfill disposal facility issued under this chapter shall establish a reserve account to cover the costs of closing the facility in accordance with state and federal regulations. The account shall be designed to ensure that there will be adequate revenue available by the projected date of closure. A landfill disposal facility maintained on private property for the sole use of the entity owning the site and a landfill disposal facility operated and maintained by a government shall not be required to establish a reserve account if, to the satisfaction of the department, the entity or government provides another form of financial assurance adequate to comply with the requirements of this section.

(2) By July 1, 1986, the department shall adopt rules under chapter 34.05 RCW to implement subsection (1) of this section. The department is not required to adopt rules pertaining to other approved forms of financial assurance to cover the costs of closing a landfill disposal facility. The rules shall include but not be limited to:

(a) Methods to estimate closure costs, including postclosure monitoring, pollution prevention measures, and any other procedures required under state and federal regulations;

(b) Methods to ensure that reserve accounts receive adequate funds, including:

(i) Requirements that the reserve account be generated by user fees. However, the department may waive this requirement for existing landfills if user fees would be prohibitively high;

(ii) Requirements that moneys be placed in the reserve account on a regular basis and that the reserve account be kept separate from all other accounts; and

(iii) Procedures for the department to verify that adequate sums are deposited in the reserve account; and

(c) Methods to ensure that other types of financial assurance provided in accordance with subsection (1) of this section are adequate to cover the costs of closing the facility. [2000 c 114 § 1; 1985 c 436 § 1.]

(2004 Ed.)

70.95.217 Waste generated outside the state—Findings. The legislature finds that:

(1) The state of Washington has responded to the increasing challenges of safe, affordable disposal of solid waste by an ambitious program of waste reduction, recycling and reuse, as well as strict standards to ensure the safe handling, transportation, and disposal of solid waste;

(2) All communities in Washington participate in these programs through locally available recycling services, increased source separation and material recovery requirements, programs for waste reduction and product reuse, and performance standards that apply to all solid waste disposal facilities in the state;

(3) New requirements for the siting and performance of disposal facilities have greatly decreased the number of such facilities in Washington, and the state has a significant interest in ensuring adequate disposal capacity within the state;

(4) The landfilling, incineration, and other disposal of solid waste may adversely impact public health and environmental quality, and the state has a significant interest in decreasing volumes of the waste stream destined for disposal;

(5) Because of the decreasing number of disposal facilities and other reasons, solid waste is being transported greater distances, often beyond the community where generated and is increasingly being transported between states;

(6) Washington's waste management priorities and programs are a balanced approach of increased reuse, recycling and waste reduction, the strengthening of markets for recycled content products, and the safe disposal of the remaining waste stream, with the costs of these programs shared equitably by all persons generating waste in the state;

(7) Those residing in other states who generate waste destined for disposal within Washington should also share the costs of waste diversion and management of Washington's disposal facilities, so that the risks of waste disposal and the costs of mitigating those risks are shared equitably by all waste generators, regardless of their location;

(8) Because Washington state may not directly regulate waste handling, reduction, and recycling activities beyond its state boundaries, the only reasonable alternative to ensure this equitable treatment of waste being disposed within Washington is to implement a program of reviewing such activities as to waste originating outside of Washington, and to assign the additional costs, when necessary, to ensure that the waste meets standards substantially equivalent to those applicable to waste generated within the state, and, in some cases, to prohibit disposal of waste where its generation and management is not subject to standards substantially equivalent to those applicable to waste generated within the state. [1993 c 286 § 1.]

Severability—1993 c 286: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 286 § 3.]

Effective date—1993 c 286: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 286 § 4.]

70.95.218 Waste generated outside the state—Solid waste disposal site facility reporting requirements—Fees.

(1) At least sixty days prior to receiving solid waste generated

(2004 Ed.)

from outside of the state, the operator of a solid waste disposal site facility shall report to the department the types and quantities of waste to be received from an out-of-state source. The department shall develop guidelines for reporting this information. The guidelines shall provide for less than sixty days notice for shipments of waste made on a short-term or emergency basis. The requirements of this subsection shall take effect upon completion of the guidelines.

(2) Upon notice under subsection (1) of this section, the department shall identify all activities and costs necessary to ensure that solid waste generated out-of-state meets standards relating to solid waste reduction, recycling, and management substantially equivalent to those required of solid waste generated within the state. The department may assess a fee on the out-of-state waste sufficient to recover the actual costs incurred in ensuring that the out-of-state waste meets equivalent state standards. The department may delegate, to a local health department, authority to implement the activities identified by the department under this subsection. All money received from fees imposed under this subsection shall be deposited into the solid waste management account created by *RCW 70.95.800, and shall be used solely for the activities required by this section.

(3) The department may prohibit in-state disposal of solid waste generated from outside of the state, unless the generators of the waste meet: (a) Waste reduction and recycling requirements substantially equivalent to those applicable in Washington state; and (b) solid waste handling standards substantially equivalent to those applicable in Washington state.

(4) The department may adopt rules to implement this section. [1993 c 286 § 2.]

***Reviser's note:** RCW 70.95.800 was repealed by 2000 c 150 § 2, effective July 1, 2001.

Severability—Effective date—1993 c 286: See notes following RCW 70.95.217.

70.95.220 Financial aid to jurisdictional health departments—Applications—Allocations. Any jurisdictional health department may apply to the department for financial aid for the enforcement of rules and regulations promulgated under this chapter. Such application shall contain such information, including budget and program description, as may be prescribed by regulations of the department.

After receipt of such applications the department may allocate available funds according to criteria established by regulations of the department considering population, urban development, the number of the disposal sites, and geographical area.

The sum allocated to a jurisdictional health department shall be paid to the treasury from which the operating expenses of the health department are paid, and shall be used exclusively for inspections and administrative expenses necessary to enforce applicable regulations. [1969 ex.s. c 134 § 22.]

70.95.230 Financial aid to jurisdictional health departments—Matching funds requirements. The jurisdictional health department applying for state assistance for the enforcement of this chapter shall match such aid allocated by the department in an amount not less than twenty-five per-

cent of the total amount spent for such enforcement activity during the year. The local share of enforcement costs may be met by cash and contributed services. [1969 ex.s. c 134 § 23.]

70.95.235 Diversion of recyclable material—Penalty.

(1) No person may divert to personal use any recyclable material placed in a container as part of a recycling program, without the consent of the generator of such recyclable material or the solid waste collection company operating under the authority of a town, city, county, or the utilities and transportation commission, and no person may divert to commercial use any recyclable material placed in a container as part of a recycling program, without the consent of the person owning or operating such container.

(2) A violation of subsection (1) of this section is a class 1 civil infraction under chapter 7.80 RCW. Each violation of this section shall be a separate infraction. [1991 c 319 § 407.]

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

70.95.240 Unlawful to dump or deposit solid waste without permit—Penalties—Litter cleanup restitution payment.

(1) After the adoption of regulations or ordinances by any county, city, or jurisdictional board of health providing for the issuance of permits as provided in RCW 70.95.160, it shall be unlawful for any person to dump or deposit or permit the dumping or depositing of any solid waste onto or under the surface of the ground or into the waters of this state except at a solid waste disposal site for which there is a valid permit. This section does not:

(a) Prohibit a person from dumping or depositing solid waste resulting from his or her own activities onto or under the surface of ground owned or leased by him or her when such action does not violate statutes or ordinances, or create a nuisance;

(b) Apply to a person using a waste-derived soil amendment that has been approved by the department under RCW 70.95.205; or

(c) Apply to the application of commercial fertilizer that has been registered with the department of agriculture as provided in RCW 15.54.325, and that is applied in accordance with the standards established in RCW 15.54.800(3).

(2)(a) It is a class 3 civil infraction as defined in RCW 7.80.120 for a person to litter in an amount less than or equal to one cubic foot.

(b) It is a misdemeanor for a person to litter in an amount greater than one cubic foot but less than one cubic yard. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or fifty dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the jurisdictional health department investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(c) It is a gross misdemeanor for a person to litter in an amount of one cubic yard or more. The person shall also pay a litter cleanup restitution payment equal to twice the actual cost of cleanup, or one hundred dollars per cubic foot of litter, whichever is greater. The court shall distribute one-half of the restitution payment to the landowner and one-half of the restitution payment to the jurisdictional health department investigating the incident. The court may, in addition to or in lieu of part or all of the cleanup restitution payment, order the person to pick up and remove litter from the property, with prior permission of the legal owner or, in the case of public property, of the agency managing the property. The court may suspend or modify the litter cleanup restitution payment for a first-time offender under this section, if the person cleans up and properly disposes of the litter.

(d) If a junk vehicle is abandoned in violation of this chapter, RCW 46.55.230 governs the vehicle's removal, disposal, and sale, and the penalties that may be imposed against the person who abandoned the vehicle. [2001 c 139 § 2; 2000 c 154 § 3; 1998 c 36 § 19; 1997 c 427 § 4; 1993 c 292 § 3; 1969 ex.s. c 134 § 24.]

Severability—2000 c 154: See note following RCW 70.93.030.

Intent—1998 c 36: See RCW 15.54.265.

Short title—1998 c 36: See note following RCW 15.54.265.

70.95.250 Name appearing on waste material—Presumption. Whenever solid wastes dumped in violation of RCW 70.95.240 contain three or more items bearing the name of one individual, there shall be a rebuttable presumption that the individual whose name appears on such items committed the unlawful act of dumping. [1969 ex.s. c 134 § 25.]

70.95.255 Disposal of sewage sludge or septic tank sludge prohibited—Exemptions—Uses of sludge material permitted. After January 1, 1988, the department of ecology may prohibit disposal of sewage sludge or septic tank sludge (septage) in landfills for final disposal, except on a temporary, emergency basis, if the jurisdictional health department determines that a potentially unhealthful circumstance exists. Beneficial uses of sludge in landfill reclamation is acceptable utilization and not considered disposal.

The department of ecology shall adopt rules that provide exemptions from this section on a case-by-case basis. Exemptions shall be based on the economic infeasibility of using or disposing of the sludge material other than in a landfill.

The department of ecology, in conjunction with the department of health and the department of agriculture, shall adopt rules establishing labeling and notification requirements for sludge material sold commercially or given away to the public. The department shall specify mandatory wording for labels and notification to warn the public against improper use of the material. [1992 c 174 § 15; 1986 c 297 § 1.]

70.95.260 Duties of department—State solid waste management plan—Assistance—Coordination—Tire recycling. The department shall in addition to its other powers and duties:

(1) Cooperate with the appropriate federal, state, interstate and local units of government and with appropriate private organizations in carrying out the provisions of this chapter.

(2) Coordinate the development of a solid waste management plan for all areas of the state in cooperation with local government, the department of community, trade, and economic development, and other appropriate state and regional agencies. The plan shall relate to solid waste management for twenty years in the future and shall be reviewed biennially, revised as necessary, and extended so that perpetually the plan shall look to the future for twenty years as a guide in carrying out a state coordinated solid waste management program. The plan shall be developed into a single integrated document and shall be adopted no later than October 1990. The plan shall be revised regularly after its initial completion so that local governments revising local comprehensive solid waste management plans can take advantage of the data and analysis in the state plan.

(3) Provide technical assistance to any person as well as to cities, counties, and industries.

(4) Initiate, conduct, and support research, demonstration projects, and investigations, and coordinate research programs pertaining to solid waste management systems.

(5) Develop statewide programs to increase public awareness of and participation in tire recycling, and to stimulate and encourage local private tire recycling centers and public participation in tire recycling.

(6) May, under the provisions of the Administrative Procedure Act, chapter 34.05 RCW, as now or hereafter amended, from time to time promulgate such rules and regulations as are necessary to carry out the purposes of this chapter. [1995 c 399 § 189; 1989 c 431 § 9. Prior: 1985 c 345 § 8; 1985 c 6 § 23; 1969 ex.s. c 134 § 26.]

Study—1989 c 431: "The institute for urban and local studies at Eastern Washington State University shall conduct a study of enforcement of solid waste management laws and regulations as a component of the 1990 state solid waste management plan. This study shall include, but shall not be limited to:

(1) A review of current state and local solid waste rules, requirements, policies, and resources devoted to state and local solid waste enforcement, and of the effectiveness of these programs in promoting environmental health and public safety;

(2) An examination of federal regulations and the latest proposed amendments to the Resource Conservation and Recovery Act, in subtitle D of the code of federal regulations;

(3) A review of regulatory approaches used by other states;

(4) A review and evaluation of educational and technical assistance programs related to enforcement;

(5) An inventory of regulatory compliance for all processing and disposal facilities handling mixed solid waste;

(6) A review of the role and effectiveness of other enforcement jurisdictions;

(7) An evaluation of the need for redefining institutional roles and responsibilities for enforcement of solid waste management laws and regulations in order to establish public confidence in solid waste management systems and ensure public protection; and

(8) An evaluation of possible benefits in separating the solid waste planning and technical assistance responsibilities from the enforcement responsibilities within the department." [1989 c 431 § 96.]

70.95.263 Additional powers and duties of department. The department shall in addition to its other duties and powers under this chapter:

(1) Prepare the following:

(a) A management system for recycling waste paper generated by state offices and institutions in cooperation with such offices and institutions;

(b) An evaluation of existing and potential systems for recovery of energy and materials from solid waste with recommendations to affected governmental agencies as to those systems which would be the most appropriate for implementation;

(c) A data management system to evaluate and assist the progress of state and local jurisdictions and private industry in resource recovery;

(d) Identification of potential markets, in cooperation with private industry, for recovered resources and the impact of the distribution of such resources on existing markets;

(e) Studies on methods of transportation, collection, reduction, separation, and packaging which will encourage more efficient utilization of existing waste recovery facilities;

(f) Recommendations on incentives, including state grants, loans, and other assistance, to local governments which will encourage the recovery and recycling of solid wastes.

(2) Provide technical information and assistance to state and local jurisdictions, the public, and private industry on solid waste recovery and/or recycling.

(3) Procure and expend funds available from federal agencies and other sources to assist the implementation by local governments of solid waste recovery and/or recycling programs, and projects.

(4) Conduct necessary research and studies to carry out the purposes of this chapter.

(5) Encourage and assist local governments and private industry to develop pilot solid waste recovery and/or recycling projects.

(6) Monitor, assist with research, and collect data for use in assessing feasibility for others to develop solid waste recovery and/or recycling projects. [1998 c 245 § 131; 1975-'76 2nd ex.s. c 41 § 5.]

70.95.265 Department to cooperate with public and private departments, agencies and associations. The department shall work closely with the department of community, trade, and economic development, the department of general administration, and with other state departments and agencies, the Washington state association of counties, the association of Washington cities, and business associations, to carry out the objectives and purposes of chapter 41, Laws of 1975-'76 2nd ex. sess. [1995 c 399 § 190; 1985 c 466 § 69; 1975-'76 2nd ex.s. c 41 § 6.]

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

70.95.267 Department authorized to disburse referendum 26 (chapter 43.83A RCW) fund for local government solid waste projects. The department is authorized to use referendum 26 (chapter 43.83A RCW) funds of the Washington futures account to disburse to local governments in developing solid waste recovery and/or recycling projects. [1975-'76 2nd ex.s. c 41 § 10.]

70.95.268 Department authorized to disburse funds under chapter 43.99F RCW for local government solid waste projects. The department is authorized to use funds under chapter 43.99F RCW to disburse to local governments in developing solid waste recovery or recycling projects. Priority shall be given to those projects that use incineration of solid waste to produce energy and to recycling projects. [1984 c 123 § 10.]

70.95.270 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 16.]

Severability—1994 c 257: See note following RCW 36.70A.270.

70.95.280 Determination of best solid waste management practices—Department to develop method to monitor waste stream—Collectors to report quantity and quality of waste—Confidentiality of proprietary information. The department of ecology shall determine the best management practices for categories of solid waste in accordance with the priority solid waste management methods established in RCW 70.95.010. In order to make this determination, the department shall conduct a comprehensive solid waste stream analysis and evaluation. Following establishment of baseline data resulting from an initial in-depth analysis of the waste stream, the department shall develop a less intensive method of monitoring the disposed waste stream including, but not limited to, changes in the amount of waste generated and waste type. The department shall monitor curbside collection programs and other waste segregation and disposal technologies to determine, to the extent possible, the effectiveness of these programs in terms of cost and participation, their applicability to other locations, and their implications regarding rules adopted under this chapter. Persons who collect solid waste shall annually report to the department the types and quantities of solid waste that are collected and where it is delivered. The department shall adopt guidelines for reporting and for keeping proprietary information confidential. [1989 c 431 § 13; 1988 c 184 § 1.]

Recovered materials transportation, utilities and transportation commission to adopt rules for reporting under RCW 70.95.280: RCW 81.80.450.

70.95.285 Solid waste stream analysis. The comprehensive, statewide solid waste stream analysis under RCW 70.95.280 shall be based on representative solid waste generation areas and solid waste generation sources within the state. The following information and evaluations shall be included:

- (1) Solid waste generation rates for each category;
- (2) The rate of recycling being achieved within the state for each category of solid waste;

(3) The current and potential rates of solid waste reduction within the state;

(4) A technological assessment of current solid waste reduction and recycling methods and systems, including cost/benefit analyses;

(5) An assessment of the feasibility of segregating solid waste at: (a) The original source, (b) transfer stations, and (c) the point of final disposal;

(6) A review of methods that will increase the rate of solid waste reduction; and

(7) An assessment of new and existing technologies that are available for solid waste management including an analysis of the associated environmental risks and costs.

The data required by the analysis under this section shall be kept current and shall be available to local governments and the waste management industry. [1988 c 184 § 2.]

70.95.290 Solid waste stream evaluation. (1) The evaluation of the solid waste stream required in RCW 70.95.280 shall include the following elements:

(a) The department shall determine which management method for each category of solid waste will have the least environmental impact; and

(b) The department shall evaluate the costs of various management options for each category of solid waste, including a review of market availability, and shall take into consideration the economic impact on affected parties;

(c) Based on the results of (a) and (b) of this subsection, the department shall determine the best management for each category of solid waste. Different management methods for the same categories of waste may be developed for different parts of the state.

(2) The department shall give priority to evaluating categories of solid waste that, in relation to other categories of solid waste, comprise a large volume of the solid waste stream or present a high potential of harm to human health. At a minimum the following categories of waste shall be evaluated:

(a) By January 1, 1989, yard waste and other biodegradable materials, paper products, disposable diapers, and batteries; and

(b) By January 1, 1990, metals, glass, plastics, styrofoam or rigid lightweight cellular polystyrene, and tires. [1988 c 184 § 3.]

70.95.295 Analysis and evaluation to be incorporated in state solid waste management plan. The department shall incorporate the information from the analysis and evaluation conducted under RCW 70.95.280 through 70.95.290 to the state solid waste management plan under RCW 70.95.260. The plan shall be revised periodically as the evaluation and analysis is updated. [1988 c 184 § 4.]

70.95.300 Solid waste—Beneficial uses—Permitting requirement exemptions. (1) The department may by rule exempt a solid waste from the permitting requirements of this chapter for one or more beneficial uses. In adopting such rules, the department shall specify both the solid waste that is exempted from the permitting requirements and the beneficial use or uses for which the solid waste is so exempted. The

department shall consider: (a) Whether the material will be beneficially used or reused; and (b) whether the beneficial use or reuse of the material will present threats to human health or the environment.

(2) The department may also exempt a solid waste from the permitting requirements of this chapter for one or more beneficial uses by approving an application for such an exemption. The department shall establish by rule procedures under which a person may apply to the department for such an exemption. The rules shall establish criteria for providing such an exemption, which shall include, but not be limited to: (a) The material will be beneficially used or reused; and (b) the beneficial use or reuse of the material will not present threats to human health or the environment. Rules adopted under this subsection shall identify the information that an application shall contain. Persons seeking such an exemption shall apply to the department under the procedures established by the rules adopted under this subsection.

(3) After receipt of an application filed under rules adopted under subsection (2) of this section, the department shall review the application to determine whether it is complete, and forward a copy of the completed application to all jurisdictional health departments for review and comment. Within forty-five days, the jurisdictional health departments shall forward to the department their comments and any other information they deem relevant to the department's decision to approve or disapprove the application. Every complete application shall be approved or disapproved by the department within ninety days of receipt. If the application is approved by the department, the solid waste is exempt from the permitting requirements of this chapter when used anywhere in the state in the manner approved by the department. If the composition, use, or reuse of the solid waste is not consistent with the terms and conditions of the department's approval of the application, the use of the solid waste remains subject to the permitting requirements of this chapter.

(4) The department shall establish procedures by rule for providing to the public and the solid waste industry notice of and an opportunity to comment on each application for an exemption under subsection (2) of this section.

(5) Any jurisdictional health department or applicant may appeal the decision of the department to approve or disapprove an application under subsection (3) of this section. The appeal shall be made to the pollution control hearings board by filing with the hearings board a notice of appeal within thirty days of the decision of the department. The hearings board's review of the decision shall be made in accordance with chapter 43.21B RCW and any subsequent appeal of a decision of the board shall be made in accordance with RCW 43.21B.180.

(6) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on June 11, 1998, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to modify or revoke those exemptions or determinations by rule. [1998 c 156 § 2.]

70.95.305 Solid waste handling permit—Exemption from requirements—Application of section—Rules. (1) Notwithstanding any other provision of this chapter, the

(2004 Ed.)

department may by rule exempt from the requirements to obtain a solid waste handling permit any category of solid waste handling facility that it determines to:

(a) Present little or no environmental risk; and

(b) Meet the environmental protection and performance requirements required for other similar solid waste facilities.

(2) This section does not apply to any facility or category of facilities that:

(a) Receives municipal solid waste destined for final disposal, including but not limited to transfer stations, landfills, and incinerators;

(b) Applies putrescible solid waste on land for final disposal purposes;

(c) Handles mixed solid wastes that have not been processed to segregate solid waste materials destined for disposal from other solid waste materials destined for a beneficial use;

(d) Receives or processes organic waste materials into compost in volumes that generally far exceed those handled by municipal park departments, master gardening programs, and households; or

(e) Receives solid waste destined for recycling or reuse, the operation of which is determined by the department to present risks to human health and the environment.

(3) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules. If a facility does not operate in compliance with the terms and conditions established for an exemption under subsection (1) of this section, the facility is subject to the permitting requirements for solid waste handling under this chapter.

(4) This section shall not be deemed to invalidate the exemptions or determinations of nonapplicability in the department's solid waste rules as they exist on June 11, 1998, which exemptions and determinations are recognized and confirmed subject to the department's continuing authority to modify or revoke those exemptions or determinations by rule. [1998 c 156 § 5.]

70.95.310 Rules—Department "deferring" to other permits—Application of section. (1) Notwithstanding any other provisions of this chapter, the department shall adopt rules:

(a) Describing when a jurisdictional health department may, at its discretion, waive the requirement that a permit be issued for a facility under this chapter if other air, water, or environmental permits are issued for the same facility. As used in this section, a jurisdictional health department's waiving the requirement that a permit be issued for a facility under this chapter based on the issuance of such other permits for the facility is the health department's "deferring" to the other permits; and

(b) Allowing deferral only if the applicant and the jurisdictional health department demonstrate that other permits for the facility will provide a comparable level of protection for human health and the environment that would be provided by a solid waste handling permit.

(2) This section does not apply to any transfer station, landfill, or incinerator that receives municipal solid waste destined for final disposal.

[Title 70 RCW—page 227]

(3) If, before June 11, 1998, either the department or a jurisdictional health department has deferred solid waste permitting or regulation of a solid waste facility to permitting or regulation under other environmental permits for the same facility, such deferral is valid and shall not be affected by the rules developed under subsection (1) of this section.

(4) Rules adopted under this section shall contain such terms and conditions as the department deems necessary to ensure compliance with applicable statutes and rules. [1998 c 156 § 6.]

70.95.315 Penalty. The department may assess a civil penalty in an amount not to exceed one thousand dollars per day per violation to any person exempt from solid waste permitting in accordance with RCW 70.95.300 or 70.95.305 who fails to comply with the terms and conditions of the exemption. Each such violation shall be a separate and distinct offense, and in the case of a continuing violation, each day's continuance shall be a separate and distinct violation. [1998 c 156 § 7.]

70.95.320 Construction. Nothing in chapter 156, Laws of 1998 may be construed to affect chapter 81.77 RCW and the authority of the utilities and transportation commission. [1998 c 156 § 9.]

70.95.500 Disposal of vehicle tires outside designated area prohibited—Penalty—Exemption. (1) No person may drop, deposit, discard, or otherwise dispose of vehicle tires on any public property or private property in this state or in the waters of this state whether from a vehicle or otherwise, including, but not limited to, any public highway, public park, beach, campground, forest land, recreational area, trailer park, highway, road, street, or alley unless:

(a) The property is designated by the state, or by any of its agencies or political subdivisions, for the disposal of discarded vehicle tires; and

(b) The person is authorized to use the property for such purpose.

(2) A violation of this section is punishable by a civil penalty, which shall not be less than two hundred dollars nor more than two thousand dollars for each offense.

(3) This section does not apply to the storage or deposit of vehicle tires in quantities deemed exempt under rules adopted by the department of ecology under its functional standards for solid waste. [1985 c 345 § 4.]

70.95.510 Fee on the retail sale of new replacement vehicle tires. There is levied a one dollar per tire fee on the retail sale of new replacement vehicle tires for a period of five years, beginning October 1, 1989. The fee imposed in this section shall be paid by the buyer to the seller, and each seller shall collect from the buyer the full amount of the fee. The fee collected from the buyer by the seller less the ten percent amount retained by the seller as provided in RCW 70.95.535 shall be paid to the department of revenue in accordance with RCW 82.32.045. All other applicable provisions of chapter 82.32 RCW have full force and application with respect to the fee imposed under this section. The department of revenue shall administer this section.

For the purposes of this section, "new replacement vehicle tires" means tires that are newly manufactured for vehicle purposes and does not include retreaded vehicle tires. [1989 c 431 § 92; 1985 c 345 § 5.]

70.95.530 Vehicle tire recycling account—Use. Moneys in the account may be appropriated to the department of ecology:

(1) To provide for funding to state and local governments for the removal of discarded vehicle tires from unauthorized tire dump sites;

(2) To accomplish the other purposes of *RCW 70.95.020(5); and

(3) To fund the study authorized in section 2, chapter 250, Laws of 1988.

In spending funds in the account under this section, the department of ecology shall identify communities with the most severe problems with waste tires and provide funds first to those communities to remove accumulations of waste tires. [1988 c 250 § 1; 1985 c 345 § 7.]

***Reviser's note:** RCW 70.95.020 was amended by 1998 c 90 § 1, changing subsection (5) to subsection (6).

70.95.535 Disposition of fee. (1) Every person engaged in making retail sales of new replacement vehicle tires in this state shall retain ten percent of the collected one dollar fee. The moneys retained may be used for costs associated with the proper management of the waste vehicle tires by the retailer.

(2) The department of ecology will administer the funds for the purposes specified in *RCW 70.95.020(5) including, but not limited to:

(a) Making grants to local governments for pilot demonstration projects for on-site shredding and recycling of tires from unauthorized dump sites;

(b) Grants to local government for enforcement programs;

(c) Implementation of a public information and education program to include posters, signs, and informational materials to be distributed to retail tire sales and tire service outlets;

(d) Product marketing studies for recycled tires and alternatives to land disposal. [1989 c 431 § 93.]

***Reviser's note:** RCW 70.95.020 was amended by 1998 c 90 § 1, changing subsection (5) to subsection (6).

70.95.540 Cooperation with department to aid tire recycling. To aid in the statewide tire recycling campaign, the legislature strongly encourages various industry organizations which are active in resource recycling efforts to provide active cooperation with the department of ecology so that additional technology can be developed for the tire recycling campaign. [1985 c 345 § 9.]

70.95.545 Tire recycling—Report. The department of ecology, in conjunction with the appropriate private sector stakeholders, shall track and report annually to the legislature the total increase or reduction of tire recycling or reuse rates in the state for each calendar year and for the cumulative calendar years from June 13, 2002. [2002 c 299 § 9.]

70.95.550 Waste tires—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.95.555 through 70.95.565.

(1) "Storage" or "storing" means the placing of more than eight hundred waste tires in a manner that does not constitute final disposal of the waste tires.

(2) "Transportation" or "transporting" means picking up or transporting waste tires for the purpose of storage or final disposal.

(3) "Waste tires" means tires that are no longer suitable for their original intended purpose because of wear, damage, or defect. [1988 c 250 § 3.]

70.95.555 Waste tires—License for transport or storage business—Requirements. Any person engaged in the business of transporting or storing waste tires shall be licensed by the department. To obtain a license, each applicant must:

(1) Provide assurances that the applicant is in compliance with this chapter and the rules regarding waste tire storage and transportation; and

(2) Post a bond in the sum of ten thousand dollars in favor of the state of Washington. In lieu of the bond, the applicant may submit financial assurances acceptable to the department. [1988 c 250 § 4.]

70.95.560 Waste tires—Violation of RCW 70.95.555—Penalty. Any person who transports or stores waste tires without a license in violation of RCW 70.95.555 shall be guilty of a gross misdemeanor and upon conviction shall be punished under RCW 9A.20.021(2). [1989 c 431 § 95; 1988 c 250 § 5.]

70.95.565 Waste tires—Contracts with unlicensed persons prohibited. No business may enter into a contract for:

(1) Transportation of waste tires with an unlicensed waste tire transporter; or

(2) Waste tire storage with an unlicensed owner or operator of a waste tire storage site. [1988 c 250 § 6.]

70.95.600 Educational material promoting household waste reduction and recycling. The department of ecology, at the request of a local government jurisdiction, may periodically provide educational material promoting household waste reduction and recycling to public and private refuse haulers. The educational material shall be distributed to households receiving refuse collection service by local governments or the refuse hauler providing service. The refuse hauler may distribute the educational material by any means that assures timely delivery.

Reasonable expenses incurred in the distribution of this material shall be considered, for rate-making purposes, as legitimate operating expenses of garbage and refuse haulers regulated under chapter 81.77 RCW. [1988 c 175 § 3.]

Effective date—1988 c 175: See note following RCW 43.19.538.

70.95.610 Battery disposal—Restrictions—Violators subject to fine—"Vehicle battery" defined. (1) No person may knowingly dispose of a vehicle battery except by deliv-

ery to: A person or entity selling lead acid batteries, a person or entity authorized by the department to accept the battery, or to a secondary lead smelter.

(2) No owner or operator of a solid waste disposal site shall knowingly accept for disposal used vehicle batteries except when authorized to do so by the department or by the federal government.

(3) Any person who violates this section shall be subject to a fine of up to one thousand dollars. Each battery will constitute a separate violation. Nothing in this section and RCW 70.95.620 through 70.95.660 shall supersede the provisions under chapter 70.105 RCW.

(4) For purposes of this section and RCW 70.95.620 through 70.95.660, "vehicle battery" means batteries capable for use in any vehicle, having a core consisting of elemental lead, and a capacity of six or more volts. [1989 c 431 § 37.]

70.95.620 Identification procedure for persons accepting used vehicle batteries. The department shall establish a procedure to identify, on an annual basis, those persons accepting used vehicle batteries from retail establishments. [1989 c 431 § 38.]

70.95.630 Requirements for accepting used batteries by retailers of vehicle batteries—Notice. A person selling vehicle batteries at retail in the state shall:

(1) Accept, at the time of purchase of a replacement battery, in the place where the new batteries are physically transferred to the purchasers, and in a quantity at least equal to the number of new batteries purchased, used vehicle batteries from the purchasers, if offered by the purchasers. When a purchaser fails to provide an equivalent used battery or batteries, the purchaser may reclaim the core charge paid under RCW 70.95.640 by returning, to the point of purchase within thirty days, a used battery or batteries and a receipt showing proof of purchase from the establishment where the replacement battery or batteries were purchased; and

(2) Post written notice which must be at least eight and one-half inches by eleven inches in size and must contain the universal recycling symbol and the following language:

(a) "It is illegal to put a motor vehicle battery or other vehicle battery in your garbage."

(b) "State law requires us to accept used motor vehicle batteries or other vehicle batteries for recycling, in exchange for new batteries purchased."

(c) "When you buy a battery, state law also requires us to include a core charge of five dollars or more if you do not return your old battery for exchange." [1989 c 431 § 39.]

70.95.640 Retail core charge. Each retail sale of a vehicle battery shall include, in the price of the battery for sale, a core charge of not less than five dollars. When a purchaser offers the seller a used battery of equivalent size, the seller shall omit the core charge from the price of the battery. [1989 c 431 § 40.]

70.95.650 Vehicle battery wholesalers—Obligations regarding used batteries—Noncompliance procedure. (1) A person selling vehicle batteries at wholesale to a retail establishment in this state shall accept, at the time and place

of transfer, used vehicle batteries in a quantity at least equal to the number of new batteries purchased, if offered by the purchaser.

(2) When a battery wholesaler, or agent of the wholesaler, fails to accept used vehicle batteries as provided in this section, a retailer may file a complaint with the department and the department shall investigate any such complaint.

(3)(a) The department shall issue an order suspending any of the provisions of RCW 70.95.630 through 70.95.660 whenever it finds that the market price of lead has fallen to the extent that new battery wholesalers' estimated statewide average cost of transporting used batteries to a smelter or other person or entity in the business of purchasing used batteries is clearly greater than the market price paid for used lead batteries by such smelter or person or entity.

(b) The order of suspension shall only apply to batteries that are sold at retail during the period in which the suspension order is effective.

(c) The department shall limit its suspension order to a definite period not exceeding six months, but shall revoke the order prior to its expiration date should it find that the reasons for its issuance are no longer valid. [1989 c 431 § 41.]

70.95.660 Department to distribute printed notice—Issuance of warnings and citations—Fines. The department shall produce, print, and distribute the notices required by RCW 70.95.630 to all places where vehicle batteries are offered for sale at retail and in performing its duties under this section the department may inspect any place, building, or premise governed by RCW 70.95.640. Authorized employees of the agency may issue warnings and citations to persons who fail to comply with the requirements of RCW 70.95.610 through 70.95.670. Failure to conform to the notice requirements of RCW 70.95.630 shall subject the violator to a fine imposed by the department not to exceed one thousand dollars. However, no such fine shall be imposed unless the department has issued a warning of infraction for the first offense. Each day that a violator does not comply with the requirements of chapter 431, Laws of 1989 following the issuance of an initial warning of infraction shall constitute a separate offense. [1989 c 431 § 42.]

70.95.670 Rules. The department shall adopt rules providing for the implementation and enforcement of RCW 70.95.610 through 70.95.660. [1989 c 431 § 43.]

70.95.700 Solid waste incineration or energy recovery facility—Environmental impact statement requirements. No solid waste incineration or energy recovery facility shall be operated prior to the completion of an environmental impact statement containing the considerations required under RCW 43.21C.030(2)(c) and prepared pursuant to the procedures of chapter 43.21C RCW. This section does not apply to a facility operated prior to January 1, 1989, as a solid waste incineration facility or energy recovery facility burning solid waste. [1989 c 431 § 55.]

70.95.710 Incineration of medical waste. Incineration of medical waste shall be conducted under sufficient burning conditions to reduce all combustible material to a form such

that no portion of the combustible material is visible in its uncombusted state. [1989 c 431 § 77.]

70.95.715 Sharps waste—Drop-off sites—Pharmacy return program. (1) A solid waste planning jurisdiction may designate sharps waste container drop-off sites.

(2) A pharmacy return program shall not be considered a solid waste handling facility and shall not be required to obtain a solid waste permit. A pharmacy return program is required to register, at no cost, with the department. To facilitate designation of sharps waste drop-off sites, the department shall share the name and location of registered pharmacy return programs with jurisdictional health departments and local solid waste management officials.

(3) A public or private provider of solid waste collection service may provide a program to collect source separated residential sharps waste containers as provided in chapter 70.95K RCW.

(4) For the purpose of this section, "sharps waste," "sharps waste container," and "pharmacy return program" shall have the same meanings as provided in RCW 70.95K.010. [1994 c 165 § 5.]

Findings—Purposes—Intent—1994 c 165: See note following RCW 70.95K.010.

70.95.720 Closure of energy recovery and incineration facilities—Recordkeeping requirements. The department shall require energy recovery and incineration facilities to retain records of monitoring and operation data for a minimum of ten years after permanent closure of the facility. [1990 c 114 § 4.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95.810 Composting food and yard wastes—Grants and study. (1) In order to establish the feasibility of composting food and yard wastes, the department shall provide funds, as available, to local governments submitting a proposal to compost such wastes.

(2) The department, in cooperation with the department of community, trade, and economic development, may approve an application if the project can demonstrate the essential parameters for successful composting, including, but not limited to, cost-effectiveness, handling and safety requirements, and current and potential markets. [1998 c 245 § 132; 1995 c 399 § 191; 1989 c 431 § 97.]

70.95.900 Authority and responsibility of utilities and transportation commission not changed. Nothing in this act shall be deemed to change the authority or responsibility of the Washington utilities and transportation commission to regulate all intrastate carriers. [1969 ex.s. c 134 § 27.]

70.95.901 Severability—1989 c 431. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 431 § 107.]

70.95.902 Section captions not law—1989 c 431. Captions and headings used in this act do not constitute any part of the law. [1989 c 431 § 108.]

70.95.903 Application of chapter—Collection and transportation of recyclable materials by recycling companies or nonprofit entities—Reuse or reclamation. Nothing in this chapter shall prevent a recycling company or nonprofit entity from collecting and transporting recyclable materials from a buy-back center, drop-box, or from a commercial or industrial generator of recyclable materials, or upon agreement with a solid waste collection company.

Nothing in this chapter shall be construed as prohibiting a commercial or industrial generator of commercial recyclable materials from selling, conveying, or arranging for transportation of such material to a recycler for reuse or reclamation. [1989 c 431 § 32.]

70.95.910 Severability—1969 ex.s. c 134. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provisions to other persons or circumstances is not affected. [1969 ex.s. c 134 § 28.]

70.95.911 Severability—1975-'76 2nd ex.s. c 41. If any provision of this 1976 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 41 § 11.]

Chapter 70.95A RCW

POLLUTION CONTROL—MUNICIPAL BONDING AUTHORITY

Sections

| | |
|------------|---|
| 70.95A.010 | Legislative declaration—Liberal construction. |
| 70.95A.020 | Definitions. |
| 70.95A.030 | Municipalities—Powers. |
| 70.95A.035 | Actions by municipalities validated. |
| 70.95A.040 | Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms. |
| 70.95A.045 | Proceeds of bonds are separate trust funds—Municipal treasurer, compensation. |
| 70.95A.050 | Revenue bonds—Security—Scope—Default—Authorization proceedings. |
| 70.95A.060 | Facilities—Leases authorized. |
| 70.95A.070 | Facilities—Revenue bonds—Refunding provisions. |
| 70.95A.080 | Revenue bonds—Disposition of proceeds. |
| 70.95A.090 | Facilities—Sale or lease—Certain restrictions on municipalities not applicable. |
| 70.95A.100 | Facilities—Department of ecology certification. |
| 70.95A.910 | Construction—1973 c 132. |
| 70.95A.912 | Construction—1975 c 6. |
| 70.95A.920 | Severability—1973 c 132. |
| 70.95A.930 | Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations. |
| 70.95A.940 | Severability—1975 c 6. |

70.95A.010 Legislative declaration—Liberal construction. The legislature finds:

(1) That environmental damage seriously endangers the public health and welfare;

(2004 Ed.)

(2) That such environmental damage results from air, water, and other resources pollution and from solid waste disposal, noise and other environmental problems;

(3) That to abate or control such environmental damage antipollution devices, equipment, and facilities must be acquired, constructed and installed;

(4) That the tax exempt financing permitted by Section 103 of the Internal Revenue Code of 1954, as amended, and authorized by this chapter results in lower costs of installation of pollution control facilities;

(5) That such lower costs benefit the public with no measurable cost impact;

(6) That the method of financing provided in this chapter is in the public interest and its use serves a public purpose in (a) protecting and promoting the health and welfare of the citizens of the cities, towns, counties, and port districts and of this state by encouraging and accelerating the installation of facilities for abating or controlling and preventing environmental damage and (b) in attracting and retaining environmentally sound industry in this state which reduces unemployment and provides a more diversified tax base.

(7) For the reasons set forth in subsection (6) of this section, the provisions of this chapter relating to port districts and all proceedings heretofore or hereafter taken by port districts pursuant thereto are, and shall be deemed to be, for industrial development as authorized by Article 8, section 8 of the Washington state Constitution.

This chapter shall be liberally construed to accomplish the intentions expressed in this section. [1975 c 6 § 1; 1973 c 132 § 2.]

70.95A.020 Definitions. As used in this chapter, unless the context otherwise requires:

(1) "Municipality" shall mean any city, town, county, or port district in the state;

(2) "Facility" or "facilities" shall mean any land, building, structure, machinery, system, fixture, appurtenance, equipment or any combination thereof, or any interest therein, and all real and personal properties deemed necessary in connection therewith whether or not now in existence, which is used or to be used by any person, corporation or municipality in furtherance of the purpose of abating, controlling or preventing pollution;

(3) "Pollution" shall mean any form of environmental pollution, including but not limited to water pollution, air pollution, land pollution, solid waste disposal, thermal pollution, radiation contamination, or noise pollution;

(4) "Governing body" shall mean the body or bodies in which the legislative powers of the municipality are vested;

(5) "Mortgage" shall mean a mortgage or a mortgage and deed of trust or other security device; and

(6) "Department" shall mean the state department of ecology. [1973 c 132 § 3.]

70.95A.030 Municipalities—Powers. In addition to any other powers which it may now have, each municipality shall have the following powers:

(1) To acquire, whether by construction, purchase, devise, gift or lease, or any one or more of such methods, one

or more facilities which shall be located within, or partially within the municipality;

(2) To lease, lease with option to purchase, sell or sell by installment sale, any or all of the facilities upon such terms and conditions as the governing body may deem advisable but which shall at least fully reimburse the municipality for all debt service on any bonds issued to finance the facilities and for all costs incurred by the municipality in financing and operating the facilities and as shall not conflict with the provisions of this chapter;

(3) To issue revenue bonds for the purpose of defraying the cost of acquiring or improving any facility or facilities or refunding any bonds issued for such purpose and to secure the payment of such bonds as provided in this chapter. Revenue bonds may be issued in one or more series or issues where deemed advisable, and each such series or issue may have the same or different maturity dates, interest rates, priorities on revenues available for payment of such bonds and priorities on security available for assuring payment thereof, and such other differing terms and conditions as are deemed necessary and are not in conflict with the provisions of this chapter. [1973 c 132 § 4.]

70.95A.035 Actions by municipalities validated. All actions heretofore taken by any municipality in conformity with the provisions of this chapter and the provisions of chapter 6, Laws of 1975 hereby made applicable thereto relating to pollution control facilities, including but not limited to all bonds issued for such purposes, are hereby declared to be valid, legal and binding in all respects. [1975 c 6 § 4.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.040 Municipalities—Revenue bonds for pollution control facilities—Authorized—Construction—Sale, conditions—Form, terms. (1) All bonds issued by a municipality under the authority of this chapter shall be secured solely by revenues derived from the lease or sale of the facility. Bonds and any interest coupons issued under the authority of this chapter shall not constitute nor give rise to a pecuniary liability of the municipality or a charge against its general credit or taxing powers. Such limitation shall be plainly stated upon the face of each of such bonds. The use of the municipality's name on revenue bonds authorized hereunder shall not be construed to be the giving or lending of the municipality's financial guarantee or pledge, i.e. credit to any private person, firm, or corporation as the term credit is used in Article 8, section 7 of the Washington state Constitution.

(2) The bonds referred to in subsection (1) of this section, may (a) be executed and delivered at any time and from time to time, (b) be in such form and denominations, (c) be of such tenor, (d) be in bearer or registered form either as to principal or interest or both, as provided in RCW 39.46.030, and may provide for conversion between registered and coupon bonds of varying denominations, (e) be payable in such installments and at such time or times not exceeding forty years from their date, (f) be payable at such place or places, (g) bear interest at such rate or rates as may be determined by the governing body, payable at such place or places within or without this state and evidenced in such manner, (h) be redeemable prior to maturity, with or without premium, and

(i) contain such provisions not inconsistent herewith, as shall be deemed for the best interest of the municipality and provided for in the proceedings of the governing body whereunder the bonds shall be authorized to be issued.

(3) Any bonds issued under the authority of this chapter, may be sold at public or private sale in such manner and at such time or times as may be determined by the governing body to be most advantageous. The municipality may pay all expenses, premiums and commissions which the governing body may deem necessary or advantageous in connection with the authorization, sale and issuance thereof from the proceeds of the sale of said bonds or from the revenues of the facilities.

(4) All bonds issued under the authority of this chapter, and any interest coupons applicable thereto shall be investment securities within the meaning of the uniform commercial code and shall be deemed to be issued by a political subdivision of the state.

(5) The proceeds from any bonds issued under this chapter shall be used only for purposes qualifying under Section 103(c)(4)(f) of the Internal Revenue Code of 1954, as amended.

(6) Notwithstanding subsections (2) and (3) of this section, such bonds may be issued and sold in accordance with chapter 39.46 RCW. [1983 c 167 § 174; 1975 c 6 § 3; 1973 c 132 § 5.]

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

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.045 Proceeds of bonds are separate trust funds—Municipal treasurer, compensation. The proceeds of any bonds heretofore or hereafter issued in conformity with the authority of this chapter, together with interest and premiums thereon, and any revenues used to pay or redeem any of such bonds, together with interest and any premiums thereon, shall be separate trust funds and used only for the purposes permitted herein and shall not be considered to be money of the municipality. The services of the treasurer of a municipality, if such treasurer is or has been used, were and are intended to be for the administrative convenience of receipt and payment of nonpublic moneys only for which reasonable compensation may be charged by such treasurer or municipality. [1975 c 6 § 2.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.050 Revenue bonds—Security—Scope—Default—Authorization proceedings. (1) The principal of and interest on any bonds issued under the authority of this chapter (a) shall be secured by a pledge of the revenues derived from the sale or lease of the facilities out of which such bonds shall be made payable, (b) may be secured by a mortgage covering all or any part of the facilities, (c) may be secured by a pledge or assignment of the lease of such facilities, or (d) may be secured by a trust agreement or such other security device as may be deemed most advantageous by the governing body.

(2) The proceedings under which the bonds are authorized to be issued under the provisions of this chapter, and

any mortgage given to secure the same may contain any agreements and provisions customarily contained in instruments securing bonds, including, without limiting the generality of the foregoing, provisions respecting (a) the fixing and collection of rents for any facilities covered by such proceedings or mortgage, (b) the terms to be incorporated in the lease of such facilities, (c) the maintenance and insurance of such facilities, (d) the creation and maintenance of special funds from the revenues of such facilities, and (e) the rights and remedies available in the event of a default to the bond owners or to the trustee under a mortgage or trust agreement, all as the governing body shall deem advisable and as shall not be in conflict with the provisions of this chapter: PROVIDED, That in making any such agreements or provisions a municipality shall not have the power to obligate itself except with respect to the facilities and the application of the revenues therefrom, and shall not have the power to incur a pecuniary liability or a charge upon its general credit or against its taxing powers.

(3) The proceedings authorizing any bonds under the provisions of this chapter and any mortgage securing such bonds may provide that, in the event of a default in the payment of the principal of or the interest on such bonds or in the performance of any agreement contained in such proceedings or mortgage, such payment and performance may be enforced by mandamus or by the appointment of a receiver in equity with power to charge and collect rents and to apply the revenues from the facilities in accordance with such proceedings or the provisions of such mortgage.

(4) Any mortgage made under the provisions of this chapter, to secure bonds issued thereunder, may also provide that, in the event of a default in the payment thereof or the violation of any agreement contained in the mortgage, the mortgage may be foreclosed and the mortgaged property sold under proceedings in equity or in any other manner now or hereafter permitted by law. Such mortgage may also provide that any trustee under such mortgage or the owner of any of the bonds secured thereby may become the purchaser at any foreclosure sale if the highest bidder therefor. No breach of any such agreement shall impose any pecuniary liability upon a municipality or any charge upon their general credit or against their taxing powers.

(5) The proceedings authorizing the issuance of bonds hereunder may provide for the appointment of a trustee or trustees for the protection of the owners of the bonds, whether or not a mortgage is entered into as security for such bonds. Any such trustee may be a bank with trust powers or a trust company and shall be located in the United States, within or without the state of Washington, shall have the immunities, powers and duties provided in said proceedings, and may, to the extent permitted by such proceedings, hold and invest funds deposited with it in direct obligations of the United States, obligations guaranteed by the United States or certificates of deposit of a bank (including the trustee) which are continuously secured by such obligations of or guaranteed by the United States. Any bank acting as such trustee may, to the extent permitted by such proceedings, buy bonds issued hereunder to the same extent as if it were not such trustee. Said proceedings may provide for one or more co-trustees, and any co-trustee may be any competent individual over the age of twenty-one years or a bank having trust pow-

ers or trust company within or without the state. The proceedings authorizing the bonds may provide that some or all of the proceeds of the sale of the bonds, the revenues of any facilities, the proceeds of the sale of any part of a facility, of any insurance policy or of any condemnation award be deposited with the trustee or a co-trustee and applied as provided in said proceedings. [1983 c 167 § 175; 1973 c 132 § 6.]

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

70.95A.060 Facilities—Leases authorized. Prior to the issuance of the bonds authorized by this chapter, the municipality may lease the facilities to a lessee or lessees under an agreement providing for payment to the municipality of such rentals as will be sufficient (a) to pay the principal of and interest on the bonds issued to finance the facilities, (b) to pay the taxes on the facilities, (c) to build up and maintain any reserves deemed by the governing body to be advisable in connection therewith, and (d) unless the agreement of lease obligates the lessees to pay for the maintenance and insurance of the facilities, to pay the costs of maintaining the facilities in good repair and keeping the same properly insured. Subject to the limitations of this chapter, the lease or extensions or modifications thereof may contain such other terms and conditions as may be mutually acceptable to the parties, and notwithstanding any other provisions of law relating to the sale of property owned by municipalities, such lease may contain an option for the lessees to purchase the facilities on such terms and conditions with or without consideration as may be mutually acceptable to the parties. [1973 c 132 § 7.]

70.95A.070 Facilities—Revenue bonds—Refunding provisions. Any bonds issued under the provisions of this chapter and at any time outstanding may at any time and from time to time be refunded by a municipality by the issuance of its refunding bonds in such amount as the governing body may deem necessary but not exceeding an amount sufficient to refund the principal of the bonds to be so refunded, together with any unpaid interest thereon and any premiums and commissions necessary to be paid in connection therewith: PROVIDED, That an issue of refunding bonds may be combined with an issue of additional revenue bonds on any facilities. Any such refunding may be effected whether the bonds to be refunded shall have then matured or shall thereafter mature, either by sale of the refunding bonds and the application of the proceeds thereof for the payment of the bonds to be refunded thereby, or by exchange of the refunding bonds for the bonds to be refunded thereby: PROVIDED FURTHER, That the owners of any bonds to be so refunded shall not be compelled without their consent to surrender their bonds for payment or exchange except on the terms expressed on the face thereof. Any refunding bonds issued under the authority of this chapter shall be subject to the provisions contained in RCW 70.95A.040 and may be secured in accordance with the provisions of RCW 70.95A.050. [1983 c 167 § 176; 1973 c 132 § 8.]

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

70.95A.080 Revenue bonds—Disposition of proceeds. The proceeds from the sale of any bonds issued under

authority of this chapter shall be applied only for the purpose for which the bonds were issued: PROVIDED, That any accrued interest and premium received in any such sale shall be applied to the payment of the principal of or the interest on the bonds sold: AND PROVIDED FURTHER, That if for any reason any portion of such proceeds shall not be needed for the purpose for which the bonds were issued, then such unneeded portion of said proceeds shall be applied to the payment of the principal of or the interest on said bonds. The cost of acquiring or improving any facilities shall be deemed to include the following: The actual cost of acquiring or improving real estate for any facilities; the actual cost of construction of all or any part of the facilities which may be constructed, including architects' and engineers' fees, all expenses in connection with the authorization, sale and issuance of the bonds to finance such acquisition or improvements; and the interest on such bonds for a reasonable time prior to construction, during construction, and for a time not exceeding six months after completion of construction. [1973 c 132 § 9.]

70.95A.090 Facilities—Sale or lease—Certain restrictions on municipalities not applicable. The facilities shall be constructed, reconstructed, and improved and shall be leased, sold or otherwise disposed of in the manner determined by the governing body in its sole discretion and any requirement of competitive bidding, lease performance bonds or other restriction imposed on the procedure for award of contracts for such purpose or the lease, sale or other disposition of property of a municipality is not applicable to any action taken under authority of this chapter. [1973 c 132 § 10.]

70.95A.100 Facilities—Department of ecology certification. Upon request by a municipality or by a user of the facilities the department of ecology may in relation to chapter 54, Laws of 1972 ex. sess. and this chapter issue its certificate stating that the facilities (1) as designed are in furtherance of the purpose of abating, controlling or preventing pollution, and/or (2) as designed or as operated meet state and local requirements for the control of pollution. This section shall not be construed as modifying the provisions of RCW 82.34.030; chapter 70.94 RCW; or chapter 90.48 RCW. [1973 c 132 § 11.]

70.95A.910 Construction—1973 c 132. Nothing in this chapter shall be construed as a restriction or limitation upon any powers which a municipality might otherwise have under any laws of this state, but shall be construed as cumulative. [1973 c 132 § 12.]

70.95A.912 Construction—1975 c 6. This 1975 amendatory act shall be liberally construed to accomplish the intention expressed herein. [1975 c 6 § 6.]

Port districts—Pollution control facilities or other industrial development—Validation: RCW 53.08.041.

70.95A.920 Severability—1973 c 132. If any provision of this 1973 act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect

other provisions or applications of this 1973 act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1973 c 132 § 13.]

70.95A.930 Acquisitions by port districts under RCW 53.08.040—Prior rights or obligations. All acquisitions by port districts pursuant to RCW 53.08.040 may, at the option of a port commission, be deemed to be made under this chapter, or under both: PROVIDED, That nothing contained in this chapter shall impair rights or obligations under contracts entered into before March 19, 1973. [1973 c 132 § 14.]

70.95A.940 Severability—1975 c 6. If any provision of this 1975 amendatory act or the application thereof to any person or circumstance, is held invalid, such invalidity shall not affect other provisions or applications of this 1975 amendatory act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable. [1975 c 6 § 7.]

Chapter 70.95B RCW DOMESTIC WASTE TREATMENT PLANTS—OPERATORS

Sections

- 70.95B.010 Legislative declaration.
- 70.95B.020 Definitions.
- 70.95B.030 Wastewater treatment plant operators—Certification required.
- 70.95B.040 Administration of chapter—Rules and regulations—Director's duties.
- 70.95B.050 Wastewater treatment plants—Classification.
- 70.95B.060 Criteria and guidelines.
- 70.95B.071 Ad hoc advisory committees.
- 70.95B.080 Certificates—When examination not required.
- 70.95B.090 Certificates—Issuance and renewal conditions.
- 70.95B.095 Certificates—Fees.
- 70.95B.100 Certificates—Revocation procedures.
- 70.95B.110 Administration of chapter—Powers and duties of director.
- 70.95B.115 Licenses or certificates—Suspension for noncompliance with support order—Reissuance.
- 70.95B.120 Violations.
- 70.95B.130 Certificates—Reciprocity with other states.
- 70.95B.140 Penalties for violations—Injunctions.
- 70.95B.150 Administration of chapter—Receipts—Payment to general fund.
- 70.95B.900 Effective date—1973 c 139.

Reviser's note: Chapter 139, Laws of 1973 has been codified as chapter 70.95B RCW to conform with code organization. Section 16 of chapter 139 had directed that the chapter be added to Title 43 RCW.

Public water supply systems—Certification and regulation of operators: Chapter 70.119 RCW.

70.95B.010 Legislative declaration. The legislature declares that competent operation of waste treatment plants plays an important part in the protection of the environment of the state and therefore it is of vital interest to the public. In order to protect the public health and to conserve and protect the water resources of the state, it is necessary to provide for the classifying of all domestic wastewater treatment plants; to require the examination and certification of the persons responsible for the supervision and operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1973 c 139 § 1.]

70.95B.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Director" means the director of the department of ecology.

(2) "Department" means the department of ecology.

(3) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(4) "Wastewater treatment plant" means a facility used to treat any liquid or waterborne waste of domestic origin or a combination of domestic, commercial or industrial origin, and which by its design requires the presence of an operator for its operation. It shall not include any facility used exclusively by a single family residence, septic tanks with subsoil absorption, industrial wastewater treatment plants, or wastewater collection systems.

(5) "Operator in responsible charge" means an individual who is designated by the owner as the person on-site in responsible charge of the routine operation of a wastewater treatment plant.

(6) "Nationally recognized association of certification authorities" shall mean that organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and wastewater facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(7) "Wastewater collection system" means any system of lines, pipes, manholes, pumps, liftstations, or other facilities used for the purpose of collecting and transporting wastewater.

(8) "Operating experience" means routine performance of duties, on-site in a wastewater treatment plant, that affects plant performance or effluent quality.

(9) "Owner" means in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chairman of the county legislative authority or the chairman's designee; in the case of a water-sewer district, board of public utilities, association, municipality or other public body, the president or chairman of the body or the president's or chairman's designee; in the case of a privately owned wastewater treatment plant, the legal owner.

(10) "Wastewater certification program coordinator" means an employee of the department who administers the wastewater treatment plant operators' certification program. [1999 c 153 § 66; 1995 c 269 § 2901; 1987 c 357 § 1; 1973 c 139 § 2.]

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

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95B.030 Wastewater treatment plant operators—Certification required. As provided for in this chapter, the individual on-site at a wastewater treatment plant who is designated by the owner as the operator in responsible charge of

(2004 Ed.)

the operation and maintenance of the plant on a routine basis shall be certified at a level equal to or higher than the classification rating of the plant being operated.

If a wastewater treatment plant is operated on more than one daily shift, the operator in charge of each shift shall be certified at a level no lower than one level lower than the classification rating of the plant being operated and shall be subordinate to the operator in responsible charge who is certified at a level equal to or higher than the plant. This requirement for shift operator certification shall be met by January 1, 1989.

Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1987 c 357 § 2; 1973 c 139 § 3.]

70.95B.040 Administration of chapter—Rules and regulations—Director's duties. The director shall adopt and enforce such rules and regulations as may be necessary for the administration of this chapter. The rules and regulations shall include, but not be limited to, provisions for the qualification and certification of operators for different classifications of wastewater treatment plants. [1995 c 269 § 2902; 1987 c 357 § 3; 1973 c 139 § 4.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95B.050 Wastewater treatment plants—Classification. The director shall classify all wastewater treatment plants with regard to the size, type, and other conditions affecting the complexity of such treatment plants and the skill, knowledge, and experience required of an operator to operate such facilities to protect the public health and the state's water resources. [1987 c 357 § 4; 1973 c 139 § 5.]

70.95B.060 Criteria and guidelines. The director is authorized when taking action pursuant to RCW 70.95B.040 and 70.95B.050 to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1973 c 139 § 6.]

70.95B.071 Ad hoc advisory committees. The director, in cooperation with the secretary of health, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance regarding the examination and certification of operators of wastewater treatment plants. [1995 c 269 § 2908.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95B.080 Certificates—When examination not required. Certificates shall be issued without examination under the following conditions:

(1) Certificates, in appropriate classifications, shall be issued without application fee to operators who, on July 1, 1973, hold certificates of competency attained by examination under the voluntary certification program sponsored jointly by the state department of social and health services,

health services division, and the Pacific Northwest pollution control association.

(2) Certificates, in appropriate classifications, shall be issued to persons certified by a governing body or owner to have been the operator in responsible charge of a waste treatment plant on July 1, 1973. A certificate so issued will be valid only for the existing plant.

(3) A nonrenewable certificate, temporary in nature, may be issued for a period not to exceed twelve months, to an operator who fills a vacated position required to be filled by a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [1987 c 357 § 5; 1973 c 139 § 8.]

70.95B.090 Certificates—Issuance and renewal conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) A certificate shall be issued if the operator has satisfactorily passed a written examination, or has met the requirements of RCW 70.95B.080, and has met the requirements specified in the rules and regulations as authorized by this chapter, and has paid the department an application fee. Such application fee shall not exceed fifty dollars.

(2) The term for all certificates shall be from the first of January of the year of issuance until the thirty-first of December of the renewal year. The renewal period, not to exceed three years, shall be set by agency rule. Every certificate shall be renewed upon the payment of a renewal fee and satisfactory evidence presented to the director that the operator demonstrates continued professional growth in the field. Such renewal fee shall not exceed thirty dollars.

(3) Individuals who fail to renew their certificates before December 31 of the renewal year, upon notice by the director shall have their certificates suspended for sixty days. If, during the suspension period, the renewal is not completed, the director shall give notice of revocation to the employer and to the operator and the certificate will be revoked ten days after such notice is given. An operator whose certificate has been revoked must reapply for certification and will be requested to meet the requirements of a new applicant. [1987 c 357 § 6; 1973 c 139 § 9.]

70.95B.095 Certificates—Fees. Effective January 1, 1988, the department shall establish rules for the collection of fees for the issuance and renewal of certificates as provided for in RCW 70.95B.090. Beginning January 1, 1992, these fees shall be sufficient to recover the costs of the certification program. [1987 c 357 § 9.]

70.95B.100 Certificates—Revocation procedures. The director may, after conducting a hearing, revoke a certificate found to have been obtained by fraud or deceit, or for gross negligence in the operation of a waste treatment plant, or for violating the requirements of this chapter or any lawful rule, order or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of this final order or revocation. [1995 c 269 § 2903; 1973 c 139 § 10.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95B.110 Administration of chapter—Powers and duties of director. To carry out the provisions and purposes of this chapter, the director is authorized and empowered to:

(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as the director deems appropriate with other state, federal, or interstate agencies, municipalities, education institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government and other public or private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, or other public or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, education institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting for funds appropriated or otherwise provided for the purpose of carrying out the provisions of this chapter. [1987 c 357 § 7; 1973 c 139 § 11.]

70.95B.115 Licenses or certificates—Suspension for noncompliance with support order—Reissuance. The director shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the director's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 876.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

70.95B.120 Violations. On and after one year following July 1, 1973, it shall be unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a wastewater treatment plant unless the individuals identified in RCW 70.95B.030 are duly certified by the director under the provisions of this chapter or any lawful rule, order, or regulation of the department. It shall also be unlawful for any person to perform the duties of an operator as defined in this chapter, or in any lawful rule, order, or regulation of the department, without being duly

certified under the provisions of this chapter. [1987 c 357 § 8; 1973 c 139 § 12.]

70.95B.130 Certificates—Reciprocity with other states. On or after July 1, 1973, certification of operators by any state which, as determined by the director, accepts certifications made or certification requirements deemed satisfied pursuant to the provisions of this chapter, shall be accorded reciprocal treatment and shall be recognized as valid and sufficient within the purview of this chapter, if in the judgment of the director the certification requirements of such state are substantially equivalent to the requirements of this chapter or any rules or regulations promulgated hereunder.

In making determinations pursuant to this section, the director shall consult with the *board and may consider any generally applicable criteria and guidelines developed by the nationally recognized association of certification authorities. [1973 c 139 § 13.]

***Reviser's note:** RCW 70.95B.070, which created the water and wastewater operator certification board of examiners, was repealed by 1995 c 269 § 2907, effective July 1, 1995.

70.95B.140 Penalties for violations—Injunctions. Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency violating any provisions of this chapter or the rules and regulations adopted hereunder, is guilty of a misdemeanor. Each day of operation in such violation of this chapter or any rules or regulations adopted hereunder shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate, to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted hereunder. [1973 c 139 § 14.]

70.95B.150 Administration of chapter—Receipts—Payment to general fund. All receipts realized in the administration of this chapter shall be paid into the general fund. [1973 c 139 § 15.]

70.95B.900 Effective date—1973 c 139. This 1973 act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1973. [1973 c 139 § 17.]

Chapter 70.95C RCW WASTE REDUCTION

Sections

| | |
|------------|--|
| 70.95C.010 | Legislative findings. |
| 70.95C.020 | Definitions. |
| 70.95C.030 | Office of waste reduction—Duties. |
| 70.95C.040 | Waste reduction and hazardous substance use reduction consultation program. |
| 70.95C.050 | Waste reduction techniques—Workshops and seminars. |
| 70.95C.060 | Waste reduction hot line—Data base system. |
| 70.95C.070 | Waste reduction research and development program—Contracts. |
| 70.95C.080 | Director's authority. |
| 70.95C.110 | Waste reduction and recycling program to promote activities by state agencies—Recycled paper goal. |

(2004 Ed.)

| | |
|------------|--|
| 70.95C.120 | Waste reduction and recycling awards program in K-12 public schools. |
| 70.95C.200 | Hazardous waste generators and users—Voluntary reduction plan. |
| 70.95C.210 | Voluntary reduction plan—Exemption. |
| 70.95C.220 | Voluntary reduction plan, executive summary, or progress report—Department review. |
| 70.95C.230 | Appeal of department order or surcharge. |
| 70.95C.240 | Public inspection of plans, summaries, progress reports. |
| 70.95C.250 | Multimedia permit pilot program—Air, water, hazardous waste management. |

70.95C.010 Legislative findings. The legislature finds that land disposal and incineration of solid and hazardous waste can be both harmful to the environment and costly to those who must dispose of the waste. In order to address this problem in the most cost-effective and environmentally sound manner, and to implement the highest waste management priority as articulated in RCW 70.95.010 and 70.105.150, public and private efforts should focus on reducing the generation of waste. Waste reduction can be achieved by encouraging voluntary efforts to redesign industrial, commercial, production, and other processes to result in the reduction or elimination of waste byproducts and to maximize the in-process reuse or reclamation of valuable spent material.

In the interest of protecting the public health, safety, and the environment, the legislature declares that it is the policy of the state of Washington to encourage reduction in the use of hazardous substances and reduction in the generation of hazardous waste whenever economically and technically practicable.

The legislature finds that hazardous wastes are generated by numerous different sources including, but not limited to, large and small business, households, and state and local government. The legislature further finds that a goal against which efforts at waste reduction may be measured is essential for an effective hazardous waste reduction program. The Pacific Northwest hazardous waste advisory council has endorsed a goal of reducing, through hazardous substance use reduction and waste reduction techniques, the generation of hazardous waste by fifty percent by 1995. The legislature adopts this as a policy goal for the state of Washington. The legislature recognizes that many individual businesses have already reduced the generation of hazardous waste through appropriate hazardous waste reduction techniques. The legislature also recognizes that there are some basic industrial processes which by their nature have limited potential for significantly reducing the use of certain raw materials or substantially reducing the generation of hazardous wastes. Therefore, the goal of reducing hazardous waste generation by fifty percent cannot be applied as a regulatory requirement. [1990 c 114 § 1; 1988 c 177 § 1.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

- (1) "Department" means the department of ecology.
- (2) "Director" means the director of the department of ecology or the director's designee.
- (3) "Dangerous waste" shall have the same definition as set forth in RCW 70.105.010(5) and shall specifically include

those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW.

(4) "EPA/state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.

(5) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

(6) "Fee" means the annual hazardous waste fees imposed under RCW 70.95E.020 and 70.95E.030.

(7) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(8) "Hazardous substance" means any hazardous substance listed as a hazardous substance as of March 21, 1990, pursuant to section 313 of Title III of the Superfund Amendments and Reauthorization Act, any other substance determined by the director by rule to present a threat to human health or the environment, and all ozone depleting compounds as defined by the Montreal Protocol of October 1987.

(9)(a) "Hazardous substance use reduction" means the reduction, avoidance, or elimination of the use or production of hazardous substances without creating substantial new risks to human health or the environment.

(b) "Hazardous substance use reduction" includes proportionate changes in the usage of hazardous substances as the usage of a hazardous substance or hazardous substances changes as a result of production changes or other business changes.

(10) "Hazardous substance user" means any facility required to report under section 313 of Title III of the Superfund Amendments and Reauthorization Act, except for those facilities which only distribute or use fertilizers or pesticides intended for commercial agricultural applications.

(11) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes, but does not include radioactive wastes or a substance composed of both radioactive and hazardous components and does not include any hazardous waste generated as a result of a remedial action under state or federal law.

(12) "Hazardous waste generator" means any person generating hazardous waste regulated by the department.

(13) "Office" means the office of waste reduction.

(14) "Plan" means the plan provided for in RCW 70.95C.200.

(15) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government, including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(16) "Process" means all industrial, commercial, production, and other processes that result in the generation of waste.

(17) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(18) "Recycling" means reusing waste materials and extracting valuable materials from a waste stream. Recycling does not include burning for energy recovery.

(19) "Treatment" means the physical, chemical, or biological processing of waste to render it completely innocuous, produce a recyclable by-product, reduce toxicity, or substantially reduce the volume of material requiring disposal as described in the priorities established in RCW 70.105.150. Treatment does not include incineration.

(20) "Used oil" means (a) lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; (b) any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; and (c) any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser. "Used oil" does not include used oil to which hazardous wastes have been added.

(21) "Waste" means any solid waste as defined under RCW 70.95.030, any hazardous waste, any air contaminant as defined under RCW 70.94.030, and any organic or inorganic matter that shall cause or tend to cause water pollution as defined under RCW 90.48.020.

(22) "Waste generator" means any individual, business, government agency, or any other organization that generates waste.

(23) "Waste reduction" means all in-plant practices that reduce, avoid, or eliminate the generation of wastes or the toxicity of wastes, prior to generation, without creating substantial new risks to human health or the environment. As used in RCW 70.95C.200 through 70.95C.240, "waste reduction" refers to hazardous waste only. [1991 c 319 § 313; 1990 c 114 § 2; 1988 c 177 § 2.]

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

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.030 Office of waste reduction—Duties. (1)

There is established in the department an office of waste reduction. The office shall use its authorities to encourage the voluntary reduction of hazardous substance usage and waste generation by waste generators and hazardous substance users. The office shall prepare and submit a quarterly progress report to the director.

(2) The office shall be the coordinating center for all state agency programs that provide technical assistance to waste generators and hazardous substance users and shall serve as the state's lead agency and promoter for such programs. In addition to this coordinating function, the office shall encourage hazardous substance use reduction and waste reduction by:

(a) Providing for the rendering of advice and consultation to waste generators and hazardous substance users on hazardous substance use reduction and waste reduction techniques, including assistance in preparation of plans provided for in RCW 70.95C.200;

(b) Sponsoring or co-sponsoring with public or private organizations technical workshops and seminars on waste reduction and hazardous substance use reduction;

(c) Administering a waste reduction and hazardous substance use reduction data base and hot line providing comprehensive referral services to waste generators and hazardous substance users;

(d) Administering a waste reduction and hazardous substance use reduction research and development program;

(e) Coordinating a waste reduction and hazardous substance use reduction public education program that includes the utilization of existing publications from public and private sources, as well as publishing necessary new materials on waste reduction;

(f) Recommending to institutions of higher education in the state courses and curricula in areas related to waste reduction and hazardous substance use reduction; and

(g) Operating an intern program in cooperation with institutions of higher education and other outside resources to provide technical assistance on hazardous substance use reduction and waste reduction techniques and to carry out research projects as needed within the office. [1998 c 245 § 133; 1990 c 114 § 3; 1988 c 177 § 3.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.040 Waste reduction and hazardous substance use reduction consultation program. (1) The office shall establish a waste reduction and hazardous substance use reduction consultation program to be coordinated with other state waste reduction and hazardous substance use reduction consultation programs.

(2) The director may grant a request by any waste generator or hazardous substance user for advice and consultation on waste reduction and hazardous substance use reduction techniques and assistance in preparation or modification of a plan, executive summary, or annual progress report, or assistance in the implementation of a plan required by RCW 70.95C.200. Pursuant to a request from a facility such as a business, governmental entity, or other process site in the state, the director may visit the facility making the request for the purposes of observing hazardous substance use and the waste-generating process, obtaining information relevant to waste reduction and hazardous substance use reduction, rendering advice, and making recommendations. No such visit may be regarded as an inspection or investigation, and no notices or citations may be issued, or civil penalty be assessed, upon such a visit. A representative of the director providing advisory or consultative services under this section may not have any enforcement authority.

(3) Consultation and advice given under this section shall be limited to the matters specified in the request and shall include specific techniques of waste reduction and hazardous substance use reduction tailored to the relevant process. In granting any request for advisory or consultative services, the director may provide for an alternative means of affording consultation and advice other than on-site consultation.

(4) Any proprietary information obtained by the director while carrying out the duties required under this section shall remain confidential and shall not be publicized or become part of the data base established under RCW 70.95C.060 without written permission of the requesting party. [1990 c 114 § 5; 1988 c 177 § 4.]

(2004 Ed.)

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.050 Waste reduction techniques—Workshops and seminars. The office, in coordination with all other state waste reduction technical assistance programs, shall sponsor technical workshops and seminars on waste reduction techniques that have been successfully used to eliminate or reduce substantially the amount of waste or toxicity of hazardous waste generated, or that use in-process reclamation or reuse of spent material. [1988 c 177 § 5.]

70.95C.060 Waste reduction hot line—Data base system. (1) The office shall establish a statewide waste reduction hot line with the capacity to refer waste generators and the public to sources of information on specific waste reduction techniques and procedures. The hot line shall coordinate with all other state waste hot lines.

(2) The director shall work with the state library to establish a data base system that shall include proven waste reduction techniques and case studies of effective waste reduction. The data base system shall be: (a) Coordinated with all other state agency data bases on waste reduction; (b) administered in conjunction with the statewide waste reduction hot line; and (c) readily accessible to the public. [1988 c 177 § 6.]

70.95C.070 Waste reduction research and development program—Contracts. (1) The office may administer a waste reduction research and development program. The director may contract with any public or private organization for the purpose of developing methods and technologies that achieve waste reduction. All research performed and all methods or technologies developed as a result of a contract entered into under this section shall become the property of the state and shall be incorporated into the data base system established under RCW 70.95C.060.

(2) Any contract entered into under this section shall be awarded only after requests for proposals have been circulated to persons, firms, or organizations who have requested that their names be placed on a proposal list. The director shall establish a proposal list and shall review and evaluate all proposals received. [1988 c 177 § 7.]

70.95C.080 Director's authority. (1) The director may solicit and accept gifts, grants, conveyances, bequests, and devises, in trust or otherwise, to be directed to the office of waste reduction.

(2) The director may enter into contracts with any public or private organization to carry out the purposes of this chapter. [1988 c 177 § 8.]

70.95C.110 Waste reduction and recycling program to promote activities by state agencies—Recycled paper goal. The legislature finds and declares that the buildings and facilities owned and leased by state government produce significant amounts of solid and hazardous wastes, and actions must be taken to reduce and recycle these wastes and thus reduce the costs associated with their disposal. In order for the operations of state government to provide the citizens of the state an example of positive waste management, the legislature further finds and declares that state government

should undertake an aggressive program designed to reduce and recycle solid and hazardous wastes produced in the operations of state buildings and facilities to the maximum extent possible.

The office of waste reduction, in cooperation with the department of general administration, shall establish an intensive waste reduction and recycling program to promote the reduction of waste produced by state agencies and to promote the source separation and recovery of recyclable and reusable materials.

All state agencies, including but not limited to, colleges, community colleges, universities, offices of elected and appointed officers, the supreme court, court of appeals, and administrative departments of state government shall fully cooperate with the office of waste reduction and recycling in all phases of implementing the provisions of this section. The office shall establish a coordinated state plan identifying each agency's participation in waste reduction and recycling. The office shall develop the plan in cooperation with a multi-agency committee on waste reduction and recycling. Appointments to the committee shall be made by the director of the department of general administration. The director shall notify each agency of the committee, which shall implement the applicable waste reduction and recycling plan elements. All state agencies are to use maximum efforts to achieve a goal of increasing the use of recycled paper by fifty percent by July 1, 1993. [1989 c 431 § 53.]

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

70.95C.120 Waste reduction and recycling awards program in K-12 public schools. The office of waste reduction shall develop, in consultation with the superintendent of public instruction, an awards program to achieve waste reduction and recycling in the public schools, grades kindergarten through high school. The office shall develop guidelines for program development and implementation. Each public school shall implement a waste reduction and recycling program conforming to guidelines developed by the office.

For the purpose of granting awards, the office may group schools into not more than three classes, based upon student population, distance to markets for recyclable materials, and other criteria, as deemed appropriate by the office. Except as otherwise provided, five or more awards shall be granted to each of the three classes. Each award shall be a sum of not less than two thousand dollars nor more than five thousand dollars. Awards shall be granted each year to the schools that achieve the greatest levels of waste reduction and recycling. A single award of not less than five thousand dollars shall be presented to the school having the best recycling program as measured by the total amount of materials recycled, including materials generated outside of the school. A single award of not less than five thousand dollars shall be presented to the school having the best waste reduction program as determined by the office.

The superintendent of public instruction shall distribute guidelines and other materials developed by the office to implement programs to reduce and recycle waste generated in administrative offices, classrooms, laboratories, cafeterias,

and maintenance operations. [1991 c 319 § 114; 1989 c 431 § 54.]

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

Severability—Section captions not law—1989 c 431: See RCW 70.95.901 and 70.95.902.

70.95C.200 Hazardous waste generators and users—Voluntary reduction plan. (1) Each hazardous waste generator who generates more than two thousand six hundred forty pounds of hazardous waste per year and each hazardous substance user, except for those facilities that are primarily permitted treatment, storage, and disposal facilities or recycling facilities, shall prepare a plan for the voluntary reduction of the use of hazardous substances and the generation of hazardous wastes. Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculation of hazardous waste generated for purposes of this section. The department may develop reporting requirements, consistent with existing reporting, to establish recycling for beneficial use under this section. Used oil to be re-refined or burned for energy or heat recovery shall not be used in the calculation of hazardous wastes generated for purposes of this section, and is not required to be addressed by plans prepared under this section. A person with multiple interrelated facilities where the processes in the facilities are substantially similar, may prepare a single plan covering one or more of those facilities.

(2) Each user or generator required to write a plan is encouraged to advise its employees of the planning process and solicit comments or suggestions from its employees on hazardous substance use and waste reduction options.

(3) The department shall adopt by April 1, 1991, rules for preparation of plans. The rules shall require the plan to address the following options, according to the following order of priorities: Hazardous substance use reduction, waste reduction, recycling, and treatment. In the planning process, first consideration shall be given to hazardous substance use reduction and waste reduction options. Consideration shall be given next to recycling options. Recycling options may be considered only after hazardous substance use reduction options and waste reduction options have been thoroughly researched and shown to be inappropriate. Treatment options may be considered only after hazardous substance use reduction, waste reduction, and recycling options have been thoroughly researched and shown to be inappropriate. Documentation of the research shall be available to the department upon request. The rules shall also require the plans to discuss the hazardous substance use reduction, waste reduction, and closed loop recycling options separately from other recycling and treatment options. All plans shall be written in conformance with the format prescribed in the rules adopted under this section. The rules shall require the plans to include, but not be limited to:

(a) A written policy articulating management and corporate support for the plan and a commitment to implementing planned activities and achieving established goals;

(b) The plan scope and objectives;

(c) Analysis of current hazardous substance use and hazardous waste generation, and a description of current hazard-

ous substance use reduction, waste reduction, recycling, and treatment activities;

(d) An identification of further hazardous substance use reduction, waste reduction, recycling, and treatment opportunities, and an analysis of the amount of hazardous substance use reduction and waste reduction that would be achieved, and the costs. The analysis of options shall demonstrate that the priorities provided for in this section have been followed;

(e) A selection of options to be implemented in accordance with the priorities established in this section;

(f) An analysis of impediments to implementing the options. Impediments that shall be considered acceptable include, but are not limited to: Adverse impacts on product quality, legal or contractual obligations, economic practicality, and technical feasibility;

(g) A written policy stating that in implementing the selected options, whenever technically and economically practicable, risks will not be shifted from one part of a process, environmental media, or product to another;

(h) Specific performance goals in each of the following categories, expressed in numeric terms:

(i) Hazardous substances to be reduced or eliminated from use;

(ii) Wastes to be reduced or eliminated through waste reduction techniques;

(iii) Materials or wastes to be recycled; and

(iv) Wastes to be treated;

If the establishment of numeric performance goals is not practicable, the performance goals shall include a clearly stated list of objectives designed to lead to the establishment of numeric goals as soon as is practicable. Goals shall be set for a five-year period from the first reporting date;

(i) A description of how the wastes that are not recycled or treated and the residues from recycling and treatment processes are managed may be included in the plan;

(j) Hazardous substance use and hazardous waste accounting systems that identify hazardous substance use and waste management costs and factor in liability, compliance, and oversight costs;

(k) A financial description of the plan;

(l) Personnel training and employee involvement programs;

(m) A five-year plan implementation schedule;

(n) Documentation of hazardous substance use reduction and waste reduction efforts completed before or in progress at the time of the first reporting date; and

(o) An executive summary of the plan, which shall include, but not be limited to:

(i) The information required by (c), (e), (h), and (n) of this subsection; and

(ii) A summary of the information required by (d) and (f) of this subsection.

(4) Upon completion of a plan, the owner, chief executive officer, or other person with the authority to commit management to the plan shall sign and submit an executive summary of the plan to the department.

(5) Plans shall be completed and executive summaries submitted in accordance with the following schedule:

(a) Hazardous waste generators who generated more than fifty thousand pounds of hazardous waste in calendar

year 1991 and hazardous substance users who were required to report in 1991, by September 1, 1992;

(b) Hazardous waste generators who generated between seven thousand and fifty thousand pounds of hazardous waste in calendar year 1992 and hazardous substance users who were required to report for the first time in 1992, by September 1, 1993;

(c) Hazardous waste generators who generated between two thousand six hundred forty and seven thousand pounds of hazardous waste in 1993 and hazardous substance users who were required to report for the first time in 1993, by September 1, 1994;

(d) Hazardous waste generators who have not been required to complete a plan on or prior to September 1, 1994, must complete a plan by September 1 of the year following the first year that they generate more than two thousand six hundred forty pounds of hazardous waste; and

(e) Hazardous substance users who have not been required to complete a plan on or prior to September 1, 1994, must complete a plan by September 1 of the year following the first year that they are required to report under section 313 of Title III of the Superfund Amendments and Reauthorization Act.

(6) Annual progress reports, including a description of the progress made toward achieving the specific performance goals established in the plan, shall be prepared and submitted to the department in accordance with rules developed under this section. Upon the request of two or more users or generators belonging to similar industrial classifications, the department may aggregate data contained in their annual progress reports for the purpose of developing a public record.

(7) Every five years, each plan shall be updated, and a new executive summary shall be submitted to the department. [1991 c 319 § 314; 1990 c 114 § 6.]

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

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.210 Voluntary reduction plan—Exemption.

A person required to prepare a plan under RCW 70.95C.200 because of the quantity of hazardous waste generated may petition the director to be excused from this requirement. The person must demonstrate to the satisfaction of the director that the quantity of hazardous waste generated was due to unique circumstances not likely to be repeated and that the person is unlikely to generate sufficient hazardous waste to require a plan in the next five years. [1990 c 114 § 7.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.220 Voluntary reduction plan, executive summary, or progress report—Department review. (1)

The department may review a plan, executive summary, or an annual progress report to determine whether the plan, executive summary, or annual progress report is adequate pursuant to the rules developed under this section and with the provisions of RCW 70.95C.200. In determining the adequacy of any plan, executive summary, or annual progress report, the department shall base its determination solely on whether the plan, executive summary, or annual progress report is com-

plete and prepared in accordance with the provisions of RCW 70.95C.200.

(2) Plans developed under RCW 70.95C.200 shall be retained at the facility of the hazardous substance user or hazardous waste generator preparing a plan. The plan is not a public record under the public disclosure laws of the state of Washington contained in chapter 42.17 RCW. A user or generator required to prepare a plan shall permit the director or a representative of the director to review the plan to determine its adequacy. No visit made by the director or a representative of the director to a facility for the purposes of this subsection may be regarded as an inspection or investigation, and no notices or citations may be issued, nor any civil penalty assessed, upon such a visit.

(3) If a hazardous substance user or hazardous waste generator fails to complete an adequate plan, executive summary, or annual progress report, the department shall notify the user or generator of the inadequacy, identifying specific deficiencies. For the purposes of this section, a deficiency may include failure to develop a plan, failure to submit an executive summary pursuant to the schedule provided in RCW 70.95C.200(5), and failure to submit an annual progress report pursuant to the rules developed under RCW 70.95C.200(6). The department shall specify a reasonable time frame, of not less than ninety days, within which the user or generator shall complete a modified plan, executive summary, or annual progress report addressing the specified deficiencies.

(4) If the department determines that a modified plan, executive summary, or annual progress report is inadequate, the department may, within its discretion, either require further modification or enter an order pursuant to subsection (5)(a) of this section.

(5)(a) If, after having received a list of specified deficiencies from the department, a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete modification of a plan, executive summary, or annual progress report within the time period specified by the department, the department may enter an order pursuant to chapter 34.05 RCW finding the user or generator not in compliance with the requirements of RCW 70.95C.200. When the order is final, the department shall notify the department of revenue to charge a penalty fee. The penalty fee shall be the greater of one thousand dollars or three times the amount of the user's or generator's previous year's fee, in addition to the current year's fee. If no fee was assessed the previous year, the penalty shall be the greater of one thousand dollars or three times the amount of the current year's fee. The penalty assessed under this subsection shall be collected each year after the year for which the penalty was assessed until an adequate plan or executive summary is completed.

(b) If a hazardous substance user or hazardous waste generator required to prepare a plan fails to complete an adequate plan, executive summary, or annual progress report after the department has levied against the user or generator the penalty provided in (a) of this subsection, the user or generator shall be required to pay a surcharge to the department whenever the user or generator disposes of a hazardous waste at any hazardous waste incinerator or hazardous waste landfill facility located in Washington state, until a plan, executive summary, or annual progress report is completed and

determined to be adequate by the department. The surcharge shall be equal to three times the fee charged for disposal. The department shall furnish the incinerator and landfill facilities in this state with a list of environmental protection agency/state identification numbers of the hazardous waste generators that are not in compliance with the requirements of RCW 70.95C.200. [1990 c 114 § 8.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.230 Appeal of department order or surcharge. A user or generator may appeal from a department order or a surcharge under RCW 70.95C.220 to the pollution control hearings board pursuant to chapter 43.21B RCW. [1990 c 114 § 9.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.240 Public inspection of plans, summaries, progress reports. (1) The department shall make available for public inspection any executive summary or annual progress report submitted to the department. Any hazardous substance user or hazardous waste generator required to prepare an executive summary or annual progress report who believes that disclosure of any information contained in the executive summary or annual progress report may adversely affect the competitive position of the user or generator may request the department pursuant to RCW 43.21A.160 to delete from the public record those portions of the executive summary or annual progress report that may affect the user's or generator's competitive position. The department shall not disclose any information contained in an executive summary or annual progress report pending a determination of whether the department will delete any information contained in the report from the public record.

(2) Any ten persons residing within ten miles of a hazardous substance user or hazardous waste generator required to prepare a plan may file with the department a petition requesting the department to examine a plan to determine its adequacy. The department shall report its determination of adequacy to the petitioners and to the user or generator within a reasonable time. The department may deny a petition if the department has within the previous year determined the plan of the user or generator named in the petition to be adequate.

(3) The department shall maintain a record of each plan, executive summary, or annual progress report it reviews, and a list of all plans, executive summaries, or annual progress reports the department has determined to be inadequate, including descriptions of corrective actions taken. This information shall be made available to the public. [1990 c 114 § 10.]

Severability—1990 c 114: See RCW 70.95E.900.

70.95C.250 Multimedia permit pilot program—Air, water, hazardous waste management. (1) Not later than January 1, 1995, the department shall designate an industry type and up to ten individual facilities within that industry type to be the focus of a pilot multimedia program. The program shall be designed to coordinate department actions related to environmental permits, plans, approvals, certificates, registrations, technical assistance, and inspections. The program shall also investigate the feasibility of issuing facil-

ity-wide permits. The director shall determine the industry type and facilities based on:

- (a) A review of at least three industry types; and
- (b) Criteria which shall include at least the following factors:

(i) The potential for the industry to serve as a statewide model for multimedia environmental programs including pollution prevention;

(ii) Whether the industry type is subject to regulatory requirements relating to at least two of the following subject areas: Air quality, water quality, or hazardous waste management;

(iii) The existence within the industry type of a range of business sizes; and

(iv) Voluntary participation in the program.

(2) In developing the program, the department shall consult with and seek the cooperation of the environmental protection agency.

(3) For purposes of this section, "facility-wide permit" means a single multimedia permit issued by the department to the owner or operator of a facility incorporating the permits and any other relevant department approvals previously issued to the owner or operator or currently required by the department. [1998 c 245 § 134; 1994 c 248 § 1.]

Conflict with federal requirements—1994 c 248: "If any part of this act is found to be in conflict with federal requirements, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned." [1994 c 248 § 5.]

Chapter 70.95D RCW

SOLID WASTE INCINERATOR AND LANDFILL OPERATORS

Sections

| | |
|------------|--|
| 70.95D.010 | Definitions. |
| 70.95D.020 | Incineration facilities—Owner and operator certification requirements. |
| 70.95D.030 | Landfills—Owner and operator certification requirements. |
| 70.95D.040 | Certification process—Suspension of license or certificate for noncompliance with support order. |
| 70.95D.051 | Ad hoc advisory committees. |
| 70.95D.060 | Revocation of certification. |
| 70.95D.070 | Certification of inspectors. |
| 70.95D.080 | Authority of director. |
| 70.95D.090 | Unlawful acts—Variance from requirements. |
| 70.95D.100 | Penalties. |
| 70.95D.110 | Deposit of receipts. |
| 70.95D.900 | Severability—1989 c 431. |
| 70.95D.901 | Section captions not law—1989 c 431. |

70.95D.010 Definitions. Unless the context clearly requires otherwise the definitions in this section apply throughout this chapter.

(1) "Certificate" means a certificate of competency issued by the director stating that the operator has met the requirements for the specified operator classification of the certification program.

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology.

(4) "Incinerator" means a facility which has the primary purpose of burning or which is designed with the primary purpose of burning solid waste or solid waste derived fuel,

(2004 Ed.)

but excludes facilities that have the primary purpose of burning hog fuel.

(5) "Landfill" means a landfill as defined under RCW 70.95.030.

(6) "Owner" means, in the case of a town or city, the city or town acting through its chief executive officer or the lessee if operated pursuant to a lease or contract; in the case of a county, the chief elected official of the county legislative authority or the chief elected official's designee; in the case of a board of public utilities, association, municipality, or other public body, the president or chief elected official of the body or the president's or chief elected official's designee; in the case of a privately owned landfill or incinerator, the legal owner.

(7) "Solid waste" means solid waste as defined under RCW 70.95.030. [1995 c 269 § 2801; 1989 c 431 § 65.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95D.020 Incineration facilities—Owner and operator certification requirements. (1) By January 1, 1992, the owner or operator of a solid waste incineration facility shall employ a certified operator. At a minimum, the individual on-site at a solid waste incineration facility who is designated by the owner as the operator in responsible charge of the operation and maintenance of the facility on a routine basis shall be certified by the department.

(2) If a solid waste incinerator is operated on more than one daily shift, the operator in charge of each shift shall be certified.

(3) Operators not required to be certified are encouraged to become certified on a voluntary basis.

(4) The department shall adopt and enforce such rules as may be necessary for the administration of this section. [1989 c 431 § 66.]

70.95D.030 Landfills—Owner and operator certification requirements. (1) By January 1, 1992, the owner or operator of a landfill shall employ a certified landfill operator.

(2) For each of the following types of landfills defined in existing regulations: Inert, demolition waste, problem waste, and municipal solid waste, the department shall adopt rules classifying all landfills in each class. The factors to be considered in the classification shall include, but not be limited to, the type and amount of waste in place and projected to be disposed of at the site, whether the landfill currently meets state and federal operating criteria, the location of the landfill, and such other factors as may be determined to affect the skill, knowledge, and experience required of an operator to operate the landfill in a manner protective of human health and the environment.

(3) The rules shall identify the landfills in each class in which the owner or operator will be required to employ a certified landfill operator who is on-site at all times the landfill is operating. At a minimum, the rule shall require that owners and operators of landfills are required to employ a certified landfill operator who is on call at all times the landfill is operating. [1989 c 431 § 67.]

70.95D.040 Certification process—Suspension of license or certificate for noncompliance with support order. (1) The department shall establish a process to certify incinerator and landfill operators. To the greatest extent possible, the department shall rely on the certification standards and procedures developed by national organizations and the federal government.

(2) Operators shall be certified if they:

- (a) Attend the required training sessions;
- (b) Successfully complete required examinations; and
- (c) Pay the prescribed fee.

(3) By January 1, 1991, the department shall adopt rules to require incinerator and appropriate landfill operators to:

(a) Attend a training session concerning the operation of the relevant type of landfill or incinerator;

(b) Demonstrate sufficient skill and competency for proper operation of the incinerator or landfill by successfully completing an examination prepared by the department; and

(c) Renew the certificate of competency at reasonable intervals established by the department.

(4) The department shall provide for the collection of fees for the issuance and renewal of certificates. These fees shall be sufficient to recover the costs of the certification program.

(5) The department shall establish an appeals process for the denial or revocation of a certificate.

(6) The department shall establish a process to automatically certify operators who have received comparable certification from another state, the federal government, a local government, or a professional association.

(7) Upon July 23, 1989, and prior to January 1, 1992, the owner or operator of an incinerator or landfill may apply to the department for interim certification. Operators shall receive interim certification if they:

(a) Have received training provided by a recognized national organization, educational institution, or the federal government that is acceptable to the department; or

(b) Have received individualized training in a manner approved by the department; and

(c) Have successfully completed any required examinations.

(8) No interim certification shall be valid after January 1, 1992, and interim certification shall not automatically qualify operators for certification pursuant to subsections (2) through (4) of this section.

(9) The department shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 875; 1989 c 431 § 68.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

70.95D.051 Ad hoc advisory committees. The director may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance on the certification of solid waste incinerator and landfill operators. [1995 c 269 § 2804.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95D.060 Revocation of certification. (1) The director may revoke a certificate:

(a) If it were found to have been obtained by fraud or deceit;

(b) For gross negligence in the operation of a solid waste incinerator or landfill;

(c) For violating the requirements of this chapter or any lawful rule or order of the department; or

(d) If the facility operated by the certified employee is operated in violation of state or federal environmental laws.

(2) A person whose certificate is revoked under this section shall not be eligible to apply for a certificate for one year from the effective date of the final order of revocation. [1995 c 269 § 2802; 1989 c 431 § 70.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.95D.070 Certification of inspectors. Any person who is employed by a public agency to inspect the operation of a landfill or a solid waste incinerator to determine the compliance of the facility with state or local laws or rules shall be required to be certified in the same manner as an operator under this chapter. [1989 c 431 § 71.]

70.95D.080 Authority of director. To carry out the provisions and purposes of this chapter, the director may:

(1) Enter into agreements, contracts, or cooperative arrangements, under such terms and conditions as the director deems appropriate, with other state, federal, or interstate agencies, municipalities, educational institutions, or other organizations or individuals.

(2) Receive financial and technical assistance from the federal government, other public agencies, and private agencies.

(3) Participate in related programs of the federal government, other states, interstate agencies, other public agencies, or private agencies or organizations.

(4) Upon request, furnish reports, information, and materials relating to the certification program authorized by this chapter to federal, state, or interstate agencies, municipalities, educational institutions, and other organizations and individuals.

(5) Establish adequate fiscal controls and accounting procedures to assure proper disbursement of and accounting

for funds appropriated or otherwise provided for the purpose of carrying out this chapter.

(6) Adopt rules under chapter 34.05 RCW. [1989 c 431 § 72.]

70.95D.090 Unlawful acts—Variance from requirements. After January 1, 1992, it is unlawful for any person, firm, corporation, municipal corporation, or other governmental subdivision or agency to operate a solid waste incineration or landfill facility unless the operators are duly certified by the director under this chapter or any lawful rule or order of the department. It is unlawful for any person to perform the duties of an operator without being duly certified under this chapter. The department shall adopt rules that allow the owner or operator of a landfill or solid waste incineration facility to request a variance from this requirement under emergency conditions. The department may impose such conditions as may be necessary to protect human health and the environment during the term of the variance. [1989 c 431 § 73.]

70.95D.100 Penalties. (1) Any person, including any firm, corporation, municipal corporation, or other governmental subdivision or agency, with the exception of incinerator operators, violating any provision of this chapter or the rules adopted under this chapter, is guilty of a misdemeanor.

(2) Any incinerator operator who violates any provision of this chapter is guilty of a gross misdemeanor.

(3) Each day of operation in violation of this chapter or any rules adopted under this chapter shall constitute a separate offense.

(4) The prosecuting attorney or the attorney general, as appropriate, shall secure injunctions of continuing violations of any provisions of this chapter or the rules adopted under this chapter. [2003 c 53 § 356; 1989 c 431 § 74.]

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

70.95D.110 Deposit of receipts. All receipts realized in the administration of this chapter shall be paid into the general fund. [1989 c 431 § 75.]

70.95D.900 Severability—1989 c 431. See RCW 70.95.901.

70.95D.901 Section captions not law—1989 c 431. See RCW 70.95.902.

Chapter 70.95E RCW

HAZARDOUS WASTE FEES

Sections

- 70.95E.010 Definitions.
- 70.95E.020 Hazardous waste generation—Fee.
- 70.95E.030 Voluntary reduction plan—Fees.
- 70.95E.040 Fees—Generally.
- 70.95E.050 Administration of fees.
- 70.95E.080 Hazardous waste assistance account.
- 70.95E.090 Technical assistance and compliance education—Grants.
- 70.95E.100 Exclusion from chapter.
- 70.95E.900 Severability—1990 c 114.

(2004 Ed.)

70.95E.010 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Dangerous waste" shall have the same definition as set forth in RCW 70.105.010(5) and shall include those wastes designated as dangerous by rules adopted pursuant to chapter 70.105 RCW.

(2) "Department" means the department of ecology.

(3) "EPA/ state identification number" means the number assigned by the EPA (environmental protection agency) or by the department of ecology to each generator and/or transporter and treatment, storage, and/or disposal facility.

(4) "Extremely hazardous waste" shall have the same definition as set forth in RCW 70.105.010(6) and shall specifically include those wastes designated as extremely hazardous by rules adopted pursuant to chapter 70.105 RCW.

(5) "Fee" means the annual fees imposed under this chapter.

(6) "Generate" means any act or process which produces hazardous waste or first causes a hazardous waste to become subject to regulation.

(7) "Hazardous waste" means and includes all dangerous and extremely hazardous wastes but for the purposes of this chapter excludes all radioactive wastes or substances composed of both radioactive and hazardous components.

(8) "Hazardous waste generator" means all persons whose primary business activities are identified by the department to generate any quantity of hazardous waste in the calendar year for which the fee is imposed.

(9) "Person" means an individual, trust, firm, joint stock company, partnership, association, state, public or private or municipal corporation, commission, political subdivision of a state, interstate body, the federal government including any agency or officer thereof, and any Indian tribe or authorized tribal organization.

(10) "Price deflator" means the United States department of commerce bureau of economic analysis, "Implicit Price Deflator for Gross National Product" for "Government Purchases of Goods and Services," for "State and Local Government."

(11) "Recycled for beneficial use" means the use of hazardous waste, either before or after reclamation, as a substitute for a commercial product or raw material, but does not include: (a) Use constituting disposal; (b) incineration; or (c) use as a fuel.

(12) "Waste generation site" means any geographical area that has been assigned an EPA/ state identification number. [1995 c 207 § 1; 1994 c 136 § 1; 1990 c 114 § 11.]

Effective date—1995 c 207: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 3, 1995]." [1995 c 207 § 5.]

70.95E.020 Hazardous waste generation—Fee. A fee is imposed for the privilege of generating hazardous waste in the state. The annual amount of the fee shall be thirty-five dollars upon every hazardous waste generator doing business in Washington in the current calendar year or any part thereof. This fee shall be collected by the department or its designee. A hazardous waste generator shall be exempt from the fee imposed under this section if the value of products,

gross proceeds of sales, or gross income of the business, from all business activities of the hazardous waste generator, is less than twelve thousand dollars in the current calendar year. The department shall, subject to appropriation, use the funds collected from the fees assessed in this subsection to support the activities of the office of waste reduction as specified in RCW 70.95C.030. The fee imposed pursuant to this section is due annually by July 1 of the year following the calendar year for which the fee is imposed. [1995 c 207 § 2. Prior: 1994 sp.s. c 2 § 3; 1994 c 136 § 2; 1990 c 114 § 12.]

Effective date—1995 c 207: See note following RCW 70.95E.010.

Effective date—1994 sp.s. c 2: See note following RCW 82.04.4451.

70.95E.030 Voluntary reduction plan—Fees. Hazardous waste generators and hazardous substance users required to prepare plans under RCW 70.95C.200 shall pay an annual fee to support implementation of RCW 70.95C.200 and 70.95C.040. These fees are to be used by the department, subject to appropriation, for plan review, technical assistance to facilities that are required to prepare plans, other activities related to plan development and implementation, and associated indirect costs. The total fees collected under this subsection shall not exceed the department's costs of implementing RCW 70.95C.200 and 70.95C.040 and shall not exceed one million dollars per year. The annual fee for a facility shall not exceed ten thousand dollars per year. Any facility that generates less than two thousand six hundred forty pounds of hazardous waste per waste generation site in the previous calendar year shall be exempt from the fee imposed by this section. The annual fee for a facility generating at least two thousand six hundred forty pounds but not more than four thousand pounds of hazardous waste per waste generation site in the previous calendar year shall not exceed fifty dollars. A person that develops a plan covering more than one interrelated facility as provided for in RCW 70.95C.200 shall be assessed fees only for the number of plans prepared. The department shall adopt a fee schedule by rule after consultation with typical affected businesses and other interested parties. Hazardous waste generated and recycled for beneficial use, including initial amount of hazardous substances introduced into a process and subsequently recycled for beneficial use, shall not be used in the calculations of hazardous waste generated for purposes of this section.

The annual fee imposed by this section shall be first due on July 1 of the year prior to the year that the facility is required to prepare a plan, and by July 1 of each year thereafter. [1994 c 136 § 3; 1990 c 114 § 13.]

70.95E.040 Fees—Generally. On an annual basis, the department shall adjust the fees provided for in RCW 70.95E.020 and 70.95E.030, including the maximum annual fee, and maximum total fees, by conducting the calculation in subsection (1) of this section and taking the actions set forth in subsection (2) of this section:

(1) In November of each year, the fees, annual fee, and maximum total fees imposed in RCW 70.95E.020 and 70.95E.030, or as subsequently adjusted by this section, shall be multiplied by a factor equal to the most current quarterly "price deflator" available, divided by the "price deflator" used in the numerator the previous year. However, the "price

deflator" used in the denominator for the first adjustment shall be defined by the second quarter "price deflator" for 1990.

(2) Each year by March 1 the fee schedule, as adjusted in subsection (1) of this section will be published. The department will round the published fees to the nearest dollar. [1990 c 114 § 14.]

70.95E.050 Administration of fees. In administration of this chapter for the enforcement and collection of the fees due and owing under RCW 70.95E.020 and 70.95E.030, the department may apply RCW 43.17.240. [1995 c 207 § 3; 1994 c 136 § 4; 1990 c 114 § 15.]

Effective date—1995 c 207: See note following RCW 70.95E.010.

70.95E.080 Hazardous waste assistance account. The hazardous waste assistance account is hereby created in the state treasury. The following moneys shall be deposited into the hazardous waste assistance account:

(1) Those revenues which are raised by the fees imposed under RCW 70.95E.020 and 70.95E.030;

(2) Penalties and surcharges collected under chapter 70.95C RCW and this chapter; and

(3) Any other moneys appropriated or transferred to the account by the legislature. Moneys in the hazardous waste assistance account may be spent only for the purposes of this chapter following legislative appropriation. [1991 sp.s. c 13 § 75; 1990 c 114 § 18.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

70.95E.090 Technical assistance and compliance education—Grants. The department may use funds in the hazardous waste assistance account to provide technical assistance and compliance education assistance to hazardous substance users and waste generators, to provide grants to local governments, and for administration of this chapter.

Technical assistance may include the activities authorized under chapter 70.95C RCW and RCW 70.105.170 to encourage hazardous waste reduction and hazardous use reduction and the assistance provided for by RCW 70.105.100(2).

Compliance education may include the activities authorized under RCW 70.105.100(2) to train local agency officials and to inform hazardous substance users and hazardous waste generators and owners and operators of hazardous waste management facilities of the requirements of chapter 70.105 RCW and related federal laws and regulations. To the extent practicable, the department shall contract with private businesses to provide compliance education.

Grants to local governments shall be used for small quantity generator technical assistance and compliance education components of their moderate risk waste plans as required by RCW 70.105.220. [1995 c 207 § 4; 1990 c 114 § 19.]

Effective date—1995 c 207: See note following RCW 70.95E.010.

70.95E.100 Exclusion from chapter. Nothing in this chapter relates to radioactive wastes or substances composed of both radioactive and hazardous components, and the

department is precluded from using the funds of the hazardous waste assistance account for the regulation and control of such wastes. [1990 c 114 § 20.]

70.95E.900 Severability—1990 c 114. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 114 § 23.]

Chapter 70.95F RCW LABELING OF PLASTICS

Sections

| | |
|------------|---|
| 70.95F.010 | Definitions. |
| 70.95F.020 | Labeling requirements—Plastic industry standards. |
| 70.95F.030 | Violations, penalty. |
| 70.95F.900 | Severability—1991 c 319. |
| 70.95F.901 | Part headings not law—1991 c 319. |

70.95F.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Container," unless otherwise specified, refers to "rigid plastic container" or "plastic bottle" as those terms are defined in this section.

(2) "Distributors" means those persons engaged in the distribution of packaged goods for sale in the state of Washington, including manufacturers, wholesalers, and retailers.

(3) "Label" means a molded, imprinted, or raised symbol on or near the bottom of a plastic container or bottle.

(4) "Person" means an individual, sole proprietor, partnership, association, or other legal entity.

(5) "Plastic" means a material made of polymeric organic compounds and additives that can be shaped by flow.

(6) "Plastic bottle" means a plastic container intended for single use that has a neck that is smaller than the body of the container, accepts a screw-type, snap cap, or other closure and has a capacity of sixteen fluid ounces or more, but less than five gallons.

(7) "Rigid plastic container" means a formed or molded container, other than a bottle, intended for single use, composed predominantly of plastic resin, and having a relatively inflexible finite shape or form with a capacity of eight ounces or more but less than five gallons. [1991 c 319 § 103.]

70.95F.020 Labeling requirements—Plastic industry standards. (1) The provisions of this section and any rules adopted under this section shall be interpreted to conform with nation-wide plastics industry standards.

(2) Except as provided in RCW 70.95F.030(2), after January 1, 1992, no person may distribute, sell, or offer for sale in this state a plastic bottle or rigid plastic container unless the container is labeled with a code identifying the appropriate resin type used to produce the structure of the container. The code shall consist of a number placed within three triangulated arrows and letters placed below the triangle of arrows. The triangulated arrows shall be equilateral, formed by three arrows with the apex of each point of the triangle at the midpoint of each arrow, rounded with a short radius. The pointer (arrowhead) of each arrow shall be at the midpoint of

(2004 Ed.)

each side of the triangle with a short gap separating the pointer from the base of the adjacent arrow. The triangle, formed by the three arrows curved at their midpoints shall depict a clockwise path around the code number. The numbers and letters used shall be as follows:

- (a) 1. = PETE (polyethylene terephthalate)
- (b) 2. = HDPE (high density polyethylene)
- (c) 3. = V (vinyl)
- (d) 4. = LDPE (low density polyethylene)
- (e) 5. = PP (polypropylene)
- (f) 6. = PS (polystyrene)
- (g) 7. = OTHER

[1991 c 319 § 104.]

70.95F.030 Violations, penalty. (1) A person who, after written notice from the department, violates RCW 70.95F.020 is subject to a civil penalty of fifty dollars for each violation up to a maximum of five hundred dollars and may be enjoined from continuing violations. Each distribution constitutes a separate offense.

(2) Retailers and distributors shall have two years from May 21, 1991, to clear current inventory, delivered or received and held in their possession as of May 21, 1991. [1991 c 319 § 105.]

70.95F.900 Severability—1991 c 319. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 319 § 411.]

70.95F.901 Part headings not law—1991 c 319. Part headings as used in this act do not constitute any part of the law. [1991 c 319 § 409.]

Chapter 70.95G RCW PACKAGES CONTAINING METALS

Sections

| | |
|------------|--|
| 70.95G.005 | Finding. |
| 70.95G.010 | Definitions. |
| 70.95G.020 | Concentration levels. |
| 70.95G.030 | Exemptions. |
| 70.95G.040 | Certificate of compliance. |
| 70.95G.050 | Certificate of compliance—Public access. |
| 70.95G.060 | Prohibition of sale of package. |
| 70.95G.900 | Severability—Part headings not law—1991 c 319. |

70.95G.005 Finding. The legislature finds and declares that:

(1) The management of solid waste can pose a wide range of hazards to public health and safety and to the environment;

(2) Packaging comprises a significant percentage of the overall solid waste stream;

(3) The presence of heavy metals in packaging is a part of the total concern in light of their likely presence in emissions or ash when packaging is incinerated, or in leachate when packaging is landfilled;

(4) Lead, mercury, cadmium, and hexavalent chromium, on the basis of available scientific and medical evidence, are of particular concern;

(5) The intent of this chapter is to achieve a reduction in toxicity without impeding or discouraging the expanded use of postconsumer materials in the production of packaging and its components. [1991 c 319 § 106.]

Report to legislature—1991 c 319: "By July 1, 1993, the solid waste advisory committee created under chapter 70.95 RCW shall report to the appropriate standing committees of the legislature on the need to further reduce toxic metals from packaging. The report shall contain recommendations to add other toxic substances contained in packaging to the list set forth in this chapter, including but not limited to mutagens, carcinogens, and teratogens, in order to further reduce the toxicity of packaging waste, and shall contain a recommendation regarding imposition of penalty for violation of section 108 of this act." [1991 c 319 § 113.]

70.95G.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Package" means a container providing a means of marketing, protecting, or handling a product and shall include a unit package, an intermediate package, and a shipping container. "Package" also means and includes unsealed receptacles such as carrying cases, crates, cups, pails, rigid foil and other trays, wrappers and wrapping films, bags, and tubs.

(2) "Manufacturer" means a person, firm, or corporation that applies a package to a product for distribution or sale.

(3) "Packaging component" means an individual assembled part of a package such as, but not limited to, any interior or exterior blocking, bracing, cushioning, weatherproofing, exterior strapping, coatings, closures, inks, and labels. [1991 c 319 § 107.]

70.95G.020 Concentration levels. The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in any package or packaging component shall not exceed the following:

(1) Six hundred parts per million by weight effective July 1, 1993;

(2) Two hundred fifty parts per million by weight effective July 1, 1994; and

(3) One hundred parts per million by weight effective July 1, 1995.

This section shall apply only to lead, cadmium, mercury, and hexavalent chromium that has been intentionally introduced as an element during manufacturing or distribution. [1992 c 131 § 1; 1991 c 319 § 108.]

70.95G.030 Exemptions. All packages and packaging components shall be subject to this chapter except the following:

(1) Those packages or package components with a code indicating date of manufacture that were manufactured prior to May 21, 1991;

(2) Those packages or packaging components that have been purchased by, delivered to, or are possessed by a retailer on or before twenty-four months following May 21, 1991, to permit opportunity to clear existing inventory of the proscribed packaging material;

(3) Those packages or packaging components to which lead, cadmium, mercury, or hexavalent chromium have been

added in the manufacturing, forming, printing, or distribution process in order to comply with health or safety requirements of federal law or for which there is no feasible alternative; or

(4) Those packages and packaging components that would not exceed the maximum contaminant levels set forth in RCW 70.95G.020(1) but for the addition of postconsumer materials; and provided that the exemption for this subsection shall expire six years after May 21, 1991. [1991 c 319 § 109.]

70.95G.040 Certificate of compliance. By July 1, 1993, a certificate of compliance stating that a package or packaging component is in compliance with the requirements of this chapter shall be developed by its manufacturer. If compliance is achieved under the exemption or exemptions provided in RCW 70.95G.030 (3) or (4), the certificate shall state the specific basis upon which the exemption is claimed. The certificate of compliance shall be signed by an authorized official of the manufacturing company. The certificate of compliance shall be kept on file by the manufacturer for as long as the package or packaging component is in use, and for three years from the date of the last sale or distribution by the manufacturer. Certificates of compliance, or copies thereof, shall be furnished to the department of ecology upon request within sixty days. If manufacturers are required under any other state statute to provide a certificate of compliance, one certificate may be developed containing all required information.

If the manufacturer or supplier of the package or packaging component reformulates or creates a new package or packaging component, the manufacturer shall develop an amended or new certificate of compliance for the reformulated or new package or packaging component. [1991 c 319 § 110.]

70.95G.050 Certificate of compliance—Public access. Requests from a member of the public for any certificate of compliance shall be:

(1) Made in writing to the department of ecology;

(2) Made specific as to package or packaging component information requested; and

(3) Responded to by the department of ecology within ninety days. [1991 c 319 § 111.]

70.95G.060 Prohibition of sale of package. The department of ecology may prohibit the sale of any package for which a manufacturer has failed to respond to a request by the department for a certificate of compliance within the allotted period of time pursuant to RCW 70.95G.040. [1991 c 319 § 112.]

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

Chapter 70.95H RCW

CLEAN WASHINGTON CENTER

Sections

70.95H.005 Finding.

70.95H.007 Center created.

70.95H.010 Purpose—Market development defined.

70.95H.030 Duties and responsibilities.

70.95H.040 Authority.
 70.95H.050 Funding.
 70.95H.900 Termination.
 70.95H.901 Captions not law.
 70.95H.902 Severability—Part headings not law—1991 c 319.

70.95H.005 Finding. (1) The legislature finds that:

(a) Recycling conserves energy and landfill space, provides jobs and valuable feedstock materials to industry, and promotes health and environmental protection;

(b) Seventy-eight percent of the citizens of the state actively participate in recycling programs and Washington currently has the highest recycling rate in the nation;

(c) The current supply of many recycled commodities far exceeds the demand for such commodities;

(d) Many local governments and private entities cumulatively affect, and are affected by, the market for recycled commodities but have limited jurisdiction and cannot adequately address the problems of market development that are complex, wide-ranging, and regional in nature; and

(e) The private sector has the greatest capacity for creating and expanding markets for recycled commodities, and the development of private markets for recycled commodities is in the public interest.

(2) It is therefore the policy of the state to create a single entity to be known as the clean Washington center to develop new, and expand existing, markets for recycled commodities. [1991 c 319 § 201.]

70.95H.007 Center created. There is created the clean Washington center within the department of community, trade, and economic development. As used in this chapter, "center" means the clean Washington center. [1995 c 399 § 192; 1991 c 319 § 202.]

70.95H.010 Purpose—Market development defined. The purpose of the center is to provide or facilitate business assistance, basic and applied research and development, marketing, public education, and policy analysis in furthering the development of markets for recycled products. As used in this chapter, market development consists of public and private activities that are used to overcome impediments preventing full use of secondary materials diverted from the waste stream, and that encourage and expand use of those materials and subsequent products. In fulfilling this mission the center shall primarily direct its services to businesses that transform or remanufacture waste materials into usable or marketable materials or products for use other than landfill disposal or incineration. [1991 c 319 § 203.]

70.95H.030 Duties and responsibilities. The center shall:

(1) Provide targeted business assistance to recycling businesses, including:

- (a) Development of business plans;
- (b) Market research and planning information;
- (c) Access to financing programs;
- (d) Referral and information on market conditions; and
- (e) Information on new technology and product development;

(2004 Ed.)

(2) Negotiate voluntary agreements with manufacturers to increase the use of recycled materials in product development;

(3) Support and provide research and development to stimulate and commercialize new and existing technologies and products using recycled materials;

(4) Undertake an integrated, comprehensive education effort directed to recycling businesses to promote processing, manufacturing, and purchase of recycled products, including:

(a) Provide information to recycling businesses on the availability and benefits of using recycled materials;

(b) Provide information and referral services on recycled material markets;

(c) Provide information on new research and technologies that may be used by local businesses and governments; and

(d) Participate in projects to demonstrate new market uses or applications for recycled products;

(5) Assist the departments of ecology and general administration in the development of consistent definitions and standards on recycled content, product performance, and availability;

(6) Undertake studies on the unmet capital needs of reprocessing and manufacturing firms using recycled materials;

(7) Undertake and participate in marketing promotions for the purposes of achieving expanded market penetration for recycled content products;

(8) Coordinate with the department of ecology to ensure that the education programs of both are mutually reinforcing, with the center acting as the lead entity with respect to recycling businesses, and the department as the lead entity with respect to the general public and retailers;

(9) Develop an annual work plan. The plan shall describe actions and recommendations for developing markets for commodities comprising a significant percentage of the waste stream and having potential for use as an industrial or commercial feedstock. The initial plan shall address, but not be limited to, mixed waste paper, waste tires, yard and food waste, and plastics; and

(10) Represent the state in regional and national market development issues. [1992 c 131 § 2; 1991 c 319 § 205.]

70.95H.040 Authority. In order to carry out its responsibilities under this chapter, the center may:

(1) Receive such gifts, grants, funds, fees, and endowments, in trust or otherwise, for the use and benefit of the purposes of the center. The center may expend the same or any income therefrom according to the terms of the gifts, grants, or endowments;

(2) Initiate, conduct, or contract for studies and searches relating to market development for recyclable materials, including but not limited to applied research, technology transfer, and pilot demonstration projects;

(3) Obtain and disseminate information relating to market development for recyclable materials from other state and local agencies;

(4) Enter into, amend, and terminate contracts with individuals, corporations, trade associations, and research institutions for the purposes of this chapter;

(5) Provide grants to local governments or other public institutions to further the development of recycling markets;

(6) Provide business and marketing assistance to public and private sector entities within the state; and

(7) Evaluate, analyze, and make recommendations on state policies that may affect markets for recyclable materials. [1991 c 319 § 206.]

70.95H.050 Funding. The center shall solicit financial contributions and support from manufacturing industries and other private sector sources, foundations, and grants from governmental sources to assist in conducting its activities. It may also use separately appropriated funds of the department of community, trade, and economic development for the center's activities. [1995 c 399 § 194; 1991 c 319 § 207.]

70.95H.900 Termination. The center shall terminate on June 30, 1997. [1991 c 319 § 209.]

70.95H.901 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1991 c 319 § 211.]

70.95H.902 Severability—Part headings not law—1991 c 319. See RCW 70.95F.900 and 70.95F.901.

Chapter 70.95I RCW USED OIL RECYCLING

Sections

| | |
|------------|--|
| 70.95I.005 | Finding. |
| 70.95I.010 | Definitions. |
| 70.95I.020 | Used oil recycling element. |
| 70.95I.030 | Used oil recycling element guidelines—Waiver—Statewide goals. |
| 70.95I.040 | Oil sellers—Education responsibility—Penalty. |
| 70.95I.050 | Statewide education. |
| 70.95I.060 | Disposal of used oil—Penalty. |
| 70.95I.070 | Used oil transporter and processor requirements—Civil penalties. |
| 70.95I.080 | Above-ground used oil collection tanks. |
| 70.95I.900 | Captions not law. |
| 70.95I.901 | Short title. |
| 70.95I.902 | Severability—Part headings not law—1991 c 319. |

70.95I.005 Finding. (1) The legislature finds that:

(a) Millions of gallons of used oil are generated each year in this state, and used oil is a valuable petroleum resource that can be recycled;

(b) The improper collection, transportation, recycling, use, or disposal of used oil contributes to the pollution of air, water, and land, and endangers public health and welfare;

(c) The private sector is a vital resource in the collection and recycling of used oil and should be involved in its collection and recycling whenever practicable.

(2) In light of the harmful consequences of improper disposal and use of used oil, and its value as a resource, the legislature declares that the collection, recycling, and reuse of used oil is in the public interest.

(3) The department, when appropriate, should promote the rerefining of used oil in its grants, public education, regulation, and other programs. [1991 c 319 § 301.]

Hazardous waste: Chapter 70.95C RCW.

70.95I.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Rerefining used oil" means the reclaiming of base lube stock from used oil for use again in the production of lube stock. Rerefining used oil does not mean combustion or landfilling.

(2) "Used oil" means (a) lubricating fluids that have been removed from an engine crankcase, transmission, gearbox, hydraulic device, or differential of an automobile, bus, truck, vessel, plane, heavy equipment, or machinery powered by an internal combustion engine; (b) any oil that has been refined from crude oil, used, and as a result of use, has been contaminated with physical or chemical impurities; and (c) any oil that has been refined from crude oil and, as a consequence of extended storage, spillage, or contamination, is no longer useful to the original purchaser. "Used oil" does not include used oil to which hazardous wastes have been added.

(3) "Public used oil collection site" means a site where a used oil collection tank has been placed for the purpose of collecting household generated used oil. "Public used oil collection site" also means a vehicle designed or operated to collect used oil from the public.

(4) "Lubricating oil" means any oil designed for use in, or maintenance of, a vehicle, including, but not limited to, motor oil, gear oil, and hydraulic oil. "Lubricating oil" does not mean petroleum hydrocarbons with a flash point below one hundred degrees Centigrade.

(5) "Vehicle" includes every device physically capable of being moved upon a public or private highway, road, street, watercourse, or trail, and in, upon, or by which any person or property is or may be transported or drawn upon a public or private highway, road, street, watercourse, or trail, except devices moved by human or animal power.

(6) "Department" means the department of ecology.

(7) "Local government" means a city or county developing a local hazardous waste plan under RCW 70.105.220. [1991 c 319 § 302.]

70.95I.020 Used oil recycling element. (1) Each local government and its local hazardous waste plan under RCW 70.105.220 is required to include a used oil recycling element. This element shall include:

(a) A plan to reach the local goals for household used oil recycling established by the local government and the department under RCW 70.95I.030. The plan shall, to the maximum extent possible, incorporate voluntary agreements with the private sector and state agencies to provide sites for the collection of used oil. Where provided, the plan shall also incorporate residential collection of used oil;

(b) A plan for enforcing the sign and container ordinances required by RCW 70.95I.040;

(c) A plan for public education on used oil recycling; and

(d) An estimate of funding needed to implement the requirements of this chapter. This estimate shall include a budget reserve for disposal of contaminated oil detected at any public used oil collection site administered by the local government.

(2) By July 1, 1993, each local government or combination of contiguous local governments shall submit its used oil recycling element to the department. The department shall

approve or disapprove the used oil recycling element by January 1, 1994, or within ninety days of submission, whichever is later. The department shall approve or disapprove the used oil recycling element if it determines that the element is consistent with this chapter and the guidelines developed by the department under RCW 70.95I.030.

(3) Each local government, or combination of contiguous local governments, shall submit an annual statement to the department describing the number of used oil collection sites and the quantity of household used oil recycled for the jurisdiction during the previous calendar year. The first statement shall be due April 1, 1994. Subsequent statements shall be due April 1st of each year.

Nothing in this section shall be construed to require a city or county to construct or operate a public used oil collection site. [1991 c 319 § 303.]

70.95I.030 Used oil recycling element guidelines—Waiver—Statewide goals. (1) By July 1, 1992, the department shall, in consultation with local governments, prepare guidelines for the used oil recycling elements required by RCW 70.95I.020. The guidelines shall:

(a) Require development of local collection and refining goals for household used oil for each entity preparing a used oil recycling element under RCW 70.95I.020;

(b) Require local government to recommend the number of used oil collection sites needed to meet the local goals. The department shall establish criteria regarding minimum levels of used oil collection sites;

(c) Require local government to identify locations suitable as public used oil collection sites as described under RCW 70.95I.020(1)(a).

(2) The department may waive all or part of the specific requirements of RCW 70.95I.020 if a local government demonstrates to the satisfaction of the department that the objectives of this chapter have been met.

(3) The department may prepare and implement a used oil recycling plan for any local government failing to complete the used oil recycling element of the plan.

(4) The department shall develop statewide collection and refining goals for household used oil for each calendar year beginning with calendar year 1994. Goals shall be based on the estimated statewide collection and refining rate for calendar year 1993, and shall increase each year until calendar year 1996, when the rate shall be eighty percent.

(5) By July 1, 1993, the department shall prepare guidelines establishing statewide equipment and operating standards for public used oil collection sites. Standards shall:

(a) Allow the use of used oil collection igloos and other types of portable used oil collection tanks;

(b) Prohibit the disposal of nonhousehold-generated used oil;

(c) Limit the amount of used oil deposited to five gallons per household per day;

(d) Ensure adequate protection against leaks and spills; and

(e) Include other requirements deemed appropriate by the department. [1991 c 319 § 304.]

(2004 Ed.)

70.95I.040 Oil sellers—Education responsibility—Penalty. (1) A person annually selling one thousand or more gallons of lubricating oil to ultimate consumers for use or installation off the premises, or five hundred or more vehicle oil filters to ultimate consumers for use or installation off the premises within a city or county having an approved used oil recycling element, shall:

(a) Post and maintain at or near the point of sale, durable and legible signs informing the public of the importance of used oil recycling and how and where used oil may be properly recycled; and

(b) Provide for sale at or near the display location of the lubricating oil or vehicle oil filters, household used oil recycling containers. The department shall design and print the signs required by this section, and shall make them available to local governments and retail outlets.

(2) A person, who, after notice, violates this section is guilty of a misdemeanor and on conviction is subject to a fine not to exceed one thousand dollars.

(3) The department is responsible for notifying retailers subject to this section.

(4) A city or county may adopt household used oil recycling container standards in order to ensure compatibility with local recycling programs.

(5) Each local government preparing a used oil recycling element of a local hazardous waste plan pursuant to RCW 70.95I.020 shall adopt ordinances within its jurisdiction to enforce subsections (1) and (4) of this section. [1991 c 319 § 305.]

70.95I.050 Statewide education. The department shall conduct a public education program to inform the public of the needs for and benefits of collecting and recycling used oil in order to conserve resources and protect the environment. As part of this program, the department shall:

(1) Establish and maintain a statewide list of public used oil collection sites, and a list of all persons coordinating local government used oil programs;

(2) Establish a statewide media campaign describing used oil recycling;

(3) Assist local governments in providing public education and awareness programs concerning used oil by providing technical assistance and education materials; and

(4) Encourage the establishment of voluntary used oil collection and recycling programs, including public-private partnerships, and provide technical assistance to persons organizing such programs. [1991 c 319 § 306.]

70.95I.060 Disposal of used oil—Penalty. (1) Effective January 1, 1992, the use of used oil for dust suppression or weed abatement is prohibited.

(2) Effective July 1, 1992, no person may sell or distribute absorbent-based kits, intended for home use, as a means for collecting, recycling, or disposing of used oil.

(3) Effective January 1, 1994, no person may knowingly dispose of used oil except by delivery to a person collecting used oil for recycling, treatment, or disposal, subject to the provisions of this chapter and chapter 70.105 RCW.

(4) Effective January 1, 1994, no owner or operator of a solid waste landfill may knowingly accept used oil for disposal in the landfill.

(5) A person who violates this section is guilty of a misdemeanor. [1991 c 319 § 307.]

70.951.070 Used oil transporter and processor requirements—Civil penalties. (1) By January 1, 1993, the department shall adopt rules requiring any transporter of used oil to comply with minimum notification, invoicing, record-keeping, and reporting requirements. For the purpose of this section, a transporter means a person engaged in the off-site transportation of used oil in quantities greater than twenty-five gallons per day.

(2) By January 1, 1993, the department shall adopt minimum standards for used oil that is blended into fuels. Standards shall, at a minimum, establish testing and recordkeeping requirements. Unless otherwise exempted, a processor is any person involved in the marketing, blending, mixing, or processing of used oil to produce fuel to be burned for energy recovery.

(3) Any person who knowingly transports used oil without meeting the requirements of this section shall be subject to civil penalties under chapter 70.105 RCW.

(4) Rules developed under this section shall not require a manifest from individual residences served by a waste oil curbside collection program. [1991 c 319 § 308.]

70.951.080 Above-ground used oil collection tanks. By January 1, 1987, the state fire protection board, in cooperation with the department of ecology, shall develop a state-wide standard for the placement of above-ground tanks to collect used oil from private individuals for recycling purposes. [1986 c 37 § 1. Formerly RCW 19.114.040.]

70.951.900 Captions not law. Section headings as used in this chapter do not constitute any part of the law. [1991 c 319 § 309.]

70.951.901 Short title. This chapter shall be known and may be cited as the used oil recycling act. [1991 c 319 § 310.]

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

Chapter 70.95J RCW

MUNICIPAL SEWAGE SLUDGE—BIOSOLIDS

Sections

| | |
|------------|---|
| 70.95J.005 | Findings—Municipal sewage sludge as a beneficial commodity. |
| 70.95J.007 | Purpose—Federal requirements. |
| 70.95J.010 | Definitions. |
| 70.95J.020 | Biosolid management program—Transportation of biosolids and sludge. |
| 70.95J.025 | Biosolids permits—Fees—Biosolids permit account—Report. |
| 70.95J.030 | Beneficial uses for biosolids and glassified sewage sludge. |
| 70.95J.040 | Violations—Orders. |
| 70.95J.050 | Enforcement of chapter. |
| 70.95J.060 | Violations—Punishment. |
| 70.95J.070 | Violations—Monetary penalty. |
| 70.95J.080 | Delegation to local health department—Generally. |
| 70.95J.090 | Delegation to local health department—Review. |

70.95J.005 Findings—Municipal sewage sludge as a beneficial commodity. (1) The legislature finds that:

(a) Municipal sewage sludge is an unavoidable byproduct of the wastewater treatment process;

(b) Population increases and technological improvements in wastewater treatment processes will double the amount of sludge generated within the next ten years;

(c) Sludge management is often a financial burden to municipalities and to ratepayers;

(d) Properly managed municipal sewage sludge is a valuable commodity and can be beneficially used in agriculture, silviculture, and in landscapes as a soil conditioner; and

(e) Municipal sewage sludge can contain metals and microorganisms that, under certain circumstances, may pose a risk to public health.

(2) The legislature declares that a program shall be established to manage municipal sewage sludge and that the program shall, to the maximum extent possible, ensure that municipal sewage sludge is reused as a beneficial commodity and is managed in a manner that minimizes risk to public health and the environment. [1992 c 174 § 1.]

70.95J.007 Purpose—Federal requirements. The purpose of this chapter is to provide the department of ecology and local governments with the authority and direction to meet federal regulatory requirements for municipal sewage sludge. The department of ecology may seek delegation and administer the sludge permit program required by the federal clean water act as it existed February 4, 1987. [1992 c 174 § 2.]

70.95J.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biosolids" means municipal sewage sludge that is a primarily organic, semisolid product resulting from the wastewater treatment process, that can be beneficially recycled and meets all requirements under this chapter. For the purposes of this chapter, "biosolids" includes septic tank sludge, also known as septage, that can be beneficially recycled and meets all requirements under this chapter.

(2) "Department" means the department of ecology.

(3) "Local health department" has the same meaning as "jurisdictional health department" in RCW 70.95.030.

(4) "Municipal sewage sludge" means a semisolid substance consisting of settled sewage solids combined with varying amounts of water and dissolved materials generated from a publicly owned wastewater treatment plant. [1992 c 174 § 3.]

70.95J.020 Biosolid management program—Transportation of biosolids and sludge. (1) The department shall adopt rules to implement a biosolid management program within twelve months of the adoption of federal rules, 40 C.F.R. Sec. 503, relating to technical standards for the use and disposal of sewage sludge. The biosolid management program shall, at a minimum, conform with all applicable federal rules adopted pursuant to the federal clean water act as it existed on February 4, 1987.

(2) In addition to any federal requirements, the state biosolid management program may include, but not be limited

to, an education program to provide relevant legal and scientific information to local governments and citizen groups.

(3) Rules adopted by the department under this section shall provide for public input and involvement for all state and local permits.

(4) Materials that have received a permit as a biosolid shall be regulated pursuant to this chapter.

(5) The transportation of biosolids and municipal sewage sludge shall be governed by Title 81 RCW. Certificates issued by the utilities and transportation commission before June 11, 1992, that include or authorize transportation of municipal sewage sludge shall continue in force and effect and be interpreted to include biosolids. [1992 c 174 § 4.]

70.95J.025 Biosolids permits—Fees—Biosolids permit account—Report. (1) The department shall establish annual fees to collect expenses for issuing and administering biosolids permits under this chapter. An initial fee schedule shall be established by rule and shall be adjusted no more often than once every two years. This fee schedule applies to all permits, regardless of date of issuance, and fees shall be assessed prospectively. Fees shall be established in amounts to recover expenses incurred by the department in processing permit applications and modifications, reviewing related plans and documents, monitoring, evaluating, conducting inspections, overseeing performance of delegated program elements, providing technical assistance and supporting overhead expenses that are directly related to these activities.

(2) The annual fee paid by a permittee for any permit issued under this chapter shall be determined by the number of residences or residential equivalents contributing to the permittee's biosolids management system. If residences or residential equivalents cannot be determined or reasonably estimated, fees shall be based on other appropriate criteria.

(3) The biosolids permit account is created in the state treasury. All receipts from fees under this section must be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of administering permits under this chapter.

(4) The department shall present a biennial progress report on the use of moneys from the biosolids permit account to the legislature. The first report is due on or before December 31, 1998, and thereafter on or before December 31st of odd-numbered years. The report shall consist of information on fees collected, actual expenses incurred, and anticipated expenses for the current and following fiscal years.

(5) The department shall work with the regulated community and local health departments to study the feasibility of modifying the fee schedule to support delegated local health departments and reduce local health department fees paid by biosolids permittees. [1997 c 398 § 1.]

70.95J.030 Beneficial uses for biosolids and glassified sewage sludge. The department may work with all appropriate state agencies, local governments, and private entities to establish beneficial uses for biosolids and glassified sewage sludge. [1992 c 174 § 5.]

(2004 Ed.)

70.95J.040 Violations—Orders. If a person violates any provision of this chapter, or a permit issued or rule adopted pursuant to this chapter, the department may issue an appropriate order to assure compliance with the chapter, permit, or rule. [1992 c 174 § 6.]

70.95J.050 Enforcement of chapter. The department, with the assistance of the attorney general, may bring an action at law or in equity, including an action for injunctive relief, to enforce this chapter or a permit issued or rule adopted by the department pursuant to this chapter. [1992 c 174 § 7.]

70.95J.060 Violations—Punishment. A person who willfully violates, without sufficient cause, any of the provisions of this chapter, or a permit or order issued pursuant to this chapter, is guilty of a gross misdemeanor. Willful violation of this chapter, or a permit or order issued pursuant to this chapter is a gross misdemeanor punishable by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to one year, or by both. Each day of violation may be deemed a separate violation. [1992 c 174 § 8.]

70.95J.070 Violations—Monetary penalty. In addition to any other penalty provided by law, a person who violates this chapter or rules or orders adopted or issued pursuant to it shall be subject to a penalty in an amount of up to five thousand dollars a day for each violation. Each violation shall be a separate violation. In the case of a continuing violation, each day of violation is a separate violation. An act of commission or omission that procures, aids, or abets in the violation shall be considered a violation under this section. [1992 c 174 § 9.]

70.95J.080 Delegation to local health department—Generally. The department may delegate to a local health department the powers necessary to issue and enforce permits to use or dispose of biosolids. A delegation may be withdrawn if the department finds that a local health department is not effectively administering the permit program. [1992 c 174 § 10.]

70.95J.090 Delegation to local health department—Review. (1) Any permit issued by a local health department under RCW 70.95J.080 may be reviewed by the department to ensure that the proposed site or facility conforms with all applicable laws, rules, and standards under this chapter.

(2) If the department does not approve or disapprove a permit within sixty days, the permit shall be considered approved.

(3) A local health department may appeal the department's decision to disapprove a permit to the pollution control hearings board, as provided in chapter 43.21B RCW. [1992 c 174 § 11.]

Chapter 70.95K RCW BIOMEDICAL WASTE

Sections

70.95K.005 Findings.

- 70.95K.010 Definitions.
 70.95K.011 State definition preempts local definitions.
 70.95K.020 Waste treatment technologies.
 70.95K.030 Residential sharps—Disposal—Violation.
 70.95K.040 Residential sharps waste collection.
 70.95K.900 Section headings.
 70.95K.910 Severability—1992 c 14.
 70.95K.920 Effective dates—1992 c 14.

70.95K.005 Findings. The legislature finds and declares that:

(1) It is a matter of statewide concern that biomedical waste be handled in a manner that protects the health, safety, and welfare of the public, the environment, and the workers who handle the waste.

(2) Infectious disease transmission has not been identified from improperly disposed biomedical waste, but the potential for such transmission may be present.

(3) A uniform, statewide definition of biomedical waste will simplify compliance with local regulations while preserving local control of biomedical waste management. [1992 c 14 § 1.]

70.95K.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Biomedical waste" means, and is limited to, the following types of waste:

(a) "Animal waste" is waste animal carcasses, body parts, and bedding of animals that are known to be infected with, or that have been inoculated with, human pathogenic microorganisms infectious to humans.

(b) "Biosafety level 4 disease waste" is waste contaminated with blood, excretions, exudates, or secretions from humans or animals who are isolated to protect others from highly communicable infectious diseases that are identified as pathogenic organisms assigned to biosafety level 4 by the centers for disease control, national institute of health, biosafety in microbiological and biomedical laboratories, current edition.

(c) "Cultures and stocks" are wastes infectious to humans and includes specimen cultures, cultures and stocks of etiologic agents, wastes from production of biologicals and serums, discarded live and attenuated vaccines, and laboratory waste that has come into contact with cultures and stocks of etiologic agents or blood specimens. Such waste includes but is not limited to culture dishes, blood specimen tubes, and devices used to transfer, inoculate, and mix cultures.

(d) "Human blood and blood products" is discarded waste human blood and blood components, and materials containing free-flowing blood and blood products.

(e) "Pathological waste" is waste human source biopsy materials, tissues, and anatomical parts that emanate from surgery, obstetrical procedures, and autopsy. "Pathological waste" does not include teeth, human corpses, remains, and anatomical parts that are intended for interment or cremation.

(f) "Sharps waste" is all hypodermic needles, syringes with needles attached, IV tubing with needles attached, scalpel blades, and lancets that have been removed from the original sterile package.

(2) "Local government" means city, town, or county.

(3) "Local health department" means the city, county, city-county, or district public health department.

(4) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, or local government.

(5) "Treatment" means incineration, sterilization, or other method, technique, or process that changes the character or composition of a biomedical waste so as to minimize the risk of transmitting an infectious disease.

(6) "Residential sharps waste" has the same meaning as "sharps waste" in subsection (1) of this section except that the sharps waste is generated and prepared for disposal at a residence, apartment, dwelling, or other noncommercial habitat.

(7) "Sharps waste container" means a leak-proof, rigid, puncture-resistant red container that is taped closed or tightly lidded to prevent the loss of the residential sharps waste.

(8) "Mail programs" means those programs that provide sharps users with a multiple barrier protection kit for the placement of a sharps container and subsequent mailing of the wastes to an approved disposal facility.

(9) "Pharmacy return programs" means those programs where sharps containers are returned by the user to designated return sites located at a pharmacy to be transported by a biomedical or solid waste collection company approved by the utilities and transportation commission.

(10) "Drop-off programs" means those program sites designated by the solid waste planning jurisdiction where sharps users may dispose of their sharps containers.

(11) "Source separation" has the same meaning as in RCW 70.95.030.

(12) "Unprotected sharps" means residential sharps waste that are not disposed of in a sharps waste container. [1994 c 165 § 2; 1992 c 14 § 2.]

Findings—Purpose—Intent—1994 c 165: "The legislature finds that the improper disposal and labeling of sharps waste from residences poses a potential health risk and perceived threat to the waste generators, public, and workers in the waste and recycling industry. The legislature further finds that a uniform method for handling sharps waste generated at residences will reduce confusion and injuries, and enhance public and waste worker confidence.

It is the purpose and intent of this act that residential generated sharps waste be contained in easily identified containers and separated from the regular solid waste stream to ensure worker safety and promote proper disposal of these wastes in a manner that is environmentally safe and economically sound." [1994 c 165 § 1.]

70.95K.011 State definition preempts local definitions. The definition of biomedical waste set forth in RCW 70.95K.010 shall be the sole state definition for biomedical waste within the state, and shall preempt biomedical waste definitions established by a local health department or local government. [1992 c 14 § 3.]

70.95K.020 Waste treatment technologies. (1) At the request of an applicant, the department of health, in consultation with the department of ecology and local health departments, may evaluate the environmental and public health impacts of biomedical waste treatment technologies. The department shall make available the results of any evaluation to local health departments.

(2) All direct costs associated with the evaluation shall be paid by the applicant to the department of health or to a state or local entity designated by the department of health.

(3) For the purposes of this section, "applicant" means any person representing a biomedical waste treatment tech-

nology that seeks an evaluation under subsection (1) of this section.

(4) The department of health may adopt rules to implement this section. [1992 c 14 § 4.]

70.95K.030 Residential sharps—Disposal—Violation. (1) A person shall not intentionally place unprotected sharps or a sharps waste container into: (a) Recycling containers provided by a city, county, or solid waste collection company, or any other recycling collection site unless that site is specifically designated by a local health department as a drop-off site for sharps waste containers; or (b) cans, carts, drop boxes, or other containers in which refuse, trash, or solid waste has been placed for collection if a source separated collection service is provided for residential sharps waste.

(2) Local health departments shall enforce this section, primarily through an educational approach regarding proper disposal of residential sharps. On the first and second violation, the health department shall provide a warning to the person that includes information on proper disposal of residential sharps. A subsequent violation shall be a class 3 infraction under chapter 7.80 RCW.

(3) It is not a violation of this section to place a sharps waste container into a household refuse receptacle if the utilities and transportation commission determines that such placement is necessary to reduce the potential for theft of the sharps waste container. [1994 c 165 § 3.]

Effective date—1994 c 165 § 3: "Section 3 of this act shall take effect July 1, 1995." [1994 c 165 § 6.]

Findings—Purpose—Intent—1994 c 165: See note following RCW 70.95K.010.

70.95K.040 Residential sharps waste collection. (1) A public or private provider of solid waste collection service may provide a program to collect source separated residential sharps waste containers in conjunction with regular collection services.

(2) A company collecting source separated residential sharps waste containers shall notify the public, in writing, on the availability of this service. Notice shall occur at least forty-five days prior to the provision of this service and shall include the following information: (a) How to properly dispose of residential sharps waste; (b) how to obtain sharps waste containers; (c) the cost of the program; (d) options to home collection of sharps waste; and (e) the legal requirements of residential sharps waste disposal.

(3) A company under the jurisdiction of the utilities and transportation commission may provide the service authorized under subsection (1) of this section only under tariff.

The commission may require companies collecting sharps waste containers to implement practices that will protect the containers from theft. [1994 c 165 § 4.]

Findings—Purpose—Intent—1994 c 165: See note following RCW 70.95K.010.

70.95K.900 Section headings. Section headings as used in this chapter do not constitute any part of the law. [1992 c 14 § 5.]

70.95K.910 Severability—1992 c 14. If any provision of this act or its application to any person or circumstance is (2004 Ed.)

held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 14 § 6.]

70.95K.920 Effective dates—1992 c 14. (1) Sections 2 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 20, 1992].

(2) Section 4 of this act shall take effect October 1, 1992. [1992 c 14 § 7.]

Chapter 70.95L RCW

DETERGENT PHOSPHORUS CONTENT

Sections

| | |
|------------|---|
| 70.95L.005 | Finding. |
| 70.95L.010 | Definitions. |
| 70.95L.020 | Phosphorus content regulated. |
| 70.95L.030 | Notice to distributors and wholesalers. |
| 70.95L.040 | Injunction. |

70.95L.005 Finding. The legislature hereby finds and declares that:

(1) Phosphorus loading of surface waters can stimulate the growth of weeds and algae, and that such growth can have adverse environmental, health, and aesthetic effects;

(2) Household detergents contribute to phosphorus loading, and that a limit on detergents containing phosphorus can significantly reduce the discharge of phosphorus into the state's surface and ground waters;

(3) Household detergents containing no or very low phosphorus are readily available and that over thirty percent of the United States population lives in areas with a ban on detergents containing phosphorus; and

(4) Phosphorus limits on household detergents can significantly reduce treatment costs at those sewage treatment facilities that remove phosphorus from the waste stream.

It is therefore the intent of the legislature to impose a statewide limit on the phosphorus content of household detergents. [1993 c 118 § 1.]

70.95L.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 70.95L.005 through 70.95L.030.

(1) "Department" means the department of ecology.

(2) "Dishwashing detergent" means a cleaning agent sold, used, or manufactured for the purpose of cleaning dishes, whether by hand or by household machine.

(3) "Laundry detergent" means a cleaning agent sold, used, or manufactured for the purpose of cleaning laundry, whether by hand or by household machine.

(4) "Person" means an individual, firm, association, copartnership, political subdivision, government agency, municipality, industry, public or private corporation, or any other entity whatsoever.

(5) "Phosphorus" means elemental phosphorus. [1993 c 118 § 2.]

70.95L.020 Phosphorus content regulated. (1) After July 1, 1994, a person may not sell or distribute for sale a

laundry detergent that contains 0.5 percent or more phosphorus by weight.

(2) After July 1, 1994, a person may not sell or distribute for sale a dishwashing detergent that contains 8.7 percent or more phosphorous by weight.

(3) This section does not apply to the sale or distribution of detergents for commercial and industrial uses. [1993 c 118 § 3.]

70.95L.030 Notice to distributors and wholesalers.

The department is responsible for notifying major distributors and wholesalers of the statewide limit on phosphorus in detergents. [1993 c 118 § 4.]

70.95L.040 Injunction. The attorney general or appropriate city or county prosecuting attorney is authorized to bring an appropriate action to enjoin any violation of the provisions of RCW 70.95L.020. [1993 c 118 § 5.]

Chapter 70.95M RCW MERCURY

Sections

| | |
|------------|--|
| 70.95M.010 | Definitions. |
| 70.95M.020 | Fluorescent lamps—Labeling requirements. |
| 70.95M.030 | Mercury disposal education plan. |
| 70.95M.040 | Schools—Purchase of mercury prohibited. |
| 70.95M.050 | Prohibited sales—Novelties, manometers, thermometers, thermostats, motor vehicles. |
| 70.95M.060 | Rules—Product preference. |
| 70.95M.070 | Clearinghouse—Department participation. |
| 70.95M.080 | Penalties. |
| 70.95M.090 | Crematories—Nonapplicability of chapter. |
| 70.95M.100 | Prescription drugs, biological products, over-the-counter items—Nonapplicability of chapter. |
| 70.95M.110 | Medical equipment, research tests—Nonapplicability of chapter. |
| 70.95M.120 | Fiscal impact—Toxics control account. |
| 70.95M.130 | National mercury repository site. |

70.95M.010 Definitions. The definitions in this section apply throughout this chapter unless the context clearly requires otherwise.

(1) "Automotive mercury switch" includes a convenience switch, such as a switch for a trunk or hood light, and a mercury switch in antilock brake systems.

(2) "Department" means the department of ecology.

(3) "Director" means the director of the department of ecology.

(4) "Health care facility" includes a hospital, nursing home, extended care facility, long-term care facility, clinical or medical laboratory, state or private health or mental institution, clinic, physician's office, or health maintenance organization.

(5) "Manufacturer" includes any person, firm, association, partnership, corporation, governmental entity, organization, or joint venture that produces a mercury-added product or an importer or domestic distributor of a mercury-added product produced in a foreign country. In the case of a multicomponent product containing mercury, the manufacturer is the last manufacturer to produce or assemble the product. If the multicomponent product or mercury-added product is produced in a foreign country, the manufacturer is the first importer or domestic distributor.

(6) "Mercury-added button-cell battery" means a button-cell battery to which the manufacturer intentionally introduces mercury for the operation of the battery.

(7) "Mercury-added novelty" means a mercury-added product intended mainly for personal or household enjoyment or adornment. Mercury-added novelties include, but are not limited to, items intended for use as practical jokes, figurines, adornments, toys, games, cards, ornaments, yard statues and figures, candles, jewelry, holiday decorations, items of apparel, and other similar products. Mercury-added novelty does not include games, toys, or products that require a button-cell or lithium battery, liquid crystal display screens, or a lamp that contains mercury.

(8) "Mercury-added product" means a product, commodity, or chemical, or a product with a component that contains mercury or a mercury compound intentionally added to the product, commodity, or chemical in order to provide a specific characteristic, appearance, or quality, or to perform a specific function, or for any other reason. Mercury-added products include, but are not limited to, mercury thermometers, mercury thermostats, and mercury switches in motor vehicles.

(9) "Mercury manometer" means a mercury-added product that is used for measuring blood pressure.

(10) "Mercury thermometer" means a mercury-added product that is used for measuring temperature.

(11) "Retailer" means a retailer of a mercury-added product. [2003 c 260 § 2.]

70.95M.020 Fluorescent lamps—Labeling requirements. (1) Effective January 1, 2004, a manufacturer, wholesaler, or retailer may not knowingly sell at retail a fluorescent lamp if the fluorescent lamp contains mercury and was manufactured after November 30, 2003, unless the fluorescent lamp is labeled in accordance with the guidelines listed under subsection (2) of this section. Primary responsibility for affixing labels required under this section is on the manufacturer, and not on the wholesaler or retailer.

(2) Except as provided in subsection (3) of this section, a lamp is considered labeled pursuant to subsection (1) of this section if the lamp has all of the following:

(a) A label affixed to the lamp that displays the internationally recognized symbol for the element mercury; and

(b) A label on the lamp's packaging that: (i) Clearly informs the purchaser that mercury is present in the item; (ii) explains that the fluorescent lamp should be disposed of according to applicable federal, state, and local laws; and (iii) provides a toll-free telephone number, and a uniform resource locator internet address to a web site, that contains information on applicable disposal laws.

(3) The manufacturer of a mercury-added lamp is in compliance with the requirements of this section if the manufacturer is in compliance with the labeling requirements of another state.

(4) The provisions of this section do not apply to products containing mercury-added lamps. [2003 c 260 § 3.]

70.95M.030 Mercury disposal education plan. The department of health must develop an educational plan for schools, local governments, businesses, and the public on the

proper disposal methods for mercury and mercury-added products. [2003 c 260 § 4.]

70.95M.040 Schools—Purchase of mercury prohibited. A school may not purchase for use in a primary or secondary classroom bulk elemental mercury or chemical mercury compounds. By January 1, 2006, all primary and secondary schools in the state must remove and properly dispose of all bulk elemental mercury, chemical mercury, and bulk mercury compounds used as teaching aids in science classrooms, not including barometers. [2003 c 260 § 5.]

70.95M.050 Prohibited sales—Novelties, manometers, thermometers, thermostats, motor vehicles. (1) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a mercury-added novelty. A manufacturer of mercury-added novelties must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining mercury-added novelty inventory.

(2)(a) Effective January 1, 2006, no person may sell, offer for sale, or distribute for sale or use in this state a manometer used to measure blood pressure or a thermometer that contains mercury. This subsection (2)(a) does not apply to:

(i) An electronic thermometer with a button-cell battery containing mercury;

(ii) A thermometer that contains mercury and that is used for food research and development or food processing, including meat, dairy products, and pet food processing;

(iii) A thermometer that contains mercury and that is a component of an animal agriculture climate control system or industrial measurement system or for veterinary medicine until such a time as the system is replaced or a nonmercury component for the system or application is available;

(iv) A thermometer or manometer that contains mercury that is used for calibration of other thermometers, manometers, apparatus, or equipment, unless a nonmercury calibration standard is approved for the application by the national institute of standards and technology;

(v) A thermometer that is provided by prescription. A manufacturer of a mercury thermometer shall supply clear instructions on the careful handling of the thermometer to avoid breakage and proper cleanup should a breakage occur; or

(vi) A manometer or thermometer sold or distributed to a hospital, or a health care facility controlled by a hospital, if the hospital has adopted a plan for mercury reduction consistent with the goals of the mercury chemical action plan developed by the department under section 302, chapter 371, Laws of 2002.

(b) A manufacturer of thermometers that contain mercury must notify all retailers that sell the product about the provisions of this section and how to properly dispose of any remaining thermometer inventory.

(3) Effective January 1, 2006, no person may sell, install, or reinstall a commercial or residential thermostat that contains mercury unless the manufacturer of the thermostat conducts or participates in a thermostat recovery or recycling program designed to assist contractors in the proper disposal

(2004 Ed.)

of thermostats that contain mercury in accordance with 42 U.S.C. Sec. 6901, et seq., the federal resource conservation and recovery act.

(4) No person may sell, offer for sale, or distribute for sale or use in this state a motor vehicle manufactured after January 1, 2006, if the motor vehicle contains an automotive mercury switch.

(5) Nothing in this section restricts the ability of a manufacturer, importer, or domestic distributor from transporting products through the state, or storing products in the state for later distribution outside the state. [2003 c 260 § 6.]

70.95M.060 Rules—Product preference. (1) The department of general administration must, by January 1, 2005, revise its rules, policies, and guidelines to implement the purpose of this chapter.

(2) The department of general administration must give priority and preference to the purchase of equipment, supplies, and other products that contain no mercury-added compounds or components, unless: (a) There is no economically feasible nonmercury-added alternative that performs a similar function; or (b) the product containing mercury is designed to reduce electricity consumption by at least forty percent and there is no nonmercury or lower mercury alternative available that saves the same or a greater amount of electricity as the exempted product. In circumstances where a nonmercury-added product is not available, preference must be given to the purchase of products that contain the least amount of mercury added to the product necessary for the required performance. [2003 c 260 § 7.]

70.95M.070 Clearinghouse—Department participation. The department is authorized to participate in a regional or multistate clearinghouse to assist in carrying out any of the requirements of this chapter. A clearinghouse may also be used for examining notification and label requirements, developing education and outreach activities, and maintaining a list of all mercury-added products. [2003 c 260 § 8.]

70.95M.080 Penalties. A violation of this chapter is punishable by a civil penalty not to exceed one thousand dollars for each violation in the case of a first violation. Repeat violators are liable for a civil penalty not to exceed five thousand dollars for each repeat violation. Penalties collected under this section must be deposited in the state toxics control account created in RCW 70.105D.070. [2003 c 260 § 9.]

70.95M.090 Crematories—Nonapplicability of chapter. Nothing in this chapter applies to crematories as that term is defined in RCW 68.04.070. [2003 c 260 § 10.]

70.95M.100 Prescription drugs, biological products, over-the-counter items—Nonapplicability of chapter. Nothing in this chapter applies to prescription drugs regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.), to biological products regulated by the food and drug administration under the public health service act (42 U.S.C. Sec. 262 et seq.), or to any substance that may be lawfully sold over-

the-counter without a prescription under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.). [2003 c 260 § 12.]

70.95M.110 Medical equipment, research tests—Nonapplicability of chapter. Nothing in RCW 70.95M.020, 70.95M.050 (1), (3), or (4), or 70.95M.060 applies to medical equipment or reagents used in medical or research tests regulated by the food and drug administration under the federal food, drug, and cosmetic act (21 U.S.C. Sec. 301 et seq.). [2003 c 260 § 13.]

70.95M.120 Fiscal impact—Toxics control account. Any fiscal impact on the department or the department of health that results from the implementation of this chapter must be paid for out of funds that are appropriated by the legislature from the state toxics control account for the implementation of the department's persistent bioaccumulative toxic chemical strategy. [2003 c 260 § 11.]

70.95M.130 National mercury repository site. The department of ecology shall petition the United States environmental protection agency requesting development of a national mercury repository site. [2003 c 260 § 14.]

Chapter 70.96 RCW

ALCOHOLISM

Sections

70.96.150 Inability to contribute to cost no bar to admission—Department may limit admissions.

Alcoholism and drug addiction and support act: Chapter 74.50 RCW.

Chemical dependency benefit provisions

group disability contracts: RCW 48.21.160 through 48.21.190.

health care services contracts: RCW 48.44.240.

70.96.150 Inability to contribute to cost no bar to admission. [1959 c 85 § 15.] Repealed by 1989 c 270 § 35; and subsequently recodified as RCW 70.96A.430 pursuant to 1993 c 131 § 1.

Reviser's note: This section was amended by 1989 c 271 § 308, without cognizance of the repeal thereof; and subsequently recodified without cognizance of the repeal thereof.

70.96.150 Inability to contribute to cost no bar to admission—Department may limit admissions. The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism.

The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible applicants exceeds the limits set by the department. [1989 c 271 § 308; 1959 c 85 § 15.]

Reviser's note: This section was also repealed by 1989 c 270 § 35, without cognizance of its amendment by 1989 c 271 § 308; and subsequently recodified pursuant to 1993 c 131 § 1. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Severability—1989 c 271: See note following RCW 9.94A.510.

Chapter 70.96A RCW

TREATMENT FOR ALCOHOLISM, INTOXICATION, AND DRUG ADDICTION

(Formerly: Uniform alcoholism and intoxication treatment)

Sections

- 70.96A.010 Declaration of policy.
- 70.96A.011 Legislative finding and intent—Purpose of chapter.
- 70.96A.020 Definitions.
- 70.96A.030 Chemical dependency program.
- 70.96A.040 Program authority.
- 70.96A.043 Agreements authorized under the Interlocal Cooperation Act.
- 70.96A.045 Funding prerequisites, facilities, plans, or programs receiving financial assistance.
- 70.96A.047 Local funding and donative funding requirements—Facilities, plans, programs.
- 70.96A.050 Duties of department.
- 70.96A.055 Drug courts.
- 70.96A.060 Interdepartmental coordinating committee.
- 70.96A.070 Citizens advisory council—Qualifications—Duties—Rules and policies.
- 70.96A.080 Comprehensive program for treatment—Regional facilities.
- 70.96A.085 City, town, or county without facility—Contribution of liquor taxes prerequisite to use of another's facility.
- 70.96A.087 Liquor taxes and profits—City and county eligibility conditioned.
- 70.96A.090 Standards for treatment programs—Enforcement procedures—Penalties—Evaluation of treatment of children.
- 70.96A.095 Age of consent—Outpatient treatment of minors for chemical dependency.
- 70.96A.096 Notice to parents, school contacts for referring students to inpatient treatment.
- 70.96A.097 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treatment—At-risk youth petition—Costs—Public funds.
- 70.96A.100 Acceptance for approved treatment—Rules.
- 70.96A.110 Voluntary treatment of alcoholics or other drug addicts.
- 70.96A.120 Treatment programs and facilities—Admissions—Peace officer duties—Protective custody.
- 70.96A.140 Involuntary commitment.
- 70.96A.142 Evaluation by designated chemical dependency specialist—When required—Required notifications.
- 70.96A.145 Involuntary commitment proceedings—Prosecuting attorney may represent specialist or program.
- 70.96A.148 Detention, commitment duties—Designation of county designated mental health professional.
- 70.96A.150 Records of alcoholics and intoxicated persons.
- 70.96A.155 Court-ordered treatment—Required notifications.
- 70.96A.160 Visitation and communication with patients.
- 70.96A.170 Emergency service patrol—Establishment—Rules.
- 70.96A.180 Payment for treatment—Financial ability of patients.
- 70.96A.190 Criminal laws limitations.
- 70.96A.230 Minor—When outpatient treatment provider must give notice to parents.
- 70.96A.235 Minor—Parental consent for inpatient treatment—Exception.
- 70.96A.240 Minor—Parent not liable for payment unless consented to treatment—No right to public funds.
- 70.96A.245 Minor—Parent may request determination whether minor has chemical dependency requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility.
- 70.96A.250 Minor—Parent may request determination whether minor has chemical dependency requiring outpatient treatment—Consent of minor not required—Discharge of minor.
- 70.96A.255 Minor—Petition to superior court for release from facility.
- 70.96A.260 Minor—Not released by petition under RCW 70.96A.255—Release within thirty days—Professional may initiate proceedings to stop release.
- 70.96A.265 Minor—Eligibility for medical assistance under chapter 74.09 RCW—Payment by department.
- 70.96A.300 Counties may create alcoholism and other drug addiction board—Generally.
- 70.96A.310 County alcoholism and other drug addiction program—Chief executive officer of program to be program coordinator.
- 70.96A.320 Alcoholism and other drug addiction program—Generally.
- 70.96A.350 Criminal justice treatment account.
- 70.96A.400 Opiate substitution treatment—Declaration of regulation by state.
- 70.96A.410 Opiate substitution treatment—Program certification by department, department duties—Definition of opiate substitution treatment.

- 70.96A.420 Statewide treatment and operating standards for opiate substitution programs—Evaluation and report.
- 70.96A.430 Inability to contribute to cost no bar to admission—Department may limit admissions.
- 70.96A.500 Fetal alcohol screening and assessment services.
- 70.96A.510 Interagency agreement on fetal alcohol exposure programs.
- 70.96A.520 Chemical dependency treatment expenditures—Prioritization.
- 70.96A.905 Uniform application of chapter—Training for county-designated mental health professionals.
- 70.96A.910 Application—Construction—1972 ex.s. c 122.
- 70.96A.915 Department allocation of funds—Construction.
- 70.96A.920 Severability—1972 ex.s. c 122.
- 70.96A.930 Section, subsection headings not part of law.

Reviser's note: Throughout this chapter "this act" has been translated to "this chapter." This act [1972 ex.s. c 122] consists of chapter 70.96A RCW, the amendment of RCW 9.87.010, 71.24.030 and the repeal of RCW 9.68.040, 70.96.010-70.96.030, 70.96.040-70.96.080, 70.96.090, 70.96.100-70.96.140, 70.96.900, and 71.08.010-71.08.090.

Alcoholism and drug addiction and support act: Chapter 74.50 RCW.

70.96A.010 Declaration of policy. It is the policy of this state that alcoholics and intoxicated persons may not be subjected to criminal prosecution solely because of their consumption of alcoholic beverages but rather should, within available funds, be afforded a continuum of treatment in order that they may lead normal lives as productive members of society. Within available funds, treatment should also be provided for drug addicts. [1989 c 271 § 304; 1972 ex.s. c 122 § 1.]

Severability—1989 c 271: See note following RCW 9.94A.510.

Effective date—1972 ex.s. c 122. "Chapter 122, Laws of 1972 extraordinary session shall be effective January 1, 1975." [1973 c 92 § 1; 1972 ex.s. c 122 § 31.]

Chemical dependency benefit provisions

group disability contracts: RCW 48.21.160-48.21.190.

health care services contracts: RCW 48.44.240.

70.96A.011 Legislative finding and intent—Purpose of chapter. The legislature finds that the use of alcohol and other drugs has become a serious threat to the health of the citizens of the state of Washington. The use of psychoactive chemicals has been found to be a prime factor in the current AIDS epidemic. Therefore, a comprehensive statute to deal with alcoholism and other drug addiction is necessary.

The legislature agrees with the 1987 resolution of the American Medical Association that endorses the proposition that all chemical dependencies, including alcoholism, are diseases. It is the intent of the legislature to end the sharp distinctions between alcoholism services and other drug addiction services, to recognize that chemical dependency is a disease, and to insure that prevention and treatment services are available and are of high quality. It is the purpose of this chapter to provide the financial assistance necessary to enable the department of social and health services to provide a discrete program of alcoholism and other drug addiction services. [1989 c 270 § 1.]

70.96A.020 Definitions. For the purposes of this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Alcoholic" means a person who suffers from the disease of alcoholism.

(2) "Alcoholism" means a disease, characterized by a dependency on alcoholic beverages, loss of control over the amount and circumstances of use, symptoms of tolerance,

physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(3) "Approved treatment program" means a discrete program of chemical dependency treatment provided by a treatment program certified by the department of social and health services as meeting standards adopted under this chapter.

(4) "Chemical dependency" means:

(a) Alcoholism; (b) drug addiction; or (c) dependence on alcohol and one or more other psychoactive chemicals, as the context requires.

(5) "Chemical dependency program" means expenditures and activities of the department designed and conducted to prevent or treat alcoholism and other drug addiction, including reasonable administration and overhead.

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

(7) "Designated chemical dependency specialist" or "specialist" means a person designated by the county alcoholism and other drug addiction program coordinator designated under RCW 70.96A.310 to perform the commitment duties described in RCW 70.96A.140 and qualified to do so by meeting standards adopted by the department.

(8) "Director" means the person administering the chemical dependency program within the department.

(9) "Drug addict" means a person who suffers from the disease of drug addiction.

(10) "Drug addiction" means a disease characterized by a dependency on psychoactive chemicals, loss of control over the amount and circumstances of use, symptoms of tolerance, physiological or psychological withdrawal, or both, if use is reduced or discontinued, and impairment of health or disruption of social or economic functioning.

(11) "Emergency service patrol" means a patrol established under RCW 70.96A.170.

(12) "Gravely disabled by alcohol or other psychoactive chemicals" or "gravely disabled" means that a person, as a result of the use of alcohol or other psychoactive chemicals: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by a repeated and escalating loss of cognition or volitional control over his or her actions and is not receiving care as essential for his or her health or safety.

(13) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility, or a long-term alcoholism or drug treatment facility, or in confinement.

(14) "Incapacitated by alcohol or other psychoactive chemicals" means that a person, as a result of the use of alcohol or other psychoactive chemicals, is gravely disabled or presents a likelihood of serious harm to himself or herself, to any other person, or to property.

(15) "Incompetent person" means a person who has been adjudged incompetent by the superior court.

(16) "Intoxicated person" means a person whose mental or physical functioning is substantially impaired as a result of the use of alcohol or other psychoactive chemicals.

(17) "Licensed physician" means a person licensed to practice medicine or osteopathic medicine and surgery in the state of Washington.

(18) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on one's self; (ii) physical harm will be inflicted by an individual upon another, as evidenced by behavior that has caused the harm or that places another person or persons in reasonable fear of sustaining the harm; or (iii) physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior that has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts.

(19) "Medical necessity" for inpatient care of a minor means a requested certified inpatient service that is reasonably calculated to: (a) Diagnose, arrest, or alleviate a chemical dependency; or (b) prevent the worsening of chemical dependency conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or mal-function, and there is no adequate less restrictive alternative available.

(20) "Minor" means a person less than eighteen years of age.

(21) "Parent" means the parent or parents who have the legal right to custody of the child. Parent includes custodian or guardian.

(22) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment.

(23) "Person" means an individual, including a minor.

(24) "Professional person in charge" or "professional person" means a physician or chemical dependency counselor as defined in rule by the department, who is empowered by a certified treatment program with authority to make assessment, admission, continuing care, and discharge decisions on behalf of the certified program.

(25) "Secretary" means the secretary of the department of social and health services.

(26) "Treatment" means the broad range of emergency, detoxification, residential, and outpatient services and care, including diagnostic evaluation, chemical dependency education and counseling, medical, psychiatric, psychological, and social service care, vocational rehabilitation and career counseling, which may be extended to alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(27) "Treatment program" means an organization, institution, or corporation, public or private, engaged in the care, treatment, or rehabilitation of alcoholics or other drug addicts.

(28) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2001 c 13 § 1; 1998 c 296 § 22. Prior: 1996 c 178 § 23; 1996 c 133 § 33; 1994 c 231 § 1; 1991 c 364 § 8; 1990 c 151 § 2; prior: 1989 c 271 § 305; 1989 c 270 § 3; 1972 ex.s. c 122 § 2.]

Severability—2001 c 13: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 c 13 § 5.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Effective date—1996 c 178: See note following RCW 18.35.110.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Effective date—1994 c 231: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 231 § 3.]

Findings—1991 c 364: "The legislature finds that the use of alcohol and illicit drugs continues to be a primarycrippler of our youth. This translates into incredible costs to individuals, families, and society in terms of traffic fatalities, suicides, criminal activity including homicides, sexual promiscuity, familial incorrigibility, and conduct disorders, and educational fallout. Among children of all socioeconomic groups lower expectations for the future, low motivation and self-esteem, alienation, and depression are associated with alcohol and drug abuse.

Studies reveal that deaths from alcohol and other drug-related injuries rise sharply through adolescence, peaking in the early twenties. But second peak occurs in later life, where it accounts for three times as many deaths from chronic diseases. A young victim's life expectancy is likely to be reduced by an average of twenty-six years.

Yet the cost of treating alcohol and drug addicts can be recouped in the first three years of abstinence in health care savings alone. Public money spent on treatment saves not only the life of the chemical abuser, it makes us safer as individuals, and in the long-run costs less.

The legislature further finds that many children who abuse alcohol and other drugs may not require involuntary treatment, but still are not adequately served. These children remain at risk for future chemical dependency, and may become mentally ill or a juvenile offender or need out-of-home placement. Children placed at risk because of chemical abuse may be better served by the creation of a comprehensive integrated system for children in crisis.

The legislature declares that an emphasis on the treatment of youth will pay the largest dividend in terms of preventable costs to individuals themselves, their families, and to society. The provision of augmented involuntary alcohol treatment services to youths, as well as involuntary treatment for youths addicted by other drugs, is in the interest of the public health and safety." [1991 c 364 § 7.]

Construction—1991 c 364 §§ 7-12: "The purpose of sections 7 through 12 of this act is solely to provide authority for the involuntary commitment of minors addicted by drugs within available funds and current programs and facilities. Nothing in sections 7 through 12 of this act shall be construed to require the addition of new facilities nor affect the department's authority for the uses of existing programs and facilities authorized by law. Nothing in sections 7 through 12 of this act shall prevent a parent or guardian from requesting the involuntary commitment of a minor through a county designated chemical dependency specialist on an ability to pay basis." [1991 c 364 § 13.]

Conflict with federal requirements—1991 c 364: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1991 c 364 § 15.]

Severability—1989 c 271: See note following RCW 9.94A.510.

70.96A.030 Chemical dependency program. A discrete program of chemical dependency is established within the department of social and health services, to be administered by a qualified person who has training and experience in handling alcoholism and other drug addiction problems or the organization or administration of treatment services for persons suffering from alcoholism or other drug addiction problems. [1989 c 270 § 4; 1972 ex.s. c 122 § 3.]

70.96A.040 Program authority. The department, in the operation of the chemical dependency program may:

(1) Plan, establish, and maintain prevention and treatment programs as necessary or desirable;

(2) Make contracts necessary or incidental to the performance of its duties and the execution of its powers, including contracts with public and private agencies, organizations, and individuals to pay them for services rendered or furnished to alcoholics or other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, or intoxicated persons;

(3) Enter into agreements for monitoring of verification of qualifications of counselors employed by approved treatment programs;

(4) Adopt rules under chapter 34.05 RCW to carry out the provisions and purposes of this chapter and contract, cooperate, and coordinate with other public or private agencies or individuals for those purposes;

(5) Solicit and accept for use any gift of money or property made by will or otherwise, and any grant of money, services, or property from the federal government, the state, or any political subdivision thereof or any private source, and do all things necessary to cooperate with the federal government or any of its agencies in making an application for any grant;

(6) Administer or supervise the administration of the provisions relating to alcoholics, other drug addicts, and intoxicated persons of any state plan submitted for federal funding pursuant to federal health, welfare, or treatment legislation;

(7) Coordinate its activities and cooperate with chemical dependency programs in this and other states, and make contracts and other joint or cooperative arrangements with state, local, or private agencies in this and other states for the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and for the common advancement of chemical dependency programs;

(8) Keep records and engage in research and the gathering of relevant statistics;

(9) Do other acts and things necessary or convenient to execute the authority expressly granted to it;

(10) Acquire, hold, or dispose of real property or any interest therein, and construct, lease, or otherwise provide treatment programs. [1989 c 270 § 5; 1988 c 193 § 2; 1972 ex.s. c 122 § 4.]

70.96A.043 Agreements authorized under the Interlocal Cooperation Act. Pursuant to the Interlocal Cooperation Act, chapter 39.34 RCW, the department may enter into agreements to accomplish the purposes of this chapter. [1989 c 270 § 7.]

70.96A.045 Funding prerequisites, facilities, plans, or programs receiving financial assistance. All facilities, plans, or programs receiving financial assistance under RCW 70.96A.040 must be approved by the department before any state funds may be used to provide the financial assistance. If the facilities, plans, or programs have not been approved as required or do not receive the required approval, the funds set aside for the facility, plan, or program shall be made available for allocation to facilities, plans, or programs that have

received the required approval of the department. In addition, whenever there is an excess of funds set aside for a particular approved facility, plan, or program, the excess shall be made available for allocation to other approved facilities, plans, or programs. [1989 c 270 § 10.]

70.96A.047 Local funding and donative funding requirements—Facilities, plans, programs. Except as provided in this chapter, the secretary shall not approve any facility, plan, or program for financial assistance under RCW 70.96A.040 unless at least ten percent of the amount spent for the facility, plan, or program is provided from local public or private sources. When deemed necessary to maintain public standards of care in the facility, plan, or program, the secretary may require the facility, plan, or program to provide up to fifty percent of the total spent for the program through fees, gifts, contributions, or volunteer services. The secretary shall determine the value of the gifts, contributions, and volunteer services. [1989 c 270 § 11.]

70.96A.050 Duties of department. The department shall:

(1) Develop, encourage, and foster statewide, regional, and local plans and programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons in cooperation with public and private agencies, organizations, and individuals and provide technical assistance and consultation services for these purposes;

(2) Coordinate the efforts and enlist the assistance of all public and private agencies, organizations, and individuals interested in prevention of alcoholism and drug addiction, and treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(3) Cooperate with public and private agencies in establishing and conducting programs to provide treatment for alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons who are clients of the correctional system;

(4) Cooperate with the superintendent of public instruction, state board of education, schools, police departments, courts, and other public and private agencies, organizations and individuals in establishing programs for the prevention of alcoholism and other drug addiction, treatment of alcoholics or other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, and preparing curriculum materials thereon for use at all levels of school education;

(5) Prepare, publish, evaluate, and disseminate educational material dealing with the nature and effects of alcohol and other psychoactive chemicals and the consequences of their use;

(6) Develop and implement, as an integral part of treatment programs, an educational program for use in the treatment of alcoholics or other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, which program shall include the dissemination

of information concerning the nature and effects of alcohol and other psychoactive chemicals, the consequences of their use, the principles of recovery, and HIV and AIDS;

(7) Organize and foster training programs for persons engaged in treatment of alcoholics or other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(8) Sponsor and encourage research into the causes and nature of alcoholism and other drug addiction, treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons, and serve as a clearing house for information relating to alcoholism or other drug addiction;

(9) Specify uniform methods for keeping statistical information by public and private agencies, organizations, and individuals, and collect and make available relevant statistical information, including number of persons treated, frequency of admission and readmission, and frequency and duration of treatment;

(10) Advise the governor in the preparation of a comprehensive plan for treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons for inclusion in the state's comprehensive health plan;

(11) Review all state health, welfare, and treatment plans to be submitted for federal funding under federal legislation, and advise the governor on provisions to be included relating to alcoholism and other drug addiction, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons;

(12) Assist in the development of, and cooperate with, programs for alcohol and other psychoactive chemical education and treatment for employees of state and local governments and businesses and industries in the state;

(13) Use the support and assistance of interested persons in the community to encourage alcoholics and other drug addicts voluntarily to undergo treatment;

(14) Cooperate with public and private agencies in establishing and conducting programs designed to deal with the problem of persons operating motor vehicles while intoxicated;

(15) Encourage general hospitals and other appropriate health facilities to admit without discrimination alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and to provide them with adequate and appropriate treatment;

(16) Encourage all health and disability insurance programs to include alcoholism and other drug addiction as a covered illness; and

(17) Organize and sponsor a statewide program to help court personnel, including judges, better understand the disease of alcoholism and other drug addiction and the uses of chemical dependency treatment programs. [2001 c 13 § 2; 1989 c 270 § 6; 1979 ex.s. c 176 § 7; 1972 ex.s. c 122 § 5.]

Severability—2001 c 13: See note following RCW 70.96A.020.

Severability—1979 ex.s. c 176: See note following RCW 46.61.502.

70.96A.055 Drug courts. The department shall contract with counties operating drug courts and counties in the

process of implementing new drug courts for the provision of drug and alcohol treatment services. [1999 c 197 § 10.]

Legislative recognition—1999 c 197: See note following RCW 2.28.170.

Severability—1999 c 197: See note following RCW 9.94A.030.

70.96A.060 Interdepartmental coordinating committee. (1) An interdepartmental coordinating committee is established, composed of the superintendent of public instruction or his or her designee, the director of licensing or his or her designee, the executive secretary of the Washington state law enforcement training commission or his or her designee, and one or more designees (not to exceed three) of the secretary, one of whom shall be the director of the chemical dependency program. The committee shall meet at least twice annually at the call of the secretary, or his or her designee, who shall be its chair. The committee shall provide for the coordination of, and exchange of information on, all programs relating to alcoholism and other drug addiction, and shall act as a permanent liaison among the departments engaged in activities affecting alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons. The committee shall assist the secretary and director in formulating a comprehensive plan for prevention of alcoholism and other drug addiction, for treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(2) In exercising its coordinating functions, the committee shall assure that:

(a) The appropriate state agencies provide or assure all necessary medical, social, treatment, and educational services for alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons and for the prevention of alcoholism and other chemical dependency, without unnecessary duplication of services;

(b) The several state agencies cooperate in the use of facilities and in the treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons; and

(c) All state agencies adopt approaches to the prevention of alcoholism and other drug addiction, the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons consistent with the policy of this chapter. [1989 c 270 § 8; 1979 c 158 § 220; 1972 ex.s. c 122 § 6.]

70.96A.070 Citizens advisory council—Qualifications—Duties—Rules and policies. Pursuant to the provisions of RCW 43.20A.360, there shall be a citizens advisory council composed of not less than seven nor more than fifteen members. It is the intent of the legislature that the citizens advisory council broadly represent citizens who have been recipients of voluntary or involuntary treatment for alcoholism or other drug addiction and who have been in recovery from chemical dependency for a minimum of two years. To meet this intent, at least two-thirds of the council's members shall be former recipients of these services and not employed in an occupation relating to alcoholism or drug addiction. The remaining members shall be broadly representative of the

community, shall include representation from business and industry, organized labor, the judiciary, and minority groups, chosen for their demonstrated concern with alcoholism and other drug addiction problems. Members shall be appointed by the secretary. In addition to advising the department in carrying out the purposes of this chapter, the council shall develop and propose to the secretary for his or her consideration the rules for the implementation of the chemical dependency program of the department. Rules and policies governing treatment programs shall be developed in collaboration among the council, department staff, local government, and administrators of voluntary and involuntary treatment programs. The secretary shall thereafter adopt such rules that, in his or her judgment properly implement the chemical dependency program of the department consistent with the welfare of those to be served, the legislative intent, and the public good. [1994 c 231 § 2; 1989 c 270 § 9; 1973 1st ex.s. c 155 § 1; 1972 ex.s. c 122 § 7.]

Effective date—1994 c 231: See note following RCW 70.96A.020.

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

70.96A.080 Comprehensive program for treatment—Regional facilities. (1) The department shall establish by all appropriate means, including contracting for services, a comprehensive and coordinated discrete program for the treatment of alcoholics and other drug addicts and their families, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons.

(2) The program shall include, but not necessarily be limited to:

- (a) Detoxification;
- (b) Residential treatment; and
- (c) Outpatient treatment.

(3) All appropriate public and private resources shall be coordinated with and used in the program when possible.

(4) The department may contract for the use of an approved treatment program or other individual or organizational if the secretary considers this to be an effective and economical course to follow. [1989 c 270 § 18; 1972 ex.s. c 122 § 8.]

70.96A.085 City, town, or county without facility—Contribution of liquor taxes prerequisite to use of another's facility. A city, town, or county that does not have its own facility or program for the treatment and rehabilitation of alcoholics and other drug addicts may share in the use of a facility or program maintained by another city or county so long as it contributes no less than two percent of its share of liquor taxes and profits to the support of the facility or program. [1989 c 270 § 12.]

70.96A.087 Liquor taxes and profits—City and county eligibility conditioned. To be eligible to receive its share of liquor taxes and profits, each city and county shall devote no less than two percent of its share of liquor taxes and profits to the support of a program of alcoholism and other drug addiction approved by the alcoholism and other drug addiction board authorized by RCW 70.96A.300 and the secretary. [1989 c 270 § 13.]

(2004 Ed.)

70.96A.090 Standards for treatment programs—Enforcement procedures—Penalties—Evaluation of treatment of children. (1) The department shall adopt rules establishing standards for approved treatment programs, the process for the review and inspection program applying to the department for certification as an approved treatment program, and fixing the fees to be charged by the department for the required inspections. The standards may concern the health standards to be met and standards of services and treatment to be afforded patients.

(2) The department may suspend, revoke, limit, restrict, or modify an approval, or refuse to grant approval, for failure to meet the provisions of this chapter, or the standards adopted under this chapter. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(3) No treatment program may advertise or represent itself as an approved treatment program if approval has not been granted, has been denied, suspended, revoked, or canceled.

(4) Certification as an approved treatment program is effective for one calendar year from the date of issuance of the certificate. The certification shall specify the types of services provided by the approved treatment program that meet the standards adopted under this chapter. Renewal of certification shall be made in accordance with this section for initial approval and in accordance with the standards set forth in rules adopted by the secretary.

(5) Approved treatment programs shall not provide alcoholism or other drug addiction treatment services for which the approved treatment program has not been certified. Approved treatment programs may provide services for which approval has been sought and is pending, if approval for the services has not been previously revoked or denied.

(6) The department periodically shall inspect approved public and private treatment programs at reasonable times and in a reasonable manner.

(7) The department shall maintain and periodically publish a current list of approved treatment programs.

(8) Each approved treatment program shall file with the department on request, data, statistics, schedules, and information the department reasonably requires. An approved treatment program that without good cause fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent returns thereof, may be removed from the list of approved treatment programs, and its certification revoked or suspended.

(9) The department shall use the data provided in subsection (8) of this section to evaluate each program that admits children to inpatient treatment upon application of their parents. The evaluation shall be done at least once every twelve months. In addition, the department shall randomly select and review the information on individual children who are admitted on application of the child's parent for the purpose of determining whether the child was appropriately placed into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment.

(10) Upon petition of the department and after a hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the department authorizing him or her to enter and inspect at reasonable

times, and examine the books and accounts of, any approved public or private treatment program refusing to consent to inspection or examination by the department or which the department has reasonable cause to believe is operating in violation of this chapter. [1995 c 312 § 46; 1990 c 151 § 5. Prior: 1989 c 270 § 19; 1989 c 175 § 131; 1972 ex.s. c 122 § 9.]

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

70.96A.095 Age of consent—Outpatient treatment of minors for chemical dependency. Any person thirteen years of age or older may give consent for himself or herself to the furnishing of outpatient treatment by a chemical dependency treatment program certified by the department. Parental authorization is required for any treatment of a minor under the age of thirteen. [1998 c 296 § 23; 1996 c 133 § 34; 1995 c 312 § 47; 1991 c 364 § 9; 1989 c 270 § 24.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

70.96A.096 Notice to parents, school contacts for referring students to inpatient treatment. School district personnel who contact a chemical dependency inpatient treatment program or provider for the purpose of referring a student to inpatient treatment shall provide the parents with notice of the contact within forty-eight hours. [1996 c 133 § 5.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

70.96A.097 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treatment—At-risk youth petition—Costs—Public funds. (1) The department shall ensure that, for any minor admitted to inpatient treatment under RCW 70.96A.245, a review is conducted by a physician or chemical dependency counselor, as defined in rule by the department, who is employed by the department or an agency under contract with the department and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the program providing the treatment. The physician or chemical dependency counselor shall conduct the review not less than seven nor more than fourteen days following the date the minor was brought to the facility under RCW 70.96A.245(1) to determine whether it is a medical necessity to continue the minor's treatment on an inpatient basis.

(2) In making a determination under subsection (1) of this section whether it is a medical necessity to release the minor from inpatient treatment, the department shall consider the opinion of the treatment provider, the safety of the minor, the likelihood the minor's chemical dependency recovery will deteriorate if released from inpatient treatment, and the wishes of the parent.

(3) If, after any review conducted by the department under this section, the department determines it is no longer a medical necessity for a minor to receive inpatient treatment, the department shall immediately notify the parents and the professional person in charge. The professional person in charge shall release the minor to the parents within twenty-four hours of receiving notice. If the professional person in charge and the parent believe that it is a medical necessity for the minor to remain in inpatient treatment, the minor shall be released to the parent on the second judicial day following the department's determination in order to allow the parent time to file an at-risk youth petition under chapter 13.32A RCW. If the department determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal shall be grounds for the parent to file an at-risk youth petition.

(4) The department may, subject to available funds, contract with other governmental agencies for the conduct of the reviews conducted under this section and may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

(5) In addition to the review required under this section, the department may periodically determine and redetermine the medical necessity of treatment for purposes of payment with public funds. [1998 c 296 § 28; 1995 c 312 § 48.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Short title—1995 c 312: See note following RCW 13.32A.010.

70.96A.100 Acceptance for approved treatment—Rules. The secretary shall adopt and may amend and repeal rules for acceptance of persons into the approved treatment program, considering available treatment resources and facilities, for the purpose of early and effective treatment of alcoholics and other drug addicts, persons incapacitated by alcohol or other psychoactive chemicals, and intoxicated persons. In establishing the rules, the secretary shall be guided by the following standards:

(1) If possible a patient shall be treated on a voluntary rather than an involuntary basis.

(2) A patient shall be initially assigned or transferred to outpatient treatment, unless he or she is found to require residential treatment.

(3) A person shall not be denied treatment solely because he or she has withdrawn from treatment against medical advice on a prior occasion or because he or she has relapsed after earlier treatment.

(4) An individualized treatment plan shall be prepared and maintained on a current basis for each patient.

(5) Provision shall be made for a continuum of coordinated treatment services, so that a person who leaves a facility or a form of treatment will have available and use other appropriate treatment. [1989 c 270 § 23; 1972 ex.s. c 122 § 10.]

70.96A.110 Voluntary treatment of alcoholics or other drug addicts. (1) An alcoholic or other drug addict may apply for voluntary treatment directly to an approved treatment program. If the proposed patient is a minor or an

incompetent person, he or she, a parent, a legal guardian, or other legal representative may make the application.

(2) Subject to rules adopted by the secretary, the administrator in charge of an approved treatment program may determine who shall be admitted for treatment. If a person is refused admission to an approved treatment program, the administrator, subject to rules adopted by the secretary, shall refer the person to another approved treatment program for treatment if possible and appropriate.

(3) If a patient receiving inpatient care leaves an approved treatment program, he or she shall be encouraged to consent to appropriate outpatient treatment. If it appears to the administrator in charge of the treatment program that the patient is an alcoholic or other drug addict who requires help, the department may arrange for assistance in obtaining supportive services and residential programs.

(4) If a patient leaves an approved public treatment program, with or against the advice of the administrator in charge of the program, the department may make reasonable provisions for his or her transportation to another program or to his or her home. If the patient has no home he or she should be assisted in obtaining shelter. If the patient is less than fourteen years of age or an incompetent person the request for discharge from an inpatient program shall be made by a parent, legal guardian, or other legal representative or by the minor or incompetent if he or she was the original applicant. [1990 c 151 § 7; 1989 c 270 § 25; 1972 ex.s. c 122 § 11.]

70.96A.120 Treatment programs and facilities—Admissions—Peace officer duties—Protective custody.

(1) An intoxicated person may come voluntarily to an approved treatment program for treatment. A person who appears to be intoxicated in a public place and to be in need of help, if he or she consents to the proffered help, may be assisted to his or her home, an approved treatment program or other health facility.

(2) Except for a person who may be apprehended for possible violation of laws not relating to alcoholism, drug addiction, or intoxication and except for a person who may be apprehended for possible violation of laws relating to driving or being in physical control of a vehicle while under the influence of intoxicating liquor or any drug and except for a person who may wish to avail himself or herself of the provisions of RCW 46.20.308, a person who appears to be incapacitated or gravely disabled by alcohol or other drugs and who is in a public place or who has threatened, attempted, or inflicted physical harm on himself, herself, or another, shall be taken into protective custody by a peace officer or staff designated by the county and as soon as practicable, but in no event beyond eight hours brought to an approved treatment program for treatment. If no approved treatment program is readily available he or she shall be taken to an emergency medical service customarily used for incapacitated persons. The peace officer or staff designated by the county, in detaining the person and in taking him or her to an approved treatment program, is taking him or her into protective custody and shall make every reasonable effort to protect his or her health and safety. In taking the person into protective custody, the detaining peace officer or staff designated by the county may take reasonable steps including reasonable force if necessary to protect himself or herself or effect the custody.

(2004 Ed.)

A taking into protective custody under this section is not an arrest. No entry or other record shall be made to indicate that the person has been arrested or charged with a crime.

(3) A person who comes voluntarily or is brought to an approved treatment program shall be examined by a qualified person. He or she may then be admitted as a patient or referred to another health facility, which provides emergency medical treatment, where it appears that such treatment may be necessary. The referring approved treatment program shall arrange for his or her transportation.

(4) A person who is found to be incapacitated or gravely disabled by alcohol or other drugs at the time of his or her admission or to have become incapacitated or gravely disabled at any time after his or her admission, may not be detained at the program for more than seventy-two hours after admission as a patient, unless a petition is filed under RCW 70.96A.140, as now or hereafter amended: PROVIDED, That the treatment personnel at an approved treatment program are authorized to use such reasonable physical restraint as may be necessary to retain an incapacitated or gravely disabled person for up to seventy-two hours from the time of admission. The seventy-two hour periods specified in this section shall be computed by excluding Saturdays, Sundays, and holidays. A person may consent to remain in the program as long as the physician in charge believes appropriate.

(5) A person who is not admitted to an approved treatment program, is not referred to another health facility, and has no funds, may be taken to his or her home, if any. If he or she has no home, the approved treatment program shall provide him or her with information and assistance to access available community shelter resources.

(6) If a patient is admitted to an approved treatment program, his or her family or next of kin shall be notified as promptly as possible by the treatment program. If an adult patient who is not incapacitated requests that there be no notification, his or her request shall be respected.

(7) The peace officer, staff designated by the county, or treatment facility personnel, who act in compliance with this chapter and are performing in the course of their official duty are not criminally or civilly liable therefor.

(8) If the person in charge of the approved treatment program determines that appropriate treatment is available, the patient shall be encouraged to agree to further diagnosis and appropriate voluntary treatment. [1991 c 290 § 6; 1990 c 151 § 8; 1989 c 271 § 306; 1987 c 439 § 13; 1977 ex.s. c 62 § 1; 1974 ex.s. c 175 § 1; 1972 ex.s. c 122 § 12.]

Severability—1989 c 271: See note following RCW 9.94A.510.

70.96A.140 Involuntary commitment. (1) When a designated chemical dependency specialist receives information alleging that a person presents a likelihood of serious harm or is gravely disabled as a result of chemical dependency, the designated chemical dependency specialist, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the information, may file a petition for commitment of such person with the superior court, district court, or in another court permitted by court rule.

If a petition for commitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the designated chemical dependency specialist's report.

If the designated chemical dependency specialist finds that the initial needs of such person would be better served by placement within the mental health system, the person shall be referred to either a county designated mental health professional or an evaluation and treatment facility as defined in RCW 71.05.020 or 71.34.020. If placement in a chemical dependency program is available and deemed appropriate, the petition shall allege that: The person is chemically dependent and presents a likelihood of serious harm or is gravely disabled by alcohol or drug addiction, or that the person has twice before in the preceding twelve months been admitted for detoxification, sobering services, or chemical dependency treatment pursuant to RCW 70.96A.110 or 70.96A.120, and is in need of a more sustained treatment program, or that the person is chemically dependent and has threatened, attempted, or inflicted physical harm on another and is likely to inflict physical harm on another unless committed. A refusal to undergo treatment, by itself, does not constitute evidence of lack of judgment as to the need for treatment. The petition shall be accompanied by a certificate of a licensed physician who has examined the person within five days before submission of the petition, unless the person whose commitment is sought has refused to submit to a medical examination, in which case the fact of refusal shall be alleged in the petition. The certificate shall set forth the licensed physician's findings in support of the allegations of the petition. A physician employed by the petitioning program or the department is eligible to be the certifying physician.

(2) Upon filing the petition, the court shall fix a date for a hearing no less than two and no more than seven days after the date the petition was filed unless the person petitioned against is presently being detained in a program, pursuant to RCW 70.96A.120, 71.05.210, or 71.34.050, in which case the hearing shall be held within seventy-two hours of the filing of the petition: PROVIDED, HOWEVER, That the above specified seventy-two hours shall be computed by excluding Saturdays, Sundays, and holidays: PROVIDED FURTHER, That, the court may, upon motion of the person whose commitment is sought, or upon motion of petitioner with written permission of the person whose commitment is sought, or his or her counsel and, upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of the hearing, including the date fixed by the court, shall be served by the designated chemical dependency specialist on the person whose commitment is sought, his or her next of kin, a parent or his or her legal guardian if he or she is a minor, and any other person the court believes advisable. A copy of the petition and certificate shall be delivered to each person notified.

(3) At the hearing the court shall hear all relevant testimony, including, if possible, the testimony, which may be telephonic, of at least one licensed physician who has examined the person whose commitment is sought. Communications otherwise deemed privileged under the laws of this state

are deemed to be waived in proceedings under this chapter when a court of competent jurisdiction in its discretion determines that the waiver is necessary to protect either the detained person or the public. The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person, or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical, nursing, or psychological records of detained persons so long as the requirements of RCW 5.45.020 are met, except that portions of the record that contain opinions as to whether the detained person is chemically dependent shall be deleted from the records unless the person offering the opinions is available for cross-examination. The person shall be present unless the court believes that his or her presence is likely to be injurious to him or her; in this event the court may deem it appropriate to appoint a guardian ad litem to represent him or her throughout the proceeding. If deemed advisable, the court may examine the person out of courtroom. If the person has refused to be examined by a licensed physician, he or she shall be given an opportunity to be examined by a court appointed licensed physician. If he or she refuses and there is sufficient evidence to believe that the allegations of the petition are true, or if the court believes that more medical evidence is necessary, the court may make a temporary order committing him or her to the department for a period of not more than five days for purposes of a diagnostic examination.

(4) If after hearing all relevant evidence, including the results of any diagnostic examination, the court finds that grounds for involuntary commitment have been established by clear, cogent, and convincing proof, it shall make an order of commitment to an approved treatment program. It shall not order commitment of a person unless it determines that an approved treatment program is available and able to provide adequate and appropriate treatment for him or her.

(5) A person committed under this section shall remain in the program for treatment for a period of sixty days unless sooner discharged. At the end of the sixty-day period, he or she shall be discharged automatically unless the program, before expiration of the period, files a petition for his or her recommitment upon the grounds set forth in subsection (1) of this section for a further period of ninety days unless sooner discharged.

If a petition for recommitment is not filed in the case of a minor, the parent, guardian, or custodian who has custody of the minor may seek review of that decision made by the designated chemical dependency specialist in superior or district court. The parent, guardian, or custodian shall file notice with the court and provide a copy of the treatment progress report.

If a person has been committed because he or she is chemically dependent and likely to inflict physical harm on another, the program shall apply for recommitment if after examination it is determined that the likelihood still exists.

(6) Upon the filing of a petition for recommitment under subsection (5) of this section, the court shall fix a date for hearing no less than two and no more than seven days after

the date the petition was filed: PROVIDED, That, the court may, upon motion of the person whose commitment is sought and upon good cause shown, extend the date for the hearing. A copy of the petition and of the notice of hearing, including the date fixed by the court, shall be served by the treatment program on the person whose commitment is sought, his or her next of kin, the original petitioner under subsection (1) of this section if different from the petitioner for recommitment, one of his or her parents or his or her legal guardian if he or she is a minor, and his or her attorney and any other person the court believes advisable. At the hearing the court shall proceed as provided in subsection (3) of this section.

(7) The approved treatment program shall provide for adequate and appropriate treatment of a person committed to its custody. A person committed under this section may be transferred from one approved public treatment program to another if transfer is medically advisable.

(8) A person committed to the custody of a program for treatment shall be discharged at any time before the end of the period for which he or she has been committed and he or she shall be discharged by order of the court if either of the following conditions are met:

(a) In case of a chemically dependent person committed on the grounds of likelihood of infliction of physical harm upon himself, herself, or another, the likelihood no longer exists; or further treatment will not be likely to bring about significant improvement in the person's condition, or treatment is no longer adequate or appropriate.

(b) In case of a chemically dependent person committed on the grounds of the need of treatment and incapacity, that the incapacity no longer exists.

(9) The court shall inform the person whose commitment or recommitment is sought of his or her right to contest the application, be represented by counsel at every stage of any proceedings relating to his or her commitment and recommitment, and have counsel appointed by the court or provided by the court, if he or she wants the assistance of counsel and is unable to obtain counsel. If the court believes that the person needs the assistance of counsel, the court shall require, by appointment if necessary, counsel for him or her regardless of his or her wishes. The person shall, if he or she is financially able, bear the costs of such legal service; otherwise such legal service shall be at public expense. The person whose commitment or recommitment is sought shall be informed of his or her right to be examined by a licensed physician of his or her choice. If the person is unable to obtain a licensed physician and requests examination by a physician, the court shall employ a licensed physician.

(10) A person committed under this chapter may at any time seek to be discharged from commitment by writ of habeas corpus in a court of competent jurisdiction.

(11) The venue for proceedings under this section is the county in which person to be committed resides or is present.

(12) When in the opinion of the professional person in charge of the program providing involuntary treatment under this chapter, the committed patient can be appropriately served by less restrictive treatment before expiration of the period of commitment, then the less restrictive care may be required as a condition for early release for a period which, when added to the initial treatment period, does not exceed the period of commitment. If the program designated to pro-

vide the less restrictive treatment is other than the program providing the initial involuntary treatment, the program so designated must agree in writing to assume such responsibility. A copy of the conditions for early release shall be given to the patient, the designated chemical dependency specialist of original commitment, and the court of original commitment. The program designated to provide less restrictive care may modify the conditions for continued release when the modifications are in the best interests of the patient. If the program providing less restrictive care and the designated chemical dependency specialist determine that a conditionally released patient is failing to adhere to the terms and conditions of his or her release, or that substantial deterioration in the patient's functioning has occurred, then the designated chemical dependency specialist shall notify the court of original commitment and request a hearing to be held no less than two and no more than seven days after the date of the request to determine whether or not the person should be returned to more restrictive care. The designated chemical dependency specialist shall file a petition with the court stating the facts substantiating the need for the hearing along with the treatment recommendations. The patient shall have the same rights with respect to notice, hearing, and counsel as for the original involuntary treatment proceedings. The issues to be determined at the hearing are whether the conditionally released patient did or did not adhere to the terms and conditions of his or her release to less restrictive care or that substantial deterioration of the patient's functioning has occurred and whether the conditions of release should be modified or the person should be returned to a more restrictive program. The hearing may be waived by the patient and his or her counsel and his or her guardian or conservator, if any, but may not be waived unless all such persons agree to the waiver. Upon waiver, the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions. [2001 c 13 § 3; 1995 c 312 § 49; 1993 c 362 § 1; 1991 c 364 § 10; 1990 c 151 § 3; 1989 c 271 § 307; 1987 c 439 § 14; 1977 ex.s. c 129 § 1; 1974 ex.s. c 175 § 2; 1972 ex.s. c 122 § 14.]

Severability—2001 c 13: See note following RCW 70.96A.020.

Short title—1995 c 312: See note following RCW 13.32A.010.

Purpose—Construction—1993 c 362: "The purpose of this act is solely to provide authority for the involuntary commitment of persons suffering from chemical dependency within available funds and current programs and facilities. Nothing in this act shall be construed to require the addition of new facilities nor affect the department of social and health services' authority for the uses of existing programs and facilities authorized by law." [1993 c 362 § 2.]

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

Severability—1989 c 271: See note following RCW 9.94A.510.

70.96A.142 Evaluation by designated chemical dependency specialist—When required—Required notifications. (1) When a designated chemical dependency specialist is notified by a jail that a defendant or offender who was subject to a discharge review under RCW 71.05.232 is to be released to the community, the designated chemical dependency specialist shall evaluate the person within seventy-two hours of release, if the person's treatment information indicates that he or she may need chemical dependency treatment.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the designated chemical dependency specialist of the violation and request an evaluation for purposes of revocation of the conditional release.

(3) When a designated chemical dependency specialist becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision that relates to public safety, or the designated chemical dependency specialist detains a person under this chapter, the designated chemical dependency specialist shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or designated chemical dependency specialist to provide offender supervision. [2004 c 166 § 15.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

70.96A.145 Involuntary commitment proceedings—Prosecuting attorney may represent specialist or program. The prosecuting attorney of the county in which such action is taken may, at the discretion of the prosecuting attorney, represent the designated chemical dependency specialist or treatment program in judicial proceedings under RCW 70.96A.140 for the involuntary commitment or recommendation of an individual, including any judicial proceeding where the individual sought to be committed or recommitted challenges the action. [1993 c 137 § 1.]

70.96A.148 Detention, commitment duties—Designation of county designated mental health professional. The county alcoholism and other drug addiction program coordinator may designate the county designated mental health professional to perform the detention and commitment duties described in RCW 70.96A.120 and 70.96A.140. [2001 c 13 § 4.]

Severability—2001 c 13: See note following RCW 70.96A.020.

70.96A.150 Records of alcoholics and intoxicated persons. (1) The registration and other records of treatment programs shall remain confidential. Records may be disclosed (a) in accordance with the prior written consent of the patient with respect to whom such record is maintained, (b) if authorized by an appropriate order of a court of competent jurisdiction granted after application showing good cause, (c) to comply with state laws mandating the reporting of suspected child abuse or neglect, or (d) when a patient commits

a crime on program premises or against program personnel, or threatens to do so.

(2) Notwithstanding subsection (1) of this section, the secretary may receive information from patients' records for purposes of research into the causes and treatment of alcoholism and other drug addiction, verification of eligibility and appropriateness of reimbursement, and the evaluation of alcoholism and other drug treatment programs. Information under this subsection shall not be published in a way that discloses patients' names or otherwise discloses their identities.

(3) Nothing contained in this chapter relieves a person or firm from the requirements under federal regulations for the confidentiality of alcohol and drug abuse patient records. Obligations imposed on drug and alcohol treatment programs and protections afforded alcohol and drug abuse patients under federal regulations apply to all programs approved by the department under RCW 70.96A.090. [1990 c 151 § 1; 1989 c 162 § 1; 1972 ex.s. c 122 § 15.]

70.96A.155 Court-ordered treatment—Required notifications. When any court orders a person to receive treatment under this chapter, the order shall include a statement that if the person is, or becomes, subject to supervision by the department of corrections, the person must notify the treatment provider and the person's chemical dependency treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision. Upon a petition by a person who does not have a history of one or more violent acts, as defined in RCW 71.05.020, the court may, for good cause, find that public safety would not be enhanced by the sharing of this person's information. [2004 c 166 § 13.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

70.96A.160 Visitation and communication with patients. (1) Subject to reasonable rules regarding hours of visitation which the secretary may adopt, patients in any approved treatment program shall be granted opportunities for adequate consultation with counsel, and for continuing contact with family and friends consistent with an effective treatment program.

(2) Neither mail nor other communication to or from a patient in any approved treatment program may be intercepted, read, or censored. The secretary may adopt reasonable rules regarding the use of telephone by patients in approved treatment programs. [1989 c 270 § 29; 1972 ex.s. c 122 § 16.]

70.96A.170 Emergency service patrol—Establishment—Rules. (1) The state and counties, cities, and other municipalities may establish or contract for emergency service patrols which are to be under the administration of the appropriate jurisdiction. A patrol consists of persons trained to give assistance in the streets and in other public places to persons who are intoxicated. Members of an emergency service patrol shall be capable of providing first aid in emergency situations and may transport intoxicated persons to their homes and to and from treatment programs.

(2) The secretary shall adopt rules pursuant to chapter 34.05 RCW for the establishment, training, and conduct of emergency service patrols. [1989 c 270 § 30; 1972 ex.s. c 122 § 17.]

70.96A.180 Payment for treatment—Financial ability of patients. (1) If treatment is provided by an approved treatment program and the patient has not paid or is unable to pay the charge therefor, the program is entitled to any payment (a) received by the patient or to which he may be entitled because of the services rendered, and (b) from any public or private source available to the program because of the treatment provided to the patient.

(2) A patient in a program, or the estate of the patient, or a person obligated to provide for the cost of treatment and having sufficient financial ability, is liable to the program for cost of maintenance and treatment of the patient therein in accordance with rates established.

(3) The secretary shall adopt rules governing financial ability that take into consideration the income, savings, and other personal and real property of the person required to pay, and any support being furnished by him to any person he is required by law to support. [1990 c 151 § 6; 1989 c 270 § 31; 1972 ex.s. c 122 § 18.]

70.96A.190 Criminal laws limitations. (1) No county, municipality, or other political subdivision may adopt or enforce a local law, ordinance, resolution, or rule having the force of law that includes drinking, being an alcoholic or drug addict, or being found in an intoxicated condition as one of the elements of the offense giving rise to a criminal or civil penalty or sanction.

(2) No county, municipality, or other political subdivision may interpret or apply any law of general application to circumvent the provision of subsection (1) of this section.

(3) Nothing in this chapter affects any law, ordinance, resolution, or rule against drunken driving, driving under the influence of alcohol or other psychoactive chemicals, or other similar offense involving the operation of a vehicle, aircraft, boat, machinery, or other equipment, or regarding the sale, purchase, dispensing, possessing, or use of alcoholic beverages or other psychoactive chemicals at stated times and places or by a particular class of persons; nor shall evidence of intoxication affect, other than as a defense, the application of any law, ordinance, resolution, or rule to conduct otherwise establishing the elements of an offense. [1989 c 270 § 32; 1972 ex.s. c 122 § 19.]

70.96A.230 Minor—When outpatient treatment provider must give notice to parents. Any provider of outpatient treatment who provides outpatient treatment to a minor thirteen years of age or older shall provide notice of the minor's request for treatment to the minor's parents if: (1) The minor signs a written consent authorizing the disclosure; or (2) the treatment program director determines that the minor lacks capacity to make a rational choice regarding consenting to disclosure. The notice shall be made within seven days of the request for treatment, excluding Saturdays, Sundays, and holidays, and shall contain the name, location, and telephone number of the facility providing treatment, and the

name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for treatment with the parent. [1998 c 296 § 24.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.235 Minor—Parental consent for inpatient treatment—Exception. Parental consent is required for inpatient chemical dependency treatment of a minor, unless the child meets the definition of a child in need of services in *RCW 13.32A.030(4)(c) as determined by the department: PROVIDED, That parental consent is required for any treatment of a minor under the age of thirteen.

This section does not apply to petitions filed under this chapter. [1998 c 296 § 25.]

***Reviser's note:** RCW 13.32A.030 was amended by 2000 c 123 § 2, changing subsection (4)(c) to subsection (5)(c).

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.240 Minor—Parent not liable for payment unless consented to treatment—No right to public funds. (1) The parent of a minor is not liable for payment of inpatient or outpatient chemical dependency treatment unless the parent has joined in the consent to the treatment.

(2) The ability of a parent to apply to a certified treatment program for the admission of his or her minor child does not create a right to obtain or benefit from any funds or resources of the state. However, the state may provide services for indigent minors to the extent that funds are available therefor. [1998 c 296 § 26.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.245 Minor—Parent may request determination whether minor has chemical dependency requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility. (1) A parent may bring, or authorize the bringing of, his or her minor child to a certified treatment program and request that a chemical dependency assessment be conducted by a professional person to determine whether the minor is chemically dependent and in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the program.

(3) An appropriately trained professional person may evaluate whether the minor is chemically dependent. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the program, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the pro-

fessional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the program based solely on his or her request. [1998 c 296 § 27.]

Purpose—1998 c 296 §§ 27 and 29: "It is the purpose of sections 27 and 29 of this act to assure the ability of parents to exercise reasonable, compassionate care and control of their minor children when there is a medical necessity for treatment and without the requirement of filing a petition under chapter 70.96A RCW." [1998 c 296 § 33.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.250 Minor—Parent may request determination whether minor has chemical dependency requiring outpatient treatment—Consent of minor not required—Discharge of minor. (1) A parent may bring, or authorize the bringing of, his or her minor child to a provider of outpatient chemical dependency treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a chemical dependency and is in need of outpatient treatment.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person in charge of the program may evaluate whether the minor has a chemical dependency and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under RCW 70.96A.245 shall be discharged immediately from inpatient treatment upon written request of the parent. [1998 c 296 § 29.]

Purpose—1998 c 296 §§ 27 and 29: See note following RCW 70.96A.245.

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.255 Minor—Petition to superior court for release from facility. Following the review conducted under RCW 70.96A.097, a minor child may petition the superior court for his or her release from the facility. The petition may be filed not sooner than five days following the review. The court shall release the minor unless it finds, upon a preponderance of the evidence, that it is a medical necessity for the minor to remain at the facility. [1998 c 296 § 30.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.260 Minor—Not released by petition under RCW 70.96A.255—Release within thirty days—Professional may initiate proceedings to stop release. If the minor is not released as a result of the petition filed under RCW 70.96A.255, he or she shall be released not later than thirty days following the later of: (1) The date of the department's determination under RCW 70.96A.097(2); or (2) the filing of a petition for judicial review under RCW 70.96A.255, unless a professional person or the designated chemical dependency specialist initiates proceedings under this chapter. [1998 c 296 § 31.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.265 Minor—Eligibility for medical assistance under chapter 74.09 RCW—Payment by department.

For purposes of eligibility for medical assistance under chapter 74.09 RCW, minors in inpatient chemical dependency treatment shall be considered to be part of their parent's or legal guardian's household, unless the minor has been assessed by the department or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the parents are found to not be exercising responsibility for care and control of the minor. Payment for such care by the department shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department. [1998 c 296 § 32.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

70.96A.300 Counties may create alcoholism and other drug addiction board—Generally. (1) A county or combination of counties acting jointly by agreement, referred to as "county" in this chapter, may create an alcoholism and other drug addiction board. This board may also be designated as a board for other related purposes.

(2) The board shall be composed of not less than seven nor more than fifteen members, who shall be chosen for their demonstrated concern for alcoholism and other drug addiction problems. Members of the board shall be representative of the community, shall include at least one-quarter recovered alcoholics or other recovered drug addicts, and shall include minority group representation. No member may be a provider of alcoholism and other drug addiction treatment services. No more than four elected or appointed city or county officials may serve on the board at the same time. Members of the board shall serve three-year terms and hold office until their successors are appointed and qualified. They shall not be compensated for the performance of their duties as members of the board, but may be reimbursed for travel expenses.

(2) The board shall be composed of not less than seven nor more than fifteen members, who shall be chosen for their demonstrated concern for alcoholism and other drug addiction problems. Members of the board shall be representative of the community, shall include at least one-quarter recovered alcoholics or other recovered drug addicts, and shall include minority group representation. No member may be a provider of alcoholism and other drug addiction treatment services. No more than four elected or appointed city or county officials may serve on the board at the same time. Members of the board shall serve three-year terms and hold office until their successors are appointed and qualified. They shall not be compensated for the performance of their duties as members of the board, but may be reimbursed for travel expenses.

(3) The alcoholism and other drug addiction board shall:

(a) Conduct public hearings and other investigations to determine the needs and priorities of county citizens;

(b) Prepare and recommend to the county legislative authority for approval, all plans, budgets, and applications by the county to the department and other state agencies on behalf of the county alcoholism and other drug addiction program;

(c) Monitor the implementation of the alcoholism and other drug addiction plan and evaluate the performance of the alcoholism and drug addiction program at least annually;

(d) Advise the county legislative authority and county alcoholism and other drug addiction program coordinator on matters relating to the alcoholism and other drug addiction program, including prevention and education;

(e) Nominate individuals to the county legislative authority for the position of county alcoholism and other drug addiction program coordinator. The nominees should have training and experience in the administration of alcoholism

and other drug addiction services and shall meet the minimum qualifications established by rule of the department;

(f) Carry out other duties that the department may prescribe by rule. [1989 c 270 § 15.]

70.96A.310 County alcoholism and other drug addiction program—Chief executive officer of program to be program coordinator. (1) The chief executive officer of the county alcoholism and other drug addiction program shall be the county alcoholism and other drug addiction program coordinator. The coordinator shall:

(a) In consultation with the county alcoholism and other drug addiction board, provide general supervision over the county alcoholism and other drug addiction program;

(b) Prepare plans and applications for funds to support the alcoholism and other drug addiction program in consultation with the county alcoholism and other drug addiction board;

(c) Monitor the delivery of services to assure conformance with plans and contracts and, at the discretion of the board, but at least annually, report to the alcoholism and other drug addiction board the results of the monitoring;

(d) Provide staff support to the county alcoholism and other drug addiction board.

(2) The county alcoholism and other drug addiction program coordinator shall be appointed by the county legislative authority from nominations by the alcoholism and other drug addiction program board. The coordinator may serve on either a full-time or part-time basis. Only with the prior approval of the secretary may the coordinator be an employee of a government or private agency under contract with the department to provide alcoholism or other drug addiction services. [1989 c 270 § 16.]

70.96A.320 Alcoholism and other drug addiction program—Generally. (1) A county legislative authority, or two or more counties acting jointly, may establish an alcoholism and other drug addiction program. If two or more counties jointly establish the program, they shall designate one county to provide administrative and financial services.

(2) To be eligible for funds from the department for the support of the county alcoholism and other drug addiction program, the county legislative authority shall establish a county alcoholism and other drug addiction board under RCW 70.96A.300 and appoint a county alcoholism and other drug addiction program coordinator under RCW 70.96A.310.

(3) The county legislative authority may apply to the department for financial support for the county program of alcoholism and other drug addiction. To receive financial support, the county legislative authority shall submit a plan that meets the following conditions:

(a) It shall describe the services and activities to be provided;

(b) It shall include anticipated expenditures and revenues;

(c) It shall be prepared by the county alcoholism and other drug addiction program board and be adopted by the county legislative authority;

(d) It shall reflect maximum effective use of existing services and programs; and

(2004 Ed.)

(e) It shall meet other conditions that the secretary may require.

(4) The county may accept and spend gifts, grants, and fees, from public and private sources, to implement its program of alcoholism and other drug addiction.

(5) The county may subcontract for detoxification, residential treatment, or outpatient treatment with treatment programs that are approved treatment programs. The county may subcontract for other services with individuals or organizations approved by the department.

(6) To continue to be eligible for financial support from the department for the county alcoholism and other drug addiction program, an increase in state financial support shall not be used to supplant local funds from a source that was used to support the county alcoholism and other drug addiction program before the effective date of the increase. [1990 c 151 § 9; 1989 c 270 § 17.]

70.96A.350 Criminal justice treatment account. (1) The criminal justice treatment account is created in the state treasury. Moneys in the account may be expended solely for: (a) Substance abuse treatment and treatment support services for offenders with an addiction or a substance abuse problem that, if not treated, would result in addiction, against whom charges are filed by a prosecuting attorney in Washington state; and (b) the provision of drug and alcohol treatment services and treatment support services for nonviolent offenders within a drug court program. Moneys in the account may be spent only after appropriation.

(2) For purposes of this section:

(a) "Treatment" means services that are critical to a participant's successful completion of his or her substance abuse treatment program, but does not include the following services: Housing other than that provided as part of an inpatient substance abuse treatment program, vocational training, and mental health counseling; and

(b) "Treatment support" means transportation to or from inpatient or outpatient treatment services when no viable alternative exists, and child care services that are necessary to ensure a participant's ability to attend outpatient treatment sessions.

(3) Revenues to the criminal justice treatment account consist of: (a) Funds transferred to the account pursuant to this section; and (b) any other revenues appropriated to or deposited in the account.

(4)(a) For the fiscal biennium beginning July 1, 2003, the state treasurer shall transfer eight million nine hundred fifty thousand dollars from the general fund into the criminal justice treatment account, divided into eight equal quarterly payments. For the fiscal year beginning July 1, 2005, and each subsequent fiscal year, the state treasurer shall transfer eight million two hundred fifty thousand dollars from the general fund to the criminal justice treatment account, divided into four equal quarterly payments. For the fiscal year beginning July 1, 2006, and each subsequent fiscal year, the amount transferred shall be increased on an annual basis by the implicit price deflator as published by the federal bureau of labor statistics.

(b) For the fiscal biennium beginning July 1, 2003, and each biennium thereafter, the state treasurer shall transfer two million nine hundred eighty-four thousand dollars from the

general fund into the violence reduction and drug enforcement account, divided into eight quarterly payments. The amounts transferred pursuant to this subsection (4)(b) shall be used solely for providing drug and alcohol treatment services to offenders confined in a state correctional facility who are assessed with an addiction or a substance abuse problem that if not treated would result in addiction.

(c) In each odd-numbered year, the legislature shall appropriate the amount transferred to the criminal justice treatment account in (a) of this subsection to the division of alcohol and substance abuse for the purposes of subsection (5) of this section.

(5) Moneys appropriated to the division of alcohol and substance abuse from the criminal justice treatment account shall be distributed as specified in this subsection. The department shall serve as the fiscal agent for purposes of distribution. Until July 1, 2004, the department may not use moneys appropriated from the criminal justice treatment account for administrative expenses and shall distribute all amounts appropriated under subsection (4)(c) of this section in accordance with this subsection. Beginning in July 1, 2004, the department may retain up to three percent of the amount appropriated under subsection (4)(c) of this section for its administrative costs.

(a) Seventy percent of amounts appropriated to the division from the account shall be distributed to counties pursuant to the distribution formula adopted under this section. The division of alcohol and substance abuse, in consultation with the department of corrections, the sentencing guidelines commission, the Washington state association of counties, the Washington state association of drug court professionals, the superior court judges' association, the Washington association of prosecuting attorneys, representatives of the criminal defense bar, representatives of substance abuse treatment providers, and any other person deemed by the division to be necessary, shall establish a fair and reasonable methodology for distribution to counties of moneys in the criminal justice treatment account. County or regional plans submitted for the expenditure of formula funds must be approved by the panel established in (b) of this subsection.

(b) Thirty percent of the amounts appropriated to the division from the account shall be distributed as grants for purposes of treating offenders against whom charges are filed by a county prosecuting attorney. The division shall appoint a panel of representatives from the Washington association of prosecuting attorneys, the Washington association of sheriffs and police chiefs, the superior court judges' association, the Washington state association of counties, the Washington defender's association or the Washington association of criminal defense lawyers, the department of corrections, the Washington state association of drug court professionals, substance abuse treatment providers, and the division. The panel shall review county or regional plans for funding under (a) of this subsection and grants approved under this subsection. The panel shall attempt to ensure that treatment as funded by the grants is available to offenders statewide.

(6) The county alcohol and drug coordinator, county prosecutor, county sheriff, county superior court, a substance abuse treatment provider appointed by the county legislative authority, a member of the criminal defense bar appointed by the county legislative authority, and, in counties with a drug

court, a representative of the drug court shall jointly submit a plan, approved by the county legislative authority or authorities, to the panel established in subsection (5)(b) of this section, for disposition of all the funds provided from the criminal justice treatment account within that county. The funds shall be used solely to provide approved alcohol and substance abuse treatment pursuant to RCW 70.96A.090 and treatment support services. No more than ten percent of the total moneys received under subsections (4) and (5) of this section by a county or group of counties participating in a regional agreement shall be spent for treatment support services.

(7) Counties are encouraged to consider regional agreements and submit regional plans for the efficient delivery of treatment under this section.

(8) Moneys allocated under this section shall be used to supplement, not supplant, other federal, state, and local funds used for substance abuse treatment.

(9) Counties must meet the criteria established in RCW 2.28.170(3)(b). [2003 c 379 § 11; 2002 c 290 § 4.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Effective date—2002 c 290 §§ 1, 4-6, 12, 13, 26, and 27: "Sections 1, 4 through 6, 12, 13, 26, and 27 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [April 1, 2002]." [2002 c 290 § 32.]

Intent—2002 c 290: See note following RCW 9.94A.517.

Severability—2002 c 290: See RCW 9.94A.924.

70.96A.400 Opiate substitution treatment—Declaration of regulation by state. The state of Washington declares that there is no fundamental right to opiate substitution treatment. The state of Washington further declares that while opiate substitution drugs used in the treatment of opiate dependency are addictive substances, that they nevertheless have several legal, important, and justified uses and that one of their appropriate and legal uses is, in conjunction with other required therapeutic procedures, in the treatment of persons addicted to or habituated to opioids. Opiate substitution treatment should only be used for participants who are deemed appropriate to need this level of intervention and should not be the first treatment intervention for all opiate addicts.

Because opiate substitution drugs, used in the treatment of opiate dependency are addictive and are listed as a schedule II controlled substance in chapter 69.50 RCW, the state of Washington has the legal obligation and right to regulate the use of opiate substitution treatment. The state of Washington declares its authority to control and regulate carefully, in consultation with counties and cities, all clinical uses of opiate substitution drugs used in the treatment of opiate addiction.

Further, the state declares that the primary goal of opiate substitution treatment is total abstinence from chemical dependency for the individuals who participate in the treatment program. The state recognizes that a small percentage of persons who participate in opiate substitution treatment programs require treatment for an extended period of time. Opiate substitution treatment programs shall provide a comprehensive transition program to eliminate chemical dependency, including opiate and opiate substitute addiction of

program participants. [2001 c 242 § 1; 1995 c 321 § 1; 1989 c 270 § 20.]

70.96A.410 Opiate substitution treatment—Program certification by department, department duties—Definition of opiate substitution treatment. (1) For purposes of this section, "area" means the county in which an applicant proposes to locate a certified program and counties adjacent, or near to, the county in which the program is proposed to be located.

When making a decision on an application for certification of a program, the department shall:

(a) Consult with the county legislative authorities in the area in which an applicant proposes to locate a program and the city legislative authority in any city in which an applicant proposes to locate a program;

(b) Certify only programs that will be sited in accordance with the appropriate county or city land use ordinances. Counties and cities may require conditional or special use permits with reasonable conditions for the siting of programs. Pursuant to RCW 36.70A.200, no local comprehensive plan or development regulation may preclude the siting of essential public facilities;

(c) Not discriminate in its certification decision on the basis of the corporate structure of the applicant;

(d) Consider the size of the population in need of treatment in the area in which the program would be located and certify only applicants whose programs meet the necessary treatment needs of that population;

(e) Demonstrate a need in the community for opiate substitution treatment and not certify more program slots than justified by the need in that community. No program shall exceed three hundred fifty participants unless specifically authorized by the county in which the program is certified;

(f) Consider the availability of other certified programs near the area in which the applicant proposes to locate the program;

(g) Consider the transportation systems that would provide service to the program and whether the systems will provide reasonable opportunities to access the program for persons in need of treatment;

(h) Consider whether the applicant has, or has demonstrated in the past, the capability to provide the appropriate services to assist the persons who utilize the program in meeting goals established by the legislature, including abstinence from opiates and opiate substitutes, obtaining mental health treatment, improving economic independence, and reducing adverse consequences associated with illegal use of controlled substances. The department shall prioritize certification to applicants who have demonstrated such capability;

(i) Hold at least one public hearing in the county in which the facility is proposed to be located and one hearing in the area in which the facility is proposed to be located. The hearing shall be held at a time and location that are most likely to permit the largest number of interested persons to attend and present testimony. The department shall notify all appropriate media outlets of the time, date, and location of the hearing at least three weeks in advance of the hearing.

(2) A program applying for certification from the department and a program applying for a contract from a state agency that has been denied the certification or contract shall

(2004 Ed.)

be provided with a written notice specifying the rationale and reasons for the denial.

(3) For the purpose of this chapter, opiate substitution treatment means:

(a) Dispensing an opiate substitution drug approved by the federal drug administration for the treatment of opiate addiction; and

(b) Providing a comprehensive range of medical and rehabilitative services. [2001 c 242 § 2; 1995 c 321 § 2; 1989 c 270 § 21.]

70.96A.420 Statewide treatment and operating standards for opiate substitution programs—Evaluation and report. (1) The department, in consultation with opiate substitution treatment service providers and counties and cities, shall establish statewide treatment standards for certified opiate substitution treatment programs. The department shall enforce these treatment standards. The treatment standards shall include, but not be limited to, reasonable provisions for all appropriate and necessary medical procedures, counseling requirements, urinalysis, and other suitable tests as needed to ensure compliance with this chapter.

(2) The department, in consultation with opiate substitution treatment programs and counties, shall establish statewide operating standards for certified opiate substitution treatment programs. The department shall enforce these operating standards. The operating standards shall include, but not be limited to, reasonable provisions necessary to enable the department and counties to monitor certified and licensed opiate substitution treatment programs for compliance with this chapter and the treatment standards authorized by this chapter and to minimize the impact of the opiate substitution treatment programs upon the business and residential neighborhoods in which the program is located.

(3) The department shall establish criteria for evaluating the compliance of opiate substitution treatment programs with the goals and standards established under this chapter. As a condition of certification, opiate substitution programs shall submit an annual report to the department and county legislative authority, including data as specified by the department necessary for outcome analysis. The department shall analyze and evaluate the data submitted by each treatment program and take corrective action where necessary to ensure compliance with the goals and standards enumerated under this chapter. [2003 c 207 § 6; 2001 c 242 § 3; 1998 c 245 § 135; 1995 c 321 § 3; 1989 c 270 § 22.]

70.96A.430 Inability to contribute to cost no bar to admission—Department may limit admissions. The department shall not refuse admission for diagnosis, evaluation, guidance or treatment to any applicant because it is determined that the applicant is financially unable to contribute fully or in part to the cost of any services or facilities available under the program on alcoholism.

The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible

The department may limit admissions of such applicants or modify its programs in order to ensure that expenditures for services or programs do not exceed amounts appropriated by the legislature and are allocated by the department for such services or programs. The department may establish admission priorities in the event that the number of eligible

applicants exceeds the limits set by the department. [1989 c 271 § 308; 1959 c 85 § 15. Formerly RCW 70.96.150.]

Reviser's note: This section was also repealed by 1989 c 270 § 35, without cognizance of its amendment by 1989 c 271 § 308; and subsequently recodified pursuant to 1993 c 131 § 1. For rule of construction concerning sections amended and repealed in the same legislative session, see RCW 1.12.025.

Severability—1989 c 271: See note following RCW 9.94A.510.

70.96A.500 Fetal alcohol screening and assessment services. The department shall contract with the University of Washington fetal alcohol syndrome clinic to provide fetal alcohol exposure screening and assessment services. The University indirect charges shall not exceed ten percent of the total contract amount. The contract shall require the University of Washington fetal alcohol syndrome clinic to provide the following services:

(1) Training for health care staff in community-based fetal alcohol exposure clinics to ensure the accurate diagnosis of individuals with fetal alcohol exposure and the development and implementation of appropriate service referral plans;

(2) Development of written or visual educational materials for the individuals diagnosed with fetal alcohol exposure and their families or caregivers;

(3) Systematic information retrieval from each community clinic to (a) maintain diagnostic accuracy and reliability across all community clinics, (b) facilitate the development of effective and efficient screening tools for population-based identification of individuals with fetal alcohol exposure, (c) facilitate identification of the most clinically efficacious and cost-effective educational, social, vocational, and health service interventions for individuals with fetal alcohol exposure;

(4) Based on available funds, establishment of a network of community-based fetal alcohol exposure clinics across the state to meet the demand for fetal alcohol exposure diagnostic and referral services; and

(5) Preparation of an annual report for submission to the department of health, the department of social and health services, the department of corrections, and the office of the superintendent of public instruction which includes the information retrieved under subsection (3) of this section. [1998 c 245 § 136; 1995 c 54 § 2.]

Findings—Purpose—1995 c 54: "The legislature finds that fetal alcohol exposure is among the leading known causes of mental retardation in the children of our state. The legislature further finds that individuals with undiagnosed fetal alcohol exposure suffer substantially from secondary disabilities such as child abuse and neglect, separation from families, multiple foster placements, depression, aggression, school failure, juvenile detention, and job instability. These secondary disabilities come at a high cost to the individuals, their family, and society. The legislature finds that these problems can be reduced substantially by early diagnosis and receipt of appropriate, effective intervention.

The purpose of this act is to support current public and private efforts directed at the early identification of and intervention into the problems associated with fetal alcohol exposure through the creation of a fetal alcohol exposure clinical network." [1995 c 54 § 1.]

70.96A.510 Interagency agreement on fetal alcohol exposure programs. The department of social and health services, the department of health, the department of corrections, and the office of the superintendent of public instruction shall execute an interagency agreement to ensure the coordination of identification, prevention, and intervention

programs for children who have fetal alcohol exposure, and for women who are at high risk of having children with fetal alcohol exposure.

The interagency agreement shall provide a process for community advocacy groups to participate in the review and development of identification, prevention, and intervention programs administered or contracted for by the agencies executing this agreement. [1995 c 54 § 3.]

Findings—Purpose—1995 c 54: See note following RCW 70.96A.500.

70.96A.520 Chemical dependency treatment expenditures—Prioritization. The department shall prioritize expenditures for treatment provided under RCW 13.40.165. The department shall provide funds for inpatient and outpatient treatment providers that are the most successful, using the standards developed by the University of Washington under section 27, chapter 338, Laws of 1997. The department may consider variations between the nature of the programs provided and clients served but must provide funds first for those programs that demonstrate the greatest success in treatment within categories of treatment and the nature of the persons receiving treatment. [2003 c 207 § 7; 1997 c 338 § 28.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

70.96A.905 Uniform application of chapter—Training for county-designated mental health professionals. The department shall ensure that the provisions of this chapter are applied by the counties in a consistent and uniform manner. The department shall also ensure that, to the extent possible within available funds, the county-designated chemical dependency specialists are specifically trained in adolescent chemical dependency issues, the chemical dependency commitment laws, and the criteria for commitment. [1992 c 205 § 306.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

70.96A.910 Application—Construction—1972 ex.s. c 122. This act shall be so applied and construed as to effectuate its general purpose to make uniform the law with respect to the subject of this act among those states which enact it. [1972 ex.s. c 122 § 22.]

70.96A.915 Department allocation of funds—Construction. The department is authorized to allocate appropriated funds in the manner that it determines best meets the purposes of this chapter. Nothing in this chapter shall be construed to entitle any individual to services authorized in this chapter, or to require the department or its contractors to reallocate funds in order to ensure that services are available to any eligible person upon demand. [1989 c 271 § 309.]

Severability—1989 c 271: See note following RCW 9.94A.510.

70.96A.920 Severability—1972 ex.s. c 122. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect

other provisions or applications of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are severable. [1972 ex.s. c 122 § 20.]

70.96A.930 Section, subsection headings not part of law. Section or subsection headings as used in this chapter do not constitute any part of the law. [1972 ex.s. c 122 § 27.]

Chapter 70.98 RCW

NUCLEAR ENERGY AND RADIATION

Sections

| | |
|-----------|--|
| 70.98.010 | Declaration of policy. |
| 70.98.020 | Purpose. |
| 70.98.030 | Definitions. |
| 70.98.050 | State radiation control agency. |
| 70.98.080 | Rules and regulations—Licensing requirements and procedure—Notice of license application—Objections—Notice upon granting of license—Registration of sources of ionizing radiation—Exemptions from registration or licensing. |
| 70.98.085 | Suspension and reinstatement of site use permits—Surveillance fee. |
| 70.98.090 | Inspection. |
| 70.98.095 | Financial assurance—Noncompliance. |
| 70.98.098 | Financial assurance—Generally. |
| 70.98.100 | Records. |
| 70.98.110 | Federal-state agreements—Authorized—Effect as to federal licenses. |
| 70.98.120 | Inspection agreements and training programs. |
| 70.98.122 | Department of ecology to seek federal funding for environmental radiation monitoring. |
| 70.98.125 | Federal assistance to be sought for high-level radioactive waste program. |
| 70.98.130 | Administrative procedure. |
| 70.98.140 | Injunction proceedings. |
| 70.98.150 | Prohibited uses. |
| 70.98.160 | Impounding of materials. |
| 70.98.170 | Prohibition—Fluoroscopic x-ray shoe-fitting devices. |
| 70.98.180 | Exemptions. |
| 70.98.190 | Professional uses. |
| 70.98.200 | Penalties. |
| 70.98.900 | Severability—1961 c 207. |
| 70.98.910 | Effective date—1961 c 207. |
| 70.98.920 | Section headings not part of law. |

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Nuclear, thermal power facilities, joint city, public utility district, electrical companies development: Chapter 54.44 RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

Radioactive waste act: Chapter 43.200 RCW.

70.98.010 Declaration of policy. It is the policy of the state of Washington in furtherance of its responsibility to protect the public health and safety and to encourage, insofar as consistent with this responsibility, the industrial and economic growth of the state and to institute and maintain a regulatory and inspection program for sources and uses of ionizing radiation so as to provide for (1) compatibility with the standards and regulatory programs of the federal government, (2) a single, effective system of regulation within the state, and (3) a system consonant insofar as possible with those of other states. [1975-'76 2nd ex.s. c 108 § 12; 1961 c 207 § 1.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

(2004 Ed.)

70.98.020 Purpose. It is the purpose of this chapter to effectuate the policies set forth in RCW 70.98.010 as now or hereafter amended by providing for:

(1) A program of effective regulation of sources of ionizing radiation for the protection of the occupational and public health and safety;

(2) A program to promote an orderly regulatory pattern within the state, among the states and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of ionizing radiation to the end that duplication of regulation may be minimized;

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source, and special nuclear materials. [1975-'76 2nd ex.s. c 108 § 13; 1965 c 88 § 1; 1961 c 207 § 2.]

Severability—Effective date—1975-'76 2nd ex.s. c 108: See notes following RCW 43.21F.010.

70.98.030 Definitions. (1) "Byproduct material" means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(2) "Ionizing radiation" means gamma rays and x-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other atomic or subatomic particles; but not sound or radio waves, or visible, infrared, or ultraviolet light.

(3)(a) "General license" means a license effective pursuant to rules promulgated by the state radiation control agency, without the filing of an application, to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, byproduct, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially.

(b) "Specific license" means a license, issued after application to use, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing byproduct, source, special nuclear materials, or other radioactive materials occurring naturally or produced artificially.

(4) "Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, other than the United States Atomic Energy Commission, or any successor thereto, and other than federal government agencies licensed by the United States Atomic Energy Commission, or any successor thereto.

(5) "Source material" means (a) uranium, thorium, or any other material which is determined by the United States Nuclear Regulatory Commission or its successor pursuant to the provisions of section 61 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 209) to be source material; or (b) ores containing one or more of the foregoing materials, in such concentration as the commission may by regulation determine from time to time.

(6) "Special nuclear material" means (a) plutonium, uranium enriched in the isotope 233 or in the isotope 235, and

any other material which the United States Nuclear Regulatory Commission or its successor, pursuant to the provisions of section 51 of the United States Atomic Energy Act of 1954, as amended (42 U.S.C. Sec. 2071), determines to be special nuclear material, but does not include source material; or (b) any material artificially enriched by any of the foregoing, but does not include source material.

(7) "Registration" means registration with the state department of health by any person possessing a source of ionizing radiation in accordance with rules adopted by the department of health.

(8) "Radiation source" means any type of device or substance which is capable of producing or emitting ionizing radiation. [1991 c 3 § 355; 1983 1st ex.s. c 19 § 9; 1979 c 141 § 125; 1965 c 88 § 2; 1961 c 207 § 3.]

Construction—Conflict with federal requirements—Severability—1983 1st ex.s. c 19: See RCW 43.200.900 through 43.200.902.

70.98.050 State radiation control agency. (1) The department of health is designated as the state radiation control agency, hereinafter referred to as the agency, and shall be the state agency having sole responsibility for administration of the regulatory, licensing, and radiation control provisions of this chapter.

(2) The secretary of health shall be director of the agency, hereinafter referred to as the secretary, who shall perform the functions vested in the agency pursuant to the provisions of this chapter.

(3) The agency shall appoint a state radiological control officer, and in accordance with the laws of the state, fix his compensation and prescribe his powers and duties.

(4) The agency shall for the protection of the occupational and public health and safety:

(a) Develop programs for evaluation of hazards associated with use of ionizing radiation;

(b) Develop a statewide radiological baseline beginning with the establishment of a baseline for the Hanford reservation;

(c) Implement an independent statewide program to monitor ionizing radiation emissions from radiation sources within the state;

(d) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials;

(e) Conduct environmental radiation monitoring programs which will determine the presence and significance of radiation in the environment and which will verify the adequacy and accuracy of environmental radiation monitoring programs conducted by the federal government at its installations in Washington and by radioactive materials licensees at their installations;

(f) Formulate, adopt, promulgate, and repeal codes, rules and regulations relating to control of sources of ionizing radiation;

(g) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and with groups concerned with control of sources of ionizing radiation;

(h) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in

furtherance of its functions, from the federal government and from other sources, public or private;

(i) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to control of sources of ionizing radiation, including the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation;

(j) Collect and disseminate information relating to control of sources of ionizing radiation; including:

(i) Maintenance of a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(ii) Maintenance of a file of registrants possessing sources of ionizing radiation requiring registration under the provisions of this chapter and any administrative or judicial action pertaining thereto; and

(iii) Maintenance of a file of all rules and regulations relating to regulation of sources of ionizing radiation, pending or promulgated, and proceedings thereon;

(k) Collect and disseminate information relating to non-ionizing radiation, including:

(i) Maintaining a state clearinghouse of information pertaining to sources and effects of nonionizing radiation with an emphasis on electric and magnetic fields;

(ii) Maintaining current information on the status and results of studies pertaining to health effects resulting from exposure to nonionizing radiation with an emphasis on studies pertaining to electric and magnetic fields;

(iii) Serving as the lead state agency on matters pertaining to electric and magnetic fields and periodically informing state agencies of relevant information pertaining to nonionizing radiation;

(l) In connection with any adjudicative proceeding as defined by RCW 34.05.010 or any other administrative proceedings as provided for in this chapter, have the power to issue subpoenas in order to compel the attendance of necessary witnesses and/or the production of records or documents.

(5) In order to avoid duplication of efforts, the agency may acquire the data requested under this section from public and private entities that possess this information. [1990 c 173 § 2; 1989 c 175 § 132; 1985 c 383 § 1; 1985 c 372 § 1; 1971 ex.s. c 189 § 10; 1970 ex.s. c 18 § 16; 1965 c 88 § 3; 1961 c 207 § 5.]

Finding—1990 c 173: "The legislature finds that concern has been raised over possible health effects resulting from exposure to nonionizing radiation, and specifically exposure to electric and magnetic fields. The legislature further finds that there is no clear responsibility in state government for following this issue and that this responsibility is best suited for the department of health." [1990 c 173 § 1.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1985 c 372: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 372 § 5.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

70.98.080 Rules and regulations—Licensing requirements and procedure—Notice of license application—Objections—Notice upon granting of license—Registra-

tion of sources of ionizing radiation—Exemptions from registration or licensing. (1) The agency shall provide by rule or regulation for general or specific licensing of byproduct, source, special nuclear materials, or devices or equipment utilizing such materials, or other radioactive material occurring naturally or produced artificially. Such rule or regulation shall provide for amendment, suspension, or revocation of licenses. Such rule or regulation shall provide that:

(a) Each application for a specific license shall be in writing and shall state such information as the agency, by rule or regulation, may determine to be necessary to decide the technical, insurance, and financial qualifications, or any other qualification of the applicant as the agency may deem reasonable and necessary to protect the occupational and public health and safety. The agency may at any time after the filing of the application, and before the expiration of the license, require further written statements and shall make such inspections as the agency deems necessary in order to determine whether the license should be granted or denied or whether the license should be modified, suspended, or revoked. In no event shall the agency grant a specific license to any applicant who has never possessed a specific license issued by a recognized state or federal authority until the agency has conducted an inspection which insures that the applicant can meet the rules, regulations and standards adopted pursuant to this chapter. All applications and statements shall be signed by the applicant or licensee. The agency may require any applications or statements to be made under oath or affirmation;

(b) Each license shall be in such form and contain such terms and conditions as the agency may by rule or regulation prescribe;

(c) No license issued under the authority of this chapter and no right to possess or utilize sources of ionizing radiation granted by any license shall be assigned or in any manner disposed of; and

(d) The terms and conditions of all licenses shall be subject to amendment, revision, or modification by rules, regulations or orders issued in accordance with the provisions of this chapter.

(2) Before the agency issues a license to an applicant under this section, it shall give notice of such application to the chief executive officer of the incorporated city or town, if the application is for a license within an incorporated city or town, or to the county legislative authority, if the application is for a license outside the boundaries of incorporated cities or towns. The incorporated city or town, through the official or employee selected by it, or the county legislative authority or the official or employee selected by it, shall have the right to file with the agency within twenty days after date of transmittal of such notice, written objections against the applicant or against the activity for which the license is sought, and shall include with such objections a statement of all facts upon which such objections are based, and in case written objections are filed, may request and the agency may in its discretion hold a formal hearing under chapter 34.05 RCW. Upon the granting of a license under this section the agency shall send a duplicate of the license or written notification to the chief executive officer of the incorporated city or town in which the license is granted, or to the county legislative

authority if the license is granted outside the boundaries of incorporated cities or towns.

This subsection shall not apply to activities conducted within the boundaries of the Hanford reservation.

(3) The agency may require registration of all sources of ionizing radiation.

(4) The agency may exempt certain sources of ionizing radiation or kinds of uses or users from the registration or licensing requirements set forth in this section when the agency makes a finding after approval of the technical advisory board that the exemption of such sources of ionizing radiation or kinds of uses or users will not constitute a significant risk to the health and safety of the public.

(5) In promulgating rules and regulations pursuant to this chapter the agency shall, insofar as practical, strive to avoid requiring dual licensing, and shall provide for such recognition of other state or federal licenses as the agency shall deem desirable, subject to such registration requirements as the agency may prescribe. [1984 c 96 § 1; 1965 c 88 § 5; 1961 c 207 § 8.]

70.98.085 Suspension and reinstatement of site use permits—Surveillance fee. (1) The agency is empowered to suspend and reinstate site use permits consistent with current regulatory practices and in coordination with the department of ecology, for generators, packagers, or brokers using the Hanford low-level radioactive waste disposal facility.

(2) The agency shall collect a surveillance fee as an added charge on each cubic foot of low level radioactive waste disposed of at the disposal site in this state which shall be set at a level that is sufficient to fund completely the radiation control activities of the agency directly related to the disposal site, including but not limited to the management, licensing, monitoring, and regulation of the site. The surveillance fee shall not exceed five percent in 1990, six percent in 1991, and seven percent in 1992 of the basic minimum fee charged by an operator of a low-level radioactive waste disposal site in this state. The basic minimum fee consists of the disposal fee for the site operator, the fee for the perpetual care and maintenance fund administered by the state, the fee for the state closure fund, and the tax collected pursuant to chapter 82.04 RCW. Site use permit fees and surcharges collected under chapter 43.200 RCW are not part of the basic minimum fee. The fee shall also provide funds to the Washington state patrol for costs incurred from inspection of low-level radioactive waste shipments entering this state. Disbursements for this purpose shall be by authorization of the secretary of the department of health or the secretary's designee.

The agency may adopt such rules as are necessary to carry out its responsibilities under this section. [1990 c 21 § 7; 1989 c 106 § 1; 1986 c 2 § 2; 1985 c 383 § 3.]

Issuance of site use permits: RCW 43.200.080.

70.98.090 Inspection. The agency or its duly authorized representative shall have the power to enter at all reasonable times upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this chapter and rules and regulations issued thereunder. [1985 c 372 § 2; 1961 c 207 § 9.]

Severability—1985 c 372: See note following RCW 70.98.050.

70.98.095 Financial assurance—Noncompliance. (1)

The radiation control agency may require any person who applies for, or holds, a license under this chapter to demonstrate that the person has financial assurance sufficient to assure that liability incurred as a result of licensed operations and activities can be fully satisfied. Financial assurance may be in the form of insurance, cash deposits, surety bonds, corporate guarantees, letters of credit, or other financial instruments or guarantees determined by the agency to be acceptable financial assurance. The agency may require financial assurance in an amount determined by the secretary pursuant to RCW 70.98.098.

(2) The radiation control agency shall refuse to issue a license or permit or suspend the license or permit of any person required by this section to demonstrate financial assurance who fails to demonstrate compliance with this section. The license or permit shall not be issued or reinstated until the person demonstrates compliance with this section.

(3) The radiation control agency shall require (a) that any person required to demonstrate financial assurance, maintain with the agency current copies of any insurance policies, certificates of insurance, letters of credit, surety bonds, or any other documents used to comply with this section, (b) that the agency be notified of any changes in the financial assurance or financial condition of the person, and (c) that the state be named as an insured party on any insurance policy used to comply with this section. [1992 c 61 § 3; 1990 c 82 § 4; 1986 c 191 § 3.]

Construction—Severability—1986 c 191: See RCW 43.200.905 and 43.200.906.

70.98.098 Financial assurance—Generally. (1) In

making the determination of the appropriate level of financial assurance, the secretary shall consider: (a) The report prepared by the department of ecology pursuant to RCW 43.200.200; (b) the potential cost of decontamination, treatment, disposal, decommissioning, and cleanup of facilities or equipment; (c) federal cleanup and decommissioning requirements; and (d) the legal defense cost, if any, that might be paid from the required financial assurance.

(2) The secretary may establish different levels of required financial assurance for various classes of permit or license holders.

(3) The secretary shall establish by rule the instruments or mechanisms by which a person may demonstrate financial assurance as required by RCW 70.98.095.

(4) To the extent that money in the site closure account together with the amount of money identified for repayment to the site closure account pursuant to RCW 43.200.080 equals or exceeds the cost estimate approved by the department of health for closure and decommissioning of the Hanford low-level radioactive waste disposal facility, the money in the site closure account together with the amount of money identified for repayment to the site closure account shall constitute adequate financial assurance for purposes of the department of health financial assurance requirements under RCW 70.98.095. [2003 1st sp.s. c 21 § 2; 1992 c 61 § 4; 1990 c 82 § 3.]

70.98.100 Records. (1) The agency shall require each person who possesses or uses a source of ionizing radiation to maintain necessary records relating to its receipt, use, storage, transfer, or disposal and such other records as the agency may require which will permit the determination of the extent of occupational and public exposure from the radiation source. Copies of these records shall be submitted to the agency on request. These requirements are subject to such exemptions as may be provided by rules.

(2) The agency may by rule and regulation establish standards requiring that personnel monitoring be provided for any employee potentially exposed to ionizing radiation and may provide for the reporting to any employee of his radiation exposure record. [1961 c 207 § 10.]

70.98.110 Federal-state agreements—Authorized—Effect as to federal licenses. (1) The governor, on behalf of this state, is authorized to enter into agreements with the federal government providing for discontinuance of certain of the federal government's responsibilities with respect to sources of ionizing radiation and the assumption thereof by this state pursuant to this chapter.

(2) Any person who, on the effective date of an agreement under subsection (1) above, possesses a license issued by the federal government shall be deemed to possess the same pursuant to a license issued under this chapter which shall expire either ninety days after the receipt from the state radiation control agency of a notice of expiration of such license or on the date of expiration specified in the federal license, whichever is earlier. [1965 c 88 § 6; 1961 c 207 § 11.]

70.98.120 Inspection agreements and training programs. (1) The agency is authorized to enter into an agreement or agreements with the federal government, other states, or interstate agencies, whereby this state will perform on a cooperative basis with the federal government, other states, or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(2) The agency may institute training programs for the purpose of qualifying personnel to carry out the provisions of this chapter and may make said personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of the purposes of this chapter. [1961 c 207 § 12.]

70.98.122 Department of ecology to seek federal funding for environmental radiation monitoring. The department of ecology shall seek federal funding, such as is available under the clean air act (42 U.S.C. Sec. 1857 et seq.) and the nuclear waste policy act (42 U.S.C. Sec. 10101 et seq.) to carry out the purposes of *RCW 70.98.050(4)(c). [1985 c 372 § 3.]

***Reviser's note:** The subparagraph "(c)" in this reference has been redesignated "(c)[(e)]" in the published version of RCW 70.98.050.

Severability—1985 c 372: See note following RCW 70.98.050.

70.98.125 Federal assistance to be sought for high-level radioactive waste program. (1) The agency shall seek federal financial assistance as authorized by the nuclear

waste policy act of 1982, P.L. 97-425 section 116(c), for activities related to the high-level radioactive waste program in the state of Washington. The activities for which federal funding is sought shall include, but are not limited to, the development of a radiological baseline for the Hanford reservation; the implementation of a program to monitor ionizing radiation emissions on the Hanford reservation; the collection of statistical data and epidemiological research, where available, on diseases that result from exposure to sources of ionizing radiation on the Hanford reservation.

(2) In the event the federal government refuses to grant financial assistance for the activities under subsection (1) of this section, the agency is directed to investigate potential legal action. [1985 c 383 § 2.]

70.98.130 Administrative procedure. In any proceeding under this chapter for the issuance or modification or repeal of rules relating to control of sources of ionizing radiation, the agency shall comply with the requirements of chapter 34.05 RCW, the Administrative Procedure Act.

Notwithstanding any other provision of this chapter, whenever the agency finds that an emergency exists requiring immediate action to protect the public health, safety, or general welfare, the agency may, in accordance with RCW 34.05.350 without notice or hearing, adopt a rule reciting the existence of such emergency and require that such action be taken as is necessary to meet the emergency. As specified in RCW 34.05.350, such rules are effective immediately. [1989 c 175 § 133; 1961 c 207 § 13.]

Effective date—1989 c 175: See note following RCW 34.05.010.

70.98.140 Injunction proceedings. Notwithstanding the existence or use of any other remedy, whenever any person has engaged in, or is about to engage in, any acts or practices which constitute or will constitute a violation of any provision of this chapter, or any rule, regulation, or order issued thereunder, the attorney general upon the request of the agency, after notice to such person and opportunity to comply, may make application to the appropriate court for an order enjoining such acts or practices, or for an order directing compliance, and upon a showing by the agency that such person has engaged in, or is about to engage in, any such acts or practices, a permanent or temporary injunction, restraining order, or other order may be granted. [1961 c 207 § 14.]

70.98.150 Prohibited uses. It shall be unlawful for any person to use, manufacture, produce, transport, transfer, receive, acquire, own, or possess any source of ionizing radiation unless licensed by or registered with, or exempted by the agency in accordance with the provisions of this chapter. [1965 c 88 § 7; 1961 c 207 § 15.]

70.98.160 Impounding of materials. The agency shall have the authority in the event of an emergency to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this chapter or any rules or regulations issued thereunder. [1961 c 207 § 16.]

70.98.170 Prohibition—Fluoroscopic x-ray shoe-fitting devices. The operation or maintenance of any x-ray, fluoroscopic, or other equipment or apparatus employing roentgen rays, in the fitting of shoes or other footwear or in the viewing of bones in the feet is prohibited. This prohibition does not apply to any licensed physician, surgeon, *podiatrist, or any person practicing a licensed healing art, or any technician working under the direct and immediate supervision of such persons. [1973 c 77 § 27; 1961 c 207 § 17.]

***Reviser's note:** The term "podiatrist" was changed to "podiatric physician and surgeon" by 1990 c 147.

70.98.180 Exemptions. This chapter shall not apply to the following sources or conditions:

(1) Radiation machines during process of manufacture, or in storage or transit: PROVIDED, That this exclusion shall not apply to functional testing of such machines.

(2) Any radioactive material while being transported in conformity with regulations adopted by any federal agency having jurisdiction therein, and specifically applicable to the transportation of such radioactive materials.

(3) No exemptions under this section are granted for those quantities or types of activities which do not comply with the established rules and regulations promulgated by the Atomic Energy Commission, or any successor thereto. [1965 c 88 § 8; 1961 c 207 § 18.]

70.98.190 Professional uses. Nothing in this chapter shall be construed to limit the kind or amount of radiation that may be intentionally applied to a person for diagnostic or therapeutic purposes by or under the immediate direction of a licensed practitioner of the healing arts acting within the scope of his professional license. [1961 c 207 § 19.]

70.98.200 Penalties. Any person who violates any of the provisions of this chapter or rules, regulations, or orders in effect pursuant thereto shall be guilty of a gross misdemeanor. [1961 c 207 § 20.]

70.98.900 Severability—1961 c 207. If any part, or parts, of this act shall be held unconstitutional, the remaining provisions shall be given full force and effect, as completely as if the part held unconstitutional had not been included herein, if any such remaining part or parts can then be administered for the declared purposes of this act. [1961 c 207 § 21.]

70.98.910 Effective date—1961 c 207. The provisions of this act relating to the control of byproduct, source and special nuclear materials shall become effective on the effective date of the agreement between the federal government and this state as authorized in RCW 70.98.110. All other provisions of this act shall become effective on the 30th day of June, 1961. [1961 c 207 § 23.]

70.98.920 Section headings not part of law. Section headings as used in this chapter do not constitute any part of the law. [1961 c 207 § 25.]

Chapter 70.99 RCW

RADIOACTIVE WASTE STORAGE AND
TRANSPORTATION ACT OF 1980

Sections

| | |
|-----------|---|
| 70.99.010 | Finding. |
| 70.99.020 | Definitions. |
| 70.99.030 | Storage of radioactive waste from outside the state prohibited—Exceptions. |
| 70.99.040 | Transportation of radioactive waste from outside the state for storage within the state prohibited—Exception. |
| 70.99.050 | Violations—Penalties—Injunctions—Jurisdiction and venue—Fees and costs. |
| 70.99.060 | Interstate compact for regional storage. |
| 70.99.900 | Construction—1981 c 1. |
| 70.99.905 | Severability—1981 c 1. |
| 70.99.910 | Short title. |

Nuclear energy and radiation: Chapter 70.98 RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

Uranium and thorium mill tailings—Licensing and perpetual care: Chapter 70.121 RCW.

70.99.010 Finding. The people of the state of Washington find that:

(1) Radioactive wastes are highly dangerous, in that releases of radioactive materials and emissions to the environment are inimical to the health and welfare of the people of the state of Washington, and contribute to the occurrences of harmful diseases, including excessive cancer and leukemia. The dangers posed by the transportation and presence of radioactive wastes are increased further by the long time periods that the wastes remain radioactive and highly dangerous;

(2) Transporting, handling, storing, or otherwise caring for radioactive waste presents a hazard to the health, safety, and welfare of the individual citizens of the state of Washington because of the ever-present risk that an accident or incident will occur while the wastes are being cared for;

(3) The likelihood that an accident will occur in this state involving the release of radioactive wastes to the environment becomes greater as the volume of wastes transported, handled, stored, or otherwise cared for in this state increases;

(4) The effects of unplanned releases of radioactive wastes into the environment, especially into the air and water of the state, are potentially both widespread and harmful to the health, safety, and welfare of the citizens of this state.

The burdens and hazards posed by increasing the volume of radioactive wastes transported, handled, stored, or otherwise cared for in this state by the importation of such wastes from outside this state is not a hazard the state government may reasonably ask its citizens to bear. The people of the state of Washington believe that the principles of federalism do not require the sacrifice of the health, safety, and welfare of the people of one state for the convenience of other states or nations. [1981 c 1 § 1 (Initiative Measure No. 383, approved November 4, 1980).]

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

(1) "Radioactive waste" means unwanted radioactive material, including radioactive residues produced as a result of electric power generation or other reactor operation.

(2) "Medical waste" means radioactive waste from all therapy, diagnosis, or research in medical fields and radioac-

tive waste which results from the production and manufacture of radioactive material used for therapy, diagnosis, or research in medical fields, except that "medical waste" does not include spent fuel or waste from the fuel of an isotope production reactor.

(3) "Radioactive waste generated or otherwise produced outside the geographic boundaries of the state of Washington" means radioactive waste which was located outside the state of Washington at the time of removal from a reactor vessel. [1981 c 1 § 2 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.030 Storage of radioactive waste from outside the state prohibited—Exceptions. Notwithstanding any law, order, or regulation to the contrary, after July 1, 1981, no area within the geographic boundaries of the state of Washington may be used by any person or entity as a temporary, interim, or permanent storage site for radioactive waste, except medical waste, generated or otherwise produced outside the geographic boundaries of the state of Washington. This section does not apply to radioactive waste stored within the state of Washington prior to July 1, 1981. [1981 c 1 § 3 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.040 Transportation of radioactive waste from outside the state for storage within the state prohibited—Exception. Notwithstanding any law, order, or regulation to the contrary, after July 1, 1981, no person or entity may transport radioactive waste, except medical waste, generated or otherwise produced outside the geographic boundaries of the state of Washington to any site within the geographic boundaries of the state of Washington for temporary, interim, or permanent storage. [1981 c 1 § 4 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.050 Violations—Penalties—Injunctions—Jurisdiction and venue—Fees and costs. (1) A violation of or failure to comply with the provisions of RCW 70.99.030 or 70.99.040 is a gross misdemeanor.

(2) Any person or entity that violates or fails to comply with the provisions of RCW 70.99.030 or 70.99.040 is subject to a civil penalty of one thousand dollars for each violation or failure to comply.

(3) Each day upon which a violation occurs constitutes a separate violation for the purposes of subsections (1) and (2) of this section.

(4) Any person or entity violating this chapter may be enjoined from continuing the violation. The attorney general or any person residing in the state of Washington may bring an action to enjoin violations of this chapter, on his or her own behalf and on the behalf of all persons similarly situated. Such action may be maintained in the person's own name or in the name of the state of Washington. No bond may be required as a condition to obtaining any injunctive relief. The superior courts have jurisdiction over actions brought under this section, and venue shall lie in the county of the plaintiff's residence, in the county in which the violation is alleged to occur, or in Thurston county. In addition to other relief, the court in its discretion may award attorney's and expert witness fees and costs of the suit to a party who demonstrates

that a violation of this chapter has occurred. [1981 c 1 § 5 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.060 Interstate compact for regional storage.

Notwithstanding the other provisions of this chapter, the state of Washington may enter into an interstate compact, which will become effective upon ratification by a majority of both houses of the United States Congress, to provide for the regional storage of radioactive wastes. [1981 c 1 § 6 (Initiative Measure No. 383, approved November 4, 1980).]

Northwest Interstate Compact on Low-Level Radioactive Waste Management: Chapter 43.145 RCW.

70.99.900 Construction—1981 c 1. This chapter shall be liberally construed to protect the health, safety, and welfare of the individual citizens of the state of Washington. [1981 c 1 § 7 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.905 Severability—1981 c 1. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1981 c 1 § 8 (Initiative Measure No. 383, approved November 4, 1980).]

70.99.910 Short title. This act may be known as the Radioactive Waste Storage and Transportation Act of 1980. [1981 c 1 § 9 (Initiative Measure No. 383, approved November 4, 1980).]

Chapter 70.100 RCW

EYE PROTECTION—PUBLIC AND PRIVATE EDUCATIONAL INSTITUTIONS

Sections

- 70.100.010 "Eye protection areas" defined.
- 70.100.020 Wearing of eye protection devices required—Furnishing of—Costs.
- 70.100.030 Standard requirement for eye protection devices.
- 70.100.040 Superintendent of public instruction to circulate instruction manual to public and private educational institutions.

70.100.010 "Eye protection areas" defined. As used in this chapter:

"Eye protection areas" means areas within vocational or industrial arts shops, science or other school laboratories, or schools within state institutional facilities as designated by the state superintendent of public instruction in which activities take place involving:

- (1) Hot molten metals or other molten materials;
- (2) Milling, sawing, turning, shaping, cutting, grinding, or stamping of any solid materials;
- (3) Heat treatment, tempering or kiln firing of any metal or other materials;
- (4) Gas or electric arc welding, or other forms of welding processes;
- (5) Corrosive, caustic, or explosive materials;
- (6) Custodial or other service activity potentially hazardous to the eye: PROVIDED, That nothing in this chapter shall supersede regulations heretofore or hereafter estab-

(2004 Ed.)

lished by the department of labor and industries respecting such activity; or

(7) Any other activity or operation involving mechanical or manual work in any area that is potentially hazardous to the eye. [1969 ex.s. c 179 § 1.]

70.100.020 Wearing of eye protection devices required—Furnishing of—Costs.

Every person shall wear eye protection devices when participating in, observing, or performing any function in connection with any courses or activities taking place in eye protection areas of any private or public school, college, university, or other public or private educational institution in this state, as designated by the superintendent of public instruction. The governing board or authority of any public school shall furnish the eye protection devices prescribed in RCW 70.100.030 without cost to all teachers and students in grades K-12 engaged in activities potentially dangerous to the human eye, and the governing body of each institution of higher education and vocational technical institute shall furnish such eye protection devices free or at cost to all teachers and students similarly engaged at the institutions of higher education and vocational technical institutes. Eye protection devices shall be furnished on a loan basis to all visitors observing activities hazardous to the eye. [1969 ex.s. c 179 § 2.]

70.100.030 Standard requirement for eye protection devices.

Eye protection devices, which shall include plano safety spectacles, plastic face shields or goggles, shall comply with the U.S.A. Standard Practice for Occupational and Educational Eye and Face Protection, Z87.1-1968 or later revisions thereof. [1969 ex.s. c 179 § 3.]

70.100.040 Superintendent of public instruction to circulate instruction manual to public and private educational institutions.

The superintendent of public instruction, after consulting with the department of labor and industries, and the division of vocational education shall prepare and circulate to each public and private educational institution in this state within six months of the date of passage of this chapter, a manual containing instructions and recommendations for the guidance of such institutions in implementing the eye safety provisions of this chapter. [1969 ex.s. c 179 § 4.]

Chapter 70.102 RCW

HAZARDOUS SUBSTANCE INFORMATION

Sections

- 70.102.010 Definitions.
- 70.102.020 Hazardous substance information and education office—Duties.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

70.102.010 Definitions. Unless the context clearly indicates otherwise, the definitions in this section shall apply throughout this chapter.

(1) "Agency" means any state agency or local government entity.

(2) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed by the department.

(3) "Department" means the department of ecology.

(4) "Director" means the director of the department.

(5) "Hazardous substances" or "hazardous materials" means those substances or materials identified as such under regulations adopted pursuant to the federal hazardous materials transportation act, the toxic substances control act, the resource recovery and conservation act, the comprehensive environmental response compensation and liability act, the federal insecticide, fungicide, and rodenticide act, the occupational safety and health act hazardous communications standards, and the state hazardous waste act.

(6) "Moderate risk waste" means any waste that exhibits any of the properties of dangerous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation and any household wastes that are generated from the disposal of substances identified by the department as hazardous household substances. [1985 c 410 § 2.]

70.102.020 Hazardous substance information and education office—Duties. There is hereby created the hazardous substance information and education office. Through this office the department shall:

(1) Facilitate access to existing information on hazardous substances within a community;

(2) Request and obtain information about hazardous substances at specified locations and facilities from agencies that regulate those locations and facilities. The department shall review, approve, and provide confidentiality as provided by statute. Upon request of the department, each agency shall provide the information within forty-five days;

(3) At the request of citizens or public health or public safety organizations, compile existing information about hazardous substance use at specified locations and facilities. This information shall include but not be limited to:

(a) Point and nonpoint air and water emissions;

(b) Extremely hazardous, moderate risk wastes and dangerous wastes as defined in chapter 70.105 RCW produced, used, stored, transported from, or disposed of by any facility;

(c) A list of the hazardous substances present at a given site and data on their acute and chronic health and environmental effects;

(d) Data on governmental pesticide use at a given site;

(e) Data on commercial pesticide use at a given site if such data is only given to individuals who are chemically sensitive; and

(f) Compliance history of any facility.

(4) Provide education to the public on the proper production, use, storage, and disposal of hazardous substances, including but not limited to:

(a) A technical resource center on hazardous substance management for industry and the public;

(b) Programs, in cooperation with local government, to educate generators of moderate risk waste, and provide information regarding the potential hazards to human health and the environment resulting from improper use and disposal of the waste and proper methods of handling, reducing, recycling, and disposing of the waste;

(c) Public information and education relating to the safe handling and disposal of hazardous household substances; and

(d) Guidelines to aid counties in developing and implementing a hazardous household substances program.

Requests for information from the hazardous substance information and education office may be made by letter or by a toll-free telephone line, if one is established by the department. Requests shall be responded to in accordance with chapter 42.17 RCW.

This section shall not require any agency to compile information that is not required by existing laws or regulations. [1985 c 410 § 1.]

Worker and community right to know fund, use to provide hazardous substance information under chapter 70.102 RCW: RCW 49.70.175.

Chapter 70.103 RCW LEAD-BASED PAINT

Sections

| | |
|------------|---|
| 70.103.010 | Finding. |
| 70.103.020 | Definitions. |
| 70.103.030 | Certification and training—Local governments—Rules. |
| 70.103.040 | Certification and accreditation—Rules. |
| 70.103.050 | Rules—Report. |
| 70.103.060 | Lead paint account. |
| 70.103.070 | Inspections. |
| 70.103.080 | Certification required to perform lead-based paint activities— Certificate revocation—Penalties. |
| 70.103.090 | Chapter contingent on federal action. |

70.103.010 Finding. (Contingent expiration date.) (1) The legislature finds that lead hazards associated with lead-based paint represent a significant and preventable environmental health problem. Lead-based paint is the most widespread of the various sources of lead exposure to the public. Census data show that one million five hundred sixty thousand homes in Washington state were built prior to 1978 when the sale of residential lead-based paint was banned. These are homes that are believed to contain some lead-based paint.

Lead negatively affects every system of the body. It is harmful to individuals of all ages and is especially harmful to children, fetuses, and adults of childbearing age. The effects of lead on a child's cognitive, behavioral, and developmental abilities may necessitate large expenditures of public funds for health care and special education. The irreversible damage to children and subsequent expenditures could be avoided if exposure to lead is reduced.

(2) The federal government regulates lead poisoning and lead hazard reduction through:

(a)(i) The lead-based paint poisoning prevention act;

(ii) The lead contamination control act;

(iii) The safe drinking water act;

(iv) The resource conservation and recovery act of 1976;

and

(v) The residential lead-based paint hazard reduction act of 1992; and

(b) Implementing regulations of:

(i) The environmental protection agency;

(ii) The department of housing and urban development;

(iii) The occupational safety and health administration; and

(iv) The centers for disease control and prevention.

(3) In 1992, congress passed the federal residential lead-based paint hazard reduction act, which allows states to provide for the accreditation of lead-based paint activities programs, the certification of persons completing such training programs, and the licensing of lead-based paint activities contractors under standards developed by the United States environmental protection agency.

(4) The legislature recognizes the state's need to protect the public from exposure to lead hazards. A qualified and properly trained work force is needed to assist in the prevention, detection, reduction, and elimination of hazards associated with lead-based paint. The purpose of training workers, supervisors, inspectors, risk assessors, and project designers engaged in lead-based paint activities is to protect building occupants, particularly children ages six years and younger from potential lead-based paint hazards and exposures both during and after lead-based paint activities. Qualified and properly trained individuals and firms will help to ensure lead-based paint activities are conducted in a way that protects the health of the citizens of Washington state and safeguards the environment. The state lead-based paint activities program requires that all lead-based paint activities be performed by certified personnel trained by an accredited program, and that all lead-based paint activities meet minimum work practice standards established by the department of community, trade, and economic development. Therefore, the lead-based paint activities accreditation, training, and certification program shall be established in accordance with this chapter. The lead-based paint activities accreditation, training, and certification program shall be administered by the department of community, trade, and economic development and shall be used as a means to assure the protection of the general public from exposure to lead hazards.

(5) For the welfare of the people of the state of Washington, this chapter establishes a lead-based paint activities program within the department of community, trade, and economic development to protect the general public from exposure to lead hazards and to ensure the availability of a trained and qualified work force to identify and address lead-based paint hazards. The legislature recognizes the department of community, trade, and economic development is not a regulatory agency and may delegate enforcement responsibilities under chapter 322, Laws of 2003 to local governments or private entities. [2003 c 322 § 1.]

70.103.020 Definitions. (Contingent expiration date.)

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

(1) "Abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards.

(a) Abatement includes, but is not limited to:

(i) The removal of paint and dust, the permanent enclosure or encapsulation of lead-based paint, the replacement of painted surfaces or fixtures, or the removal or permanent covering of soil, when lead-based paint hazards are present in such paint, dust, or soil; and

(ii) All preparation, cleanup, disposal, and postabatement clearance testing activities associated with such measures.

(b) Specifically, abatement includes, but is not limited to:

(i) Projects for which there is a written contract or other documentation, which provides that an individual or firm will be conducting activities in or to a residential dwelling or child-occupied facility that:

(A) Shall result in the permanent elimination of lead-based paint hazards; or

(B) Are designed to permanently eliminate lead-based paint hazards and are described in (a)(i) and (ii) of this subsection;

(ii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by certified firms or individuals, unless such projects are covered by (c) of this subsection;

(iii) Projects resulting in the permanent elimination of lead-based paint hazards, conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint activities as identified and defined by this section, unless such projects are covered by (c) of this subsection; or

(iv) Projects resulting in the permanent elimination of lead-based paint hazards, that are conducted in response to state or local abatement orders.

(c) Abatement does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

(2) "Accredited training program" means a training program that has been accredited by the department to provide training for individuals engaged in lead-based paint activities.

(3) "Certified inspector" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct inspections.

(4) "Certified abatement worker" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to perform abatements.

(5) "Certified firm" includes a company, partnership, corporation, sole proprietorship, association, agency, or other business entity that meets all the qualifications established by the department and performs lead-based paint activities to which the department has issued a certificate.

(6) "Certified project designer" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to prepare abatement project designs, occupant protection plans, and abatement reports.

(7) "Certified risk assessor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to conduct risk assessments and sample for

the presence of lead in dust and soil for the purposes of abatement clearance testing.

(8) "Certified supervisor" means an individual who has been trained by an accredited training program, meets all the qualifications established by the department, and is certified by the department to supervise and conduct abatements, and to prepare occupant protection plans and abatement reports.

(9) "Department" means the Washington state department of community, trade, and economic development.

(10) "Director" means the director of the Washington state department of community, trade, and economic development.

(11) "Federal laws and rules" means:

(a) Title IV, toxic substances control act (15 U.S.C. Sec. 2681 et seq.) and the rules adopted by the United States environmental protection agency under that law for authorization of state programs;

(b) Any regulations or requirements adopted by the United States department of housing and urban development regarding eligibility for grants to states and local governments; and

(c) Any other requirements adopted by a federal agency with jurisdiction over lead-based paint hazards.

(12) "Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligrams per square centimeter or more than 0.5 percent by weight.

(13) "Lead-based paint activity" includes inspection, testing, risk assessment, lead-based paint hazard reduction project design or planning, or abatement of lead-based paint hazards.

(14) "Lead-based paint hazard" means any condition that causes exposure to lead from lead-contaminated dust, lead-contaminated soil, or lead-contaminated paint that is deteriorated or present in accessible surfaces, friction surfaces, or impact surfaces that would result in adverse human health effects as identified by the administrator of the United States environmental protection agency under the toxic substances control act, section 403.

(15) "State program" means a state administered lead-based paint activities certification and training program that meets the federal environmental protection agency requirements.

(16) "Person" includes an individual, corporation, firm, partnership, or association, an Indian tribe, state, or political subdivision of a state, and a state department or agency.

(17) "Risk assessment" means:

(a) An on-site investigation to determine the existence, nature, severity, and location of lead-based paint hazards; and

(b) The provision of a report by the individual or the firm conducting the risk assessment, explaining the results of the investigation and options for reducing lead-based paint hazards. [2003 c 322 § 2.]

70.103.030 Certification and training—Local governments—Rules. (Contingent expiration date.) (1) The department shall administer and enforce a state program for worker training and certification, and training program accreditation, which shall include those program elements necessary to assume responsibility for federal requirements for a program as set forth in Title IV of the toxic substances

control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745, Subparts L and Q (1996), and Title X of the housing and community development act of 1992 (P.L. 102-550). The department may delegate or enter into a memorandum of understanding with local governments or private entities for implementation of components of the state program.

(2) The department is authorized to adopt rules that are consistent with federal requirements to implement a state program. Rules adopted under this section shall:

(a) Establish minimum accreditation requirements for lead-based paint activities for training providers;

(b) Establish work practice standards for conduct of lead-based paint activities;

(c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;

(d) Require the use of certified personnel in all lead-based paint activities;

(e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;

(f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;

(g) Provide for decertification, deaccreditation, and financial assurance for a person certified by or a training provider accredited by the department; and

(h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) The department may accept federal funds for the administration of the program.

(4) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), and Title X of the housing and community development act of 1992 (P.L. 102-550).

(5) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter 70.105D RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(6) The department shall collect a fee in the amount of twenty-five dollars for certification and recertification of lead paint firms, inspectors, project developers, risk assessors, supervisors, and abatement workers.

(7) The department shall collect a fee in the amount of two hundred dollars for the accreditation of lead paint training programs. [2003 c 322 § 3.]

70.103.040 Certification and accreditation—Rules. (Contingent expiration date.) (1) The department shall establish a program for certification of persons involved in lead-based paint activities and for accreditation of training providers in compliance with federal laws and rules.

(2) Rules adopted under this section shall:

- (a) Establish minimum accreditation requirements for lead-based paint activities for training providers;
- (b) Establish work practice standards for conduct of lead-based paint activities;
- (c) Establish certification requirements for individuals and firms engaged in lead-based paint activities including provisions for recognizing certifications accomplished under existing certification programs;
- (d) Require the use of certified personnel in any lead-based paint hazard reduction activity;
- (e) Be revised as necessary to comply with federal law and rules and to maintain eligibility for federal funding;
- (f) Facilitate reciprocity and communication with other states having a lead-based paint certification program;
- (g) Provide for decertification, deaccreditation, and financial assurance for a person certified or accredited by the department; and
- (h) Be issued in accordance with the administrative procedure act, chapter 34.05 RCW.

(3) This program shall equal, but not exceed, legislative authority under federal requirements as set forth in Title IV of the toxic substances control act (15 U.S.C. Sec. 2601 et seq.), the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.), 40 C.F.R. Part 745 (1996), Subparts L and Q, and Title X of the housing and community development act of 1992 (P.L. 102-550).

(4) Any rules adopted by the department shall be consistent with federal laws, regulations, and requirements relating to lead-based paint activities specified by the residential lead-based paint hazard reduction act of 1992 (42 U.S.C. Sec. 4851 et seq.) and Title X of the housing and community development act of 1992 (P.L. 102-550), and rules adopted pursuant to chapter 70.105D RCW, to ensure consistency in regulatory action. The rules may not be more restrictive than corresponding federal and state regulations unless such stringency is specifically authorized by this chapter.

(5) The department may accept federal funds for the administration of the program. [2003 c 322 § 4.]

70.103.050 Rules—Report. (Contingent expiration date.) The department shall adopt rules to:

- (1) Establish procedures and requirements for the accreditation of lead-based paint activities training programs including, but not limited to, the following:
 - (a) Training curriculum;
 - (b) Training hours;
 - (c) Hands-on training;
 - (d) Trainee competency and proficiency;
 - (e) Training program quality control;
 - (f) Procedures for the reaccreditation of training programs;
 - (g) Procedures for the oversight of training programs; and
 - (h) Procedures for the suspension, revocation, or modification of training program accreditations, or acceptance of training offered by an accredited training provider in another state or Indian tribe authorized by the environmental protection agency;

(2) Establish procedures for the purposes of certification, for the acceptance of training offered by an accredited train-

(2004 Ed.)

ing provider in a state or Indian tribe authorized by the environmental protection agency;

(3) Certify individuals involved in lead-based paint activities to ensure that certified individuals are trained by an accredited training program and possess appropriate educational or experience qualifications for certification;

(4) Establish procedures for recertification;

(5) Require the conduct of lead-based paint activities in accordance with work practice standards;

(6) Establish procedures for the suspension, revocation, or modification of certifications;

(7) Establish requirements for the administration of third-party certification exams;

(8) Use laboratories accredited under the environmental protection agency's national lead laboratory accreditation program;

(9) Establish work practice standards for the conduct of lead-based paint activities for:

(a) Inspection for presence of lead-based paint;

(b) Risk assessment; and

(c) Abatement;

(10) Establish an enforcement response policy that shall include:

(a) Warning letters, notices of noncompliance, notices of violation, or the equivalent;

(b) Administrative or civil actions, including penalty authority, including accreditation or certification suspension, revocation, or modification; and

(c) Authority to apply criminal sanctions or other criminal authority using existing state laws as applicable.

The department shall prepare and submit a biennial report to the legislature regarding the program's status, its costs, and the number of persons certified by the program. [2003 c 322 § 5.]

70.103.060 Lead paint account. (Contingent expiration date.) The lead paint account is created in the state treasury. All receipts from RCW 70.103.030 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used only for the purposes of this chapter. [2003 c 322 § 6.]

70.103.070 Inspections. (Contingent expiration date.)

(1)(a) The director or the director's designee is authorized to inspect at reasonable times and, when feasible, with at least twenty-four hours prior notification:

(i) Premises or facilities where those engaged in training for lead-based paint activities conduct business; and

(ii) The business records of, and take samples at, the businesses accredited or certified under this chapter to conduct lead-based paint training or activities.

(b) Any accredited training program or any firm or individual certified under this chapter that denies access to the department for the purposes of (a) of this subsection is subject to deaccreditation or decertification under RCW 70.103.040.

(2) The director or the director's designee is authorized to inspect premises or facilities, with the consent of the owner or owner's agent, where violations may occur concerning lead-based paint activities, as defined under RCW

70.103.020, at reasonable times and, when feasible, with at least forty-eight hours prior notification of the inspection.

(3) Prior to receipt of federal lead-based paint abatement funding, all premise or facility owners shall be notified by any entity that receives and disburses the federal funds that an inspection may be conducted. If a premise or facility owner does not wish to have an inspection conducted, that owner is not eligible to receive lead-based paint abatement funding. [2003 c 322 § 7.]

70.103.080 Certification required to perform lead-based paint activities—Certificate revocation—Penalties. (Contingent expiration date.) (1) The department is designated as the official agency of this state for purposes of cooperating with, and implementing the state lead-based paint activities program under the jurisdiction of the United States environmental protection agency.

(2) No individual or firm can perform, offer, or claim to perform lead-based paint activities without certification from the department to conduct these activities.

(3) The department may deny, suspend, or revoke a certificate for failure to comply with the requirements of this chapter or any rule adopted under this chapter. No person whose certificate is revoked under this chapter shall be eligible to apply for a certificate for one year from the effective date of the final order of revocation. A certificate may be denied, suspended, or revoked on any of the following grounds:

(a) A risk assessor, inspector, contractor, project designer, or worker violates work practice standards established by the United States environmental protection agency or the United States department of housing and urban development governing work practices and procedures; or

(b) The certificate was obtained by error, misrepresentation, or fraud.

(4) Any person convicted of violating any of the provisions of this chapter is guilty of a misdemeanor. A conviction is an unvacated forfeiture of bail or collateral deposited to secure the defendant's appearance in court, the payment of a fine, a plea of guilty, or a finding of guilt on a violation of this chapter, regardless of whether imposition of sentence is deferred or the penalty is suspended, and shall be treated as a violation conviction for purposes of certification forfeiture under this chapter. Violations of this chapter include:

(a) Failure to comply with any requirement of this chapter;

(b) Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required;

(c) Obtaining certification through fraud or misrepresentation;

(d) Failure to obtain certification from the department and performing work requiring certification at a job site; or

(e) Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification. [2003 c 322 § 8.]

70.103.090 Chapter contingent on federal action. (Contingent expiration date.) (1) The department's duties under chapter 322, Laws of 2003 are subject to authorization of the state program from the federal government within two

years of July 27, 2003. Chapter 322, Laws of 2003 expires if the federal environmental protection agency does not authorize a state program within two years of July 27, 2003.

(2) The department's duties under chapter 322, Laws of 2003 are subject to the availability of sufficient funding from the federal government for this purpose. The director or his or her designee shall seek funding of the department's efforts under this chapter from the federal government. By October 15th of each year, the director shall determine if sufficient federal funding has been provided or guaranteed by the federal government. If the director determines sufficient funding has not been provided, the department shall cease efforts under this chapter due to the lack of federal funding. [2003 c 322 § 9.]

Chapter 70.104 RCW

PESTICIDES—HEALTH HAZARDS

Sections

| | |
|------------|---|
| 70.104.010 | Declaration. |
| 70.104.020 | "Pesticide" defined. |
| 70.104.030 | Powers and duties of department of health. |
| 70.104.040 | Pesticide emergencies—Authority of department of agriculture not infringed upon. |
| 70.104.050 | Investigation of human exposure to pesticides. |
| 70.104.055 | Pesticide poisonings—Reports. |
| 70.104.057 | Pesticide poisonings—Medical education program. |
| 70.104.060 | Technical assistance, consultations and services to physicians and agencies authorized. |
| 70.104.070 | Pesticide incident reporting and tracking review panel—Intent. |
| 70.104.080 | Pesticide panel—Generally. |
| 70.104.090 | Pesticide panel—Responsibilities. |
| 70.104.100 | Industrial insurance statutes not affected. |

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.104.010 Declaration. The department of health has responsibility to protect and enhance the public health and welfare. As a consequence, it must be concerned with both natural and artificial environmental factors which may adversely affect the public health and welfare. Dangers to the public health and welfare related to the use of pesticides require specific legislative recognition of departmental authority and responsibility in this area. [1991 c 3 § 356; 1971 ex.s. c 41 § 1.]

70.104.020 "Pesticide" defined. For the purposes of this chapter pesticide means, but is not limited to:

(1) Any substance or mixture of substances intended to prevent, destroy, control, repel, or mitigate any insect, rodent, nematode, snail, slug, fungus, weed and any other form of plant or animal life or virus, except virus on or in living man or other animal, which is normally considered to be a pest or which the director of agriculture may declare to be a pest; or

(2) Any substance or mixture of substances intended to be used as a plant regulator, defoliant or desiccant; or

(3) Any spray adjuvant, such as a wetting agent, spreading agent, deposit builder, adhesive, emulsifying agent, deflocculating agent, water modifier, or similar agent with or without toxic properties of its own intended to be used with any other pesticide as an aid to the application or effect

thereof, and sold in a package or container separate from that of the pesticide with which it is to be used; or

(4) Any fungicide, rodenticide, herbicide, insecticide, and nematocide. [1971 ex.s. c 41 § 2.]

70.104.030 Powers and duties of department of health. (1) The department of health shall investigate all suspected human cases of pesticide poisoning and such cases of suspected pesticide poisoning of animals that may relate to human illness. The department shall establish time periods by rule to determine investigation response time. Time periods shall range from immediate to forty-eight hours to initiate an investigation, depending on the severity of the case or suspected case of pesticide poisoning.

In order to adequately investigate such cases, the department shall have the power to:

(a) Take all necessary samples and human or animal tissue specimens for diagnostic purposes: PROVIDED, That tissue, if taken from a living human, shall be taken from a living human only with the consent of a person legally qualified to give such consent;

(b) Secure any and all such information as may be necessary to adequately determine the nature and causes of any case of pesticide poisoning.

(2) The department shall, by rule adopted pursuant to the Administrative Procedure Act, chapter 34.05 RCW, with due notice and a hearing for the adoption of permanent rules, establish procedures for the prevention of any recurrence of poisoning and the department shall immediately notify the department of agriculture, the department of labor and industries, and other appropriate agencies of the results of its investigation for such action as the other departments or agencies deem appropriate. The notification of such investigations and their results may include recommendations for further action by the appropriate department or agency. [1991 c 3 § 357; 1989 c 380 § 71; 1971 ex.s. c 41 § 3.]

Effective date—1989 c 380 §§ 69, 71-73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

70.104.040 Pesticide emergencies—Authority of department of agriculture not infringed upon. (1) In any case where an emergency relating to pesticides occurs that represents a hazard to the public due to toxicity of the material, the quantities involved or the environment in which the incident takes place, such emergencies including but not limited to fires, spillage, and accidental contamination, the person or agent of such person having actual or constructive control of the pesticides involved shall immediately notify the department of health by telephone or the fastest available method.

(2) Upon notification or discovery of any pesticide emergency the department of health shall:

(a) Make such orders and take such actions as are appropriate to assume control of the property and to dispose of hazardous substances, prevent further contamination, and restore any property involved to a nonhazardous condition. In the event of failure of any individual to obey and carry out orders pursuant to this section, the department shall have all power and authority to accomplish those things necessary to carry out such order. Any expenses incurred by the department as a

(2004 Ed.)

result of intentional failure of any individual to obey its lawful orders shall be charged as a debt against such individual.

(3) In any case where the department of health has assumed control of property pursuant to this chapter, such property shall not be reoccupied or used until such time as written notification of its release for use is received from the secretary of the department or his or her designee. Such action shall take into consideration the economic hardship, if any, caused by having the department assume control of property, and release shall be accomplished as expeditiously as possible. Nothing in this chapter shall prevent a farmer from continuing to process his or her crops and/or animals provided that the processing does not endanger the public health.

(4) The department shall recognize the pesticide industry's responsibility and active role in minimizing the effect of pesticide emergencies and shall provide for maximum utilization of these services.

(5) Nothing in this chapter shall be construed in any way to infringe upon or negate the authority and responsibility of the department of agriculture in its application and enforcement of the Washington Pesticide Control Act, chapter 15.58 RCW and the Washington Pesticide Application Act, chapter 17.21 RCW. The department of health shall work closely with the department of agriculture in the enforcement of this chapter and shall keep it appropriately advised. [1991 c 3 § 358; 1983 c 3 § 178; 1971 ex.s. c 41 § 4.]

70.104.050 Investigation of human exposure to pesticides. The department of health shall investigate human exposure to pesticides, and in order to carry out such investigations shall have authority to secure and analyze appropriate specimens of human tissue and samples representing sources of possible exposure. [1991 c 3 § 359; 1971 ex.s. c 41 § 5.]

70.104.055 Pesticide poisonings—Reports. (1) Any attending physician or other health care provider recognized as primarily responsible for the diagnosis and treatment of a patient or, in the absence of a primary health care provider, the health care provider initiating diagnostic testing or therapy for a patient shall report a case or suspected case of pesticide poisoning to the department of health in the manner prescribed by, and within the reasonable time periods established by, rules of the state board of health. Time periods established by the board shall range from immediate reporting to reporting within seven days depending on the severity of the case or suspected case of pesticide poisoning. The reporting requirements shall be patterned after other board rules establishing requirements for reporting of diseases or conditions. Confidentiality requirements shall be the same as the confidentiality requirements established for other reportable diseases or conditions. The information to be reported may include information from relevant pesticide application records and shall include information required under board rules. Reports shall be made on forms provided to health care providers by the department of health. For purposes of any oral reporting, the department of health shall make available a toll-free telephone number.

(2) Within a reasonable time period as established by board rules, the department of health shall investigate the

report of a case or suspected case of pesticide poisoning to document the incident. The department shall report the results of the investigation to the health care provider submitting the original report.

(3) Cases or suspected cases of pesticide poisoning shall be reported by the department of health to the pesticide reporting and tracking review panel within the time periods established by state board of health rules.

(4) Upon request of the primary health care provider, pesticide applicators or employers shall provide a copy of records of pesticide applications which may have affected the health of the provider's patient. This information is to be used only for the purposes of providing health care services to the patient.

(5) Any failure of the primary health care provider to make the reports required under this section may be cause for the department of health to submit information about such nonreporting to the applicable disciplining authority for the provider under RCW 18.130.040.

(6) No cause of action shall arise as the result of: (a) The failure to report under this section; or (b) any report submitted to the department of health under this section.

(7) For the purposes of this section, a suspected case of pesticide poisoning is a case in which the diagnosis is thought more likely than not to be pesticide poisoning. [1992 c 173 § 4; 1991 c 3 § 360; 1989 c 380 § 72.]

Effective dates—1992 c 173: See note following RCW 17.21.100.

Effective date—1989 c 380 §§ 69, 71-73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

70.104.057 Pesticide poisonings—Medical education program. The department of health, after seeking advice from the state board of health, local health officers, and state and local medical associations, shall develop a program of medical education to alert physicians and other health care providers to the symptoms, diagnosis, treatment, and reporting of pesticide poisonings. [1991 c 3 § 361; 1989 c 380 § 73.]

Effective date—1989 c 380 §§ 69, 71-73: See note following RCW 70.104.090.

Severability—1989 c 380: See RCW 15.58.942.

70.104.060 Technical assistance, consultations and services to physicians and agencies authorized. In order effectively to prevent human illness due to pesticides and to carry out the requirements of this chapter, the department of health is authorized to provide technical assistance and consultation regarding health effects of pesticides to physicians and other agencies, and is authorized to operate an analytical chemical laboratory and may provide analytical and laboratory services to physicians and other agencies to determine pesticide levels in human and other tissues, and appropriate environmental samples. [1991 c 3 § 362; 1971 ex.s. c 41 § 6.]

70.104.070 Pesticide incident reporting and tracking review panel—Intent. The legislature finds that heightened concern regarding health and environmental impacts from pesticide use and misuse has resulted in an increased demand for full-scale health investigations, assessment of resource

damages, and health effects information. Increased reporting, comprehensive unbiased investigation capability, and enhanced community education efforts are required to maintain this state's responsibilities to provide for public health and safety.

It is the intent of the legislature that the various state agencies responsible for pesticide regulation coordinate their activities in a timely manner to ensure adequate monitoring of pesticide use and protection of workers and the public from the effects of pesticide misuse. [1989 c 380 § 67.]

Severability—1989 c 380: See RCW 15.58.942.

70.104.080 Pesticide panel—Generally. (1) There is hereby created a pesticide incident reporting and tracking review panel consisting of the following members:

(a) The directors, secretaries, or designees of the departments of labor and industries, agriculture, natural resources, fish and wildlife, and ecology;

(b) The secretary of the department of health or his or her designee, who shall serve as the coordinating agency for the review panel;

(c) The chair of the department of environmental health of the University of Washington, or his or her designee;

(d) The pesticide coordinator and specialist of the cooperative extension at Washington State University or his or her designee;

(e) A representative of the Washington poison control center network;

(f) A practicing toxicologist and a member of the general public, who shall each be appointed by the governor for terms of two years and may be appointed for a maximum of four terms at the discretion of the governor. The governor may remove either member prior to the expiration of his or her term of appointment for cause. Upon the death, resignation, or removal for cause of a member of the review panel, the governor shall fill such vacancy, within thirty days of its creation, for the remainder of the term in the manner herein prescribed for appointment to the review panel.

(2) The review panel shall be chaired by the secretary of the department of health, or the secretary's designee. The members of the review panel shall meet at least monthly at a time and place specified by the chair, or at the call of a majority of the review panel. [1994 c 264 § 41; 1991 c 3 § 363; 1989 c 380 § 68.]

Severability—1989 c 380: See RCW 15.58.942.

70.104.090 Pesticide panel—Responsibilities. The responsibilities of the review panel shall include, but not be limited to:

(1) Establishing guidelines for centralizing the receipt of information relating to actual or alleged health and environmental incidents involving pesticides;

(2) Reviewing and making recommendations for procedures for investigation of pesticide incidents, which shall be implemented by the appropriate agency unless a written statement providing the reasons for not adopting the recommendations is provided to the review panel;

(3) Monitoring the time periods required for response to reports of pesticide incidents by the departments of agriculture, health, and labor and industries;

(4) At the request of the chair or any panel member, reviewing pesticide incidents of unusual complexity or those that cannot be resolved;

(5) Identifying inadequacies in state and/or federal law that result in insufficient protection of public health and safety, with specific attention to advising the appropriate agencies on the adequacy of pesticide reentry intervals established by the federal environmental protection agency and registered pesticide labels to protect the health and safety of farmworkers. The panel shall establish a priority list for reviewing reentry intervals, which considers the following criteria:

(a) Whether the pesticide is being widely used in labor-intensive agriculture in Washington;

(b) Whether another state has established a reentry interval for the pesticide that is longer than the existing federal reentry interval;

(c) The toxicity category of the pesticide under federal law;

(d) Whether the pesticide has been identified by a federal or state agency or through a scientific review as presenting a risk of cancer, birth defects, genetic damage, neurological effects, blood disorders, sterility, menstrual dysfunction, organ damage, or other chronic or subchronic effects; and

(e) Whether reports or complaints of ill effects from the pesticide have been filed following worker entry into fields to which the pesticide has been applied; and

(6) Reviewing and approving an annual report prepared by the department of health to the governor, agency heads, and members of the legislature, with the same available to the public. The report shall include, at a minimum:

(a) A summary of the year's activities;

(b) A synopsis of the cases reviewed;

(c) A separate descriptive listing of each case in which adverse health or environmental effects due to pesticides were found to occur;

(d) A tabulation of the data from each case;

(e) An assessment of the effects of pesticide exposure in the workplace;

(f) The identification of trends, issues, and needs; and

(g) Any recommendations for improved pesticide use practices. [1991 c 3 § 364; 1989 c 380 § 69.]

Effective date—1989 c 380 §§ 69, 71-73: "Sections 69 and 71 through 73 of this act shall take effect on January 1, 1990." [1989 c 380 § 90.]

Severability—1989 c 380: See RCW 15.58.942.

70.104.100 Industrial insurance statutes not affected. Nothing in RCW 70.104.070 through 70.104.090 shall be construed to affect in any manner the administration of Title 51 RCW by the department of labor and industries. [1989 c 380 § 70.]

Severability—1989 c 380: See RCW 15.58.942.

Chapter 70.105 RCW

HAZARDOUS WASTE MANAGEMENT

Sections

- 70.105.005 Legislative declaration.
- 70.105.007 Purpose.
- 70.105.010 Definitions.

(2004 Ed.)

- 70.105.020 Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies.
- 70.105.025 Environmental excellence program agreements—Effect on chapter.
- 70.105.030 List and information to be furnished by depositor of hazardous waste—Rules and regulations.
- 70.105.035 Solid wastes—Conditionally exempt from chapter.
- 70.105.040 Disposal site or facility—Acquisition—Disposal fee schedule.
- 70.105.050 Disposal at other than approved site prohibited—Disposal of radioactive wastes.
- 70.105.060 Review of rules, regulations, criteria and fee schedules.
- 70.105.070 Criteria for receiving waste at disposal site.
- 70.105.080 Violations—Civil penalties.
- 70.105.085 Violations—Criminal penalties.
- 70.105.090 Violations—Gross misdemeanor.
- 70.105.095 Violations—Orders—Penalty for noncompliance—Appeal.
- 70.105.097 Action for damages resulting from violation—Attorneys' fees.
- 70.105.100 Powers and duties of department.
- 70.105.105 Duty of department to regulate PCB waste.
- 70.105.109 Regulation of wastes with radioactive and hazardous components.
- 70.105.110 Regulation of dangerous wastes associated with energy facilities.
- 70.105.111 Radioactive wastes—Authority of department of social and health services.
- 70.105.112 Application of chapter to special incinerator ash.
- 70.105.116 Hazardous substance remedial actions—Procedural requirements not applicable.
- 70.105.120 Authority of attorney general.
- 70.105.130 Department's powers as designated agency under federal act.
- 70.105.135 Copies of notification forms or annual reports to officials responsible for fire protection.
- 70.105.140 Rules implemented under RCW 70.105.130—Review.
- 70.105.145 Department's authority to participate in and administer federal act.
- 70.105.150 Declaration—Management of hazardous waste—Priorities—Definitions.
- 70.105.160 Waste management study—Public hearings—Adoption or modification of rules.
- 70.105.165 Disposal of dangerous wastes at commercial off-site land disposal facilities—Limitations.
- 70.105.170 Waste management—Consultative services—Technical assistance—Confidentiality.
- 70.105.180 Disposition of fines and penalties—Earnings.
- 70.105.200 Hazardous waste management plan.
- 70.105.210 Hazardous waste management facilities—Department to develop criteria for siting.
- 70.105.215 Department to adopt rules for permits for hazardous substances treatment facilities.
- 70.105.217 Local government regulatory authority to prohibit or condition.
- 70.105.220 Local governments to prepare local hazardous waste plans—Basis—Elements required.
- 70.105.221 Local governments to prepare local hazardous waste plans—Used oil recycling element.
- 70.105.225 Local governments to designate zones—Departmental guidelines—Approval of local government zone designations or amendments—Exemption.
- 70.105.230 Local governments to submit letter of intent to identify or designate zones and submit management plans—Department to prepare plan in event of failure to act.
- 70.105.235 Grants to local governments for plan preparation, implementation, and designation of zones—Matching funds—Qualifications.
- 70.105.240 State preemption—Department sole authority—Local requirements superseded—State authority over designated zone facilities.
- 70.105.245 Department may require notice of intent for management facility permit.
- 70.105.250 Appeals to pollution control hearings board.
- 70.105.255 Department to provide technical assistance with local plans.
- 70.105.260 Department to assist conflict resolution activities related to siting facilities—Agreements may constitute conditions for permit.
- 70.105.270 Requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) not mandatory without legislative appropriation.
- 70.105.280 Service charges.
- 70.105.300 Metals mining and milling operations permits—Inspections by department of ecology.
- 70.105.900 Short title—1985 c 448.

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

Hazardous materials incidents, handling and liability: RCW 70.136.010 through 70.136.070.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

Transport of hazardous materials, state patrol authority over: Chapter 46.48 RCW.

70.105.005 Legislative declaration. The legislature hereby finds and declares:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. At the same time, the quality of life of the people of the state is in part based upon a large variety of goods produced by the economy of the state. The complex industrial processes that produce these goods also generate waste byproducts, some of which are hazardous to the public health and the environment if improperly managed.

(2) Safe and responsible management of hazardous waste is necessary to prevent adverse effects on the environment and to protect public health and safety.

(3) The availability of safe, effective, economical, and environmentally sound facilities for the management of hazardous waste is essential to protect public health and the environment and to preserve the economic strength of the state.

(4) Strong and effective enforcement of federal and state hazardous waste laws and regulations is essential to protect the public health and the environment and to meet the public's concerns regarding the acceptance of needed new hazardous waste management facilities.

(5) Negotiation, mediation, and similar conflict resolution techniques are useful in resolving concerns over the local impacts of siting hazardous waste management facilities.

(6) Safe and responsible management of hazardous waste requires an effective planning process that involves local and state governments, the public, and industry.

(7) Public acceptance and successful siting of needed new hazardous waste management facilities depends on several factors, including:

(a) Public confidence in the safety of the facilities;

(b) Assurance that the hazardous waste management priorities established in this chapter are being carried out to the maximum degree practical;

(c) Recognition that all state citizens benefit from certain products whose manufacture results in the generation of hazardous byproducts, and that all state citizens must, therefore, share in the responsibility for finding safe and effective means to manage this hazardous waste; and

(d) Provision of adequate opportunities for citizens to meet with facility operators and resolve concerns about local hazardous waste management facilities.

(8) Due to the controversial and regional nature of facilities for the disposal and incineration of hazardous waste, the facilities have had difficulty in obtaining necessary local approvals. The legislature finds that there is a statewide interest in assuring that such facilities can be sited.

It is therefore the intent of the legislature to preempt local government's authority to approve, deny, or otherwise regulate disposal and incineration facilities, and to vest in the department of ecology the sole authority among state,

regional, and local agencies to approve, deny, and regulate preempted facilities, as defined in this chapter.

In addition, it is the intent of the legislature that such complete preemptive authority also be vested in the department for treatment and storage facilities, in addition to disposal and incineration facilities, if a local government fails to carry out its responsibilities established in RCW 70.105.225.

It is further the intent of the legislature that no local ordinance, permit requirement, other requirement, or decision shall prohibit on the basis of land use considerations the construction of a hazardous waste management facility within any zone designated and approved in accordance with this chapter, provided that the proposed site for the facility is consistent with applicable state siting criteria.

(9) With the exception of the disposal site authorized for acquisition under this chapter, the private sector has had the primary role in providing hazardous waste management facilities and services in the state. It is the intent of the legislature that this role be encouraged and continue into the future to the extent feasible. Whether privately or publicly owned and operated, hazardous waste management facilities and services should be subject to strict governmental regulation as provided under this chapter.

(10) Wastes that are exempt or excluded from full regulation under this chapter due to their small quantity or household origin have the potential to pose significant risk to public health and the environment if not properly managed. It is the intent of the legislature that the specific risks posed by such waste be investigated and assessed and that programs be carried out as necessary to manage the waste appropriately. In addition, the legislature finds that, because local conditions vary substantially in regard to the quantities, risks, and management opportunities available for such wastes, local government is the appropriate level of government to plan for and carry out programs to manage moderate-risk waste, with assistance and coordination provided by the department. [1985 c 448 § 2.]

Severability—1985 c 448: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 448 § 19.]

70.105.007 Purpose. The purpose of this chapter is to establish a comprehensive statewide framework for the planning, regulation, control, and management of hazardous waste which will prevent land, air, and water pollution and conserve the natural, economic, and energy resources of the state. To this end it is the purpose of this chapter:

(1) To provide broad powers of regulation to the department of ecology relating to management of hazardous wastes and releases of hazardous substances;

(2) To promote waste reduction and to encourage other improvements in waste management practices;

(3) To promote cooperation between state and local governments by assigning responsibilities for planning for hazardous wastes to the state and planning for moderate-risk waste to local government;

(4) To provide for prevention of problems related to improper management of hazardous substances before such problems occur; and

(5) To assure that needed hazardous waste management facilities may be sited in the state, and to ensure the safe operation of the facilities. [1985 c 448 § 3.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.010 Definitions. The words and phrases defined in this section shall have the meanings indicated when used in this chapter unless the context clearly requires otherwise.

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or the director's designee.

(3) "Disposal site" means a geographical site in or upon which hazardous wastes are disposed of in accordance with the provisions of this chapter.

(4) "Dispose or disposal" means the discarding or abandoning of hazardous wastes or the treatment, decontamination, or recycling of such wastes once they have been discarded or abandoned.

(5) "Dangerous wastes" means any discarded, useless, unwanted, or abandoned substances, including but not limited to certain pesticides, or any residues or containers of such substances which are disposed of in such quantity or concentration as to pose a substantial present or potential hazard to human health, wildlife, or the environment because such wastes or constituents or combinations of such wastes:

(a) Have short-lived, toxic properties that may cause death, injury, or illness or have mutagenic, teratogenic, or carcinogenic properties; or

(b) Are corrosive, explosive, flammable, or may generate pressure through decomposition or other means.

(6) "Extremely hazardous waste" means any dangerous waste which

(a) will persist in a hazardous form for several years or more at a disposal site and which in its persistent form

(i) presents a significant environmental hazard and may be concentrated by living organisms through a food chain or may affect the genetic make-up of man or wildlife, and

(ii) is highly toxic to man or wildlife

(b) if disposed of at a disposal site in such quantities as would present an extreme hazard to man or the environment.

(7) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(8) "Pesticide" shall have the meaning of the term as defined in RCW 15.58.030 as now or hereafter amended.

(9) "Solid waste advisory committee" means the same advisory committee as per RCW 70.95.040 through 70.95.070.

(10) "Designated zone facility" means any facility that requires an interim or final status permit under rules adopted under this chapter and that is not a preempted facility as defined in this section.

(11) "Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for recycling, storing, treating, incinerating, or disposing of hazardous waste.

(12) "Preempted facility" means any facility that includes as a significant part of its activities any of the following operations: (a) Landfill, (b) incineration, (c) land

treatment, (d) surface impoundment to be closed as a landfill, or (e) waste pile to be closed as a landfill.

(13) "Hazardous household substances" means those substances identified by the department as hazardous household substances in the guidelines developed under RCW 70.105.220.

(14) "Hazardous substances" means any liquid, solid, gas, or sludge, including any material, substance, product, commodity, or waste, regardless of quantity, that exhibits any of the characteristics or criteria of hazardous waste as described in rules adopted under this chapter.

(15) "Hazardous waste" means and includes all dangerous and extremely hazardous waste, including substances composed of both radioactive and hazardous components.

(16) "Local government" means a city, town, or county.

(17) "Moderate-risk waste" means (a) any waste that exhibits any of the properties of hazardous waste but is exempt from regulation under this chapter solely because the waste is generated in quantities below the threshold for regulation, and (b) any household wastes which are generated from the disposal of substances identified by the department as hazardous household substances.

(18) "Service charge" means an assessment imposed under RCW 70.105.280 against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component. Service charges shall also apply to facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. [1989 c 376 § 1; 1987 c 488 § 1; 1985 c 448 § 1; 1975-'76 2nd ex.s. c 101 § 1.]

Severability—1989 c 376: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 376 § 4.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.020 Standards and regulations—Adoption—Notice and hearing—Consultation with other agencies. The department after notice and public hearing shall:

(1) Adopt regulations designating as extremely hazardous wastes subject to the provisions of this chapter those substances which exhibit characteristics consistent with the definition provided in RCW 70.105.010(6);

(2) Adopt and may revise when appropriate, minimum standards and regulations for disposal of extremely hazardous wastes to protect against hazards to the public, and to the environment. Before adoption of such standards and regulations, the department shall consult with appropriate agencies of interested local governments and secure technical assistance from the department of agriculture, the department of social and health services, the department of fish and wildlife, the department of natural resources, the department of labor and industries, and the department of community, trade, and economic development, through the director of fire protection. [1994 c 264 § 42; 1988 c 36 § 28; 1986 c 266 § 119; 1975-'76 2nd ex.s. c 101 § 2.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.105.025 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 23.]

Purpose—1997 c 381: See RCW 43.21K.005.

70.105.030 List and information to be furnished by depositor of hazardous waste—Rules and regulations. (1) After the effective date of the regulations adopted by the department designating extremely hazardous wastes, any person planning to dispose of extremely hazardous waste as designated by the department shall provide the operator of the disposal site with a list setting forth the extremely hazardous wastes for disposal, the amount of such wastes, the general chemical and mineral composition of such waste listed by approximate maximum and minimum percentages, and the origin of any such waste. Such list, when appropriate, shall include information on antidotes, first aid, or safety measures to be taken in case of accidental contact with the particular extremely hazardous waste being disposed.

(2) The department shall adopt and enforce all rules and regulations including the form and content of the list, necessary and appropriate to accomplish the purposes of subsection (1) of this section. [1975-'76 2nd ex.s. c 101 § 3.]

70.105.035 Solid wastes—Conditionally exempt from chapter. Solid wastes that designate as dangerous waste or extremely hazardous waste but do not designate as hazardous waste under federal law are conditionally exempt from the requirements of this chapter, if:

(1) The waste is generated pursuant to a consent decree issued under chapter 70.105D RCW;

(2) The consent decree characterizes the solid waste and specifies management practices and a department-approved treatment or disposal location;

(3) The management practices are consistent with RCW 70.105.150 and are protective of human health and the environment as determined by the department of ecology; and

(4) Waste treated or disposed of on-site will be managed in a manner determined by the department to be as protective of human health and the environment as clean-up standards pursuant to chapter 70.105D RCW.

This section shall not be interpreted to limit the ability of the department to apply any requirement of this chapter through a consent decree issued under chapter 70.105D RCW, if the department determines these requirements to be appropriate. Neither shall this section be interpreted to limit the application of this chapter to a cleanup conducted under the federal comprehensive environmental response, compensation, and liability act (42 U.S.C. Sec. 9601 et seq., as amended). [1994 c 254 § 5.]

70.105.040 Disposal site or facility—Acquisition—Disposal fee schedule. (1) The department through the department of general administration, is authorized to acquire

interests in real property from the federal government on the Hanford Reservation by gift, purchase, lease, or other means, to be used for the purpose of developing, operating, and maintaining an extremely hazardous waste disposal site or facility by the department, either directly or by agreement with public or private persons or entities: PROVIDED, That lands acquired under this section shall not be inconsistent with a local comprehensive plan approved prior to January 1, 1976: AND PROVIDED FURTHER, That no lands acquired under this section shall be subject to land use regulation by a local government.

(2) The department may establish an appropriate fee schedule for use of such disposal facilities to offset the cost of administration of this chapter and the cost of development, operation, maintenance, and perpetual management of the disposal site. If operated by a private entity, the disposal fee may be such as to provide a reasonable profit. [1975-'76 2nd ex.s. c 101 § 4.]

70.105.050 Disposal at other than approved site prohibited—Disposal of radioactive wastes. (1) No person shall dispose of designated extremely hazardous wastes at any disposal site in the state other than the disposal site established and approved for such purpose under provisions of this chapter, except:

(a) When such wastes are going to a processing facility which will result in the waste being reclaimed, treated, detoxified, neutralized, or otherwise processed to remove its harmful properties or characteristics; or

(b) When such wastes are managed on-site as part of a remedial action conducted by the department or by potentially liable persons under a consent decree issued by the department pursuant to chapter 70.105D RCW.

(2) Extremely hazardous wastes that contain radioactive components may be disposed at a radioactive waste disposal site that is (a) owned by the United States department of energy or a licensee of the nuclear regulatory commission and (b) permitted by the department and operated in compliance with the provisions of this chapter. However, prior to disposal, or as a part of disposal, all reasonable methods of treatment, detoxification, neutralization, or other waste management methodologies designed to mitigate hazards associated with these wastes shall be employed, as required by applicable federal and state laws and regulations. [1994 c 254 § 6; 1987 c 488 § 4; 1975-'76 2nd ex.s. c 101 § 5.]

70.105.060 Review of rules, regulations, criteria and fee schedules. All rules, regulations, criteria, and fee schedules adopted by the department to implement the provisions of this chapter shall be reviewed by the solid waste advisory committee for the purpose of recommending revisions, additions, or modifications thereto as provided for the review of solid waste regulations and standards pursuant to chapter 70.95 RCW. [1975-'76 2nd ex.s. c 101 § 6.]

70.105.070 Criteria for receiving waste at disposal site. The department may elect to receive dangerous waste at the site provided under this chapter, provided

(1) it is upon request of the owner, producer, or person having custody of the waste, and

(2) upon the payment of a fee to cover disposal

(3) it can be reasonably demonstrated that there is no other disposal sites in the state that will handle such dangerous waste, and

(4) the site is designed to handle such a request or can be modified to the extent necessary to adequately dispose of the waste, or

(5) if a demonstrable emergency and potential threat to the public health and safety exists. [1975-'76 2nd ex.s. c 101 § 7.]

70.105.080 Violations—Civil penalties. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, every person who fails to comply with any provision of this chapter or of the rules adopted thereunder shall be subjected to a penalty in an amount of not more than ten thousand dollars per day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed pursuant to the procedures in RCW 43.21B.300. [1995 c 403 § 631; 1987 c 109 § 12; 1983 c 172 § 2; 1975-'76 2nd ex.s. c 101 § 8.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1983 c 172: See note following RCW 70.105.097.

70.105.085 Violations—Criminal penalties. (1) Any person who knowingly transports, treats, stores, handles, disposes of, or exports a hazardous substance in violation of this chapter is guilty of: (a) A class B felony punishable according to chapter 9A.20 RCW if the person knows at the time that the conduct constituting the violation places another person in imminent danger of death or serious bodily injury; or (b) a class C felony punishable according to chapter 9A.20 RCW if the person knows that the conduct constituting the violation places any property of another person or any natural resources owned by the state of Washington or any of its local governments in imminent danger of harm.

(2) As used in this section: (a) "Imminent danger" means that there is a substantial likelihood that harm will be experienced within a reasonable period of time should the danger not be eliminated; and (b) "knowingly" refers to an awareness of facts, not awareness of law. [2003 c 53 § 357; 1989 c 2 § 15 (Initiative Measure No. 97, approved November 8, 1988).]

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

Short title—Captions—Construction—Existing agreements—Effective date—Severability—1989 c 2: See RCW 70.105D.900 through 70.105D.921, respectively.

(2004 Ed.)

70.105.090 Violations—Gross misdemeanor. In addition to the penalties imposed pursuant to RCW 70.105.080, any person who violates any provisions of this chapter, or of the rules implementing this chapter, and any person who knowingly aids or abets another in conducting any violation of any provisions of this chapter, or of the rules implementing this chapter, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than ten thousand dollars, and/or by imprisonment in the county jail for not more than one year, for each separate violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct offense. [1984 c 237 § 1; 1983 c 172 § 3; 1975-'76 2nd ex.s. c 101 § 9.]

Severability—1983 c 172: See note following RCW 70.105.097.

70.105.095 Violations—Orders—Penalty for non-compliance—Appeal. (1) Whenever on the basis on any information the department determines that a person has violated or is about to violate any provision of this chapter, the department may issue an order requiring compliance either immediately or within a specified period of time. The order shall be delivered by registered mail or personally to the person against whom the order is directed.

(2) Any person who fails to take corrective action as specified in a compliance order shall be liable for a civil penalty of not more than ten thousand dollars for each day of continued noncompliance. In addition, the department may suspend or revoke any permits and/or certificates issued under the provisions of this chapter to a person who fails to comply with an order directed against him.

(3) Any order may be appealed pursuant to RCW 43.21B.310. [1987 c 109 § 16; 1983 c 172 § 4.]

Purpose—Short title—Construction—Rules—Severability—Captions—1987 c 109: See notes following RCW 43.21B.001.

Severability—1983 c 172: See note following RCW 70.105.097.

70.105.097 Action for damages resulting from violation—Attorneys' fees. A person injured as a result of a violation of this chapter or the rules adopted thereunder may bring an action in superior court for the recovery of the damages. A conviction or imposition of a penalty under this chapter is not a prerequisite to an action under this section.

The court may award reasonable attorneys' fees to a prevailing injured party in an action under this section. [1983 c 172 § 1.]

Severability—1983 c 172: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1983 c 172 § 5.]

70.105.100 Powers and duties of department. The department in performing its duties under this chapter may:

(1) Conduct studies and coordinate research programs pertaining to extremely hazardous waste management;

(2) Render technical assistance to generators of dangerous and extremely hazardous wastes and to state and local agencies in the planning and operation of hazardous waste programs;

(3) Encourage and provide technical assistance to waste generators to form and operate a "waste exchange" for the purpose of finding users for dangerous and extremely hazardous wastes that would otherwise be disposed of: PROVIDED, That such technical assistance shall not violate the confidentiality of manufacturing processes; and

(4) Provide for appropriate surveillance and monitoring of extremely hazardous waste disposal practices in the state. [1975-'76 2nd ex.s. c 101 § 10.]

70.105.105 Duty of department to regulate PCB waste. The department of ecology shall regulate under chapter 70.105 RCW, wastes generated from the salvaging, rebuilding, or discarding of transformers or capacitors that have been sold or otherwise transferred for salvage or disposal after the completion or termination of their useful lives and which contain polychlorinated biphenyls (PCB's) and whose disposal is not regulated under 40 CFR part 761. Nothing in this section shall prohibit such wastes from being incinerated or disposed of at facilities permitted to manage PCB wastes under 40 CFR part 761. [1985 c 65 § 1.]

70.105.109 Regulation of wastes with radioactive and hazardous components. The department of ecology may regulate all hazardous wastes, including those composed of both radioactive and hazardous components, to the extent it is not preempted by federal law. [1987 c 488 § 2.]

70.105.110 Regulation of dangerous wastes associated with energy facilities. (1) Nothing in this chapter shall alter, amend, or supersede the provisions of chapter 80.50 RCW, except that, notwithstanding any provision of chapter 80.50 RCW, regulation of dangerous wastes associated with energy facilities from generation to disposal shall be solely by the department pursuant to chapter 70.105 RCW. In the implementation of said section, the department shall consult and cooperate with the energy facility site evaluation council and, in order to reduce duplication of effort and to provide necessary coordination of monitoring and on-site inspection programs at energy facility sites, any on-site inspection by the department that may be required for the purposes of this chapter shall be performed pursuant to an interagency coordination agreement with the council.

(2) To facilitate the implementation of this chapter, the energy facility site evaluation council may require certificate holders to remove from their energy facility sites any dangerous wastes, controlled by this chapter, within ninety days of their generation. [1987 c 488 § 3; 1984 c 237 § 3; 1975-'76 2nd ex.s. c 101 § 11.]

70.105.111 Radioactive wastes—Authority of department of social and health services. Nothing in this chapter diminishes the authority of the department of social and health services to regulate the radioactive portion of mixed wastes pursuant to chapter 70.98 RCW. [1987 c 488 § 5.]

70.105.112 Application of chapter to special incinerator ash. This chapter does not apply to special incinerator ash regulated under chapter 70.138 RCW except that, for pur-

poses of RCW 4.22.070(3)(a), special incinerator ash shall be considered hazardous waste. [1987 c 528 § 9.]

Severability—1987 c 528: See RCW 70.138.902.

70.105.116 Hazardous substance remedial actions—Procedural requirements not applicable. The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090. [1994 c 257 § 17.]

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105.120 Authority of attorney general. At the request of the department, the attorney general is authorized to bring such injunctive, declaratory, or other actions to enforce any requirement of this chapter. [1980 c 144 § 2.]

70.105.130 Department's powers as designated agency under federal act. (1) The department is designated as the state agency for implementing the federal resource conservation and recovery act (42 U.S.C. Sec. 6901 et seq.).

(2) The power granted to the department by this section is the authority to:

(a) Establish a permit system for owners or operators of facilities which treat, store, or dispose of dangerous wastes: PROVIDED, That spent containers of pesticides or herbicides which have been used in normal farm operations and which are not extremely hazardous wastes, shall not be subject to the permit system;

(b) Establish standards for the safe transport, treatment, storage, and disposal of dangerous wastes as may be necessary to protect human health and the environment;

(c) Establish, to implement this section:

(i) A manifest system to track dangerous wastes;

(ii) Reporting, monitoring, recordkeeping, labeling, sampling requirements; and

(iii) Owner, operator, and transporter responsibility;

(d) Enter at reasonable times establishments regulated under this section for the purposes of inspection, monitoring, and sampling; and

(e) Adopt rules necessary to implement this section. [1980 c 144 § 1.]

70.105.135 Copies of notification forms or annual reports to officials responsible for fire protection. Any person who generates, treats, stores, disposes, or otherwise handles dangerous or extremely hazardous wastes shall provide copies of any notification forms, or annual reports that are required pursuant to RCW 70.105.130 to the fire departments or fire districts that service the areas in which the wastes are handled upon the request of the fire departments or fire districts. In areas that are not serviced by a fire department or fire district, the forms or reports shall be provided to

the sheriff or other county official designated pursuant to RCW 48.48.060 upon the request of the sheriff or other county official. This section shall not apply to the transportation of hazardous wastes. [1986 c 82 § 1.]

70.105.140 Rules implemented under RCW 70.105.130—Review. Rules implementing RCW 70.105.130 shall be submitted to the house and senate committees on ecology for review prior to being adopted in accordance with chapter 34.05 RCW. [1980 c 144 § 3.]

70.105.145 Department's authority to participate in and administer federal act. Notwithstanding any other provision of chapter 70.105 RCW, the department of ecology is empowered to participate fully in and is empowered to administer all aspects of the programs of the federal Resource Conservation and Recovery Act, as it exists on June 7, 1984, (42 U.S.C. Sec. 6901 et seq.), contemplated for participation and administration by a state under that act. [1984 c 237 § 2; 1983 c 270 § 2.]

Severability—1983 c 270: See note following RCW 90.48.260.

70.105.150 Declaration—Management of hazardous waste—Priorities—Definitions. The legislature hereby declares that:

(1) The health and welfare of the people of the state depend on clean and pure environmental resources unaffected by hazardous waste contamination. Management and regulation of hazardous waste disposal should encourage practices which result in the least amount of waste being produced. Towards that end, the legislature finds that the following priorities in the management of hazardous waste are necessary and should be followed in order of descending priority as applicable:

- (a) Waste reduction;
- (b) Waste recycling;
- (c) Physical, chemical, and biological treatment;
- (d) Incineration;
- (e) Solidification/stabilization treatment;
- (f) Landfill.

(2) As used in this section:

(a) "Waste reduction" means reducing waste so that hazardous byproducts are not produced;

(b) "Waste recycling" means reusing waste materials and extracting valuable materials from a waste stream;

(c) "Physical, chemical, and biological treatment" means processing the waste to render it completely innocuous, produce a recyclable byproduct, reduce toxicity, or substantially reduce the volume of material requiring disposal;

(d) "Incineration" means reducing the volume or toxicity of wastes by use of an enclosed device using controlled flame combustion;

(e) "Solidification/stabilization treatment" means the use of encapsulation techniques to solidify wastes and make them less permeable or leachable; and

(f) "Landfill" means a disposal facility, or part of a facility, at which waste is placed in or on land and which is not a land treatment facility, surface impoundment, or injection well. [1983 1st ex.s. c 70 § 1.]

(2004 Ed.)

70.105.160 Waste management study—Public hearings—Adoption or modification of rules. The department shall conduct a study to determine the best management practices for categories of waste for the priority waste management methods established in RCW 70.105.150, with due consideration in the course of the study to sound environmental management and available technology. As an element of the study, the department shall review methods that will help achieve the priority of RCW 70.105.150(1)(a), waste reduction. Before issuing any proposed rules, the department shall conduct public hearings regarding the best management practices for the various waste categories studied by the department. After conducting the study, the department shall prepare new rules or modify existing rules as appropriate to promote implementation of the priorities established in RCW 70.105.150 for management practices which assure use of sound environmental management techniques and available technology. The preliminary study shall be completed by July 1, 1986, and the rules shall be adopted by July 1, 1987. The solid waste advisory committee shall review the studies and the new or modified rules.

The studies shall be updated at least once every five years. The funding for these studies shall be from the hazardous waste control and elimination account, subject to legislative appropriation. [1998 c 245 § 110; 1984 c 254 § 2; 1983 1st ex.s. c 70 § 2.]

Severability—1984 c 254: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1984 c 254 § 3.]

70.105.165 Disposal of dangerous wastes at commercial off-site land disposal facilities—Limitations. (1) Independent of the processing or issuance of any or all federal, state, and local permits for disposal of dangerous wastes, no disposal of dangerous wastes at a commercial off-site land disposal facility may be undertaken prior to July 1, 1986, unless:

(a) The disposal results from actions taken under *RCW 70.105A.060 (2) and (3), or results from other emergency situations; or

(b) Studies undertaken by the department under RCW 70.105.160 to determine the best management practices for various waste categories under the priority waste management methods established in RCW 70.105.150 are completed for the particular wastes or waste categories to be disposed of and any regulatory revisions deemed necessary by the department are proposed and do not prohibit land disposal of such wastes; or

(c) Final regulations have been adopted by the department that allow for such disposal.

(2) Construction of facilities used solely for the purpose of disposal of wastes that have not met the requirements of subsection (1) of this section shall not be undertaken by any developer of a dangerous waste disposal facility.

(3) The department shall prioritize the studies of waste categories undertaken under RCW 70.105.160 to provide initial consideration of those categories most likely to be suitable for land disposal. Any regulatory changes deemed necessary by the department shall be proposed and subjected to the rule-making process by category as the study of each

waste category is completed. All of the study shall be completed, and implementing regulations proposed, by July 1, 1986.

(4) Any final permit issued by the department before the adoption of rules promulgated as a result of the study conducted under RCW 70.105.160 shall be modified as necessary to be consistent with such rules. [1984 c 254 § 1.]

*Reviser's note: RCW 70.105A.060 was repealed by 1990 c 114 § 21.
Severability—1984 c 254: See note following RCW 70.105.160.

70.105.170 Waste management—Consultative services—Technical assistance—Confidentiality. Consistent with the purposes of RCW 70.105.150 and 70.105.160, the department is authorized to promote the priority waste management methods listed in RCW 70.105.150 by establishing or assisting in the establishment of: (1) Consultative services which, in conjunction with any business or industry requesting such service, study and recommend alternative waste management practices; and (2) technical assistance, such as a toll-free telephone service, to persons interested in waste management alternatives. Any person receiving such service or assistance may, in accordance with state law, request confidential treatment of information about their manufacturing or business practices. [1983 1st ex.s. c 70 § 3.]

70.105.180 Disposition of fines and penalties—Earnings. All fines and penalties collected under this chapter shall be deposited in the hazardous waste control and elimination account, which is hereby created in the state treasury. Moneys in the account collected from fines and penalties shall be expended exclusively by the department of ecology for the purposes of chapter 70, Laws of 1983 1st ex. sess., subject to legislative appropriation. Other sources of funds deposited in this account may also be used for the purposes of chapter 70, Laws of 1983 1st ex. sess. All earnings of investments of balances in the hazardous waste control and elimination account shall be credited to the general fund. [1985 c 57 § 70; 1983 1st ex.s. c 70 § 4.]

Effective date—1985 c 57: See note following RCW 18.04.105.

70.105.200 Hazardous waste management plan. (1) The department shall develop, and shall update at least once every five years, a state hazardous waste management plan. The plan shall include, but shall not be limited to, the following elements:

(a) A state inventory and assessment of the capacity of existing facilities to treat, store, dispose, or otherwise manage hazardous waste;

(b) A forecast of future hazardous waste generation;

(c) A description of the plan or program required by RCW 70.105.160 to promote the waste management priorities established in RCW 70.105.150;

(d) Siting criteria as appropriate for hazardous waste management facilities, including such criteria as may be appropriate for the designation of eligible zones for designated zone facilities. However, these criteria shall not prevent the continued operation, at or below the present level of waste management activity, of existing facilities on the basis of their location in areas other than those designated as eligible zones pursuant to RCW 70.105.225;

(e) Siting policies as deemed appropriate by the department; and

(f) A plan or program to provide appropriate public information and education relating to hazardous waste management. The department shall ensure to the maximum degree practical that these plans or programs are coordinated with public education programs carried out by local government under RCW 70.105.220.

(2) The department shall seek, encourage, and assist participation in the development, revision, and implementation of the state hazardous waste management plan by interested citizens, local government, business and industry, environmental groups, and other entities as appropriate.

(3) Siting criteria shall be completed by December 31, 1986. Other plan components listed in subsection (1) of this section shall be completed by June 30, 1987.

(4) The department shall incorporate into the state hazardous waste management plan those elements of the local hazardous waste management plans that it deems necessary to assure effective and coordinated programs throughout the state. [1985 c 448 § 4.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.210 Hazardous waste management facilities—Department to develop criteria for siting. By May 31, 1990, the department shall develop and adopt criteria for the siting of hazardous waste management facilities. These criteria will be part of the state hazardous waste management plan as described in RCW 70.105.200. To the extent practical, these criteria shall be designed to minimize the short-term and long-term risks and costs that may result from hazardous waste management facilities. These criteria may vary by type of facilities and may consider natural site characteristics and engineered protection. Criteria may be established for:

(1) Geology;

(2) Surface and groundwater hydrology;

(3) Soils;

(4) Flooding;

(5) Climatic factors;

(6) Unique or endangered flora and fauna;

(7) Transportation routes;

(8) Site access;

(9) Buffer zones;

(10) Availability of utilities and public services;

(11) Compatibility with existing uses of land;

(12) Shorelines and wetlands;

(13) Sole-source aquifers;

(14) Natural hazards; and

(15) Other factors as determined by the department.

[1989 1st ex.s. c 13 § 2; 1985 c 448 § 5.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.215 Department to adopt rules for permits for hazardous substances treatment facilities. The legislature recognizes the need for new, modified, or expanded facilities to treat, incinerate, or otherwise process or dispose of hazardous substances safely. In order to encourage the development of such facilities, the department shall adopt rules as necessary regarding the permitting of such facilities to ensure the

most expeditious permit processing possible consistent with the substantive requirements of applicable law. If owners and operators are not the same entity, the operator shall be the permit applicant and responsible for the development of the permit application and all accompanying materials, as long as the owner also signs the application and certifies its ownership of the real property described in the application, and acknowledges its awareness of the contents of the application and receipt of a copy thereof. [1986 c 210 § 3.]

70.105.217 Local government regulatory authority to prohibit or condition. Nothing in this chapter shall alter or affect the regulatory authority of a county, city, or jurisdictional health district to condition or prohibit the acceptance of hazardous waste in a county or city landfill. [1994 c 254 § 7.]

70.105.220 Local governments to prepare local hazardous waste plans—Basis—Elements required. (1) Each local government, or combination of contiguous local governments, is directed to prepare a local hazardous waste plan which shall be based on state guidelines and include the following elements:

(a) A plan or program to manage moderate-risk wastes that are generated or otherwise present within the jurisdiction. This element shall include an assessment of the quantities, types, generators, and fate of moderate-risk wastes in the jurisdiction. The purpose of this element is to develop a system of managing moderate-risk waste, appropriate to each local area, to ensure protection of the environment and public health;

(b) A plan or program to provide for ongoing public involvement and public education in regard to the management of moderate-risk waste. This element shall provide information regarding:

(i) The potential hazards to human health and the environment resulting from improper use and disposal of the waste; and

(ii) Proper methods of handling, reducing, recycling, and disposing of the waste;

(c) An inventory of all existing generators of hazardous waste and facilities managing hazardous waste within the jurisdiction. This inventory shall be based on data provided by the department;

(d) A description of the public involvement process used in developing the plan;

(e) A description of the eligible zones designated in accordance with RCW 70.105.225. However, the requirement to designate eligible zones shall not be considered part of the local hazardous waste planning requirements; and

(f) Other elements as deemed appropriate by local government.

(2) To the maximum extent practicable, the local hazardous waste plan shall be coordinated with other hazardous materials-related plans and policies in the jurisdiction.

(3) Local governments shall coordinate with those persons involved in providing privately owned hazardous and moderate-risk waste facilities and services as follows: If a local government determines that a moderate-risk waste will be or is adequately managed by one or more privately owned facilities or services at a reasonable price, the local govern-

(2004 Ed.)

ment shall take actions to encourage the use of that private facility or service. Actions taken by a local government under this subsection may include, but are not limited to, restricting or prohibiting the land disposal of a moderate-risk waste at any transfer station or land disposal facility within its jurisdiction.

(4)(a) The department shall prepare guidelines for the development of local hazardous waste plans. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986. The guidelines shall include a list of substances identified as hazardous household substances.

(b) In preparing the guidelines under (a) of this subsection, the department shall review and assess information on pilot projects that have been conducted for moderate-risk waste management. The department shall encourage additional pilot projects as needed to provide information to improve and update the guidelines.

(5) The department shall consult with retailers, trade associations, public interest groups, and appropriate units of local government to encourage the development of voluntary public education programs on the proper handling of hazardous household substances.

(6) Local hazardous waste plans shall be completed and submitted to the department no later than June 30, 1990. Local governments may from time to time amend the local plan.

(7) Each local government, or combination of contiguous local governments, shall submit its local hazardous waste plan or amendments thereto to the department. The department shall approve or disapprove local hazardous waste plans or amendments by December 31, 1990, or within ninety days of submission, whichever is later. The department shall approve a local hazardous waste plan if it determines that the plan is consistent with this chapter and the guidelines under subsection (4) of this section. If approval is denied, the department shall submit its objections to the local government within ninety days of submission. However, for plans submitted between January 1, 1990, and June 30, 1990, the department shall have one hundred eighty days to submit its objections. No local government is eligible for grants under RCW 70.105.235 for implementing a local hazardous waste plan unless the plan for that jurisdiction has been approved by the department.

(8) Each local government, or combination of contiguous local governments, shall implement the local hazardous waste plan for its jurisdiction by December 31, 1991.

(9) The department may waive the specific requirements of this section for any local government if such local government demonstrates to the satisfaction of the department that the objectives of the planning requirements have been met. [1992 c 17 § 1; 1986 c 210 § 1; 1985 c 448 § 6.]

Severability—1985 c 448: See note following RCW 70.105.005.

Used oil recycling element: RCW 70.951.020.

70.105.221 Local governments to prepare local hazardous waste plans—Used oil recycling element. Local governments and combinations of local governments shall amend their local hazardous waste plans required under

RCW 70.105.220 to comply with RCW 70.95I.020. [1991 c 319 § 312.]

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

70.105.225 Local governments to designate zones—Departmental guidelines—Approval of local government zone designations or amendments—Exemption. (1) Each local government, or combination of contiguous local governments, is directed to: (a) Demonstrate to the satisfaction of the department that existing zoning allows designated zone facilities as permitted uses; or (b) designate land use zones within its jurisdiction in which designated zone facilities are permitted uses. The zone designations shall be consistent with the state siting criteria adopted in accordance with RCW 70.105.210, except as may be approved by the department in accordance with subsection (6) of this section.

(2) Local governments shall not prohibit the processing or handling of hazardous waste in zones in which the processing or handling of hazardous substances is not prohibited. This subsection does not apply in residential zones.

(3) The department shall prepare guidelines, as appropriate, for the designation of zones under this section. The guidelines shall be prepared in consultation with local governments and shall be completed by December 31, 1986.

(4) The initial designation of zones shall be completed or revised, and submitted to the department within eighteen months after the enactment of siting criteria in accordance with RCW 70.105.210. Local governments that do not comply with this submittal deadline shall be subject to the preemptive provisions of RCW 70.105.240(4) until such time as zone designations are completed and approved by the department. Local governments may from time to time amend their designated zones.

(5) Local governments without land use zoning provisions shall designate eligible geographic areas within their jurisdiction, based on siting criteria adopted in accordance with RCW 70.105.210. The area designation shall be subject to the same requirements as if they were zone designations.

(6) Each local government, or combination of contiguous local governments, shall submit its designation of zones or amendments thereto to the department. The department shall approve or disapprove zone designations or amendments within ninety days of submission. The department shall approve eligible zone designations if it determines that the proposed zone designations are consistent with this chapter, the applicable siting criteria, and guidelines for developing designated zones: PROVIDED, That the department shall consider local zoning in place as of January 1, 1985, or other special situations or conditions which may exist in the jurisdiction. If approval is denied, the department shall state within ninety days from the date of submission the facts upon which that decision is based and shall submit the statement to the local government together with any other comments or recommendations it deems appropriate. The local government shall have ninety days after it receives the statement from the department to make modifications designed to eliminate the inconsistencies and resubmit the designation to the department for approval. Any designations shall take effect when approved by the department.

(7) The department may exempt a local government from the requirements of this section if:

(a) Regulated quantities of hazardous waste have not been generated within the jurisdiction during the two calendar years immediately preceding the calendar year during which the exemption is requested; and

(b) The local government can demonstrate to the satisfaction of the department that no significant portion of land within the jurisdiction can meet the siting criteria adopted in accordance with RCW 70.105.210. [1989 1st ex.s. c 13 § 1; 1985 c 448 § 7.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.230 Local governments to submit letter of intent to identify or designate zones and submit management plans—Department to prepare plan in event of failure to act. (1) Each local government is directed to submit to the director of the department by October 31, 1987, a letter of intent stating that it intends to (a) identify, or designate if necessary, eligible zones for designated zone facilities no later than June 30, 1988, and (b) submit a complete local hazardous waste management plan to the department no later than June 30, 1990. The letters shall also indicate whether these requirements will be completed in conjunction with other local governments.

(2) If any local government fails to submit a letter as provided in subsection (1)(b) of this section, or fails to adopt a local hazardous waste plan for its jurisdiction in accordance with the time schedule provided in this chapter, or fails to secure approval from the department for its local hazardous waste plan in accordance with the time schedule provided in this chapter, the department shall prepare a hazardous waste plan for the local jurisdiction. [1985 c 448 § 8.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.235 Grants to local governments for plan preparation, implementation, and designation of zones—Matching funds—Qualifications. (1) Subject to legislative appropriations, the department may make and administer grants to local governments for (a) preparing and updating local hazardous waste plans, (b) implementing approved local hazardous waste plans, and (c) designating eligible zones for designated zone facilities as required under this chapter.

(2) Local governments shall match the funds provided by the department for planning or designating zones with an amount not less than twenty-five percent of the estimated cost of the work to be performed. Local governments may meet their share of costs with cash or contributed services. Local governments, or combination of contiguous local governments, conducting pilot projects pursuant to RCW 70.105.220(4) may subtract the cost of those pilot projects conducted for hazardous household substances from their share of the cost. If a pilot project has been conducted for all moderate-risk wastes, only the portion of the cost that applies to hazardous household substances shall be subtracted. The matching funds requirement under this subsection shall be waived for local governments, or combination of contiguous local governments, that complete and submit their local haz-

ardous waste plans under RCW 70.105.220(6) prior to June 30, 1988.

(3) Recipients of grants shall meet such qualifications and follow such procedures in applying for and using grants as may be established by the department. [1986 c 210 § 2; 1985 c 448 § 9.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.240 State preemption—Department sole authority—Local requirements superseded—State authority over designated zone facilities. (1) As of July 28, 1985, the state preempts the field of state, regional, or local permitting and regulating of all preempted facilities as defined in this chapter. The department of ecology is designated the sole decision-making authority with respect to permitting and regulating such facilities and no other state agency, department, division, bureau, commission, or board, or any local or regional political subdivision of the state, shall have any permitting or regulatory authority with respect to such facilities including, but not limited to, the location, construction, and operation of such facilities. Permits issued by the department shall be in lieu of any and all permits, approvals, certifications, or conditions of any other state, regional, or local governmental authority which would otherwise apply.

(2) The department shall ensure that any permits issued under this chapter invoking the preemption authority of this section meet the substantive requirements of existing state laws and regulations to the extent such laws and regulations are not inconsistent or in conflict with any of the provisions of this chapter. In the event that any of the provisions of this chapter, or any of the regulations promulgated hereunder, are in conflict with any other state law or regulations, such other law or regulations shall be deemed superseded for purposes of this chapter.

(3) As of July 28, 1985, any ordinances, regulations, requirements, or restrictions of regional or local governmental authorities regarding the location, construction, or operation of preempted facilities shall be deemed superseded. However, in issuing permits under this section, the department shall consider local fire and building codes and condition such permits as appropriate in compliance therewith.

(4) Effective July 1, 1988, the department shall have the same preemptive authority as defined in subsections (1) through (3) of this section in regard to any designated zone facility that may be proposed in any jurisdiction where the designation of eligible zones pursuant to RCW 70.105.225 has not been completed and approved by the department. Unless otherwise preempted by this subsection, designated zone facilities shall be subject to all applicable state and local laws, regulations, plans, and other requirements. [1985 c 448 § 10.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.245 Department may require notice of intent for management facility permit. The department may adopt rules to require any person who intends to file an application for a permit for a hazardous waste management facility to file a notice of intent with the department prior to submitting the application. [1985 c 448 § 11.]

(2004 Ed.)

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.250 Appeals to pollution control hearings board. Any disputes between the department and the governing bodies of local governments in regard to the local planning requirements under RCW 70.105.220 and the designation of zones under RCW 70.105.225 may be appealed by the department or the governing body of the local government to the pollution control hearings board established under chapter 43.21B RCW. [1985 c 448 § 12.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.255 Department to provide technical assistance with local plans. The department shall provide technical assistance to local governments in the preparation, review, revision, and implementation of local hazardous waste plans. [1985 c 448 § 13.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.260 Department to assist conflict resolution activities related to siting facilities—Agreements may constitute conditions for permit. (1) In order to promote identification, discussion, negotiation, and resolution of issues related to siting of hazardous waste management facilities, the department:

(a) Shall compile and maintain information on the use and availability of conflict resolution techniques and make this information available to industries, state and local government officials, and other citizens;

(b) Shall encourage and assist in facilitating conflict resolution activities, as appropriate, between facility proponents, host communities, and other interested persons;

(c) May adopt rules specifying procedures for facility proponents, host communities, and citizens to follow in providing opportunities for conflict resolution activities, including the use of dispute resolution centers established pursuant to chapter 7.75 RCW; and

(d) May expend funds to support such conflict resolution activities, and may adopt rules as appropriate to govern the support.

(2) Any agreements reached under the processes described in subsection (1) of this section and deemed valid by the department may be written as conditions binding on a permit issued under this chapter. [1985 c 448 § 14.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.270 Requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) not mandatory without legislative appropriation. The requirements of RCW 70.105.200 through 70.105.230 and 70.105.240(4) shall not become mandatory until funding is appropriated by the legislature. [1985 c 448 § 15.]

Severability—1985 c 448: See note following RCW 70.105.005.

70.105.280 Service charges. (1) The department may assess reasonable service charges against those facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component or which are undergoing closure under this chapter in those instances

where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal, except any commercial low-level radioactive waste facility. Service charges may not exceed the costs to the department in carrying out the duties of this section.

(2) Program elements or activities for which service charges may be assessed include:

(a) Office, staff, and staff support for the purposes of facility or unit permit development, review, and issuance; and

(b) Actions taken to determine and ensure compliance with the state's hazardous waste management act.

(3) Moneys collected through the imposition of such service charges shall be deposited in the state toxics control account.

(4) The department shall adopt rules necessary to implement this section. Facilities that store, treat, incinerate, or dispose of dangerous or extremely hazardous waste that contains both a nonradioactive hazardous component and a radioactive component shall not be subject to service charges prior to such rule making. Facilities undergoing closure under this chapter in those instances where closure entails the physical characterization of remaining wastes which contain both a nonradioactive hazardous component and a radioactive component or the management of such wastes through treatment or removal shall not be subject to service charges prior to such rule making. [1989 c 376 § 2.]

Severability—1989 c 376: See note following RCW 70.105.010.

70.105.300 Metals mining and milling operations permits—Inspections by department of ecology. If a metals mining and milling operation is issued a permit pursuant to this chapter, then it will be subject to special inspection requirements. The department of ecology shall inspect these mining operations at least quarterly in order to ensure that the operation is in compliance with the conditions of any permit issued to it pursuant to this chapter. The department shall conduct additional inspections during the construction phase of the mining operation in order to ensure compliance with this chapter. [1994 c 232 § 19.]

Severability—1994 c 232: See RCW 78.56.900.

Effective date—1994 c 232 §§ 6-8 and 18-22: See RCW 78.56.902.

70.105.900 Short title—1985 c 448. This chapter shall be known and may be cited as the hazardous waste management act. [1985 c 448 § 16.]

Severability—1985 c 448: See note following RCW 70.105.005.

Chapter 70.105A RCW HAZARDOUS WASTE FEES

Sections

70.105A.035 Revision of fees to provide a waste reduction and recycling incentive.

Hazardous waste management: Chapter 70.105 RCW.

70.105A.035 Revision of fees to provide a waste reduction and recycling incentive. The legislature is

[Title 70 RCW—page 300]

encouraged to revise the hazardous waste fees prescribed in *RCW 70.105A.030 in a manner which provides an incentive for waste reduction and recycling. If prior to March 1, 1989, *RCW 70.105A.030 as it existed on August 1, 1987, has not been amended in a manner which specifically provides an incentive for hazardous waste reduction and recycling, then (1) the requirement to pay the fees prescribed in that section is eliminated solely for fees due and payable on June 30, 1989; and (2) the department of ecology shall prepare, and submit to the legislature by January 1, 1990, a proposed revision designed to provide an incentive for hazardous waste reduction and recycling. [1989 c 2 § 16 (Initiative Measure No. 97, approved November 8, 1988).]

***Reviser's note:** RCW 70.105A.030 was repealed by 1990 c 114 § 21.

Short title—Captions—Construction—Existing agreements—Effective date—Severability—1989 c 2: See RCW 70.105D.900 through 70.105D.921, respectively.

Chapter 70.105D RCW HAZARDOUS WASTE CLEANUP— MODEL TOXICS CONTROL ACT

Sections

70.105D.010 Declaration of policy.
70.105D.020 Definitions.
70.105D.030 Department's powers and duties.
70.105D.040 Standard of liability—Settlement.
70.105D.050 Enforcement.
70.105D.060 Timing of review.
70.105D.070 Toxics control accounts.
70.105D.080 Private right of action—Remedial action costs.
70.105D.090 Remedial actions—Exemption from procedural requirements.
70.105D.100 Grants to local governments—Statement of environmental benefits—Development of outcome-focused performance measures.
70.105D.110 Releases of hazardous substances—Notice—Exemptions.
70.105D.900 Short title—1989 c 2.
70.105D.905 Captions—1989 c 2.
70.105D.910 Construction—1989 c 2.
70.105D.915 Existing agreements—1989 c 2.
70.105D.920 Effective date—1989 c 2.
70.105D.921 Severability—1989 c 2.

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

70.105D.010 Declaration of policy. (1) Each person has a fundamental and inalienable right to a healthful environment, and each person has a responsibility to preserve and enhance that right. The beneficial stewardship of the land, air, and waters of the state is a solemn obligation of the present generation for the benefit of future generations.

(2) A healthful environment is now threatened by the irresponsible use and disposal of hazardous substances. There are hundreds of hazardous waste sites in this state, and more will be created if current waste practices continue. Hazardous waste sites threaten the state's water resources, including those used for public drinking water. Many of our municipal landfills are current or potential hazardous waste sites and present serious threats to human health and environment. The costs of eliminating these threats in many cases are beyond the financial means of our local governments and ratepayers. The main purpose of chapter 2, Laws of 1989 is to raise sufficient funds to clean up all hazardous waste sites and to prevent the creation of future hazards due to improper disposal of toxic wastes into the state's land and waters.

(3) Many farmers and small business owners who have followed the law with respect to their uses of pesticides and other chemicals nonetheless may face devastating economic consequences because their uses have contaminated the environment or the water supplies of their neighbors. With a source of funds, the state may assist these farmers and business owners, as well as those persons who sustain damages, such as the loss of their drinking water supplies, as a result of the contamination.

(4) It is in the public's interest to efficiently use our finite land base, to integrate our land use planning policies with our clean-up policies, and to clean up and reuse contaminated industrial properties in order to minimize industrial development pressures on undeveloped land and to make clean land available for future social use.

(5) Because it is often difficult or impossible to allocate responsibility among persons liable for hazardous waste sites and because it is essential that sites be cleaned up well and expeditiously, each responsible person should be liable jointly and severally.

(6) Because releases of hazardous substances can adversely affect the health and welfare of the public, the environment, and property values, it is in the public interest that affected communities be notified of where releases of hazardous substances have occurred and what is being done to clean them up. [2002 c 288 § 1; 1994 c 254 § 1; 1989 c 2 § 1 (Initiative Measure No. 97, approved November 8, 1988).]

Severability—2002 c 288: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 288 § 5.]

70.105D.020 Definitions. (1) "Agreed order" means an order issued by the department under this chapter with which the potentially liable person receiving the order agrees to comply. An agreed order may be used to require or approve any cleanup or other remedial actions but it is not a settlement under RCW 70.105D.040(4) and shall not contain a covenant not to sue, or provide protection from claims for contribution, or provide eligibility for public funding of remedial actions under RCW 70.105D.070(2)(d)(xi).

(2) "Department" means the department of ecology.

(3) "Director" means the director of ecology or the director's designee.

(4) "Facility" means (a) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, vessel, or aircraft, or (b) any site or area where a hazardous substance, other than a consumer product in consumer use, has been deposited, stored, disposed of, or placed, or otherwise come to be located.

(5) "Federal cleanup law" means the federal comprehensive environmental response, compensation, and liability act of 1980, 42 U.S.C. Sec. 9601 et seq., as amended by Public Law 99-499.

(6) "Foreclosure and its equivalents" means purchase at a foreclosure sale, acquisition, or assignment of title in lieu of foreclosure, termination of a lease, or other repossession, acquisition of a right to title or possession, an agreement in satisfaction of the obligation, or any other comparable formal

or informal manner, whether pursuant to law or under warranties, covenants, conditions, representations, or promises from the borrower, by which the holder acquires title to or possession of a facility securing a loan or other obligation.

(7) "Hazardous substance" means:

(a) Any dangerous or extremely hazardous waste as defined in RCW 70.105.010 (5) and (6), or any dangerous or extremely dangerous waste designated by rule pursuant to chapter 70.105 RCW;

(b) Any hazardous substance as defined in RCW 70.105.010(14) or any hazardous substance as defined by rule pursuant to chapter 70.105 RCW;

(c) Any substance that, on March 1, 1989, is a hazardous substance under section 101(14) of the federal cleanup law, 42 U.S.C. Sec. 9601(14);

(d) Petroleum or petroleum products; and

(e) Any substance or category of substances, including solid waste decomposition products, determined by the director by rule to present a threat to human health or the environment if released into the environment.

The term hazardous substance does not include any of the following when contained in an underground storage tank from which there is not a release: Crude oil or any fraction thereof or petroleum, if the tank is in compliance with all applicable federal, state, and local law.

(8) "Independent remedial actions" means remedial actions conducted without department oversight or approval, and not under an order, agreed order, or consent decree.

(9) "Holder" means a person who holds indicia of ownership primarily to protect a security interest. A holder includes the initial holder such as the loan originator, any subsequent holder such as a successor-in-interest or subsequent purchaser of the security interest on the secondary market, a guarantor of an obligation, surety, or any other person who holds indicia of ownership primarily to protect a security interest, or a receiver, court-appointed trustee, or other person who acts on behalf or for the benefit of a holder. A holder can be a public or privately owned financial institution, receiver, conservator, loan guarantor, or other similar persons that loan money or guarantee repayment of a loan. Holders typically are banks or savings and loan institutions but may also include others such as insurance companies, pension funds, or private individuals that engage in loaning of money or credit.

(10) "Indicia of ownership" means evidence of a security interest, evidence of an interest in a security interest, or evidence of an interest in a facility securing a loan or other obligation, including any legal or equitable title to a facility acquired incident to foreclosure and its equivalents. Evidence of such interests includes, mortgages, deeds of trust, sellers interest in a real estate contract, liens, surety bonds, and guarantees of obligations, title held pursuant to a lease financing transaction in which the lessor does not select initially the leased facility, or legal or equitable title obtained pursuant to foreclosure and their equivalents. Evidence of such interests also includes assignments, pledges, or other rights to or other forms of encumbrance against the facility that are held primarily to protect a security interest.

(11) "Operating a facility primarily to protect a security interest" occurs when all of the following are met: (a) Operating the facility where the borrower has defaulted on the

loan or otherwise breached the security agreement; (b) operating the facility to preserve the value of the facility as an ongoing business; (c) the operation is being done in anticipation of a sale, transfer, or assignment of the facility; and (d) the operation is being done primarily to protect a security interest. Operating a facility for longer than one year prior to foreclosure or its equivalents shall be presumed to be operating the facility for other than to protect a security interest.

(12) "Owner or operator" means:

(a) Any person with any ownership interest in the facility or who exercises any control over the facility; or

(b) In the case of an abandoned facility, any person who had owned, or operated, or exercised control over the facility any time before its abandonment;

The term does not include:

(i) An agency of the state or unit of local government which acquired ownership or control involuntarily through bankruptcy, tax delinquency, abandonment, or circumstances in which the government involuntarily acquires title. This exclusion does not apply to an agency of the state or unit of local government which has caused or contributed to the release or threatened release of a hazardous substance from the facility;

(ii) A person who, without participating in the management of a facility, holds indicia of ownership primarily to protect the person's security interest in the facility. Holders after foreclosure and its equivalent and holders who engage in any of the activities identified in subsection (13)(e) through (g) of this section shall not lose this exemption provided the holder complies with all of the following:

(A) The holder properly maintains the environmental compliance measures already in place at the facility;

(B) The holder complies with the reporting requirements in the rules adopted under this chapter;

(C) The holder complies with any order issued to the holder by the department to abate an imminent or substantial endangerment;

(D) The holder allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the holder are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The holder does not exacerbate an existing release. The exemption in this subsection (12)(b)(ii) does not apply to holders who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided, however, that a holder shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release;

(iii) A fiduciary in his, her, or its personal or individual capacity. This exemption does not preclude a claim against the assets of the estate or trust administered by the fiduciary

or against a nonemployee agent or independent contractor retained by a fiduciary. This exemption also does not apply to the extent that a person is liable under this chapter independently of the person's ownership as a fiduciary or for actions taken in a fiduciary capacity which cause or contribute to a new release or exacerbate an existing release of hazardous substances. This exemption applies provided that, to the extent of the fiduciary's powers granted by law or by the applicable governing instrument granting fiduciary powers, the fiduciary complies with all of the following:

(A) The fiduciary properly maintains the environmental compliance measures already in place at the facility;

(B) The fiduciary complies with the reporting requirements in the rules adopted under this chapter;

(C) The fiduciary complies with any order issued to the fiduciary by the department to abate an imminent or substantial endangerment;

(D) The fiduciary allows the department or potentially liable persons under an order, agreed order, or settlement agreement under this chapter access to the facility to conduct remedial actions and does not impede the conduct of such remedial actions;

(E) Any remedial actions conducted by the fiduciary are in compliance with any preexisting requirements identified by the department, or, if the department has not identified such requirements for the facility, the remedial actions are conducted consistent with the rules adopted under this chapter; and

(F) The fiduciary does not exacerbate an existing release.

The exemption in this subsection (12)(b)(iii) does not apply to fiduciaries who cause or contribute to a new release or threatened release or who are otherwise liable under RCW 70.105D.040(1) (b), (c), (d), and (e); provided however, that a fiduciary shall not lose this exemption if it establishes that any such new release has been remediated according to the requirements of this chapter and that any hazardous substances remaining at the facility after remediation of the new release are divisible from such new release. The exemption in this subsection (12)(b)(iii) also does not apply where the fiduciary's powers to comply with this subsection (12)(b)(iii) are limited by a governing instrument created with the objective purpose of avoiding liability under this chapter or of avoiding compliance with this chapter; or

(iv) Any person who has any ownership interest in, operates, or exercises control over real property where a hazardous substance has come to be located solely as a result of migration of the hazardous substance to the real property through the ground water from a source off the property, if:

(A) The person can demonstrate that the hazardous substance has not been used, placed, managed, or otherwise handled on the property in a manner likely to cause or contribute to a release of the hazardous substance that has migrated onto the property;

(B) The person has not caused or contributed to the release of the hazardous substance;

(C) The person does not engage in activities that damage or interfere with the operation of remedial actions installed on the person's property or engage in activities that result in exposure of humans or the environment to the contaminated ground water that has migrated onto the property;

(D) If requested, the person allows the department, potentially liable persons who are subject to an order, agreed order, or consent decree, and the authorized employees, agents, or contractors of each, access to the property to conduct remedial actions required by the department. The person may attempt to negotiate an access agreement before allowing access; and

(E) Legal withdrawal of ground water does not disqualify a person from the exemption in this subsection (12)(b)(iv).

(13) "Participation in management" means exercising decision-making control over the borrower's operation of the facility, environmental compliance, or assuming or manifesting responsibility for the overall management of the enterprise encompassing the day-to-day decision making of the enterprise.

The term does not include any of the following: (a) A holder with the mere capacity or ability to influence, or the unexercised right to control facility operations; (b) a holder who conducts or requires a borrower to conduct an environmental audit or an environmental site assessment at the facility for which indicia of ownership is held; (c) a holder who requires a borrower to come into compliance with any applicable laws or regulations at the facility for which indicia of ownership is held; (d) a holder who requires a borrower to conduct remedial actions including setting minimum requirements, but does not otherwise control or manage the borrower's remedial actions or the scope of the borrower's remedial actions except to prepare a facility for sale, transfer, or assignment; (e) a holder who engages in workout or policing activities primarily to protect the holder's security interest in the facility; (f) a holder who prepares a facility for sale, transfer, or assignment or requires a borrower to prepare a facility for sale, transfer, or assignment; (g) a holder who operates a facility primarily to protect a security interest, or requires a borrower to continue to operate, a facility primarily to protect a security interest; and (h) a prospective holder who, as a condition of becoming a holder, requires an owner or operator to conduct an environmental audit, conduct an environmental site assessment, come into compliance with any applicable laws or regulations, or conduct remedial actions prior to holding a security interest is not participating in the management of the facility.

(14) "Person" means an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, state government agency, unit of local government, federal government agency, or Indian tribe.

(15) "Policing activities" means actions the holder takes to insure that the borrower complies with the terms of the loan or security interest or actions the holder takes or requires the borrower to take to maintain the value of the security. Policing activities include: Requiring the borrower to conduct remedial actions at the facility during the term of the security interest; requiring the borrower to comply or come into compliance with applicable federal, state, and local environmental and other laws, regulations, and permits during the term of the security interest; securing or exercising authority to monitor or inspect the facility including on-site inspections, or to monitor or inspect the borrower's business or financial condition during the term of the security interest; or taking other actions necessary to adequately police the loan

or security interest such as requiring a borrower to comply with any warranties, covenants, conditions, representations, or promises from the borrower.

(16) "Potentially liable person" means any person whom the department finds, based on credible evidence, to be liable under RCW 70.105D.040. The department shall give notice to any such person and allow an opportunity for comment before making the finding, unless an emergency requires otherwise.

(17) "Prepare a facility for sale, transfer, or assignment" means to secure access to the facility; perform routine maintenance on the facility; remove inventory, equipment, or structures; properly maintain environmental compliance measures already in place at the facility; conduct remedial actions to clean up releases at the facility; or to perform other similar activities intended to preserve the value of the facility where the borrower has defaulted on the loan or otherwise breached the security agreement or after foreclosure and its equivalents and in anticipation of a pending sale, transfer, or assignment, primarily to protect the holder's security interest in the facility. A holder can prepare a facility for sale, transfer, or assignment for up to one year prior to foreclosure and its equivalents and still stay within the security interest exemption in subsection (12)(b)(ii) of this section.

(18) "Primarily to protect a security interest" means the indicia of ownership is held primarily for the purpose of securing payment or performance of an obligation. The term does not include indicia of ownership held primarily for investment purposes nor indicia of ownership held primarily for purposes other than as protection for a security interest. A holder may have other, secondary reasons, for maintaining indicia of ownership, but the primary reason must be for protection of a security interest. Holding indicia of ownership after foreclosure or its equivalents for longer than five years shall be considered to be holding the indicia of ownership for purposes other than primarily to protect a security interest. For facilities that have been acquired through foreclosure or its equivalents prior to July 23, 1995, this five-year period shall begin as of July 23, 1995.

(19) "Public notice" means, at a minimum, adequate notice mailed to all persons who have made timely request of the department and to persons residing in the potentially affected vicinity of the proposed action; mailed to appropriate news media; published in the newspaper of largest circulation in the city or county of the proposed action; and opportunity for interested persons to comment.

(20) "Release" means any intentional or unintentional entry of any hazardous substance into the environment, including but not limited to the abandonment or disposal of containers of hazardous substances.

(21) "Remedy" or "remedial action" means any action or expenditure consistent with the purposes of this chapter to identify, eliminate, or minimize any threat or potential threat posed by hazardous substances to human health or the environment including any investigative and monitoring activities with respect to any release or threatened release of a hazardous substance and any health assessments or health effects studies conducted in order to determine the risk or potential risk to human health.

(22) "Security interest" means an interest in a facility created or established for the purpose of securing a loan or

other obligation. Security interests include deeds of trusts, sellers interest in a real estate contract, liens, legal, or equitable title to a facility acquired incident to foreclosure and its equivalents, and title pursuant to lease financing transactions. Security interests may also arise from transactions such as sale and leasebacks, conditional sales, installment sales, trust receipt transactions, certain assignments, factoring agreements, accounts receivable financing arrangements, easements, and consignments, if the transaction creates or establishes an interest in a facility for the purpose of securing a loan or other obligation.

(23) "Industrial properties" means properties that are or have been characterized by, or are to be committed to, traditional industrial uses such as processing or manufacturing of materials, marine terminal and transportation areas and facilities, fabrication, assembly, treatment, or distribution of manufactured products, or storage of bulk materials, that are either:

(a) Zoned for industrial use by a city or county conducting land use planning under chapter 36.70A RCW; or

(b) For counties not planning under chapter 36.70A RCW and the cities within them, zoned for industrial use and adjacent to properties currently used or designated for industrial purposes.

(24) "Workout activities" means those actions by which a holder, at any time prior to foreclosure and its equivalents, seeks to prevent, cure, or mitigate a default by the borrower or obligor; or to preserve, or prevent the diminution of, the value of the security. Workout activities include: Restructuring or renegotiating the terms of the security interest; requiring payment of additional rent or interest; exercising forbearance; requiring or exercising rights pursuant to an assignment of accounts or other amounts owed to an obligor; requiring or exercising rights pursuant to an escrow agreement pertaining to amounts owed to an obligor; providing specific or general financial or other advice, suggestions, counseling, or guidance; and exercising any right or remedy the holder is entitled to by law or under any warranties, covenants, conditions, representations, or promises from the borrower.

(25)(a) "Fiduciary" means a person acting for the benefit of another party as a bona fide trustee; executor; administrator; custodian; guardian of estates or guardian ad litem; receiver; conservator; committee of estates of incapacitated persons; trustee in bankruptcy; trustee, under an indenture agreement, trust agreement, lease, or similar financing agreement, for debt securities, certificates of interest or certificates of participation in debt securities, or other forms of indebtedness as to which the trustee is not, in the capacity of trustee, the lender. Except as provided in subsection (12)(b)(iii) of this section, the liability of a fiduciary under this chapter shall not exceed the assets held in the fiduciary capacity.

(b) "Fiduciary" does not mean:

(i) A person acting as a fiduciary with respect to a trust or other fiduciary estate that was organized for the primary purpose of, or is engaged in, actively carrying on a trade or business for profit, unless the trust or other fiduciary estate was created as part of, or to facilitate, one or more estate plans or because of the incapacity of a natural person;

(ii) A person who acquires ownership or control of a facility with the objective purpose of avoiding liability of the person or any other person. It is prima facie evidence that the

fiduciary acquired ownership or control of the facility to avoid liability if the facility is the only substantial asset in the fiduciary estate at the time the facility became subject to the fiduciary estate;

(iii) A person who acts in a capacity other than that of a fiduciary or in a beneficiary capacity and in that capacity directly or indirectly benefits from a trust or fiduciary relationship;

(iv) A person who is a beneficiary and fiduciary with respect to the same fiduciary estate, and who while acting as a fiduciary receives benefits that exceed customary or reasonable compensation, and incidental benefits permitted under applicable law;

(v) A person who is a fiduciary and receives benefits that substantially exceed customary or reasonable compensation, and incidental benefits permitted under applicable law; or

(vi) A person who acts in the capacity of trustee of state or federal lands or resources.

(26) "Fiduciary capacity" means the capacity of a person holding title to a facility, or otherwise having control of an interest in the facility pursuant to the exercise of the responsibilities of the person as a fiduciary. [1998 c 6 § 1; 1997 c 406 § 2; 1995 c 70 § 1; 1994 c 254 § 2; 1989 c 2 § 2 (Initiative Measure No. 97, approved November 8, 1988).]

Findings—Intent—1997 c 406: "The legislature finds that:

(1) Engrossed Substitute House Bill No. 1810 enacted during the 1995 legislative session [1995 c 359] authorized establishment of the model toxics control act policy advisory committee, a twenty-two member committee representing a broad range of interests including the legislature, agriculture, large and small business, environmental organizations, and local and state government. The committee was charged with the task of providing advice to the legislature and the department of ecology to more effectively implement the model toxics control act, chapter 70.105D RCW.

(2) The committee members committed considerable time and effort to their charge, meeting twenty-six times during 1995 and 1996 to discuss and decide issues. In addition, the committee created four subcommittees that met over sixty times during this same period. There were also numerous working subgroups and drafting committees formed on an ad hoc basis to support the committee's work. Many members of the public also attended these meetings and were provided opportunities to contribute to the committee deliberations.

(3) The policy advisory committee completed its work and submitted a final report to the department of ecology and the legislature on December 15, 1996. That report contains numerous recommendations for statutory changes that were agreed to by consensus of the committee members or obtained broad support of most of the committee members. Chapter 406, Laws of 1997 is intended to implement those recommended statutory changes." [1997 c 406 § 1.]

70.105D.030 Department's powers and duties. (1) The department may exercise the following powers in addition to any other powers granted by law:

(a) Investigate, provide for investigating, or require potentially liable persons to investigate any releases or threatened releases of hazardous substances, including but not limited to inspecting, sampling, or testing to determine the nature or extent of any release or threatened release. If there is a reasonable basis to believe that a release or threatened release of a hazardous substance may exist, the department's authorized employees, agents, or contractors may enter upon any property and conduct investigations. The department shall give reasonable notice before entering property unless an emergency prevents such notice. The department may by subpoena require the attendance or testimony of witnesses

and the production of documents or other information that the department deems necessary;

(b) Conduct, provide for conducting, or require potentially liable persons to conduct remedial actions (including investigations under (a) of this subsection) to remedy releases or threatened releases of hazardous substances. In carrying out such powers, the department's authorized employees, agents, or contractors may enter upon property. The department shall give reasonable notice before entering property unless an emergency prevents such notice. In conducting, providing for, or requiring remedial action, the department shall give preference to permanent solutions to the maximum extent practicable and shall provide for or require adequate monitoring to ensure the effectiveness of the remedial action;

(c) Indemnify contractors retained by the department for carrying out investigations and remedial actions, but not for any contractor's reckless or wilful misconduct;

(d) Carry out all state programs authorized under the federal cleanup law and the federal resource, conservation, and recovery act, 42 U.S.C. Sec. 6901 et seq., as amended;

(e) Classify substances as hazardous substances for purposes of RCW 70.105D.020(7) and classify substances and products as hazardous substances for purposes of RCW 82.21.020(1);

(f) Issue orders or enter into consent decrees or agreed orders that include, or issue written opinions under (i) of this subsection that may be conditioned upon, deed restrictions where necessary to protect human health and the environment from a release or threatened release of a hazardous substance from a facility. Prior to establishing a deed restriction under this subsection, the department shall notify and seek comment from a city or county department with land use planning authority for real property subject to a deed restriction;

(g) Enforce the application of permanent and effective institutional controls that are necessary for a remedial action to be protective of human health and the environment and the notification requirements established in RCW 70.105D.110, and impose penalties for violations of that section consistent with RCW 70.105D.050;

(h) Require holders to conduct remedial actions necessary to abate an imminent or substantial endangerment pursuant to RCW 70.105D.020(12)(b)(ii)(C);

(i) Provide informal advice and assistance to persons regarding the administrative and technical requirements of this chapter. This may include site-specific advice to persons who are conducting or otherwise interested in independent remedial actions. Any such advice or assistance shall be advisory only, and shall not be binding on the department. As a part of providing this advice and assistance for independent remedial actions, the department may prepare written opinions regarding whether the independent remedial actions or proposals for those actions meet the substantive requirements of this chapter or whether the department believes further remedial action is necessary at the facility. The department may collect, from persons requesting advice and assistance, the costs incurred by the department in providing such advice and assistance; however, the department shall, where appropriate, waive collection of costs in order to provide an appropriate level of technical assistance in support of public participation. The state, the department, and officers and employ-

ees of the state are immune from all liability, and no cause of action of any nature may arise from any act or omission in providing, or failing to provide, informal advice and assistance; and

(j) Take any other actions necessary to carry out the provisions of this chapter, including the power to adopt rules under chapter 34.05 RCW.

(2) The department shall immediately implement all provisions of this chapter to the maximum extent practicable, including investigative and remedial actions where appropriate. The department shall adopt, and thereafter enforce, rules under chapter 34.05 RCW to:

(a) Provide for public participation, including at least (i) public notice of the development of investigative plans or remedial plans for releases or threatened releases and (ii) concurrent public notice of all compliance orders, agreed orders, enforcement orders, or notices of violation;

(b) Establish a hazard ranking system for hazardous waste sites;

(c) Provide for requiring the reporting by an owner or operator of releases of hazardous substances to the environment that may be a threat to human health or the environment within ninety days of discovery, including such exemptions from reporting as the department deems appropriate, however this requirement shall not modify any existing requirements provided for under other laws;

(d) Establish reasonable deadlines not to exceed ninety days for initiating an investigation of a hazardous waste site after the department receives notice or otherwise receives information that the site may pose a threat to human health or the environment and other reasonable deadlines for remedying releases or threatened releases at the site;

(e) Publish and periodically update minimum cleanup standards for remedial actions at least as stringent as the cleanup standards under section 121 of the federal cleanup law, 42 U.S.C. Sec. 9621, and at least as stringent as all applicable state and federal laws, including health-based standards under state and federal law; and

(f) Apply industrial clean-up standards at industrial properties. Rules adopted under this subsection shall ensure that industrial properties cleaned up to industrial standards cannot be converted to nonindustrial uses without approval from the department. The department may require that a property cleaned up to industrial standards is cleaned up to a more stringent applicable standard as a condition of conversion to a nonindustrial use. Industrial clean-up standards may not be applied to industrial properties where hazardous substances remaining at the property after remedial action pose a threat to human health or the environment in adjacent nonindustrial areas.

(3) Before November 1st of each even-numbered year, the department shall develop, with public notice and hearing, and submit to the ways and means and appropriate standing environmental committees of the senate and house of representatives a ranked list of projects and expenditures recommended for appropriation from both the state and local toxics control accounts. The department shall also provide the legislature and the public each year with an accounting of the department's activities supported by appropriations from the state toxics control account, including a list of known hazardous waste sites and their hazard rankings, actions taken and

planned at each site, how the department is meeting its top two management priorities under RCW 70.105.150, and all funds expended under this chapter.

(4) The department shall establish a scientific advisory board to render advice to the department with respect to the hazard ranking system, cleanup standards, remedial actions, deadlines for remedial actions, monitoring, the classification of substances as hazardous substances for purposes of RCW 70.105D.020(7) and the classification of substances or products as hazardous substances for purposes of RCW 82.21.020(1). The board shall consist of five independent members to serve staggered three-year terms. No members may be employees of the department. Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) The department shall establish a program to identify potential hazardous waste sites and to encourage persons to provide information about hazardous waste sites. [2002 c 288 § 3; 2001 c 291 § 401; 1997 c 406 § 3; 1995 c 70 § 2. Prior: 1994 c 257 § 11; 1994 c 254 § 3; 1989 c 2 § 3 (Initiative Measure No. 97, approved November 8, 1988).]

Effective date—2002 c 288 §§ 2-4: See note following RCW 70.105D.110.

Severability—2002 c 288: See note following RCW 70.105D.010.

Part headings not law—Effective date—2001 c 291: See notes following RCW 43.20A.360.

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.040 Standard of liability—Settlement. (1)

Except as provided in subsection (3) of this section, the following persons are liable with respect to a facility:

- (a) The owner or operator of the facility;
- (b) Any person who owned or operated the facility at the time of disposal or release of the hazardous substances;
- (c) Any person who owned or possessed a hazardous substance and who by contract, agreement, or otherwise arranged for disposal or treatment of the hazardous substance at the facility, or arranged with a transporter for transport for disposal or treatment of the hazardous substances at the facility, or otherwise generated hazardous wastes disposed of or treated at the facility;
- (d) Any person (i) who accepts or accepted any hazardous substance for transport to a disposal, treatment, or other facility selected by such person from which there is a release or a threatened release for which remedial action is required, unless such facility, at the time of disposal or treatment, could legally receive such substance; or (ii) who accepts a hazardous substance for transport to such a facility and has reasonable grounds to believe that such facility is not operated in accordance with chapter 70.105 RCW; and
- (e) Any person who both sells a hazardous substance and is responsible for written instructions for its use if (i) the substance is used according to the instructions and (ii) the use constitutes a release for which remedial action is required at the facility.

(2) Each person who is liable under this section is strictly liable, jointly and severally, for all remedial action costs and for all natural resource damages resulting from the releases or threatened releases of hazardous substances. The attorney

general, at the request of the department, is empowered to recover all costs and damages from persons liable therefor.

(3) The following persons are not liable under this section:

(a) Any person who can establish that the release or threatened release of a hazardous substance for which the person would be otherwise responsible was caused solely by:

- (i) An act of God;
- (ii) An act of war; or
- (iii) An act or omission of a third party (including but not limited to a trespasser) other than (A) an employee or agent of the person asserting the defense, or (B) any person whose act or omission occurs in connection with a contractual relationship existing, directly or indirectly, with the person asserting this defense to liability. This defense only applies where the person asserting the defense has exercised the utmost care with respect to the hazardous substance, the foreseeable acts or omissions of the third party, and the foreseeable consequences of those acts or omissions;

(b) Any person who is an owner, past owner, or purchaser of a facility and who can establish by a preponderance of the evidence that at the time the facility was acquired by the person, the person had no knowledge or reason to know that any hazardous substance, the release or threatened release of which has resulted in or contributed to the need for the remedial action, was released or disposed of on, in, or at the facility. This subsection (b) is limited as follows:

(i) To establish that a person had no reason to know, the person must have undertaken, at the time of acquisition, all appropriate inquiry into the previous ownership and uses of the property, consistent with good commercial or customary practice in an effort to minimize liability. Any court interpreting this subsection (b) shall take into account any specialized knowledge or experience on the part of the person, the relationship of the purchase price to the value of the property if uncontaminated, commonly known or reasonably ascertainable information about the property, the obviousness of the presence or likely presence of contamination at the property, and the ability to detect such contamination by appropriate inspection;

(ii) The defense contained in this subsection (b) is not available to any person who had actual knowledge of the release or threatened release of a hazardous substance when the person owned the real property and who subsequently transferred ownership of the property without first disclosing such knowledge to the transferee;

(iii) The defense contained in this subsection (b) is not available to any person who, by any act or omission, caused or contributed to the release or threatened release of a hazardous substance at the facility;

(c) Any natural person who uses a hazardous substance lawfully and without negligence for any personal or domestic purpose in or near a dwelling or accessory structure when that person is: (i) A resident of the dwelling; (ii) a person who, without compensation, assists the resident in the use of the substance; or (iii) a person who is employed by the resident, but who is not an independent contractor;

(d) Any person who, for the purpose of growing food crops, applies pesticides or fertilizers without negligence and in accordance with all applicable laws and regulations.

(4) There may be no settlement by the state with any person potentially liable under this chapter except in accordance with this section.

(a) The attorney general may agree to a settlement with any potentially liable person only if the department finds, after public notice and any required hearing, that the proposed settlement would lead to a more expeditious cleanup of hazardous substances in compliance with cleanup standards under RCW 70.105D.030(2)(e) and with any remedial orders issued by the department. Whenever practicable and in the public interest, the attorney general may expedite such a settlement with persons whose contribution is insignificant in amount and toxicity. A hearing shall be required only if at least ten persons request one or if the department determines a hearing is necessary.

(b) A settlement agreement under this section shall be entered as a consent decree issued by a court of competent jurisdiction.

(c) A settlement agreement may contain a covenant not to sue only of a scope commensurate with the settlement agreement in favor of any person with whom the attorney general has settled under this section. Any covenant not to sue shall contain a reopener clause which requires the court to amend the covenant not to sue if factors not known at the time of entry of the settlement agreement are discovered and present a previously unknown threat to human health or the environment.

(d) A party who has resolved its liability to the state under this section shall not be liable for claims for contribution regarding matters addressed in the settlement. The settlement does not discharge any of the other liable parties but it reduces the total potential liability of the others to the state by the amount of the settlement.

(e) If the state has entered into a consent decree with an owner or operator under this section, the state shall not enforce this chapter against any owner or operator who is a successor in interest to the settling party unless under the terms of the consent decree the state could enforce against the settling party, if:

(i) The successor owner or operator is liable with respect to the facility solely due to that person's ownership interest or operator status acquired as a successor in interest to the owner or operator with whom the state has entered into a consent decree; and

(ii) The stay of enforcement under this subsection does not apply if the consent decree was based on circumstances unique to the settling party that do not exist with regard to the successor in interest, such as financial hardship. For consent decrees entered into before July 27, 1997, at the request of a settling party or a potential successor owner or operator, the attorney general shall issue a written opinion on whether a consent decree contains such unique circumstances. For all other consent decrees, such unique circumstances shall be specified in the consent decree.

(f) Any person who is not subject to enforcement by the state under (e) of this subsection is not liable for claims for contribution regarding matters addressed in the settlement.

(5)(a) In addition to the settlement authority provided under subsection (4) of this section, the attorney general may agree to a settlement with a person not currently liable for

remedial action at a facility who proposes to purchase, redevelop, or reuse the facility, provided that:

(i) The settlement will yield substantial new resources to facilitate cleanup;

(ii) The settlement will expedite remedial action consistent with the rules adopted under this chapter; and

(iii) Based on available information, the department determines that the redevelopment or reuse of the facility is not likely to contribute to the existing release or threatened release, interfere with remedial actions that may be needed at the site, or increase health risks to persons at or in the vicinity of the site.

(b) The legislature recognizes that the state does not have adequate resources to participate in all property transactions involving contaminated property. The primary purpose of this subsection (5) is to promote the cleanup and reuse of vacant or abandoned commercial or industrial contaminated property. The attorney general and the department may give priority to settlements that will provide a substantial public benefit, including, but not limited to the reuse of a vacant or abandoned manufacturing or industrial facility, or the development of a facility by a governmental entity to address an important public purpose.

(6) Nothing in this chapter affects or modifies in any way any person's right to seek or obtain relief under other statutes or under common law, including but not limited to damages for injury or loss resulting from a release or threatened release of a hazardous substance. No settlement by the department or remedial action ordered by a court or the department affects any person's right to obtain a remedy under common law or other statutes. [1997 c 406 § 4; 1994 c 254 § 4; 1989 c 2 § 4 (Initiative Measure No. 97, approved November 8, 1988).]

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

70.105D.050 Enforcement. (1) With respect to any release, or threatened release, for which the department does not conduct or contract for conducting remedial action and for which the department believes remedial action is in the public interest, the director shall issue orders or agreed orders requiring potentially liable persons to provide the remedial action. Any liable person who refuses, without sufficient cause, to comply with an order or agreed order of the director is liable in an action brought by the attorney general for:

(a) Up to three times the amount of any costs incurred by the state as a result of the party's refusal to comply; and

(b) A civil penalty of up to twenty-five thousand dollars for each day the party refuses to comply.

The treble damages and civil penalty under this subsection apply to all recovery actions filed on or after March 1, 1989.

(2) Any person who incurs costs complying with an order issued under subsection (1) of this section may petition the department for reimbursement of those costs. If the department refuses to grant reimbursement, the person may within thirty days thereafter file suit and recover costs by proving that he or she was not a liable person under RCW 70.105D.040 and that the costs incurred were reasonable.

(3) The attorney general shall seek, by filing an action if necessary, to recover the amounts spent by the department for

investigative and remedial actions and orders, and agreed orders, including amounts spent prior to March 1, 1989.

(4) The attorney general may bring an action to secure such relief as is necessary to protect human health and the environment under this chapter.

(5)(a) Any person may commence a civil action to compel the department to perform any nondiscretionary duty under this chapter. At least thirty days before commencing the action, the person must give notice of intent to sue, unless a substantial endangerment exists. The court may award attorneys' fees and other costs to the prevailing party in the action.

(b) Civil actions under this section and RCW 70.105D.060 may be brought in the superior court of Thurston county or of the county in which the release or threatened release exists.

(6) Any person who fails to provide notification of releases consistent with RCW 70.105D.110 or who submits false information is liable in an action brought by the attorney general for a civil penalty of up to five thousand dollars per day for each day the party refuses to comply. [2002 c 288 § 4; 1994 c 257 § 12; 1989 c 2 § 5 (Initiative Measure No. 97, approved November 8, 1988).]

Effective date—2002 c 288 §§ 2-4: See note following RCW 70.105D.110.

Severability—2002 c 288: See note following RCW 70.105D.010.

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.060 Timing of review. The department's investigative and remedial decisions under RCW 70.105D.030 and 70.105D.050 and its decisions regarding liable persons under RCW *70.105D.020(8) and 70.105D.040 shall be reviewable exclusively in superior court and only at the following times: (1) In a cost recovery suit under RCW 70.105D.050(3); (2) in a suit by the department to enforce an order or an agreed order, or seek a civil penalty under this chapter; (3) in a suit for reimbursement under RCW 70.105D.050(2); (4) in a suit by the department to compel investigative or remedial action; and (5) in a citizen's suit under RCW 70.105D.050(5). The court shall uphold the department's actions unless they were arbitrary and capricious. [1994 c 257 § 13; 1989 c 2 § 6 (Initiative Measure No. 97, approved November 8, 1988).]

***Reviser's note:** RCW 70.105D.020 was amended by 1994 c 254 § 2, changing subsection (8) to subsection (9); and was subsequently amended by 1995 c 70 § 1, changing subsection (9) to subsection (15); and was subsequently amended by 1997 c 406 § 2, changing subsection (15) to subsection (16).

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.070 Toxics control accounts. (1) The state toxics control account and the local toxics control account are hereby created in the state treasury.

(2) The following moneys shall be deposited into the state toxics control account: (a) Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-three one-hundredths of one percent; (b) the costs of remedial actions recovered under this chapter or chapter 70.105A RCW; (c) penalties collected or recovered under this chapter; and (d) any other money appropriated or transferred to the

account by the legislature. Moneys in the account may be used only to carry out the purposes of this chapter, including but not limited to the following activities:

(i) The state's responsibility for hazardous waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.105 RCW;

(ii) The state's responsibility for solid waste planning, management, regulation, enforcement, technical assistance, and public education required under chapter 70.95 RCW;

(iii) The hazardous waste cleanup program required under this chapter;

(iv) State matching funds required under the federal cleanup law;

(v) Financial assistance for local programs in accordance with chapters 70.95, 70.95C, 70.95I, and 70.105 RCW;

(vi) State government programs for the safe reduction, recycling, or disposal of hazardous wastes from households, small businesses, and agriculture;

(vii) Hazardous materials emergency response training;

(viii) Water and environmental health protection and monitoring programs;

(ix) Programs authorized under chapter 70.146 RCW;

(x) A public participation program, including regional citizen advisory committees;

(xi) Public funding to assist potentially liable persons to pay for the costs of remedial action in compliance with cleanup standards under RCW 70.105D.030(2)(e) but only when the amount and terms of such funding are established under a settlement agreement under RCW 70.105D.040(4) and when the director has found that the funding will achieve both (A) a substantially more expeditious or enhanced cleanup than would otherwise occur, and (B) the prevention or mitigation of unfair economic hardship; and

(xii) Development and demonstration of alternative management technologies designed to carry out the top two hazardous waste management priorities of RCW 70.105.150.

(3) The following moneys shall be deposited into the local toxics control account: Those revenues which are raised by the tax imposed under RCW 82.21.030 and which are attributable to that portion of the rate equal to thirty-seven one-hundredths of one percent.

(a) Moneys deposited in the local toxics control account shall be used by the department for grants or loans to local governments for the following purposes in descending order of priority: (i) Remedial actions; (ii) hazardous waste plans and programs under chapter 70.105 RCW; (iii) solid waste plans and programs under chapters 70.95, 70.95C, 70.95I, and 70.105 RCW; (iv) funds for a program to assist in the assessment and cleanup of sites of methamphetamine production, but not to be used for the initial containment of such sites, consistent with the responsibilities and intent of RCW 69.50.511; and (v) cleanup and disposal of hazardous substances from abandoned or derelict vessels that pose a threat to human health or the environment. For purposes of this subsection (3)(a)(v), "abandoned or derelict vessels" means vessels that have little or no value and either have no identified owner or have an identified owner lacking financial resources to clean up and dispose of the vessel. Funds for plans and programs shall be allocated consistent with the priorities and matching requirements established in chapters

70.105, 70.95C, 70.95I, and 70.95 RCW. During the 1999-2001 fiscal biennium, moneys in the account may also be used for the following activities: Conducting a study of whether dioxins occur in fertilizers, soil amendments, and soils; reviewing applications for registration of fertilizers; and conducting a study of plant uptake of metals. During the 2003-05 fiscal biennium, the legislature may transfer from the local toxics control account to the state toxics control account such amounts as specified in the omnibus operating budget bill for methamphetamine lab cleanup.

(b) Funds may also be appropriated to the department of health to implement programs to reduce testing requirements under the federal safe drinking water act for public water systems. The department of health shall reimburse the account from fees assessed under RCW 70.119A.115 by June 30, 1995.

(4) Except for unanticipated receipts under RCW 43.79.260 through 43.79.282, moneys in the state and local toxics control accounts may be spent only after appropriation by statute.

(5) One percent of the moneys deposited into the state and local toxics control accounts shall be allocated only for public participation grants to persons who may be adversely affected by a release or threatened release of a hazardous substance and to not-for-profit public interest organizations. The primary purpose of these grants is to facilitate the participation by persons and organizations in the investigation and remedying of releases or threatened releases of hazardous substances and to implement the state's solid and hazardous waste management priorities. However, during the 1999-2001 fiscal biennium, funding may not be granted to entities engaged in lobbying activities, and applicants may not be awarded grants if their cumulative grant awards under this section exceed two hundred thousand dollars. No grant may exceed sixty thousand dollars. Grants may be renewed annually. Moneys appropriated for public participation from either account which are not expended at the close of any biennium shall revert to the state toxics control account.

(6) No moneys deposited into either the state or local toxics control account may be used for solid waste incinerator feasibility studies, construction, maintenance, or operation.

(7) The department shall adopt rules for grant or loan issuance and performance. [2003 1st sp.s. c 25 § 933; 2001 c 27 § 2; 2000 2nd sp.s. c 1 § 912; 1999 c 309 § 923. Prior: 1998 c 346 § 905; 1998 c 81 § 2; 1997 c 406 § 5; 1994 c 252 § 5; 1991 sp.s. c 13 § 69; 1989 c 2 § 7 (Initiative Measure No. 97, approved November 8, 1988).]

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

Finding—2001 c 27: "The legislature finds that there is an increasing number of derelict vessels that have been abandoned in the waters along the shorelines of the state. These vessels pose hazards to navigation and threaten the environment with the potential release of hazardous materials. There is no current federal program that comprehensively addresses this problem, and the legislature recognizes that the state must assist in providing a solution to this increasing hazard." [2001 c 27 § 1.]

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

(2004 Ed.)

Construction—Severability—Effective date—1998 c 346: See notes following RCW 50.24.014.

Local governments—Increased service—1998 c 81: "If this act mandates an increased level of service by local governments, the local government may, under RCW 43.135.060 and chapter 4.92 RCW, submit claims for reimbursement by the legislature. The claims shall be subject to verification by the office of financial management." [1998 c 81 § 3.]

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

Finding—Effective date—1994 c 252: See notes following RCW 70.119A.020.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

70.105D.080 Private right of action—Remedial action costs. Except as provided in RCW 70.105D.040(4) (d) and (f), a person may bring a private right of action, including a claim for contribution or for declaratory relief, against any other person liable under RCW 70.105D.040 for the recovery of remedial action costs. In the action, natural resource damages paid to the state under this chapter may also be recovered. Recovery shall be based on such equitable factors as the court determines are appropriate. Remedial action costs shall include reasonable attorneys' fees and expenses. Recovery of remedial action costs shall be limited to those remedial actions that, when evaluated as a whole, are the substantial equivalent of a department-conducted or department-supervised remedial action. Substantial equivalence shall be determined by the court with reference to the rules adopted by the department under this chapter. An action under this section may be brought after remedial action costs are incurred but must be brought within three years from the date remedial action confirms cleanup standards are met or within one year of May 12, 1993, whichever is later. The prevailing party in such an action shall recover its reasonable attorneys' fees and costs. This section applies to all causes of action regardless of when the cause of action may have arisen. To the extent a cause of action has arisen prior to May 12, 1993, this section applies retroactively, but in all other respects it applies prospectively. [1997 c 406 § 6; 1993 c 326 § 1.]

Findings—Intent—1997 c 406: See note following RCW 70.105D.020.

Effective date—1993 c 326: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1993]." [1993 c 326 § 2.]

Severability—1993 c 326: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 326 § 3.]

70.105D.090 Remedial actions—Exemption from procedural requirements. (1) A person conducting a remedial action at a facility under a consent decree, order, or agreed order, and the department when it conducts a remedial action, are exempt from the procedural requirements of chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW, and the procedural requirements of any laws requiring or authorizing local government permits or approvals for the remedial action. The department shall ensure compliance with the substantive provisions of chapters 70.94, 70.95, 70.105, 77.55, 90.48, and 90.58 RCW, and the substantive provisions

[Title 70 RCW—page 309]

of any laws requiring or authorizing local government permits of approvals. The department shall establish procedures for ensuring that such remedial actions comply with the substantive requirements adopted pursuant to such laws, and shall consult with the state agencies and local governments charged with implementing these laws. The procedures shall provide an opportunity for comment by the public and by the state agencies and local governments that would otherwise implement the laws referenced in this section. Nothing in this section is intended to prohibit implementing agencies from charging a fee to the person conducting the remedial action to defray the costs of services rendered relating to the substantive requirements for the remedial action.

(2) An exemption in this section or in RCW 70.94.335, 70.95.270, 70.105.116, 77.55.030, 90.48.039, and 90.58.355 shall not apply if the department determines that the exemption would result in loss of approval from a federal agency necessary for the state to administer any federal law, including the federal resource conservation and recovery act, the federal clean water act, the federal clean air act, and the federal coastal zone management act. Such a determination by the department shall not affect the applicability of the exemptions to other statutes specified in this section. [2003 c 39 § 30; 1994 c 257 § 14.]

Severability—1994 c 257: See note following RCW 36.70A.270.

70.105D.100 Grants to local governments—Statement of environmental benefits—Development of outcome-focused performance measures. In providing grants to local governments, the department shall require grant recipients to incorporate the environmental benefits of the project into their grant applications, and the department shall utilize the statement of environmental benefit[s] in its prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section. [2001 c 227 § 5.]

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

70.105D.110 Releases of hazardous substances—Notice—Exemptions. (1) Except as provided in subsection (5) of this section, any owner or operator of a facility that is actively transitioning from operating under a federal permit for treatment, storage, or disposal of hazardous waste issued under 42 U.S.C. Sec. 6925 to operating under the provisions of this chapter, who has information that a hazardous substance has been released to the environment at the owner or operator's facility that may be a threat to human health or the environment, shall issue a notice to the department within ninety days. The notice shall include a description of any remedial actions planned, completed, or underway.

(2) The notice must be posted in a visible, publicly accessible location on the facility, to remain in place until all remedial actions except confirmational monitoring are complete.

(3) After receiving the notice from the facility, the department must review the notice and mail a summary of its contents, along with any additional information deemed appropriate by the department, to:

(a) Each residence and landowner of a residence whose property boundary is within three hundred feet of the boundary of the property where the release occurred or if the release occurred from a pipeline or other facility that does not have a property boundary, within three hundred feet of the actual release;

(b) Each business and landowner of a business whose property boundary is within three hundred feet of the boundary of the property where the release occurred;

(c) Each residence, landowner of a residence, and business with a property boundary within the area where hazardous substances have come to be located as a result of the release;

(d) Neighborhood associations and community organizations representing an area within one mile of the facility and recognized by the city or county with jurisdiction within this area;

(e) The city, county, and local health district with jurisdiction within the areas described in (a), (b), and (c) of this subsection; and

(f) The department of health.

(4) A notice produced by a facility shall provide the following information:

(a) The common name of any hazardous substances released and, if available, the chemical abstract service registry number of these substances;

(b) The address of the facility where the release occurred;

(c) The date the release was discovered;

(d) The cause and date of the release, if known;

(e) The remedial actions being taken or planned to address the release;

(f) The potential health and environmental effects of the hazardous substances released; and

(g) The name, address, and telephone number of a contact person at the facility where the release occurred.

(5) The following releases are exempt from the notification requirements in this section:

(a) Application of pesticides and fertilizers for their intended purposes and according to label instructions;

(b) The lawful and nonnegligent use of hazardous household substances by a natural person for personal or domestic purposes;

(c) The discharge of hazardous substances in compliance with permits issued under chapter 70.94, 90.48, or 90.56 RCW;

(d) De minimis amounts of any hazardous substance leaked or discharged onto the ground;

(e) The discharge of hazardous substances to a permitted waste water treatment facility or from a permitted waste water collection system or treatment facility as allowed by a facility's discharge permit;

(f) Any releases originating from a single-family or multifamily residence, including but not limited to the discharge of oil from a residential home heating oil tank with the capacity of five hundred gallons or less;

(g) Any spill on a public road, street, or highway or to surface waters of the state that has previously been reported to the United States coast guard and the state division of emergency management under chapter 90.56 RCW;

(h) Any release of hazardous substances to the air;

(i) Any release that occurs on agricultural land, including land used to grow trees for the commercial production of wood or wood fiber, that is at least five acres in size, when the effects of the release do not come within three hundred feet of any property boundary. For the purposes of this subsection, agricultural land includes incidental uses that are compatible with agricultural or silvicultural purposes, including, but not limited to, land used for the housing of the owner, operator, or employees, structures used for the storage or repair of equipment, machinery, and chemicals, and any paths or roads on the land; and

(j) Releases that, before January 1, 2003, have been previously reported to the department, or remediated in compliance with a settlement agreement under RCW 70.105D.040(4) or enforcement order or agreed order issued under this chapter or have been the subject of an opinion from the department under RCW 70.105D.030(1)(i) that no further remedial action is required.

An exemption from the notification requirements of this section does not exempt the owner or operator of a facility from any other notification or reporting requirements, or imply a release from liability under this chapter.

(6) If a significant segment of the community to be notified speaks a language other than English, an appropriate translation of the notice must also be posted and mailed to the department in accordance with the requirements of this section.

(7) The facility where the release occurred is responsible for reimbursing the department within thirty days for the actual costs associated with the production and mailing of the notices under this section. [2002 c 288 § 2.]

Effective date—2002 c 288 §§ 2-4: "Sections 2 through 4 of this act take effect January 1, 2003." [2002 c 288 § 6.]

Severability—2002 c 288: See note following RCW 70.105D.010.

70.105D.900 Short title—1989 c 2. This act shall be known as "the model toxics control act." [1989 c 2 § 22 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.905 Captions—1989 c 2. As used in this act, captions constitute no part of the law. [1989 c 2 § 21 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.910 Construction—1989 c 2. The provisions of this act are to be liberally construed to effectuate the policies and purposes of this act. In the event of conflict between the provisions of this act and any other act, the provisions of this act shall govern. [1989 c 2 § 19 (Initiative Measure No. 97, approved November 8, 1988).]

70.105D.915 Existing agreements—1989 c 2. The consent orders and decrees in effect on March 1, 1989, shall remain valid and binding. [1989 c 2 § 20 (Initiative Measure No. 97, approved November 8, 1988).]

(2004 Ed.)

70.105D.920 Effective date—1989 c 2. (1) Sections 1 through 24 of this act shall take effect March 1, 1989, except that the director of ecology and the director of revenue may take whatever actions may be necessary to ensure that sections 1 through 24 of this act are implemented on their effective date.

*(2) This section does not apply and shall have no force or effect if (a) this act is passed by the legislature in the 1988 regular session or (b) no bill is enacted by the legislature involving hazardous substance cleanup (along with any other subject matter) between August 15, 1987, and January 1, 1988. [1989 c 2 § 26 (Initiative Measure No. 97, approved November 8, 1988).]

***Reviser's note:** Neither condition contained in subsection (2) was met.

70.105D.921 Severability—1989 c 2. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 2 § 18 (Initiative Measure No. 97, approved November 8, 1988).]

Chapter 70.106 RCW

POISON PREVENTION—LABELING AND PACKAGING

Sections

| | |
|------------|--|
| 70.106.010 | Purpose. |
| 70.106.020 | Short title. |
| 70.106.030 | Definitions—Construction. |
| 70.106.040 | "Director" defined. |
| 70.106.050 | "Sale" defined. |
| 70.106.060 | "Household substance" defined. |
| 70.106.070 | "Package" defined. |
| 70.106.080 | "Special packaging" defined. |
| 70.106.090 | "Labeling" defined. |
| 70.106.100 | Standards for packaging. |
| 70.106.110 | Exceptions from packaging standards. |
| 70.106.120 | Adoption of rules and regulations under federal poison prevention packaging act. |
| 70.106.140 | Penalties. |
| 70.106.150 | Authority to adopt regulations—Delegation of authority to board of pharmacy. |
| 70.106.900 | Severability—1974 ex.s. c 49. |
| 70.106.905 | Saving—1974 ex.s. c 49. |
| 70.106.910 | Chapter cumulative and nonexclusive. |

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

70.106.010 Purpose. The purpose of this chapter is to provide for special packaging to protect children from personal injury, serious illness or death resulting from handling, using or ingesting household substances, and to provide penalties. [1974 ex.s. c 49 § 1.]

70.106.020 Short title. This chapter shall be cited as the Washington Poison Prevention Act of 1974. [1974 ex.s. c 49 § 2.]

70.106.030 Definitions—Construction. The definitions in RCW 70.106.040 through 70.106.090 unless the context otherwise requires shall govern the construction of this chapter. [1974 ex.s. c 49 § 3.]

70.106.040 "Director" defined. "Director" means the director of the department of agriculture of the state of Washington, or his duly authorized representative. [1974 ex.s. c 49 § 4.]

70.106.050 "Sale" defined. "Sale" means to sell, offer for sale, hold for sale, handle or use as an inducement in the promotion of a household substance or the sale of another article or product. [1974 ex.s. c 49 § 5.]

70.106.060 "Household substance" defined. "Household substance" means any substance which is customarily produced or distributed for sale for consumption or use, or customarily stored, by individuals in or about the household and which is:

(1) A "hazardous substance", which means (a) any substance or mixture of substances or product which (i) is toxic, (ii) is corrosive, (iii) is an irritant, (iv) is a strong sensitizer, (v) is flammable or combustible, or (vi) generates pressure through decomposition, heat, or other means, if such substance or mixture of substances may cause substantial personal injury or substantial illness during or as a proximate result of any customary or reasonably foreseeable handling or use, including reasonably foreseeable ingestion by children; (b) any substances which the director by regulation finds to meet the requirements of subsection (1)(a) of this section; (c) any radioactive substance, if, with respect to such substance as used in a particular class of article or as packaged, the director determines by regulation that the substance is sufficiently hazardous to require labeling in accordance with this chapter in order to protect the public health, safety or welfare; and (d) any toy or other article intended for use by children which the director by regulation determines presents an electrical, mechanical or thermal hazard.

(2) A pesticide as defined in the Washington Pesticide Control Act, chapter 15.58 RCW as now or hereafter amended;

(3) A food, drug, or cosmetic as those terms are defined in the Uniform Washington Food, Drug and Cosmetic Act, chapter 69.04 RCW as now or hereafter amended; or

(4) A substance intended for use as fuel when stored in portable containers and used in the heating, cooking, or refrigeration system of a house; or

(5) Any other substance which the director may declare to be a household substance subsequent to a hearing as provided for under the provisions of chapter 34.05 RCW, Administrative Procedure Act, for the adoption of rules. [1974 ex.s. c 49 § 6.]

70.106.070 "Package" defined. "Package" means the immediate container or wrapping in which any household substance is contained for consumption, use, or storage by individuals in or about the household, and, for purposes of RCW 70.106.110(1)(b), also means any outer container or wrapping used in the retail display of any such substance to consumers. Such term does not include:

(1) Any shipping container or wrapping used solely for the transportation of any household substance in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof; or

(2) Any shipping container or outer wrapping used by retailers to ship or deliver any household substance to consumers unless it is the only such container or wrapping. [1974 ex.s. c 49 § 7.]

70.106.080 "Special packaging" defined. "Special packaging" means packaging that is designed or constructed to be significantly difficult for children under five years of age to open or obtain a toxic or harmful amount of the substance contained therein within a reasonable time and not difficult for normal adults to use properly, but does not mean packaging which all such children cannot open or obtain a toxic or harmful amount within a reasonable time. [1974 ex.s. c 49 § 8.]

70.106.090 "Labeling" defined. "Labeling" means all labels and other written, printed, or graphic matter upon any household substance or its package, or accompanying such substance. [1974 ex.s. c 49 § 9.]

70.106.100 Standards for packaging. (1) The director may establish in accordance with the provisions of this chapter, by regulation, standards for the special packaging of any household substance if he finds that:

(a) The degree or nature of the hazard to children in the availability of such substance, by reason of its packaging is such that special packaging is required to protect children from serious personal injury or serious illness resulting from handling, using or ingesting such substance; and

(b) The special packaging to be required by such standard is technically feasible, practicable, and appropriate for such substance.

(2) In establishing a standard under this section, the director shall consider:

(a) The reasonableness of such standard;

(b) Available scientific, medical, and engineering data concerning special packaging and concerning childhood accidental ingestions, illness, and injury caused by household substances;

(c) The manufacturing practices of industries affected by this chapter; and

(d) The nature and use of the household substance.

(3) In carrying out the provisions of this chapter, the director shall publish his findings, his reasons therefor, and citation of the sections of statutes which authorize his action.

(4) Nothing in this chapter authorizes the director to prescribe specific packaging designs, product content, package quantity, or, with the exception of authority granted in RCW 70.106.110(1)(b), labeling. In the case of a household substance for which special packaging is required pursuant to a regulation under this section, the director may in such regulation prohibit the packaging of such substance in packages which he determines are unnecessarily attractive to children.

(5) The director shall cause the regulations promulgated under this chapter to conform with the requirements or exemptions of the Federal Hazardous Substances Act and with the regulations or interpretations promulgated pursuant thereto. [1974 ex.s. c 49 § 10.]

70.106.110 Exceptions from packaging standards.

(1) For the purpose of making any household substance which is subject to a standard established under RCW 70.106.100 readily available to elderly or handicapped persons unable to use such substance when packaged in compliance with such standard, the manufacturer or packer, as the case may be, may package any household substance, subject to such a standard, in packaging of a single size which does not comply with such standard if:

(a) The manufacturer or packer also supplies such substance in packages which comply with such standard; and

(b) The packages of such substance which do not meet such standard bear conspicuous labeling stating: "This package for households without young children"; except that the director may by regulation prescribe a substitute statement to the same effect for packaging too small to accommodate such labeling.

(2) In the case of a household substance which is subject to such a standard and which is dispensed pursuant to an order of a physician, dentist, or other licensed medical practitioner authorized to prescribe, such substance may be dispensed in noncomplying packages only when directed in such order or when requested by the purchaser.

(3) In the case of a household substance subject to such a standard which is packaged under subsection (1) of this section in a noncomplying package, if the director determines that such substance is not also being supplied by a manufacturer or packer in popular size packages which comply with such standard, he may, after giving the manufacturer or packer an opportunity to comply with the purposes of this chapter, by order require such substance to be packaged by such manufacturer or packer exclusively in special packaging complying with such standard if he finds, after opportunity for hearing, that such exclusive use of special packaging is necessary to accomplish the purposes of this chapter. [1974 ex.s. c 49 § 11.]

70.106.120 Adoption of rules and regulations under federal poison prevention packaging act. One of the purposes of this chapter is to promote uniformity with the Poison Prevention Packaging Act of 1970 and rules and regulations adopted thereunder. In accordance with such declared purpose, all of the special packaging rules and regulations adopted under the Poison Prevention Packaging Act of 1970 (84 Stat. 1670; 7 U.S.C. Sec. 135; 15 U.S.C. Sec. 1261, 1471-1476; 21 U.S.C. Sec. 343, 352, 353, 362) on July 24, 1974, are hereby adopted as rules and regulations applicable to this chapter. In addition, any rule or regulation adopted hereafter under said Federal Poison Prevention Act of 1970 concerning special packaging and published in the federal register shall be deemed to have been adopted under the provisions of this chapter. The director may, however, within thirty days of the publication of the adoption of any such rule or regulation under the Federal Poison Prevention Packaging Act of 1970, give public notice that a hearing will be held to determine if such regulations shall not be applicable under the provisions of this chapter. Such hearing shall be conducted in accord with the provisions of chapter 34.05 RCW, Administrative Procedure Act, as now enacted or hereafter amended. [1974 ex.s. c 49 § 12.]

(2004 Ed.)

70.106.140 Penalties. (1) Except as provided in subsection (2) of this section, any person violating the provisions of this chapter or rules adopted under this chapter is guilty of a misdemeanor.

(2) A second or subsequent violation of the provisions of this chapter or rules adopted under this chapter is a gross misdemeanor. Any offense committed more than five years after a previous conviction shall be considered a first offense. [2003 c 53 § 358; 1974 ex.s. c 49 § 16.]

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

70.106.150 Authority to adopt regulations—Delegation of authority to board of pharmacy. The authority to promulgate regulations for the efficient enforcement of this chapter is hereby vested in the director. However, the director shall designate the Washington state board of pharmacy to carry out all the provisions of this chapter pertaining to drugs and cosmetics, with authority to promulgate regulations for the efficient enforcement thereof. [1987 c 236 § 1.]

70.106.900 Severability—1974 ex.s. c 49. If any provision of this 1974 act is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the act and the applicability thereof to other persons and circumstances shall not be affected thereby. [1974 ex.s. c 49 § 14.]

70.106.905 Saving—1974 ex.s. c 49. The enactment of this 1974 act shall not have the effect of terminating, or in any way modifying any liability, civil or criminal, which shall already be in existence on July 24, 1974. [1974 ex.s. c 49 § 15.]

70.106.910 Chapter cumulative and nonexclusive. The provisions of this chapter shall be cumulative and nonexclusive and shall not affect any other remedy. [1974 ex.s. c 49 § 17.]

Chapter 70.107 RCW NOISE CONTROL

Sections

| | |
|------------|---|
| 70.107.010 | Purpose. |
| 70.107.020 | Definitions. |
| 70.107.030 | Powers and duties of department. |
| 70.107.040 | Technical advisory committee. |
| 70.107.050 | Civil penalties. |
| 70.107.060 | Other rights, remedies, powers, duties and functions—Local regulation—Approval—Procedure. |
| 70.107.070 | Rules relating to motor vehicles—Violations—Penalty. |
| 70.107.080 | Exemptions. |
| 70.107.900 | Construction—Severability—1974 ex.s. c 183. |
| 70.107.910 | Short title. |

70.107.010 Purpose. The legislature finds that inadequately controlled noise adversely affects the health, safety and welfare of the people, the value of property, and the quality of the environment. Antinoise measures of the past have not adequately protected against the invasion of these interests by noise. There is a need, therefore, for an expansion of efforts statewide directed toward the abatement and control of noise, considering the social and economic impact upon

the community and the state. The purpose of this chapter is to provide authority for such an expansion of efforts, supplementing existing programs in the field. [1974 ex.s. c 183 § 1.]

70.107.020 Definitions. As used in this chapter, unless the context clearly indicates otherwise:

- (1) "Department" means the department of ecology.
- (2) "Director" means director of the department of ecology.
- (3) "Local government" means county or city government or any combination of the two.
- (4) "Noise" means the intensity, duration and character of sounds from any and all sources.
- (5) "Person" means any individual, corporation, partnership, association, governmental body, state, or other entity whatsoever. [1974 ex.s. c 183 § 2.]

70.107.030 Powers and duties of department. The department is empowered as follows:

(1) The department, after consultation with state agencies expressing an interest therein, shall adopt, by rule, maximum noise levels permissible in identified environments in order to protect against adverse affects of noise on the health, safety and welfare of the people, the value of property, and the quality of environment: PROVIDED, That in so doing the department shall take also into account the economic and practical benefits to be derived from the use of various products in each such environment, whether the source of the noise or the use of such products in each environment is permanent or temporary in nature, and the state of technology relative to the control of noise generated by all such sources of the noise or the products.

(2) At any time after the adoption of maximum noise levels under subsection (1) of this section the department shall, in consultation with state agencies and local governments expressing an interest therein, adopt rules, consistent with the Federal Noise Control Act of 1972 (86 Stat. 1234; 42 U.S.C. Sec. 4901-4918 and 49 U.S.C. Sec. 1431), for noise abatement and control in the state designed to achieve compliance with the noise level adopted in subsection (1) of this section, including reasonable implementation schedules where appropriate, to insure that the maximum noise levels are not exceeded and that application of the best practicable noise control technology and practice is provided. These rules may include, but shall not be limited to:

(a) Performance standards setting allowable noise limits for the operation of products which produce noise;

(b) Use standards regulating, as to time and place, the operation of individual products which produce noise above specified levels considering frequency spectrum and duration: PROVIDED, The rules shall provide for temporarily exceeding those standards for stated purposes; and

(c) Public information requirements dealing with disclosure of levels and characteristics of noise produced by products.

(3) The department may, as desirable in the performance of its duties under this chapter, conduct surveys, studies and public education programs, and enter into contracts.

(4) The department is authorized to apply for and accept moneys from the federal government and other sources to assist in the implementation of this chapter.

(5) The legislature recognizes that the operation of motor vehicles on public highways as defined in RCW 46.09.020 contributes significantly to environmental noise levels and directs the department, in exercising the rule-making authority under the provisions of this section, to give first priority to the adoption of motor vehicle noise performance standards.

(6) Noise levels and rules adopted by the department pursuant to this chapter shall not be effective prior to March 31, 1975. [1974 ex.s. c 183 § 3.]

70.107.040 Technical advisory committee. The director shall name a technical advisory committee to assist the department in the implementation of this chapter. Committee members shall be entitled to reimbursement for travel expenses as provided in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 164; 1974 ex.s. c 183 § 4.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

70.107.050 Civil penalties. (1) Any person who violates any rule adopted by the department under this chapter shall be subject to a civil penalty not to exceed one hundred dollars imposed by local government pursuant to this section. An action under this section shall not preclude enforcement of any provisions of the local government noise ordinance.

Penalties shall become due and payable thirty days from the date of receipt of a notice of penalty unless within such time said notice is appealed in accordance with the administrative procedures of the local government, or if it has no such administrative appeal, to the pollution control hearings board pursuant to the provisions of chapter 43.21B RCW and procedural rules adopted thereunder. In cases in which appeals are timely filed, penalties sustained by the local administrative agency or the pollution control hearings board shall become due and payable on the issuance of said agency or board's final order in the appeal.

(2) Whenever penalties incurred pursuant to this section have become due and payable but remain unpaid, the attorney for the local government may bring an action in the superior court of the county in which the violation occurred for recovery of penalties incurred. In all such actions the procedures and rules of evidence shall be the same as in any other civil action. [1987 c 103 § 2; 1974 ex.s. c 183 § 5.]

70.107.060 Other rights, remedies, powers, duties and functions—Local regulation—Approval—Procedure. (1) Nothing in this chapter shall be construed to deny, abridge or alter alternative rights of action or remedies in equity or under common law or statutory law, criminal or civil.

(2) Nothing in this chapter shall deny, abridge or alter any powers, duties and functions relating to noise abatement and control now or hereafter vested in any state agency, nor shall this chapter be construed as granting jurisdiction over the industrial safety and health of employees in work places

of the state, as now or hereafter vested in the department of labor and industries.

(3) Standards and other control measures adopted by the department under this chapter shall be exclusive except as hereinafter provided. A local government may impose limits or control sources differing from those adopted or controlled by the department upon a finding that such requirements are necessitated by special conditions. Noise limiting requirements of local government which differ from those adopted or controlled by the department shall be invalid unless first approved by the department. If the department of ecology fails to approve or disapprove standards submitted by local governmental jurisdictions within ninety days of submittal, such standards shall be deemed approved. If disapproved, the local government may appeal the decision to the pollution control hearings board which shall decide the appeal on the basis of the provisions of this chapter, and the applicable regulations, together with such briefs, testimony, and oral argument as the hearings board in its discretion may require. The department determination of whether to grant approval shall depend on the reasonableness and practicability of compliance. Particular attention shall be given to stationary sources located near jurisdictional boundaries, and temporary noise producing operations which may operate across one or more jurisdictional boundaries.

(4) In carrying out the rule-making authority provided in this chapter, the department shall follow the procedures of the administrative procedure act, chapter 34.05 RCW, and shall take care that no rules adopted purport to exercise any powers preempted by the United States under federal law. [1987 c 103 § 1; 1974 ex.s. c 183 § 6.]

70.107.070 Rules relating to motor vehicles—Violations—Penalty. Any rule adopted under this chapter relating to the operation of motor vehicles on public highways shall be administered according to testing and inspection procedures adopted by rule by the state patrol. Violation of any motor vehicle performance standard adopted pursuant to this chapter shall be a misdemeanor, enforced by such authorities and in such manner as violations of chapter 46.37 RCW. Violations subject to the provisions of this section shall be exempt from the provisions of RCW 70.107.050. [1987 c 330 § 749; 1974 ex.s. c 183 § 7.]

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

70.107.080 Exemptions. The department shall, in the exercise of rule-making power under this chapter, provide exemptions or specially limited regulations relating to recreational shooting and emergency or law enforcement equipment where appropriate in the interests of public safety.

The department in the development of rules under this chapter, shall consult and take into consideration the land use policies and programs of local government. [1974 ex.s. c 183 § 8.]

70.107.900 Construction—Severability—1974 ex.s. c 183. (1) This chapter shall be liberally construed to carry out its broad purposes.

(2004 Ed.)

(2) If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1974 ex.s. c 183 § 11.]

70.107.910 Short title. This chapter shall be known and may be cited as the "Noise Control Act of 1974". [1974 ex.s. c 183 § 12.]

Chapter 70.108 RCW OUTDOOR MUSIC FESTIVALS

Sections

| | |
|------------|---|
| 70.108.010 | Legislative declaration. |
| 70.108.020 | Definitions. |
| 70.108.030 | Permits—Required—Compliance with rules and regulations. |
| 70.108.040 | Application for permit—Contents—Filing. |
| 70.108.050 | Approval or denial of permit—Corrections—Procedure—Judicial review. |
| 70.108.060 | Reimbursement of expenses incurred in reviewing request. |
| 70.108.070 | Cash deposit—Surety bond—Insurance. |
| 70.108.080 | Revocation of permits. |
| 70.108.090 | Drugs prohibited. |
| 70.108.100 | Proximity to schools, churches, homes. |
| 70.108.110 | Age of patrons. |
| 70.108.120 | Permits—Posting—Transferability. |
| 70.108.130 | Penalty. |
| 70.108.140 | Inspection of books and records. |
| 70.108.150 | Firearms—Penalty. |
| 70.108.160 | Preparations—Completion requirements. |
| 70.108.170 | Local regulations and ordinances not precluded. |

Reviser's note: Throughout chapter 70.108 RCW the references to "this act" have been changed to "this chapter." "This act" [1971 ex.s. c 302] consists of this chapter, the 1971 amendments to RCW 9.40.110-9.40.130, 9.41.010, 9.41.070, 26.44.050, 70.74.135, 70.74.270, 70.74.280, and the enactment of RCW 9.27.015 and 9.91.110.

70.108.010 Legislative declaration. The legislature hereby declares it to be the public interest, and for the protection of the health, welfare and property of the residents of the state of Washington to provide for the orderly and lawful conduct of outdoor music festivals by assuring that proper sanitary, health, fire, safety, and police measures are provided and maintained. This invocation of the police power is prompted by and based upon prior experience with outdoor music festivals where the enforcement of the existing laws and regulations on dangerous and narcotic drugs, indecent exposure, intoxicating liquor, and sanitation has been rendered most difficult by the flagrant violations thereof by a large number of festival patrons. [1971 ex.s. c 302 § 19.]

Severability—1971 ex.s. c 302: See note following RCW 9.41.010.

70.108.020 Definitions. For the purposes of this chapter the following words and phrases shall have the indicated meanings:

(1) "Outdoor music festival" or "music festival" or "festival" means an assembly of persons gathered primarily for outdoor, live or recorded musical entertainment, where the predicted attendance is two thousand persons or more and where the duration of the program is five hours or longer: PROVIDED, That this definition shall not be applied to any regularly established permanent place of worship, stadium, athletic field, arena, auditorium, coliseum, or other similar permanently established places of assembly for assemblies which do not exceed by more than two hundred fifty people

the maximum seating capacity of the structure where the assembly is held: PROVIDED, FURTHER, That this definition shall not apply to government sponsored fairs held on regularly established fairgrounds nor to assemblies required to be licensed under other laws or regulations of the state.

(2) "Promoter" means any person or other legal entity issued a permit to conduct an outdoor music festival.

(3) "Applicant" means the promoter who has the right of control of the conduct of an outdoor music festival who applies to the appropriate legislative authority for a license to hold an outdoor music festival.

(4) "Issuing authority" means the legislative body of the local governmental unit where the site for an outdoor music festival is located.

(5) "Participate" means to knowingly provide or deliver to the festival site supplies, materials, food, lumber, beverages, sound equipment, generators, or musical entertainment and/or to attend a music festival. A person shall be presumed to have knowingly provided as that phrase is used herein after he has been served with a court order. [1971 ex.s. c 302 § 21.]

70.108.030 Permits—Required—Compliance with rules and regulations. No person or other legal entity shall knowingly allow, conduct, hold, maintain, cause to be advertised or permit an outdoor music festival unless a valid permit has been obtained from the issuing authority for the operation of such music festival as provided for by this chapter. One such permit shall be required for each outdoor music festival. A permit may be granted for a period not to exceed sixteen consecutive days and a festival may be operated during any or all of the days within such period. Any person, persons, partnership, corporation, association, society, fraternal or social organization, failing to comply with the rules, regulations or conditions contained in this chapter shall be subject to the appropriate penalties as prescribed by this chapter. [1971 ex.s. c 302 § 22.]

70.108.040 Application for permit—Contents—Filing. Application for an outdoor music festival permit shall be in writing and filed with the clerk of the issuing authority wherein the festival is to be held. Said application shall be filed not less than ninety days prior to the first scheduled day of the festival and shall be accompanied with a permit fee in the amount of two thousand five hundred dollars. Said application shall include:

(1) The name of the person or other legal entity on behalf of whom said application is made: PROVIDED, That a natural person applying for such permit shall be eighteen years of age or older;

(2) A financial statement of the applicant;

(3) The nature of the business organization of the applicant;

(4) Names and addresses of all individuals or other entities having a ten percent or more proprietary interest in the festival;

(5) The principal place of business of applicant;

(6) A legal description of the land to be occupied, the name and address of the owner thereof, together with a document showing the consent of said owner to the issuance of a

permit, if the land be owned by a person other than the applicant;

(7) The scheduled performances and program;

(8) Written confirmation from the local health officer that he or she has reviewed and approved plans for site and development in accordance with rules, regulations and standards adopted by the state board of health. Such rules and regulations shall include criteria as to the following and such other matters as the state board of health deems necessary to protect the public's health:

(a) Submission of plans

(b) Site

(c) Water supply

(d) Sewage disposal

(e) Food preparation facilities

(f) Toilet facilities

(g) Solid waste

(h) Insect and rodent control

(i) Shelter

(j) Dust control

(k) Lighting

(l) Emergency medical facilities

(m) Emergency air evacuation

(n) Attendant physicians

(o) Communication systems

(9) A written confirmation from the appropriate law enforcement agency from the area where the outdoor music festival is to take place, showing that traffic control and crowd protection policing have been contracted for or otherwise provided by the applicant meeting the following conditions:

(a) One person for each two hundred persons reasonably expected to be in attendance at any time during the event for purposes of traffic and crowd control.

(b) The names and addresses of all traffic and crowd control personnel shall be provided to the appropriate law enforcement authority: PROVIDED, That not less than twenty percent of the traffic and crowd control personnel shall be commissioned police officers or deputy sheriffs: PROVIDED FURTHER, That on and after February 25, 1972 any commissioned police officer or deputy sheriff who is employed and compensated by the promoter of an outdoor music festival shall not be eligible and shall not receive any benefits whatsoever from any public pension or disability plan of which he or she is a member for the time he is so employed or for any injuries received during the course of such employment.

(c) During the hours that the festival site shall be open to the public there shall be at least one regularly commissioned police officer employed by the jurisdiction wherein the festival site is located for every one thousand persons in attendance and said officer shall be on duty within the confines of the actual outdoor music festival site.

(d) All law enforcement personnel shall be charged with enforcing the provisions of this chapter and all existing statutes, ordinances and regulations.

(10) A written confirmation from the appropriate law enforcement authority that sufficient access roads are available for ingress and egress to the parking areas of the outdoor music festival site and that parking areas are available on the actual site of the festival or immediately adjacent thereto

which are capable of accommodating one auto for every four persons in estimated attendance at the outdoor music festival site.

(11) A written confirmation from the department of natural resources, where applicable, and the chief of the Washington state patrol, through the director of fire protection, that all fire prevention requirements have been complied with.

(12) A written statement of the applicant that all state and local law enforcement officers, fire control officers and other necessary governmental personnel shall have free access to the site of the outdoor music festival.

(13) A statement that the applicant will abide by the provisions of this chapter.

(14) The verification of the applicant warranting the truth of the matters set forth in the application to the best of the applicant's knowledge, under the penalty of perjury. [1995 c 369 § 59; 1986 c 266 § 120; 1972 ex.s. c 123 § 1; 1971 ex.s. c 302 § 23.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.108.050 Approval or denial of permit—Corrections—Procedure—Judicial review. Within fifteen days after the filing of the application the issuing authority shall either approve or deny the permit to the applicant. Any denial shall set forth in detail the specific grounds therefor. The applicant shall have fifteen days after the receipt of such denial or such additional time as the issuing authority shall grant to correct the deficiencies set forth and the issuing authority shall within fifteen days after receipt of such corrections either approve or deny the permit. Any denial shall set forth in detail the specific grounds therefor.

After the applicant has filed corrections and the issuing authority has thereafter again denied the permit, the applicant may within five days after receipt of such second denial seek judicial review of such denial by filing a petition in the superior court for the county of the issuing authority. The review shall take precedence over all other civil actions and shall be conducted by the court without a jury. The court shall, upon request, hear oral argument and receive written briefs and shall either affirm the denial or order that the permit be issued. An applicant may not use any other procedure to obtain judicial review of a denial. [1972 ex.s. c 123 § 2; 1971 ex.s. c 302 § 24.]

70.108.060 Reimbursement of expenses incurred in reviewing request. Any local agency requested by an applicant to give written approval as required by RCW 70.108.040 may within fifteen days after the applicant has filed his application apply to the issuing authority for reimbursement of expenses reasonably incurred in reviewing such request. Upon a finding that such expenses were reasonably incurred the issuing authority shall reimburse the local agency therefor from the funds of the permit fee. The issuing authority shall prior to the first scheduled date of the festival return to the applicant that portion of the permit fee remaining after all such reimbursements have been made. [1971 ex.s. c 302 § 25.]

70.108.070 Cash deposit—Surety bond—Insurance.

After the application has been approved the promoter shall deposit with the issuing authority, a cash deposit or surety bond. The bond or deposit shall be used to pay any costs or charges incurred to regulate health or to clean up afterwards outside the festival grounds or any extraordinary costs or charges incurred to regulate traffic or parking. The bond or other deposit shall be returned to the promoter when the issuing authority is satisfied that no claims for damage or loss will be made against said bond or deposit, or that the loss or damage claimed is less than the amount of the deposit, in which case the uncommitted balance thereof shall be returned: PROVIDED, That the bond or cash deposit or the uncommitted portion thereof shall be returned not later than thirty days after the last day of the festival.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a liability insurance policy in an amount of not less than one hundred thousand dollars bodily injury coverage per person covering any bodily injury negligently caused by any officer or employee of the festival while acting in the performance of his or her duties. The policy shall name the issuing authority of the permit as an additional named insured.

In addition, the promoter shall be required to furnish evidence that he has in full force and effect a one hundred thousand dollar liability property damage insurance policy covering any property damaged due to negligent failure by any officer or employee of the festival to carry out duties imposed by this chapter. The policy shall have the issuing authority of the permit as an additional named insured. [1972 ex.s. c 123 § 3; 1971 ex.s. c 302 § 26.]

70.108.080 Revocation of permits. Revocation of any permit granted pursuant to this chapter shall not preclude the imposition of penalties as provided for in this chapter and the laws of the state of Washington. Any permit granted pursuant to the provisions of this chapter to conduct a music festival shall be summarily revoked by the issuing authority when it finds that by reason of emergency the public peace, health, safety, morals or welfare can only be preserved and protected by such revocation.

Any permit granted pursuant to the provisions of this chapter to conduct a music festival may otherwise be revoked for any material violation of this chapter or the laws of the state of Washington after a hearing held upon not less than three days notice served upon the promoter personally or by certified mail.

Every permit issued under the provisions of this chapter shall state that such permit is issued as a measure to protect and preserve the public peace, health, safety, morals and welfare, and that the right of the appropriate authority to revoke such permit is a consideration of its issuance. [1971 ex.s. c 302 § 27.]

70.108.090 Drugs prohibited. No person, persons, partnership, corporation, association, society, fraternal or social organization to whom a music festival permit has been granted shall, during the time an outdoor music festival is in operation, knowingly permit or allow any person to bring upon the premises of said music festival, any narcotic or dangerous drug as defined by chapters *69.33 or 69.40 RCW, or

knowingly permit or allow narcotic or dangerous drug to be consumed on the premises, and no person shall take or carry onto said premises any narcotic or dangerous drug. [1971 ex.s. c 302 § 28.]

***Reviser's note:** Chapter 69.33 RCW was repealed by 1971 ex.s. c 308 § 69.50.606.

70.108.100 Proximity to schools, churches, homes. No music festival shall be operated in a location which is closer than one thousand yards from any schoolhouse or church, or five hundred yards from any house, residence or other human habitation unless waived by occupants. [1971 ex.s. c 302 § 29.]

70.108.110 Age of patrons. No person under the age of sixteen years shall be admitted to any outdoor music festival without the escort of his or her parents or legal guardian and proof of age shall be provided upon request. [1971 ex.s. c 302 § 30.]

70.108.120 Permits—Posting—Transferability. Any permit granted pursuant to this chapter shall be posted in a conspicuous place on the site of the outdoor music festival and such permit shall be not transferable or assignable without the consent of the issuing authority. [1971 ex.s. c 302 § 31.]

70.108.130 Penalty. (1) Except as otherwise provided in this section, any person who willfully fails to comply with the rules, regulations, and conditions set forth in this chapter or who aids or abets such a violation or failure to comply is guilty of a gross misdemeanor.

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

(b) Violation of such a rule, regulation, or condition equivalent to those provisions of Title 46 RCW set forth in RCW 46.63.020 is a misdemeanor. [2003 c 53 § 359; 1979 ex.s. c 136 § 104; 1971 ex.s. c 302 § 32.]

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

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

70.108.140 Inspection of books and records. The department of revenue shall be allowed to inspect the books and records of any outdoor music festival during the period of operation of the festival and after the festival has concluded for the purpose of determining whether or not the tax laws of this state are complied with. [1972 ex.s. c 123 § 4.]

70.108.150 Firearms—Penalty. It shall be unlawful for any person, except law enforcement officers, to carry, transport or convey, or to have in his possession or under his control any firearm while on the site of an outdoor music festival.

Any person violating the provisions of this section shall be guilty of a misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars and

not more than two hundred dollars or by imprisonment in the county jail for not less than ten days and not more than ninety days or by both such fine and imprisonment. [1972 ex.s. c 123 § 5.]

70.108.160 Preparations—Completion requirements. All preparations required to be made by the provisions of this chapter on the music festival site shall be completed thirty days prior to the first day scheduled for the festival. Upon such date or such earlier date when all preparations have been completed, the promoter shall notify the issuing authority thereof, and the issuing authority shall make an inspection of the festival site to determine if such preparations are in reasonably full compliance with plans submitted pursuant to RCW 70.108.040. If a material violation exists the issuing authority shall move to revoke the music festival permit in the manner provided by RCW 70.108.080. [1972 ex.s. c 123 § 6.]

70.108.170 Local regulations and ordinances not precluded. Nothing in this chapter shall be construed as precluding counties, cities and other political subdivisions of the state of Washington from enacting ordinances or regulations for the control and regulation of outdoor music festivals nor shall this chapter repeal any existing ordinances or regulations. [1972 ex.s. c 123 § 7.]

Chapter 70.110 RCW

FLAMMABLE FABRICS— CHILDREN'S SLEEPWEAR

Sections

| | |
|------------|--|
| 70.110.010 | Short title. |
| 70.110.020 | Legislative finding. |
| 70.110.030 | Definitions. |
| 70.110.040 | Compliance required. |
| 70.110.050 | Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations. |
| 70.110.070 | Strict liability. |
| 70.110.080 | Personal service of process—Jurisdiction of courts. |
| 70.110.900 | Provisions additional. |
| 70.110.910 | Severability—1973 1st ex.s. c 211. |

70.110.010 Short title. This chapter may be known and cited as the "Flammable Fabrics Act". [1973 1st ex.s. c 211 § 1.]

70.110.020 Legislative finding. The legislature hereby finds and declares that fabric related burns from children's sleepwear present an immediate and serious danger to the infants and children of this state. The legislature therefore declares it to be in the public interest, and for the protection of the health, property, and welfare of the residents of this state to herein provide for flammability standards for children's sleepwear. [1973 1st ex.s. c 211 § 2.]

70.110.030 Definitions. As used in this chapter the following words and phrases shall have the following meanings unless the context clearly requires otherwise:

(1) "Person" means an individual, partnership, corporation, association, or any other form of business enterprise, and every officer thereof.

(2) "Children's sleepwear" means any product of wearing apparel from infant size up to and including size fourteen which is sold or intended for sale for the primary use of sleeping or activities related to sleeping, such as nightgowns, pajamas, and similar or related items such as robes, but excluding diapers and underwear.

(3) "Fabric" means any material (except fiber, filament, or yarn for other than retail sale) woven, knitted, felted, or otherwise produced from or in combination with any material or synthetic fiber, film, or substitute therefor which is intended for use, or which may reasonably be expected to be used, in children's sleepwear.

(4) The term "infant size up to and including size six-x" means the sizes defined as infant through and including six-x in Department of Commerce Voluntary Standards, Commercial Standard 151-50, "Body Measurements for the Sizing of Apparel for Infants, Babies, Toddlers, and Children", Commercial Standard 153, "Body Measurements for the Sizing of Apparel for Girls", and Commercial Standard 155, "Body Measurements for the Sizing of Boys' Apparel".

(5) "Fabric related burns" means burns that would not have been incurred but for the fact that sleepwear worn at the time of the burns did not comply with commercial standards promulgated by the secretary of commerce of the United States in March, 1971, identified as Standard for the Flammability of Children's Sleepwear (DOC FF 3-71) 36 F.R. 14062 and by the Flammable Fabrics Act 15 U.S.C. 1193. [1973 1st ex.s. c 211 § 3.]

70.110.040 Compliance required. (1) It shall be unlawful to manufacture for sale, sell, or offer for sale any new and unused article of children's sleepwear which does not comply with the standards established in the Standard for the Flammability of Children's Sleepwear (DOC FF 3-71), 36 F.R. 14062 and the Flammable Fabrics Act, 15 U.S.C. 1191-1204.

(2) A violation of this section is a gross misdemeanor. [2003 c 53 § 360; 1973 1st ex.s. c 211 § 4.]

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

70.110.050 Attorney general or prosecuting attorneys authorized to bring actions to restrain or prevent violations. The attorney general or the prosecuting attorney of any county within the state may bring an action in the name of the state against any person to restrain and prevent any violation of this chapter. [1973 1st ex.s. c 211 § 5.]

70.110.070 Strict liability. Any person who violates RCW 70.110.040 shall be strictly liable for fabric-related burns. [1973 1st ex.s. c 211 § 7.]

70.110.080 Personal service of process—Jurisdiction of courts. Personal service of any process in an action under this chapter may be made upon any person outside the state if such person has violated any provision of this chapter. Such person shall be deemed to have thereby submitted himself to the jurisdiction of the courts of this state within the meaning of RCW 4.28.180 and 4.28.185, as now or hereafter amended. [1973 1st ex.s. c 211 § 8.]

(2004 Ed.)

70.110.900 Provisions additional. The provisions of this chapter shall be in addition to and not a substitution for or limitation of any other law. [1973 1st ex.s. c 211 § 9.]

70.110.910 Severability—1973 1st ex.s. c 211. If any provision of this chapter, or its application to any person or circumstance is held invalid the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 211 § 10.]

Chapter 70.111 RCW INFANT CRIB SAFETY ACT

Sections

| | |
|------------|--|
| 70.111.010 | Findings—Purpose—Intent. |
| 70.111.020 | Definitions. |
| 70.111.030 | Unsafe cribs—Prohibition—Definition—Penalty. |
| 70.111.040 | Exemption. |
| 70.111.060 | Civil actions. |
| 70.111.070 | Remedies. |
| 70.111.900 | Short title. |
| 70.111.901 | Severability—1996 c 158. |

70.111.010 Findings—Purpose—Intent. (1) The legislature finds all of the following:

(a) The disability and death of infants resulting from injuries sustained in crib accidents are a serious threat to the public health, welfare, and safety of the people of this state.

(b) Infants are an especially vulnerable class of people.

(c) The design and construction of a baby crib must ensure that it is safe to leave an infant unattended for extended periods of time. A parent or caregiver has a right to believe that the crib in use is a safe place to leave an infant.

(d) Over thirteen thousand infants are injured in unsafe cribs every year.

(e) In the past decade, six hundred twenty-two infants died (a rate of sixty-two infants each year) from injuries sustained in unsafe cribs.

(f) The United States consumer product safety commission estimates that the cost to society resulting from injuries and death due to unsafe cribs is two hundred thirty-five million dollars per year.

(g) Secondhand, hand-me-down, and heirloom cribs pose a special problem. There were four million infants born in this country last year, but only one million new cribs sold. As many as three out of four infants are placed in secondhand, hand-me-down, or heirloom cribs.

(h) Most injuries and deaths occur in secondhand, hand-me-down, or heirloom cribs.

(i) Existing state and federal legislation is inadequate to deal with this hazard.

(j) Prohibiting the remanufacture, retrofit, sale, contracting to sell or resell, leasing, or subletting of unsafe cribs, particularly unsafe secondhand, hand-me-down, or heirloom cribs, will prevent injuries and deaths caused by cribs.

(2) The purpose of this chapter is to prevent the occurrence of injuries and deaths to infants as a result of unsafe cribs by making it illegal to remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, after June 6, 1996, any full-size or non-full-size crib that is unsafe for any infant using a crib.

(3) It is the intent of the legislature to encourage public and private collaboration in disseminating materials relative to the safety of baby cribs to parents, child care providers, and those who would be likely to place unsafe cribs in the stream of commerce. The legislature also intends that informational materials regarding baby crib safety be available to consumers through the department of health. [1996 c 158 § 1.]

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

(1) "Infant" means any person less than thirty-five inches tall and less than three years of age.

(2) "Crib" means a bed or containment designed to accommodate an infant.

(3) "Full-size crib" means a full-size crib as defined in Section 1508.3 of Title 16 of the Code of Federal Regulations regarding the requirements for full-size cribs.

(4) "Nonfull-size crib" means a nonfull-size crib as defined in Section 1509.2(b) of Title 16 of the Code of the Federal Regulations regarding the requirements for nonfull-size cribs.

(5) "Person" means any natural person, firm, corporation, association, or agent or employee thereof.

(6) "Commercial user" means any person who deals in full-size or nonfull-size cribs of the kind governed by this chapter or who otherwise by one's occupation holds oneself out as having knowledge or skill peculiar to the full-size or nonfull-size cribs governed by this chapter, including child care facilities and family child care homes licensed by the department of social and health services under chapter 74.15 RCW, or any person who is in the business of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce full-size or nonfull-size cribs. [1996 c 158 § 3.]

70.111.030 Unsafe cribs—Prohibition—Definition—Penalty. (1) No commercial user may remanufacture, retrofit, sell, contract to sell or resell, lease, sublet, or otherwise place in the stream of commerce, on or after June 6, 1996, a full-size or nonfull-size crib that is unsafe for any infant using the crib.

(2) A crib is presumed to be unsafe pursuant to this chapter if it does not conform to all of the following:

(a) Part 1508 (commencing with Section 1508.1) of Title 16 of the Code of Federal Regulations;

(b) Part 1509 (commencing with Section 1509.1) of Title 16 of the Code of Federal Regulations;

(c) Part 1303 (commencing with Section 1303.1) of Title 16 of the Code of Federal Regulations;

(d) American Society for Testing Materials Voluntary Standards F966-90;

(e) American Society for Testing Materials Voluntary Standards F1169.88;

(f) Any regulations that are adopted in order to amend or supplement the regulations described in (a) through (e) of this subsection.

(3) Cribs that are unsafe or fail to perform as expected pursuant to subsection (2) of this section include, but are not

limited to, cribs that have any of the following dangerous features or characteristics:

(a) Corner posts that extend more than one-sixteenth of an inch;

(b) Spaces between side slats more than two and three-eighths inches;

(c) Mattress support that can be easily dislodged from any point of the crib. A mattress segment can be easily dislodged if it cannot withstand at least a twenty-five pound upward force from underneath the crib;

(d) Cutout designs on the end panels;

(e) Rail height dimensions that do not conform to the following:

(i) The height of the rail and end panel as measured from the top of the rail or panel in its lowest position to the top of the mattress support in its highest position is at least nine inches;

(ii) The height of the rail and end panel as measured from the top of the rail or panel in its highest position to the top of the mattress support in its lowest position is at least twenty-six inches;

(f) Any screws, bolts, or hardware that are loose and not secured;

(g) Sharp edges, points, or rough surfaces, or any wood surfaces that are not smooth and free from splinters, splits, or cracks;

(h) Nonfull-size cribs with tears in mesh or fabric sides.

(4) On or after January 1, 1997, any commercial user who willfully and knowingly violates this section is guilty of a misdemeanor, punishable by a fine not exceeding one thousand dollars. Hotels, motels, and similar transient lodging, child care facilities, and family child care homes are not subject to this section until January 1, 1999. [2003 c 53 § 361; 1996 c 158 § 4.]

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

70.111.040 Exemption. Any crib that is clearly not intended for use by an infant is exempt from the provisions of this chapter, provided that it is accompanied at the time of remanufacturing, retrofitting, selling, leasing, subletting, or otherwise placing in the stream of commerce, by a notice to be furnished by the commercial user declaring that it is not intended to be used for an infant and is dangerous to use for an infant. The commercial user is further exempt from claims for liability resulting from use of a crib contrary to the notice required in this section. [1996 c 158 § 5.]

70.111.060 Civil actions. Any person may maintain an action against any commercial user who violates RCW 70.111.030 to enjoin the remanufacture, retrofit, sale, contract to sell, contract to resell, lease, or subletting of a full-size or nonfull-size crib that is unsafe for any infant using the crib, and for reasonable attorneys' fees and costs. This section does not apply to hotels, motels, and similar transient lodging, child care facilities, and family child care homes until January 1, 1999. [1996 c 158 § 7.]

70.111.070 Remedies. Remedies available under this chapter are in addition to any other remedies or procedures

under any other provision of law that may be available to an aggrieved party. [1996 c 158 § 8.]

70.111.900 Short title. This chapter may be known and cited as the infant crib safety act. [1996 c 158 § 2.]

70.111.901 Severability—1996 c 158. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1996 c 158 § 9.]

Chapter 70.112 RCW

FAMILY MEDICINE—EDUCATION AND RESIDENCY PROGRAMS

Sections

| | |
|------------|---|
| 70.112.010 | Definitions. |
| 70.112.020 | Education in family medical practice—Department in school of medicine—Residency programs—Financial support. |
| 70.112.030 | Family practice education advisory board—Chairman—Membership. |
| 70.112.040 | Advisory board—Terms of members—Filling vacancies. |
| 70.112.050 | Advisory board—Duties. |
| 70.112.060 | Funding of residency programs. |

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

70.112.010 Definitions. (1) "School of medicine" means the University of Washington school of medicine located in Seattle, Washington;

(2) "Residency programs" mean community based family practice residency educational programs either in existence or established under this chapter;

(3) "Affiliated" means established or developed in cooperation with the school of medicine;

(4) "Family practice unit" means the community facility or classroom used for training of ambulatory health skills within a residency training program; and

(5) "Advisory board" means the family practice education advisory board created by this chapter. [1975 1st ex.s. c 108 § 1.]

70.112.020 Education in family medical practice—Department in school of medicine—Residency programs—Financial support. There is established a statewide medical education system for the purpose of training resident physicians in family practice. The dean of the school of medicine shall be responsible for implementing the development and expansion of residency programs in cooperation with the medical profession, hospitals, and clinics located throughout the state. The chairman of the department of family medicine in the school of medicine, with the consent of the advisory board, shall determine where affiliated residency programs shall exist; giving consideration to communities in the state where the population, hospital facilities, number of physicians, and interest in medical education indicate the potential success of the residency program. The medical education system shall provide financial support for residents in training for those programs which are affiliated with the school of medicine and shall establish positions for appropriate faculty to staff these programs. The number of programs shall be

(2004 Ed.)

determined by the board and be in keeping with the needs of the state. [1975 1st ex.s. c 108 § 2.]

70.112.030 Family practice education advisory board—Chairman—Membership. There is created a family practice education advisory board which shall consist of eight members with the dean of the school of medicine serving as chairman. Other members of the board will be:

(1) Chairman, department of family medicine, school of medicine;

(2) Two public members to be appointed by the governor;

(3) A member appointed by the Washington state medical association;

(4) A member appointed by the Washington state academy of family physicians;

(5) A hospital administrator representing those Washington hospitals with family practice residency programs, appointed by the governor; and

(6) A director representing the directors of community based family practice residency programs, appointed by the governor. [1975 1st ex.s. c 108 § 3.]

70.112.040 Advisory board—Terms of members—Filling vacancies. The dean and chairman of the department of family medicine at the University of Washington school of medicine shall be permanent members of the advisory board. Other members will be initially appointed as follows: Terms of the two public members shall be two years; the member from the medical association and the hospital administrator, three years; and the remaining two members, four years. Thereafter, terms for the nonpermanent members shall be four years; members may serve two consecutive terms; and new appointments shall be filled in the same manner as for original appointments. Vacancies shall be filled for an unexpired term in the manner of the original appointment. [1975 1st ex.s. c 108 § 4.]

70.112.050 Advisory board—Duties. The advisory board shall advise the dean and the chairman of the department of family medicine in the implementation of the educational programs provided for in this chapter; including, but not limited to, the selection of the areas within the state where affiliate residency programs shall exist, the allocation of funds appropriated under this chapter, and the procedures for review and evaluation of the residency programs. [1998 c 245 § 111; 1975 1st ex.s. c 108 § 5.]

70.112.060 Funding of residency programs. (1) The moneys appropriated for these statewide family medicine residency programs shall be in addition to all the income of the University of Washington and its school of medicine and shall not be used to supplant funds for other programs under the administration of the school of medicine.

(2) The allocation of state funds for the residency programs shall not exceed fifty percent of the total cost of the program.

(3) No more than twenty-five percent of the appropriation for each fiscal year for the affiliated programs shall be authorized for expenditures made in support of the faculty

and staff of the school of medicine who are associated with the affiliated residency programs and are located at the school of medicine.

(4) No funds for the purposes of this chapter shall be used to subsidize the cost of care incurred by patients. [1975 1st ex.s. c 108 § 6.]

Chapter 70.114 RCW MIGRANT LABOR HOUSING

Sections

- 70.114.010 Legislative declaration—Fees for use of housing.
70.114.020 Migrant labor housing facility—Employment security department authorized to contract for continued operation.

70.114.010 Legislative declaration—Fees for use of housing. The legislature finds that the migrant labor housing project constructed on property purchased by the state in Yakima county should be continued until June 30, 1981. The employment security department is authorized to set day use or extended period use fees, consistent with those established by the department of parks and recreation. [1979 ex.s. c 79 § 1; 1977 ex.s. c 287 § 1; 1975 1st ex.s. c 50 § 1; 1974 ex.s. c 125 § 1.]

70.114.020 Migrant labor housing facility—Employment security department authorized to contract for continued operation. The employment security department is authorized to enter into such agreements and contracts as may be necessary to provide for the continued operation of the facility by a state agency, an appropriate local governmental body, or by such other entity as the commissioner may deem appropriate and in the state's best interest. [1979 ex.s. c 79 § 2; 1977 ex.s. c 287 § 2; 1975 1st ex.s. c 50 § 3; 1974 ex.s. c 125 § 4.]

Chapter 70.114A RCW TEMPORARY WORKER HOUSING—HEALTH AND SAFETY REGULATION

Sections

- 70.114A.010 Findings—Intent.
70.114A.020 Definitions.
70.114A.030 Application of chapter.
70.114A.040 Responsibilities of department.
70.114A.045 Housing operation standards—Departments' agreement—Enforcement.
70.114A.050 Housing on rural worksites.
70.114A.060 Inspection of housing.
70.114A.065 Licensing, operation, and inspection—Rules.
70.114A.070 Technical assistance.
70.114A.081 Temporary worker building code—Rules—Guidelines—Exceptions—Enforcement—Variations.
70.114A.085 Temporary worker building code—Report.
70.114A.100 Rules—Compliance with federal act.
70.114A.110 Cherry harvest temporary labor camps—Rule making—Definition—Conditions for occupation—Application.
70.114A.900 Severability—1995 c 220.
70.114A.901 Effective date—1995 c 220.

70.114A.010 Findings—Intent. The legislature finds that there is an inadequate supply of temporary and permanent housing for migrant and seasonal workers in this state. The legislature also finds that unclear, complex regulations related to the development, construction, and permitting of

worker housing inhibit the development of this much needed housing. The legislature further finds that as a result, many workers are forced to obtain housing that is unsafe and unsanitary.

Therefore, it is the intent of the legislature to encourage the development of temporary and permanent housing for workers that is safe and sanitary by: Establishing a clear and concise set of regulations for temporary housing; establishing a streamlined permitting and administrative process that will be locally administered and encourage the development of such housing; and by providing technical assistance to organizations or individuals interested in the development of worker housing. [1995 c 220 § 1.]

70.114A.020 Definitions. The definitions in this section apply throughout this chapter.

(1) "Agricultural employee" means any person who renders personal services to, or under the direction of, an agricultural employer in connection with the employer's agricultural activity.

(2) "Agricultural employer" means any person engaged in agricultural activity, including the growing, producing, or harvesting of farm or nursery products, or engaged in the forestation or reforestation of lands, which includes but is not limited to the planting, transplanting, tubing, precommercial thinning, and thinning of trees and seedlings, the clearing, piling, and disposal of brush and slash, the harvest of Christmas trees, and other related activities.

(3) "Department" means the department of health.

(4) "Dwelling unit" means a shelter, building, or portion of a building, that may include cooking and eating facilities, that is:

(a) Provided and designated by the operator as either a sleeping area, living area, or both, for occupants; and

(b) Physically separated from other sleeping and common-use areas.

(5) "Enforcement" and "enforcement actions" include the authority to levy and collect fines.

(6) "Facility" means a sleeping place, drinking water, toilet, sewage disposal, food handling installation, or other installations required for compliance with this chapter.

(7) "Occupant" means a temporary worker or a person who resides with a temporary worker at the housing site.

(8) "Operator" means a person holding legal title to the land on which temporary worker housing is located. However, if the legal title and the right to possession are in different persons, "operator" means a person having the lawful control or supervision over the temporary worker housing under a lease or other arrangement.

(9) "Temporary worker" means an agricultural employee employed intermittently and not residing year-round at the same site.

(10) "Temporary worker housing" means a place, area, or piece of land where sleeping places or housing sites are provided by an agricultural employer for his or her agricultural employees or by another person, including a temporary worker housing operator, who is providing such accommodations for employees, for temporary, seasonal occupancy. [1999 c 374 § 6; 1995 c 220 § 2.]

70.114A.030 Application of chapter. Chapter 220, Laws of 1995, applies to temporary worker housing that consists of five or more dwelling units, or any combination of dwelling units, dormitories, or spaces that house ten or more occupants. [1995 c 220 § 3.]

70.114A.040 Responsibilities of department. The department is designated the single state agency responsible for encouraging the development of additional temporary worker housing, and shall be responsible for coordinating the activities of the various state and local agencies to assure a seamless, nonduplicative system for the development and operation of temporary worker housing. [1995 c 220 § 4.]

70.114A.045 Housing operation standards—Departments' agreement—Enforcement. By December 1, 1999, the department and the department of labor and industries shall jointly establish a formal agreement that identifies the roles of each of the two agencies with respect to the enforcement of temporary worker housing operation standards.

The agreement shall, to the extent feasible, provide for inspection and enforcement actions by a single agency, and shall include measures to avoid multiple citations for the same violation. [1999 c 374 § 3.]

70.114A.050 Housing on rural worksites. Temporary worker housing located on a rural worksite, and used for workers employed on the worksite, shall be considered a permitted use at the rural worksite for the purposes of zoning or other land use review processes, subject only to height, setback, and road access requirements of the underlying zone. [1995 c 220 § 5.]

70.114A.060 Inspection of housing. The secretary of the department or authorized representative may inspect housing covered by chapter 220, Laws of 1995, to enforce temporary worker housing rules adopted by the state board of health prior to July 25, 1999, or the department, or when the secretary or representative has reasonable cause to believe that a violation of temporary worker housing rules adopted by the state board of health prior to July 25, 1999, or the department is occurring or is being maintained. If the buildings or premises are occupied as a residence, a reasonable effort shall be made to obtain permission from the resident. If the premises or building is unoccupied, a reasonable effort shall be made to locate the owner or other person having charge or control of the building or premises and request entry. If consent for entry is not obtained, for whatever reason, the secretary or representative shall have recourse to every remedy provided by law to secure entry. [1999 c 374 § 7; 1995 c 220 § 6.]

70.114A.065 Licensing, operation, and inspection—Rules. The department and the department of labor and industries shall adopt joint rules for the licensing, operation, and inspection of temporary worker housing, and the enforcement thereof. These rules shall establish standards that are as effective as the standards developed under the Washington industrial safety and health act, chapter 49.17 RCW. [1999 c 374 § 1.]

(2004 Ed.)

70.114A.070 Technical assistance. The department of community, trade, and economic development shall contract with private, nonprofit corporations to provide technical assistance to any private individual or nonprofit organization wishing to construct temporary or permanent worker housing. The assistance may include information on state and local application and approval procedures, information or assistance in applying for federal, state, or local financial assistance, including tax incentives, information on cost-effective housing designs, or any other assistance the department of community, trade, and economic development may deem helpful in obtaining the active participation of private individuals or groups in constructing or operating temporary or permanent worker housing. [1995 c 220 § 7.]

70.114A.081 Temporary worker building code—Rules—Guidelines—Exceptions—Enforcement—Variations. (1) The department shall adopt by rule a temporary worker building code in conformance with the temporary worker housing standards developed under the Washington industrial safety and health act, chapter 49.17 RCW, and the following guidelines:

(a) The temporary worker building code shall provide construction standards for shelter and associated facilities that are safe, secure, and capable of withstanding the stresses and loads associated with their designated use, and to which they are likely to be subjected by the elements;

(b) The temporary worker building code shall permit and facilitate designs and formats that allow for maximum affordability, consistent with the provision of decent, safe, and sanitary housing;

(c) In developing the temporary worker building code the department of health shall consider:

(i) The need for dormitory type housing for groups of unrelated individuals; and

(ii) The need for housing to accommodate families;

(d) The temporary worker building code shall incorporate the opportunity for the use of construction alternatives and the use of new technologies that meet the performance standards required by law;

(e) The temporary worker building code shall include standards for heating and insulation appropriate to the type of structure and length and season of occupancy;

(f) The temporary worker building code shall include standards for temporary worker housing that are to be used only during periods when no auxiliary heat is required; and

(g) The temporary worker building code shall provide that persons operating temporary worker housing consisting of four or fewer dwelling units or combinations of dwelling units, dormitories, or spaces that house nine or fewer occupants may elect to comply with the provisions of the temporary worker building code, and that unless the election is made, such housing is subject to the codes adopted under RCW 19.27.031.

(2) In adopting the temporary worker building code, the department shall make exceptions to the codes listed in RCW 19.27.031 and chapter 19.27A RCW, in keeping with the guidelines set forth in this section. The initial temporary worker building code adopted by the department shall be substantially equivalent with the temporary worker building

code developed by the state building code council as directed by section 8, chapter 220, Laws of 1995.

(3) The temporary worker building code authorized and required by this section shall be enforced by the department.

The department shall have the authority to allow minor variations from the temporary worker building code that do not compromise the health or safety of workers. Procedures for requesting variations and guidelines for granting such requests shall be included in the rules adopted under this section. [1999 c 374 § 8; 1998 c 37 § 2.]

70.114A.085 Temporary worker building code—Report. The department shall prepare a report to the legislature on utilization of the temporary worker building code authorized by RCW 70.114A.081. The report shall include the number of housing units, number of families or individuals housed, number of growers obtaining permits, the geographic distribution of the permits, and recommendations of changes in the temporary worker building code necessary to avoid health and safety problems for the occupants. The report shall be transmitted to the senate committee on commerce, trade, housing and financial institutions and the house of representatives committee on economic development, housing and trade by December 15, 2000, and an update shall be transmitted every two years thereafter. [1999 c 374 § 11.]

70.114A.100 Rules—Compliance with federal act. Any rules adopted under chapter 220, Laws of 1995, pertaining to an employer who is subject to the migrant and seasonal agricultural worker protection act (96 Stat. 2583; 29 U.S.C. Sec. 1801 et seq.), must comply with the housing provisions of that federal act. [1995 c 220 § 10.]

70.114A.110 Cherry harvest temporary labor camps—Rule making—Definition—Conditions for occupation—Application. (1) The department and the department of labor and industries are directed to engage in joint rule making to establish standards for cherry harvest temporary labor camps. These standards may include some variation from standards that are necessary for longer occupancies, provided they are as effective as the standards adopted under the Washington industrial safety and health act, chapter 49.17 RCW. As used in this section "cherry harvest temporary labor camp" means a place where housing and related facilities are provided to agricultural employees by agricultural employers for their use while employed for the harvest of cherries. The housing and facilities may be occupied by agricultural employees for a period not to exceed one week before the commencement through one week following the conclusion of the cherry crop harvest within the state.

(2) Facilities licensed under rules adopted under this section may not be used to provide housing for agricultural employees who are nonimmigrant aliens admitted to the United States for agricultural labor or services of a temporary or seasonal nature under section 1101(a)(15)(H)(ii)(a) of the immigration and nationality act (8 U.S.C. Sec. 1101(a)(15)(H)(ii)(a)).

(3) This section has no application to temporary worker housing constructed in conformance with codes listed in

[Title 70 RCW—page 324]

RCW 19.27.031 or 70.114A.081. [2002 c 23 § 1; 1999 c 374 § 5.]

70.114A.900 Severability—1995 c 220. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 220 § 13.]

70.114A.901 Effective date—1995 c 220. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 3, 1995]. [1995 c 220 § 14.]

Chapter 70.115 RCW DRUG INJECTION DEVICES

Sections

- 70.115.050 Retail sale of hypodermic syringes, needles—Duty of retailer.
- 70.115.060 Retailers not required to sell hypodermic syringes.

70.115.050 Retail sale of hypodermic syringes, needles—Duty of retailer. On the sale at retail of any hypodermic syringe, hypodermic needle, or any device adapted for the use of drugs by injection, the retailer shall satisfy himself or herself that the device will be used for the legal use intended. [1981 c 147 § 5.]

70.115.060 Retailers not required to sell hypodermic syringes. Nothing contained in chapter 213, Laws of 2002 shall be construed to require a retailer to sell hypodermic needles or syringes to any person. [2002 c 213 § 3.]

Chapter 70.116 RCW PUBLIC WATER SYSTEM COORDINATION ACT OF 1977

Sections

- 70.116.010 Legislative declaration.
- 70.116.020 Declaration of purpose.
- 70.116.030 Definitions.
- 70.116.040 Critical water supply service area—Designation—Establishment or amendment of external boundaries—Procedures.
- 70.116.050 Development of water system plans for critical water supply service areas.
- 70.116.060 Approval of coordinated water system plan—Limitations following approval—Dispute resolution mechanism—Update or revision of plan.
- 70.116.070 Service area boundaries within critical water supply area.
- 70.116.080 Performance standards relating to fire protection.
- 70.116.090 Assumption of jurisdiction or control of public water system by city, town, or code city.
- 70.116.100 Bottled water exempt.
- 70.116.110 Rate making authority preserved.
- 70.116.120 Short title.
- 70.116.134 Satellite system management agencies.
- 70.116.140 Review of water or sewer system plan—Time limitations—Notice of rejection of plan or extension of timeline.
- 70.116.900 Severability—1977 ex.s. c 142.

Drinking water quality consumer complaints: RCW 80.04.110.

70.116.010 Legislative declaration. The legislature hereby finds that an adequate supply of potable water for domestic, commercial, and industrial use is vital to the health

and well-being of the people of the state. Readily available water for use in public water systems is limited and should be developed and used efficiently with a minimum of loss or waste.

In order to maximize efficient and effective development of the state's public water supply systems, the department of health shall assist water purveyors by providing a procedure to coordinate the planning of the public water supply systems. [1991 c 3 § 365; 1977 ex.s. c 142 § 1.]

70.116.020 Declaration of purpose. The purposes of this chapter are:

(1) To provide for the establishment of critical water supply service areas related to water utility planning and development;

(2) To provide for the development of minimum planning and design standards for critical water supply service areas to insure that water systems developed in these areas are consistent with regional needs;

(3) To assist in the orderly and efficient administration of state financial assistance programs for public water systems; and

(4) To assist public water systems to meet reasonable standards of quality, quantity and pressure. [1977 ex.s. c 142 § 2.]

70.116.030 Definitions. Unless the context clearly requires otherwise, the following terms when used in this chapter shall be defined as follows:

(1) "Coordinated water system plan" means a plan for public water systems within a critical water supply service area which identifies the present and future needs of the systems and sets forth means for meeting those needs in the most efficient manner possible. Such a plan shall include provisions for subsequently updating the plan. In areas where more than one water system exists, a coordinated plan may consist of either: (a) A new plan developed for the area following its designation as a critical water supply service area; or (b) a compilation of compatible water system plans existing at the time of such designation and containing such supplementary provisions as are necessary to satisfy the requirements of this chapter. Any such coordinated plan must include provisions regarding: Future service area designations; assessment of the feasibility of shared source, transmission, and storage facilities; emergency inter-ties; design standards; and other concerns related to the construction and operation of the water system facilities.

(2) "Critical water supply service area" means a geographical area which is characterized by a proliferation of small, inadequate water systems, or by water supply problems which threaten the present or future water quality or reliability of service in such a manner that efficient and orderly development may best be achieved through coordinated planning by the water utilities in the area.

(3) "Public water system" means any system providing water intended for, or used for, human consumption or other domestic uses. It includes, but is not limited to, the source, treatment for purifying purposes only, storage, transmission, pumping, and distribution facilities where water is furnished to any community, or number of individuals, or is made

(2004 Ed.)

available to the public for human consumption or domestic use, but excluding water systems serving one single family residence. However, systems existing on September 21, 1977 which are owner operated and serve less than ten single family residences or which serve only one industrial plant shall be excluded from this definition and the provisions of this chapter.

(4) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates for wholesale or retail service a public water system. It also means the authorized agents of any such entities.

(5) "Secretary" means the secretary of the department of health or the secretary's authorized representative.

(6) "Service area" means a specific geographical area serviced or for which service is planned by a purveyor. [1991 c 3 § 366; 1977 ex.s. c 142 § 3.]

70.116.040 Critical water supply service area—Designation—Establishment or amendment of external boundaries—Procedures. (1) The secretary and the appropriate local planning agencies and purveyors, shall study geographical areas where water supply problems related to uncoordinated planning, inadequate water quality or unreliable service appear to exist. If the results of the study indicate that such water supply problems do exist, the secretary or the county legislative authority shall designate the area involved as being a critical water supply service area, consult with the appropriate local planning agencies and purveyors, and appoint a committee of not less than three representatives therefrom solely for the purpose of establishing the proposed external boundaries of the critical water supply service area. The committee shall include a representative from each purveyor serving more than fifty customers, the county legislative authority, county planning agency, and health agencies. Such proposed boundaries shall be established within six months of the appointment of the committee.

During the six month period following the establishment of the proposed external boundaries of the critical water supply services areas, the county legislative authority shall conduct public hearings on the proposed boundaries and shall modify or ratify the proposed boundaries in accordance with the findings of the public hearings. The boundaries shall reflect the existing land usage, and permitted densities in county plans, ordinances, and/or growth policies. If the proposed boundaries are not modified during the six month period, the proposed boundaries shall be automatically ratified and be the critical water supply service area.

After establishment of the external boundaries of the critical water supply service area, no new public water systems may be approved within the boundary area unless an existing water purveyor is unable to provide water service.

(2) At the time a critical water supply service area is established, the external boundaries for such area shall not include any fractional part of a purveyor's existing contiguous service area.

(3) The external boundaries of the critical water supply service area may be amended in accordance with procedures prescribed in subsection (1) of this section for the establishment of the critical water supply service areas when such

amendment is necessary to accomplish the purposes of this chapter. [1977 ex.s. c 142 § 4.]

70.116.050 Development of water system plans for critical water supply service areas. (1) Each purveyor within the boundaries of a critical water supply service area shall develop a water system plan for the purveyor's future service area if such a plan has not already been developed: PROVIDED, That nonmunicipally owned public water systems are exempt from the planning requirements of this chapter, except for the establishment of service area boundaries if they have no plans for water service beyond their existing service area: PROVIDED FURTHER, That if the county legislative authority permits a change in development that will increase the demand for water service of such a system beyond the existing system's ability to provide minimum water service, the purveyor shall develop a water system plan in accordance with this section. The establishment of future service area boundaries shall be in accordance with RCW 70.116.070.

(2) After the boundaries of a critical water supply service area have been established pursuant to RCW 70.116.040, the committee established in RCW 70.116.040 shall participate in the development of a coordinated water system plan for the designated area. Such a plan shall incorporate all water system plans developed pursuant to subsection (1) of this section. The plan shall provide for maximum integration and coordination of public water system facilities consistent with the protection and enhancement of the public health and well-being. Decisions of the committee shall be by majority vote of those present at meetings of the committee.

(3) Those portions of a critical water supply service area not yet served by a public water system shall have a coordinated water system plan developed by existing purveyors based upon permitted densities in county plans, ordinances, and/or growth policies for a minimum of five years beyond the date of establishment of the boundaries of the critical water supply service area.

(4) To insure that the plan incorporates the proper designs to protect public health, the secretary shall adopt regulations pursuant to chapter 34.05 RCW concerning the scope and content of coordinated water system plans, and shall ensure, as minimum requirements, that such plans:

(a) Are reviewed by the appropriate local governmental agency to insure that the plan is not inconsistent with the land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects.

(b) Recognize all water resource plans, water quality plans, and water pollution control plans which have been adopted by units of local, regional, and state government.

(c) Incorporate the fire protection standards developed pursuant to RCW 70.116.080.

(d) Identify the future service area boundaries of the public water system or systems included in the plan within the critical water supply service area.

(e) Identify feasible emergency inter-ties between adjacent purveyors.

(f) Include satellite system management requirements consistent with RCW 70.116.134.

(g) Include policies and procedures that generally address failing water systems for which counties may become responsible under RCW 43.70.195.

(5) If a "water general plan" for a critical water supply service area or portion thereof has been prepared pursuant to chapter 36.94 RCW and such a plan meets the requirements of subsections (1) and (4) of this section, such a plan shall constitute the coordinated water system plan for the applicable geographical area.

(6) The committee established in RCW 70.116.040 may develop and utilize a mechanism for addressing disputes that arise in the development of the coordinated water system plan.

(7) Prior to the submission of a coordinated water system plan to the secretary for approval pursuant to RCW 70.116.060, the legislative authorities of the counties in which the critical water supply service area is located shall hold a public hearing thereon and shall determine the plan's consistency with subsection (4) of this section. If within sixty days of receipt of the plan, the legislative authorities find any segment of a proposed service area of a purveyor's plan or any segment of the coordinated water system plan to be inconsistent with any current land use plans, shoreline master programs, and/or developmental policies of the general purpose local government or governments whose jurisdiction the water system plan affects, the secretary shall not approve that portion of the plan until the inconsistency is resolved between the local government and the purveyor. If no comments have been received from the legislative authorities within sixty days of receipt of the plan, the secretary may consider the plan for approval.

(8) Any county legislative authority may adopt an abbreviated plan for the provision of water supplies within its boundaries that includes provisions for service area boundaries, minimum design criteria, and review process. The elements of the abbreviated plan shall conform to the criteria established by the department under subsection (4) of this section and shall otherwise be consistent with other adopted land use and resource plans. The county legislative authority may, in lieu of the committee required under RCW 70.116.040, and the procedures authorized in this section, utilize an advisory committee that is representative of the water utilities and local governments within its jurisdiction to assist in the preparation of the abbreviated plan, which may be adopted by resolution and submitted to the secretary for approval. Purveyors within the boundaries covered by the abbreviated plan need not develop a water system plan, except to the extent required by the secretary or state board of health under other authority. Any abbreviated plan adopted by a county legislative authority pursuant to this subsection shall be subject to the same provisions contained in RCW 70.116.060 for coordinated water system plans that are approved by the secretary. [1995 c 376 § 7; 1977 ex.s. c 142 § 5.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.116.060 Approval of coordinated water system plan—Limitations following approval—Dispute resolution mechanism—Update or revision of plan. (1) A coordinated water system plan shall be submitted to the secretary

for design approval within two years of the establishment of the boundaries of a critical water supply service area.

(2) The secretary shall review the coordinated water system plan and, to the extent the plan is consistent with the requirements of this chapter and regulations adopted hereunder, shall approve the plan, provided that the secretary shall not approve those portions of a coordinated water system plan that fail to meet the requirements for future service area boundaries until any boundary dispute is resolved as set forth in RCW 70.116.070.

(3) Following the approval of a coordinated water system plan by the secretary:

(a) All purveyors constructing or proposing to construct public water system facilities within the area covered by the plan shall comply with the plan.

(b) No other purveyor shall establish a public water system within the area covered by the plan, unless the local legislative authority determines that existing purveyors are unable to provide the service in a timely and reasonable manner, pursuant to guidelines developed by the secretary. An existing purveyor is unable to provide the service in a timely manner if the water cannot be provided to an applicant for water within one hundred twenty days unless specified otherwise by the local legislative authority. If such a determination is made, the local legislative authority shall require the new public water system to be constructed in accordance with the construction standards and specifications embodied in the coordinated water system plan approved for the area. The service area boundaries in the coordinated plan for the affected utilities shall be revised to reflect the decision of the local legislative authority.

(4) The secretary may deny proposals to establish or to expand any public water system within a critical water supply service area for which there is not an approved coordinated water system plan at any time after two years of the establishment of the critical water supply service area: PROVIDED, That service connections shall not be considered expansions.

(5) The affected legislative authorities may develop and utilize a mechanism for addressing disputes that arise in the implementation of the coordinated water system plan after the plan has been approved by the secretary.

(6) After adoption of the initial coordinated water system plan, the local legislative authority or the secretary may determine that the plan should be updated or revised. The legislative authority may initiate an update at any time, but the secretary may initiate an update no more frequently than once every five years. The update may encompass all or a portion of the plan, with the scope of the update to be determined by the secretary and the legislative authority. The process for the update shall be the one prescribed in RCW 70.116.050.

(7) The provisions of subsection (3) of this section shall not apply in any county for which a coordinated water system plan has not been approved under subsection (2) of this section.

(8) If the secretary initiates an update or revision of a coordinated water system plan, the state shall pay for the cost of updating or revising the plan. [1995 c 376 § 2; 1977 ex.s. c 142 § 6.]

Findings—1995 c 376: "The legislature finds that:

(1) Protection of the state's water resources, and utilization of such resources for provision of public water supplies, requires more efficient and

effective management than is currently provided under state law;

(2) The provision of public water supplies to the people of the state should be undertaken in a manner that is consistent with the planning principles of the growth management act and the comprehensive plans adopted by local governments under the growth management act;

(3) Small water systems have inherent difficulties with proper planning, operation, financing, management and maintenance. The ability of such systems to provide safe and reliable supplies to their customers on a long-term basis needs to be assured through proper management and training of operators;

(4) New water quality standards and operational requirements for public water systems will soon generate higher rates for the customers of those systems, which may be difficult for customers to afford to pay. It is in the best interest of the people of this state that small systems maintain themselves in a financially viable condition;

(5) The drinking water 2000 task force has recommended maintaining a strong and properly funded statewide drinking water program, retaining primary responsibility for administering the federal safe drinking water act in Washington. The task force has further recommended delegation of as many water system regulatory functions as possible to local governments, with provision of adequate resources and elimination of barriers to such delegation. In order to achieve these objectives, the state shall provide adequate funding from both general state funds and funding directly from the regulated water system;

(6) The public health services improvement plan recommends that the principal public health functions in Washington, including regulation of public water systems, should be fully funded by state revenues and undertaken by local jurisdictions with the capacity to perform them; and

(7) State government, local governments, water suppliers, and other interested parties should work for continuing economic growth of the state by maximizing the use of existing water supply management alternatives, including regional water systems, satellite management, and coordinated water system development." [1995 c 376 § 1.]

70.116.070 Service area boundaries within critical water supply area.

(1) The proposed service area boundaries of public water systems within the critical water supply service area that are required to submit water system plans under this chapter shall be identified in the system's plan. The local legislative authority, or its planning department or other designee, shall review the proposed boundaries to determine whether the proposed boundaries of one or more systems overlap. The boundaries determined by the local legislative authority not to overlap shall be incorporated into the coordinated water system plan. Where any overlap exists, the local legislative authority may attempt to resolve the conflict through procedures established under RCW 70.116.060(5).

(2) Any final decision by a local legislative authority regarding overlapping service areas, or any unresolved disputes regarding service area boundaries, may be appealed or referred to the secretary in writing for resolution. After receipt of an appeal or referral, the secretary shall hold a public hearing thereon. The secretary shall provide notice of the hearing by certified mail to each purveyor involved in the dispute, to each county legislative authority having jurisdiction in the area and to the public. The secretary shall provide public notice pursuant to the provisions of chapter 65.16 RCW. Such notice shall be given at least twenty days prior to the hearing. The hearing may be continued from time to time and, at the termination thereof, the secretary may restrict the expansion of service of any purveyor within the area if the secretary finds such restriction is necessary to provide the greatest protection of the public health and well-being. [1995 c 376 § 13; 1977 ex.s. c 142 § 7.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.116.080 Performance standards relating to fire protection. The secretary shall adopt performance standards relating to fire protection to be incorporated into the design and construction of public water systems. The standards shall be consistent with recognized national standards. The secretary shall adopt regulations pertaining to the application and enforcement of the standards: PROVIDED, That the regulations shall require the application of the standards for new and expanding systems only. The standards shall apply in critical water supply service areas unless the approved coordinated plan provides for nonfire flow systems. [1977 ex.s. c 142 § 8.]

70.116.090 Assumption of jurisdiction or control of public water system by city, town, or code city. The assumption of jurisdiction or control of any public water system or systems by a city, town, or code city, shall be subject to the provisions of chapter 35.13A RCW, and the provisions of this chapter shall be superseded by the provisions of chapter 35.13A RCW regarding such an assumption of jurisdiction. [1977 ex.s. c 142 § 9.]

70.116.100 Bottled water exempt. Nothing in this chapter shall apply to water which is bottled or otherwise packaged in a container for human consumption or domestic use, or to the treatment, storage and transportation facilities used in the processing of the bottled water or the distribution of the bottles or containers of water. [1977 ex.s. c 142 § 10.]

70.116.110 Rate making authority preserved. Nothing in this chapter shall be construed to alter in any way the existing authority of purveyors and municipal corporations to establish, administer and apply water rates and rate provisions. [1977 ex.s. c 142 § 11.]

70.116.120 Short title. This chapter shall be known and may be cited as the "Public Water System Coordination Act of 1977". [1977 ex.s. c 142 § 12.]

70.116.134 Satellite system management agencies. (1) The secretary shall adopt rules pursuant to chapter 34.05 RCW establishing criteria for designating individuals or water purveyors as qualified satellite system management agencies. The criteria shall set forth minimum standards for designation as a satellite system management agency qualified to assume ownership, operation, or both, of an existing or proposed public water system. The criteria shall include demonstration of financial integrity and operational capability, and may require demonstration of previous experience in successful operation and management of a public water system.

(2) Each county shall identify potential satellite system management agencies to the secretary for areas where: (a) No purveyor has been designated a future service area pursuant to this chapter, or (b) an existing purveyor is unable or unwilling to provide service. Preference shall be given to public utilities or utility districts or to investor-owned utilities under the jurisdiction of the utilities and transportation commission.

(3) The secretary shall approve satellite system management agencies meeting the established criteria and shall maintain and make available to counties a list of approved agencies. Prior to the construction of a new public water system, the individual(s) proposing the new system or requesting service shall first be directed by the local agency responsible for issuing the construction or building permit to one or more qualified satellite system management agencies designated for the service area where the new system is proposed for the purpose of exploring the possibility of a satellite agency either owning or operating the proposed new water system.

(4) Approved satellite system management agencies shall be reviewed periodically by the secretary for continued compliance with established criteria. The secretary may require status reports and other information necessary for such review. Satellite system management agencies shall be subject to reapproval at the discretion of the secretary but not less than once every five years.

(5) The secretary may assess reasonable fees to process applications for initial approval and for periodic review of satellite system management agencies. A satellite system management account is hereby created in the custody of the state treasurer. All receipts from satellite system management agencies or applicants under subsection (4) of this section shall be deposited into the account. Funds in this account may be used only for administration of the satellite system management program. Expenditures from the account shall be authorized by the secretary or the secretary's designee. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures.

(6) For purposes of this section, "satellite system management agency" and "satellite agency" shall mean a person or entity that is certified by the secretary to own or operate more than one public water system on a regional or county-wide basis, without the necessity for a physical connection between such systems. [1991 c 18 § 1.]

70.116.140 Review of water or sewer system plan—Time limitations—Notice of rejection of plan or extension of timeline. For any new or revised water or sewer system plan submitted for review under this chapter, the department of health shall review and either approve, conditionally approve, reject, or request amendments within ninety days of the receipt of the submission of the plan. The department of health may extend this ninety-day time limitation for new submittals by up to an additional ninety days if insufficient time exists to adequately review the general comprehensive plan. For rejections of plans or extensions of the timeline, the department shall provide in writing, to the person or entity submitting the plan, the reason for such action. In addition, the person or entity submitting the plan and the department of health may mutually agree to an extension of the deadlines contained in this section. [2002 c 161 § 3.]

70.116.900 Severability—1977 ex.s. c 142. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 142 § 13.]

Chapter 70.118 RCW

ON-SITE SEWAGE DISPOSAL SYSTEMS

Sections

| | |
|------------|--|
| 70.118.010 | Legislative declaration. |
| 70.118.020 | Definitions. |
| 70.118.030 | Local boards of health—Administrative search warrant— Administrative plan—Corrections. |
| 70.118.040 | Local boards of health—Authority to waive sections of local plumbing and/or building codes. |
| 70.118.050 | Adoption of more restrictive standards. |
| 70.118.060 | Additive regulation. |
| 70.118.070 | Additives—Confidentiality. |
| 70.118.080 | Additives—Unfair practices. |
| 70.118.090 | Funding. |
| 70.118.100 | Alternative systems—Technical review committee. |
| 70.118.110 | Alternative systems—State guidelines and standards. |
| 70.118.120 | Inspectors—Certificate of competency. |

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

Local health officer authority to grant waiver from on-site sewage system requirements: RCW 70.05.072.

70.118.010 Legislative declaration. The legislature finds that over one million, two hundred thousand persons in the state are not served by sanitary sewers and that they must rely on septic tank systems. The failure of large numbers of such systems has resulted in significant health hazards, loss of property values, and water quality degradation. The legislature further finds that failure of such systems could be reduced by utilization of nonwater-carried sewage disposal systems, or other alternative methods of effluent disposal, as a correctional measure. Waste water volume diminution and disposal of most of the high bacterial waste through composting or other alternative methods of effluent disposal would result in restorative improvement or correction of existing substandard systems. [1977 ex.s. c 133 § 1.]

70.118.020 Definitions. As used in this chapter, the terms defined in this section shall have the meanings indicated unless the context clearly indicates otherwise.

(1) "Nonwater-carried sewage disposal devices" means any device that stores and treats nonwater-carried human urine and feces.

(2) "Alternative methods of effluent disposal" means systems approved by the department of health, including at least, mound systems, alternating drain fields, anaerobic filters, evapotranspiration systems, and aerobic systems.

(3) "Failure" means: (a) Effluent has been discharged on the surface of the ground prior to approved treatment; or (b) effluent has percolated to the surface of the ground; or (c) effluent has contaminated or threatens to contaminate a ground water supply.

(4) "Additive" means any commercial product intended to affect the performance or aesthetics of an on-site sewage disposal system.

(5) "Department" means the department of health.

(6) "On-site sewage disposal system" means any system of piping, treatment devices, or other facilities that convey, store, treat, or dispose of sewage on the property where it originates or on nearby property under the control of the user where the system is not connected to a public sewer system. For purposes of this chapter, an on-site sewage disposal sys-

(2004 Ed.)

tem does not include indoor plumbing and associated fixtures.

(7) "Chemical additive" means those additives containing acids, bases, or other chemicals deemed unsafe by the department for use in an on-site sewage disposal system.

(8) "Additive manufacturer" means any person who manufactures, formulates, blends, packages, or repackages an additive product for sale, use, or distribution within the state. [1994 c 281 § 2; 1993 c 321 § 2; 1991 c 3 § 367; 1977 ex.s. c 133 § 2.]

Finding—Purpose—1994 c 281: "The legislature finds that chemical additives do, and that other types of additives may, contribute to septic system failure and ground water contamination. In order to determine which ingredients of nonchemically based additive products have adverse effects on public health or the environment, it is necessary to submit such products to a review procedure.

The purpose of this act is: (1) To establish a timely and orderly procedure for review and approval of on-site sewage disposal system additives; (2) to prohibit the use, sale, or distribution of additives having an adverse effect on public health or the water quality of the state; (3) to require the disclosure of the contents of additives that are advertised, sold, or distributed in the state; and (4) to provide for consumer protection." [1994 c 281 § 1.]

Effective date—1994 c 281: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 281 § 7.]

Intent—1993 c 321: See note following RCW 70.118.060.

70.118.030 Local boards of health—Administrative search warrant—Administrative plan—Corrections. (1) Local boards of health shall identify failing septic tank drainfield systems in the normal manner and will use reasonable effort to determine new failures. The local health officer, environmental health director, or equivalent officer may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. The warrant may only be applied for after the local health officer or the health officer's designee has requested inspection of the person's property under the specific administrative plan required in this section, and the person has refused the health officer or the health officer's designee access to the person's property. Timely notice must be given to any affected person that a warrant is being requested and that the person may be present at any court proceeding to consider the requested search warrant. The court official may issue the warrant upon probable cause. A request for a search warrant must show [that] the inspection, examination, test, or sampling is in response to pollution in commercial or recreational shellfish harvesting areas or pollution in fresh water. A specific administrative plan must be developed expressly in response to the pollution. The local health officer, environmental health director, or equivalent officer shall submit the plan to the court as part of the justification for the warrant, along with specific evidence showing that it is reasonable to believe pollution is coming from the septic system on the property to be accessed for inspection. The plan must include each of the following elements:

- (a) The overall goal of the inspection;
- (b) The location and identification by address of the properties being authorized for inspection;
- (c) Requirements for giving the person owning the property and the person occupying the property if it is someone

other than the owner, notice of the plan, its provisions, and times of any inspections;

(d) The survey procedures to be used in the inspection;

(e) The criteria that would be used to define an on-site sewage system failure; and

(f) The follow-up actions that would be pursued once an on-site sewage system failure has been identified and confirmed.

(2) Discretionary judgment will be made in implementing corrections by specifying nonwater-carried sewage disposal devices or other alternative methods of treatment and effluent disposal as a measure of ameliorating existing substandard conditions. Local regulations shall be consistent with the intent and purposes stated in this section. [1998 c 152 § 1; 1977 ex.s. c 133 § 3.]

70.118.040 Local boards of health—Authority to waive sections of local plumbing and/or building codes. With the advice of the secretary of the department of health, local boards of health are hereby authorized to waive applicable sections of local plumbing and/or building codes that might prohibit the use of an alternative method for correcting a failure. [1991 c 3 § 368; 1977 ex.s. c 133 § 4.]

70.118.050 Adoption of more restrictive standards. If the legislative authority of a county or city finds that more restrictive standards than those contained in *section 2 of this act or those adopted by the state board of health for systems allowed under *section 2 of this act or limitations on expansion of a residence are necessary to ensure protection of the public health, attainment of state water quality standards, and the protection of shellfish and other public resources, the legislative authority may adopt ordinances or resolutions setting standards as they may find necessary for implementing their findings. The legislative authority may identify the geographic areas where it is necessary to implement the more restrictive standards. In addition, the legislative authority may adopt standards for the design, construction, maintenance, and monitoring of sewage disposal systems. [1989 c 349 § 3.]

***Reviser's note:** "Section 2 of this act" did not become law. See effective date note following.

Effective date—1989 c 349: "(1) Except as provided in subsection (2) of this section, this act shall take effect November 1, 1989.

(2) *Section 2 of this act shall not take effect if the state board of health adopts standards for the replacement and repair of existing on-site sewage disposal systems located on property adjacent to marine waters by October 31, 1989." [1989 c 349 § 4.]

***Reviser's note:** Section 2 of this act did not take effect. See chapter 248-96 WAC.

70.118.060 Additive regulation. (1) After July 1, 1994, a person may not use, sell, or distribute a chemical additive to on-site sewage disposal systems.

(2) After January 1, 1996, no person shall use, sell, or distribute any on-site sewage disposal additive whose ingredients have not been approved by the department.

(3) Each manufacturer of an on-site sewage disposal system additive that is sold, advertised, or distributed in the state shall submit the following information to the department: (a) The name and address of the company; (b) the name of the product; (c) the complete product formulation; (d) the loca-

tion where the product is manufactured; (e) the intended method of product application; and (f) a request that the product be reviewed.

(4) The department shall adopt rules providing the criteria, review, and decision-making procedures to be used in reviewing on-site sewage disposal additives for use, sale, or distribution in the state. The criteria shall be designed to determine whether the additive has an adverse effect on public health or water quality. The department may charge a fee sufficient to cover the costs of evaluating the additive, including the development of criteria and review procedures. The fee schedule shall be established by rule.

(5) The department shall issue a decision as to whether a product registered pursuant to subsection (3) of this section is approved or denied within forty-five days of receiving a complete evaluation as required pursuant to subsection (4) of this section.

(6) Manufacturers shall reregister their product as provided in subsection (3) of this section each time their product formulation changes. The department may require a new approval for products registered under this subsection prior to allowing the use, sale, or distribution within the state.

(7) The department may contract with private laboratories for the performance of any duties necessary to carry out the purpose of this section.

(8) The attorney general or appropriate city or county prosecuting attorney is authorized to bring an appropriate action to enjoin any violation of the prohibition on the sale or distribution of additives, or to enjoin any violation of the conditions in RCW 70.118.080.

(9) The department is responsible for providing written notification to additives manufacturers of the provisions of this section and RCW 70.118.070 and 70.118.080. The notification shall be provided no later than thirty days after April 1, 1994. Within thirty days of notification from the department, manufacturers shall provide the same notification to their distributors, wholesalers, and retail customers. [1994 c 281 § 3; 1993 c 321 § 3.]

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70.118.020.

Intent—1993 c 321: "The legislature finds that most additives do not have a positive effect on the operation of on-site systems and can contaminate ground water aquifers, render septic drainfields dysfunctional, and result in costly repairs to homeowners. It is therefore the intent of the legislature to ban the use, sale, and distribution of additives within the state unless an additive has been specifically approved by the department of health." [1993 c 321 § 1.]

70.118.070 Additives—Confidentiality. The department shall hold confidential any information obtained pursuant to RCW 70.118.060 when shown by any manufacturer that such information, if made public, would divulge confidential business information, methods, or processes entitled to protection as trade secrets of the manufacturer. [1994 c 281 § 4.]

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70.118.020.

70.118.080 Additives—Unfair practices. (1) Each manufacturer of a certified and approved additive product advertised, sold, or distributed in the state shall:

(a) Make no claims relating to the elimination of the need for septic tank pumping or proper septic tank maintenance;

(b) List the components of additive products on the product label, along with information regarding instructions for use and precautions;

(c) Make no false statements, design, or graphic representation relative to an additive product that is inconsistent with RCW 70.118.060, 70.118.070, or this section; and

(d) Make no claims, either direct or implied, about the performance of the product based on state approval of its ingredients.

(2) A violation of this section is an unfair act or practice in violation of the consumer protection act, chapter 19.86 RCW. [1994 c 281 § 5.]

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70.118.020.

70.118.090 Funding. The department may not use funds appropriated to implement an element of the *Puget Sound water quality authority plan to conduct any activity required under chapter 281, Laws of 1994. [1994 c 281 § 6.]

***Reviser's note:** The Puget Sound water quality authority and its powers and duties, pursuant to the Sunset Act, chapter 43.131 RCW, were terminated June 30, 1995, and repealed June 30, 1996. See 1990 c 115 §§ 11 and 12. Powers, duties, and functions of the Puget Sound water quality authority pertaining to cleanup and protection of Puget Sound transferred to the Puget Sound action team by 1996 c 138 § 11. See RCW 90.71.903.

Finding—Purpose—Effective date—1994 c 281: See notes following RCW 70.118.020.

70.118.100 Alternative systems—Technical review committee. The department of health must include one person who is familiar with the operation and maintenance of certified proprietary devices on the technical review committee responsible for evaluating and making recommendations to the department of health regarding the general use of alternative on-site sewage systems in the state. [1997 c 447 § 3.]

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

70.118.110 Alternative systems—State guidelines and standards. In order to assure that technical guidelines and standards keep pace with advancing technologies, the department of health in collaboration with the technical review committee, local health departments, and other interested parties, must review and update as appropriate, the state guidelines and standards for alternative on-site sewage disposal every three years. The first review and update must be completed by January 1, 1999. [1997 c 447 § 5.]

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

70.118.120 Inspectors—Certificate of competency. (1) The local board of health shall ensure that individuals who conduct inspections of on-site wastewater treatment systems or who otherwise conduct reviews of such systems are qualified in the technology and application of on-site sewage treatment principles. A certificate of competency issued by the department of licensing is adequate demonstration that an individual is competent in the engineering aspects of on-site wastewater treatment system technology.

(2004 Ed.)

(2) A local board of health may allow noncertified individuals to review designs of, and conduct inspections of, on-site wastewater treatment systems for a maximum of two years after the date of hire, if a certified individual reviews or supervises the work during that time. [1999 c 263 § 22.]

Chapter 70.119 RCW

PUBLIC WATER SUPPLY SYSTEMS—OPERATORS

Sections

| | |
|------------|--|
| 70.119.010 | Legislative declaration. |
| 70.119.020 | Definitions. |
| 70.119.030 | Certified operators required for certain public water systems. |
| 70.119.040 | Exclusions from chapter. |
| 70.119.050 | Rules and regulations—Secretary to adopt. |
| 70.119.060 | Public water systems—Secretary to categorize. |
| 70.119.070 | Secretary—Consideration of guidelines. |
| 70.119.081 | Ad hoc advisory committees. |
| 70.119.090 | Certificates without examination—Conditions. |
| 70.119.100 | Certificates—Issuance and renewal—Conditions. |
| 70.119.110 | Certificates—Grounds for revocation. |
| 70.119.120 | Secretary—Authority. |
| 70.119.130 | Violations—Penalties. |
| 70.119.140 | Certificates—Reciprocity with other states. |
| 70.119.150 | Waterworks operator certification account. |
| 70.119.160 | Fee schedules—Certified operators—Public water systems. |
| 70.119.900 | Effective date—1977 ex.s. c 99. |

70.119.010 Legislative declaration. The legislature declares that competent operation of a public water system is necessary for the protection of the consumers' health, and therefore it is of vital interest to the public. In order to protect the public health and conserve and protect the water resources of the state, it is necessary to provide for the classifying of all public water systems; to require the examination and certification of the persons responsible for the technical operation of such systems; and to provide for the promulgation of rules and regulations to carry out this chapter. [1991 c 305 § 1; 1983 c 292 § 1; 1977 ex.s. c 99 § 1.]

70.119.020 Definitions. As used in this chapter unless context requires another meaning:

(1) "Certificate" means a certificate of competency issued by the secretary stating that the operator has met the requirements for the specified operator classification of the certification program.

(2) "Certified operator" means an individual holding a valid certificate and employed or appointed by any county, water-sewer district, municipality, public or private corporation, company, institution, person, or the state of Washington and who is designated by the employing or appointing officials as the person responsible for active daily technical operation.

(3) "Department" means the department of health.

(4) "Distribution system" means that portion of a public water system which stores, transmits, pumps and distributes water to consumers.

(5) "Ground water under the direct influence of surface water" means any water beneath the surface of the ground with:

(a) Significant occurrence of insects or other macroorganisms, algae, or large diameter pathogens such as giardia lamblia; or

(b) Significant and relatively rapid shifts in water characteristics such as turbidity, temperature, conductivity, or pH

which closely correlate to climatological or surface water conditions.

(6) "Group A water system" means a system with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. Group A water system does not include a system serving fewer than fifteen single-family residences, regardless of the number of people.

(7) "Nationally recognized association of certification authorities" shall mean an organization which serves as an information center for certification activities, recommends minimum standards and guidelines for classification of potable water treatment plants, water distribution systems and waste water facilities and certification of operators, facilitates reciprocity between state programs and assists authorities in establishing new certification programs and updating existing ones.

(8) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing piped water for human consumption, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system.

(9) "Purification plant" means that portion of a public water system which treats or improves the physical, chemical or bacteriological quality of the system's water to bring the water into compliance with state board of health standards.

(10) "Secretary" means the secretary of the department of health.

(11) "Service" means a connection to a public water system designed to serve a single-family residence, dwelling unit, or equivalent use. If the facility has group home or barracks-type accommodations, three persons will be considered equivalent to one service.

(12) "Surface water" means all water open to the atmosphere and subject to surface runoff. [1999 c 153 § 67; 1995 c 269 § 2904; 1991 c 305 § 2; 1991 c 3 § 369; 1983 c 292 § 2; 1977 ex.s. c 99 § 2.]

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

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

Public water supply systems to comply with water quality standards: RCW 70.142.050.

70.119.030 Certified operators required for certain public water systems. (1) A public water system shall have a certified operator if:

(a) It is a group A water system; or
 (b) It is a public water system using a surface water source or a ground water source under the direct influence of surface water.

(2) The certified operators shall be in charge of the technical direction of a water system's operation, or an operating shift of such a system, or a major segment of a system neces-

sary for monitoring or improving the quality of water. The operator shall be certified as provided in RCW 70.119.050.

(3) A certified operator may provide required services to more than one system or to a group of systems. The amount of time that a certified operator shall be required to be present at any given system shall be based upon the time required to properly operate and maintain the public water system as designed and constructed in accordance with RCW 43.20.050. The employing or appointing officials shall designate the position or positions requiring mandatory certification within their individual systems and shall assure that such certified operators are responsible for the system's technical operation.

(4) The department shall, in establishing by rule or otherwise the requirements for public water systems with fewer than one hundred connections, phase in such requirements in order to assure that (a) an adequate number of certified operators are available to serve the additional systems, (b) the systems have adequate notice and time to plan for securing the services of a certified operator, (c) the department has the additional data and other administrative capacity, (d) adequate training is available to certify additional operators as necessary, and (e) any additional requirements under federal law are satisfied. The department shall require certified operators for all group A systems as necessary to conform to federal law or implementing rules or guidelines. Unless necessary to conform to federal law, rules, or guidelines, the department shall not require a certified operator for a system with fewer than one hundred connections unless that system is determined by the department to be in significant noncompliance with operational, monitoring, or water quality standards that would put the public health at risk, as defined by the department by rule, or has, or is required to have, water treatment facilities other than simple disinfection.

(5) Any examination required by the department as a prerequisite for the issuance of a certificate under this chapter shall be offered in each region where the department has a regional office.

(6) Operators not required to be certified by this chapter are encouraged to become certified on a voluntary basis. [1997 c 218 § 2; 1995 c 376 § 6; 1991 c 305 § 3; 1983 c 292 § 3; 1977 ex.s. c 99 § 3.]

Findings—1997 c 218: "The legislature finds and declares that:

(1) The provision of safe and reliable water supplies to the people of the state of Washington is fundamental to ensuring public health and continuing economic vitality of this state.

(2) The department of health, pursuant to legislative directive in 1995, has provided a report that incorporates the findings and recommendations of the water supply advisory committee as to progress in meeting the objectives of the public health improvement plan, changes warranted by the recent congressional action reauthorizing the federal safe drinking water act, and new approaches to providing services under the general principles of regulatory reform.

(3) The environmental protection agency has recently completed a national assessment of public water system capital needs, which has identified over four billion dollars in such needs in the state of Washington.

(4) The changes to the safe drinking water act offer the opportunity for the increased ability of the state to tailor federal requirements and programs to meet the conditions and objectives within this state.

(5) The department of health and local governments should be provided with adequate authority, flexibility, and resources to be able to implement the principles and recommendations adopted by the water supply advisory committee.

(6) Statutory changes are necessary to eliminate ambiguity or conflicting authorities, provide additional information and tools to consumers and

the public, and make necessary changes to be consistent with federal law.

(7) A basic element to the protection of the public's health from water-borne disease outbreaks is systematic and comprehensive monitoring of water supplies for all contaminants, including hazardous substances with long-term health effects, and routine field visits to water systems for technical assistance and evaluation.

(8) The water systems of this state should have prompt and full access to the newly created federal state revolving fund program to help meet their financial needs and to achieve and maintain the technical, managerial, and financial capacity necessary for long-term compliance with state and federal regulations. This requires authority for streamlined program administration and the provision of the necessary state funds required to match the available federal funds.

(9) Stable, predictable, and adequate funding is essential to a statewide drinking water program that meets state public health objectives and provides the necessary state resources to utilize the new flexibility, opportunities, and programs under the safe drinking water act." [1997 c 218 § 1.]

Effective date—1997 c 218: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 25, 1997]." [1997 c 218 § 6.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.119.040 Exclusions from chapter. Nothing in this chapter shall apply to:

(1) Industrial water supply systems which do not supply water to residences for domestic use and are under the jurisdictional requirements of the Washington Industrial Safety and Health Act of 1973, chapter 49.17 RCW, as now or hereafter amended; or

(2) The preparation, distribution, or sale of bottled water or water similarly packaged. [1977 ex.s. c 99 § 4.]

70.119.050 Rules and regulations—Secretary to adopt. The secretary shall adopt such rules and regulations as may be necessary for the administration of this chapter and shall enforce such rules and regulations. The rules and regulations shall include provisions establishing minimum qualifications and procedures for the certification of operators, criteria for determining the kind and nature of continuing educational requirements for renewal of certification under RCW 70.119.100(2), and provisions for classifying water purification plants and distribution systems.

Rules and regulations adopted under the provisions of this section shall be adopted in accordance with the provisions of chapter 34.05 RCW. [1995 c 269 § 2905; 1983 c 292 § 4; 1977 ex.s. c 99 § 5.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.119.060 Public water systems—Secretary to categorize. The secretary shall further categorize all public water systems with regard to the size, type, source of water, and other relevant physical conditions affecting purification plants and distribution systems to assist in identifying the skills, knowledge and experience required for the certification of operators for each category of such systems, to assure the protection of the public health and conservation and protection of the state's water resources as required under RCW 70.119.010, and to implement the provisions of the state safe drinking water act in chapter 70.119A RCW. In categorizing all public water systems for the purpose of implementing these provisions of state law, the secretary shall take into con-

sideration economic impacts as well as the degree and nature of any public health risk. [1991 c 305 § 4; 1977 ex.s. c 99 § 6.]

70.119.070 Secretary—Consideration of guidelines.

The secretary is authorized, when taking action pursuant to RCW 70.119.050 and 70.119.060, to consider generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities and commonly accepted national guidelines and standards. [1983 c 292 § 5; 1977 ex.s. c 99 § 7.]

70.119.081 Ad hoc advisory committees. The secretary, in cooperation with the director of ecology, may establish ad hoc advisory committees, as necessary, to obtain advice and technical assistance regarding the development of rules implementing this chapter and on the examination and certification of operators of water systems. [1995 c 269 § 2909.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.119.090 Certificates without examination—Conditions. Certificates shall be issued without examination under the following conditions:

(1) Certificates shall be issued without application fee to operators who, on January 1, 1978, hold certificates of competency attained under the voluntary certification program sponsored jointly by the state department of social and health services, health services division, and the Pacific Northwest section of the American water works association.

(2) Certification shall be issued to persons certified by a governing body or owner of a public water system to have been the operators of a purification plant or distribution system on January 1, 1978, but only to those who are required to be certified under RCW 70.119.030(1). A certificate so issued shall be valid for operating any plant or system of the same classification and same type of water source.

(3) A nonrenewable certificate, temporary in nature, may be issued to an operator for a period not to exceed twelve months to fill a vacated position required to have a certified operator. Only one such certificate may be issued subsequent to each instance of vacation of any such position. [1991 c 305 § 5; 1983 c 292 § 7; 1977 ex.s. c 99 § 9.]

Effective date—1977 ex.s. c 99: See RCW 70.119.900.

70.119.100 Certificates—Issuance and renewal—Conditions. The issuance and renewal of a certificate shall be subject to the following conditions:

(1) Except as provided in RCW 70.119.090, a certificate shall be issued if the operator has satisfactorily passed a written examination, has paid the department an application fee as established by the department under RCW 70.119.160, and has met the requirements specified in the rules and regulations as authorized by this chapter.

(2) Every certificate shall be renewed annually upon the payment of a fee as established by the department under RCW 70.119.160 and satisfactory evidence is presented to the secretary that the operator has fulfilled the continuing

education requirements as prescribed by rule of the department.

(3) The secretary shall notify operators who fail to renew their certificates before the end of the year that their certificates are temporarily valid for two months following the end of the certificate year. Certificates not renewed during the two month period shall be invalid and the secretary shall so notify the holders of such certificates.

(4) An operator who has failed to renew a certificate pursuant to the provisions of this section, may reapply for certification and the secretary may require the operator to meet the requirements established for new applicants. [1993 c 306 § 1; 1991 c 305 § 6; 1987 c 75 § 11; 1983 c 292 § 8; 1982 c 201 § 13; 1977 ex.s. c 99 § 10.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

70.119.110 Certificates—Grounds for revocation.

The secretary may after conducting a hearing revoke a certificate found to have been obtained by fraud or deceit; or for gross negligence in the operation of a purification plant or distribution system; or for an intentional violation of the requirements of this chapter or any lawful rules, order, or regulation of the department. No person whose certificate is revoked under this section shall be eligible to apply for a certificate for one year from the effective date of the final order of revocation. [1995 c 269 § 2906; 1991 c 305 § 7; 1983 c 292 § 9; 1977 ex.s. c 99 § 11.]

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.119.120 Secretary—Authority. To carry out the provisions and purposes of this chapter, the secretary is authorized and empowered to:

(1) Receive financial and technical assistance from the federal government and other public or private agencies.

(2) Participate in related programs of the federal government, other state, interstate agencies, or other public or private agencies or organizations.

(3) Assess fees determined pursuant to RCW 70.119.160 on public water systems to support the waterworks operator certification program. [1993 c 306 § 2; 1977 ex.s. c 99 § 12.]

70.119.130 Violations—Penalties. Any person, including any operator or any firm, association, corporation, municipal corporation, or other governmental subdivision or agency who, after thirty days' written notice, operates a public water system which is not in compliance with RCW 70.119.030(1), shall be guilty of a misdemeanor. Each month of such operation out of compliance with RCW 70.119.030(1) shall constitute a separate offense. Upon conviction, violators shall be fined an amount not exceeding one hundred dollars for each offense. It shall be the duty of the prosecuting attorney or the attorney general, as appropriate to secure injunctions of continuing violations of any provisions of this chapter or the rules and regulations adopted hereunder: PROVIDED, That, except in the case of fraud, deceit, or gross negligence under RCW 70.119.110, no revocation, citation or charge shall be made under RCW 70.119.110 and 70.119.130 until a proper written notice of violation is

received and a reasonable opportunity for correction has been given. [1991 c 305 § 8; 1983 c 292 § 10; 1977 ex.s. c 99 § 13.]

Effective date—1977 ex.s. c 99: See RCW 70.119.900.

70.119.140 Certificates—Reciprocity with other states. Operators certified by any state under provisions that, in the judgment of the secretary, are substantially equivalent to the requirements of this chapter and any rules and regulations promulgated hereunder, may be issued, upon application, a certificate without examination.

In making determinations pursuant to this section, the secretary shall consult with the *board and may consider any generally applicable criteria and guidelines developed by a nationally recognized association of certification authorities. [1977 ex.s. c 99 § 14.]

***Reviser's note:** RCW 70.95B.070, which created the water and wastewater operator certification board of examiners, was repealed by 1995 c 269 § 2907, effective July 1, 1995.

70.119.150 Waterworks operator certification account. The waterworks operator certification account is created in the general fund of the state treasury. All fees paid pursuant to RCW 70.119.100, 70.119.120(3), and any other receipts realized in the administration of this chapter shall be deposited in the waterworks operator certification account. Moneys in the account shall be spent only after appropriation. Moneys from the account shall be used by the department of health to carry out the purposes of the waterworks operator certification program. [1993 c 306 § 3; 1977 ex.s. c 99 § 15.]

70.119.160 Fee schedules—Certified operators—Public water systems. The department of health certifies individuals responsible for the active daily technical operation of public water supply systems and monitors public water supply systems to ensure that such systems comply with the requirements of this chapter and regulations implementing this chapter. The secretary shall establish a schedule of fees for certified operator applicants and renewal licenses and a separate schedule of fees for public water systems to support the waterworks operator certification program. The fees shall be set at a level sufficient for the department to recover the costs of the waterworks operator certification program and in accordance with the procedures established under RCW 43.70.250. [1993 c 306 § 4.]

70.119.900 Effective date—1977 ex.s. c 99. This act shall take effect on January 1, 1978. [1977 ex.s. c 99 § 17.]

Chapter 70.119A RCW PUBLIC WATER SYSTEMS— PENALTIES AND COMPLIANCE

Sections

| | |
|-------------|---|
| 70.119A.020 | Definitions. |
| 70.119A.025 | Environmental excellence program agreements—Effect on chapter. |
| 70.119A.030 | Public health emergencies—Violations—Penalty. |
| 70.119A.040 | Additional or alternative penalty—Informal resolution unless a public health emergency. |
| 70.119A.050 | Enforcement of regulations by local boards of health—Civil penalties. |

- 70.119A.060 Public water systems—Mandate—Conditions for approval or creation of new public water system—Department and local health jurisdiction duties.
- 70.119A.070 Department contracting authority.
- 70.119A.080 Drinking water program.
- 70.119A.100 Operating permits—Findings.
- 70.119A.110 Operating permits—Application process—Phase-in of implementation—Satellite systems.
- 70.119A.115 Organic and inorganic chemicals—Area-wide waiver program.
- 70.119A.120 Safe drinking water account.
- 70.119A.130 Local government authority.
- 70.119A.140 Report by bottled water plant operator or water dealer of contaminant in water source.
- 70.119A.150 Authority to enter premises—Search warrants—Investigations.
- 70.119A.160 Water supply advisory committee.
- 70.119A.170 Drinking water assistance account—Drinking water assistance administrative account—Drinking water assistance repayment account—Program to provide financial assistance to public water systems—Responsibilities.
- 70.119A.180 Water use efficiency requirements—Rules.
- 70.119A.900 Short title—1989 c 422.

Drinking water quality consumer complaints: RCW 80.04.110.

70.119A.020 Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout this chapter:

- (1) "Department" means the department of health.
- (2) "Local board of health" means the city, town, county, or district board of health.
- (3) "Local health jurisdiction" means an entity created under chapter 70.05, 70.08, or 70.46 RCW which provides public health services to persons within the area.
- (4) "Public water system" means any system, excluding a system serving only one single-family residence and a system with four or fewer connections all of which serve residences on the same farm, providing water for human consumption through pipes or other constructed conveyances, including any collection, treatment, storage, or distribution facilities under control of the purveyor and used primarily in connection with the system; and collection or pretreatment storage facilities not under control of the purveyor but primarily used in connection with the system, including:
 - (a) Any collection, treatment, storage, and distribution facilities under control of the purveyor and used primarily in connection with such system; and
 - (b) Any collection or pretreatment storage facilities not under control of the purveyor which are primarily used in connection with such system.
- (5) "Order" means a written direction to comply with a provision of the regulations adopted under RCW 43.20.050(2)(a) or 70.119.050 or to take an action or a series of actions to comply with the regulations.
- (6) "Purveyor" means any agency or subdivision of the state or any municipal corporation, firm, company, mutual or cooperative association, institution, partnership, or person or any other entity, that owns or operates a public water system. It also means the authorized agents of any such entities.
- (7) "Regulations" means rules adopted to carry out the purposes of this chapter.
- (8) "Federal safe drinking water act" means the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., as now in effect or hereafter amended.
- (9) "Area-wide waivers" means a waiver granted by the department as a result of a geographically based testing pro-

(2004 Ed.)

gram meeting required provisions of the federal safe drinking water act.

(10) "Local health officer" means the legally qualified physician who has been appointed as the health officer for the city, town, county, or district public health department.

(11) "Person" includes, but is not limited to, natural persons, municipal corporations, governmental agencies, firms, companies, mutual or cooperative associations, institutions, and partnerships. It also means the authorized agents of any such entities.

(12) "Public health emergency" means a declaration by an authorized health official of a situation in which either illness, or exposure known to cause illness, is occurring or is imminent.

(13) "Secretary" means the secretary of the department of health.

(14) "State board of health" is the board created by RCW 43.20.030. [1999 c 118 § 2; 1994 c 252 § 2; 1991 c 304 § 2; 1991 c 3 § 370; 1989 c 422 § 2; 1986 c 271 § 2.]

Finding—Intent—1999 c 118: "The legislature finds and declares that the provision of safe and reliable water supplies is essential to public health and the continued economic vitality of the state of Washington. Maintaining the authority necessary to ensure safe and reliable water supplies requires that state laws conform with the provisions of the federal safe drinking water act. It is the intent of the legislature that the definition of public water system be amended to reflect recent amendments to the federal safe drinking water act." [1999 c 118 § 1.]

Finding—1994 c 252: "The legislature finds that:

- (1) The federal safe drinking water act has imposed significant new costs on public water systems and that the state should seek maximum regulatory flexibility allowed under federal law;
 - (2) There is a need to comprehensively assess and characterize the ground waters of the state to evaluate public health risks from organic and inorganic chemicals regulated under federal law;
 - (3) That federal law provides a mechanism to significantly reduce testing and monitoring costs to public water systems through the use of area-wide waivers.
- The legislature therefore directs the department of health to conduct a voluntary program to selectively test the ground waters of the state for organic and inorganic chemicals regulated under federal law for the purpose of granting area-wide waivers." [1994 c 252 § 1.]

Effective date—1994 c 252: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 252 § 6.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.025 Environmental excellence program agreements—Effect on chapter. Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW. [1997 c 381 § 24.]

Purpose—1997 c 381: See RCW 43.21K.005.

70.119A.030 Public health emergencies—Violations—Penalty. (1) The secretary or his or her designee or the local health officer may declare a public health emergency. As limited by RCW 70.119A.040, the department may impose penalties for violations of laws or regulations that are determined to be a public health emergency.

(2) As limited by RCW 70.119A.040, the department may impose penalties for violation of laws or rules regulating

public water systems and administered by the department of health. [1993 c 305 § 1; 1991 c 304 § 3; 1989 c 422 § 6; 1986 c 271 § 3.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.040 Additional or alternative penalty—Informal resolution unless a public health emergency.

(1)(a) In addition to or as an alternative to any other penalty or action allowed by law, a person who violates a law or rule regulating public water systems and administered by the department of health is subject to a penalty of not more than five thousand dollars per day for every such violation, or, in the case of a violation that has been determined to be a public health emergency, a penalty of not more than ten thousand dollars per day for every such violation. Every such violation shall be a separate and distinct offense. The amount of fine shall reflect the health significance of the violation and the previous record of compliance on the part of the public water supplier. In case of continuing violation, every day's continuance shall be a separate and distinct violation.

(b) In addition, a person who constructs, modifies, or expands a public water system or who commences the construction, modification, or expansion of a public water system without first obtaining the required departmental approval is subject to penalties of not more than five thousand dollars per service connection, or, in the case of a system serving a transient population, a penalty of not more than four hundred dollars per person based on the highest average daily population the system serves or is anticipated to serve may be imposed. The total penalty that may be imposed pursuant to this subsection (1)(b) is five hundred thousand dollars. For the purpose of computing the penalty under this subsection, a service connection shall include any new service connection actually constructed, any anticipated service connection the system has been designed to serve, and, in the case of a system modification not involving expansions, each existing service connection that benefits or would benefit from the modification.

(c) Every person who, through an act of commission or omission, procures, aids, or abets a violation is considered to have violated the provisions of this section and is subject to the penalty provided in this section.

(2) The penalty provided for in this section shall be imposed by a notice in writing to the person against whom the civil penalty is assessed and shall describe the violation. The notice shall be personally served in the manner of service of a summons in a civil action or in a manner that shows proof of receipt. A penalty imposed by this section is due twenty-eight days after receipt of notice unless application for an adjudicative proceeding is filed as provided in subsection (3) of this section.

(3) Within twenty-eight days after notice is received, the person incurring the penalty may file an application for an adjudicative proceeding and may pursue subsequent review as provided in chapter 34.05 RCW and applicable rules of the department or board of health.

(4) A penalty imposed by a final administrative order is due upon service of the final administrative order. A person who fails to pay a penalty assessed by a final administrative order within thirty days of service of the final administrative

order shall pay, in addition to the amount of the penalty, interest at the rate of one percent of the unpaid balance of the assessed penalty for each month or part of a month that the penalty remains unpaid, commencing with the month in which the notice of penalty was served and such reasonable attorney's fees as are incurred in securing the final administrative order.

(5) A person who institutes proceedings for judicial review of a final administrative order assessing a civil penalty under this chapter shall place the full amount of the penalty in an interest bearing account in the registry of the reviewing court. At the conclusion of the proceeding the court shall, as appropriate, enter a judgment on behalf of the department and order that the judgment be satisfied to the extent possible from moneys paid into the registry of the court or shall enter a judgment in favor of the person appealing the penalty assessment and order return of the moneys paid into the registry of the court together with accrued interest to the person appealing. The judgment may award reasonable attorney's fees for the cost of the attorney general's office in representing the department.

(6) If no appeal is taken from a final administrative order assessing a civil penalty under this chapter, the department may file a certified copy of the final administrative order with the clerk of the superior court in which the public water system is located or in Thurston county, and the clerk shall enter judgment in the name of the department and in the amount of the penalty assessed in the final administrative order.

(7) A judgment entered under subsection (5) or (6) of this section shall have the same force and effect as, and is subject to all of the provisions of law relating to, a judgment in a civil action, and may be enforced in the same manner as any other judgment of the court in which it is entered.

(8) All penalties imposed under this section shall be payable to the state treasury and credited to the safe drinking water account, and shall be used by the department to provide training and technical assistance to system owners and operators.

(9) Except in cases of public health emergencies, the department may not impose monetary penalties under this section unless a prior effort has been made to resolve the violation informally. [1995 c 376 § 8; 1993 c 305 § 2; 1990 c 133 § 8; 1989 c 175 § 135; 1986 c 271 § 4.]

Findings—1995 c 376: See note following RCW 70.116.060.

Findings—Severability—1990 c 133: See notes following RCW 36.94.140.

Effective date—1989 c 175: See note following RCW 34.05.010.

70.119A.050 Enforcement of regulations by local boards of health—Civil penalties. Each local board of health that is enforcing the regulations under an agreement with the department allocating state and local responsibility is authorized to impose and collect civil penalties for violations within the area of its responsibility under the same limitations and requirements imposed upon the department by RCW 70.119A.030 and 70.119A.040, except that judgment shall be entered in the name of the local board [and] penalties shall be placed into the general fund of the county, city, or town operating the local board of health. [1993 c 305 § 3; 1989 c 422 § 8; 1986 c 271 § 5.]

70.119A.060 Public water systems—Mandate—Conditions for approval or creation of new public water system—Department and local health jurisdiction duties.

(1) In order to assure safe and reliable public drinking water and to protect the public health, public water systems shall:

- (a) Protect the water sources used for drinking water;
- (b) Provide treatment adequate to assure that the public health is protected;
- (c) Provide and effectively operate and maintain public water system facilities;
- (d) Plan for future growth and assure the availability of safe and reliable drinking water;
- (e) Provide the department with the current names, addresses, and telephone numbers of the owners, operators, and emergency contact persons for the system, including any changes to this information, and provide to users the name and twenty-four hour telephone number of an emergency contact person; and
- (f) Take whatever investigative or corrective action is necessary to assure that a safe and reliable drinking water supply is continuously available to users.

(2) No new public water system may be approved or created unless: (a) It is owned or operated by a satellite system management agency established under RCW 70.116.134 and the satellite system management system complies with financial viability requirements of the department; or (b) a satellite management system is not available and it is determined that the new system has sufficient management and financial resources to provide safe and reliable service. The approval of any new system that is not owned by a satellite system management agency shall be conditioned upon future management or ownership by a satellite system management agency, if such management or ownership can be made with reasonable economy and efficiency, or upon periodic review of the system's operational history to determine its ability to meet the department's financial viability and other operating requirements. The department and local health jurisdictions shall enforce this requirement under authority provided under this chapter, chapter 70.116, or 70.05 RCW, or other authority governing the approval of new water systems by the department or a local jurisdiction.

(3) The department and local health jurisdictions shall carry out the rules and regulations of the state board of health adopted pursuant to RCW 43.20.050(2)(a) and other rules adopted by the department relating to public water systems. [1995 c 376 § 3; 1991 c 304 § 4; 1990 c 132 § 4; 1989 c 422 § 3.]

Findings—1995 c 376: See note following RCW 70.116.060.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

Legislative findings—Severability—1990 c 132: See notes following RCW 43.20.240.

70.119A.070 Department contracting authority. The department may enter into contracts to carry out the purposes of this chapter. [1989 c 422 § 4.]

70.119A.080 Drinking water program. (1) The department shall administer a drinking water program which includes, but is not limited to, those program elements necessary to assume primary enforcement responsibility for part B,

(2004 Ed.)

and section 1428 of part C of the federal safe drinking water act. No rule promulgated or implemented by the department of health or the state board of health for the purpose of compliance with the requirements of the federal safe drinking water act, 42 U.S.C. Sec. 300f et seq., shall be applicable to public water systems to which that federal law is not applicable, unless the department or the state board determines that such rule is necessary for the protection of public health.

(2) The department shall enter into an agreement of administration with the department of ecology and any other appropriate agencies, to administer the federal safe drinking water act.

(3) The department is authorized to accept federal grants for the administration of a primary program. [1991 c 3 § 371; 1989 c 422 § 5.]

70.119A.100 Operating permits—Findings. The legislature finds that:

(1) The responsibility for ensuring that the citizens of this state have a safe and reliable drinking water supply is shared between local government and state government, and is the obligation of every public water system;

(2) A rapid increase in the number of public water systems supplying drinking water to the citizens of this state has significantly increased the burden on both local and state government to monitor and enforce compliance by these systems with state laws that govern planning, design, construction, operation, maintenance, financing, management, and emergency response;

(3) The federal safe drinking water act imposes on state and local governments and the public water systems of this state significant new responsibilities for monitoring, testing, and treating drinking water supplies; and

(4) Existing drinking water programs at both the state and local government level need additional authorities to enable them to more comprehensively and systematically address the needs of the public water systems of this state and assure that the public health and safety of its citizens are protected.

Therefore, annual operating permit requirements shall be established in accordance with this chapter. The operating permit requirements shall be administered by the department and shall be used as a means to assure that public water systems provide safe and reliable drinking water to the public. The department and local government shall conduct comprehensive and systematic evaluations to assess the adequacy and financial viability of public water systems. The department may impose permit conditions, requirements for system improvements, and compliance schedules in order to carry out the purpose of chapter 304, Laws of 1991. [1991 c 304 § 1.]

Requirements effective upon adoption of rules—1991 c 304: "The department shall adopt rules necessary to implement sections 5 through 7 of this act. The requirements of this act shall take effect upon adoption of rules pursuant to this act." [1991 c 304 § 8.]

70.119A.110 Operating permits—Application process—Phase-in of implementation—Satellite systems. (1) No person may operate a group A public water system unless the person first submits an application to the department and receives an operating permit as provided in this section. A

new application must be submitted upon any change in ownership of the system. Any person operating a public water system on July 28, 1991, may continue to operate the system until the department takes final action, including any time necessary for a hearing under subsection (3) of this section, on a permit application submitted by the person operating the system under the rules adopted by the department to implement this section.

(2) The department may require that each application include the information that is reasonable and necessary to determine that the system complies with applicable standards and requirements of the federal safe drinking water act, state law, and rules adopted by the department or by the state board of health.

(3) Following its review of the application, its supporting material, and any information received by the department in its investigation of the application, the department shall issue or deny the operating permit. The department shall act on initial permit applications as expeditiously as possible, and shall in all cases either grant or deny the application within one hundred twenty days of receipt of the application or of any supplemental information required to complete the application. The applicant for a permit shall be entitled to file an appeal in accordance with chapter 34.05 RCW if the department denies the initial or subsequent applications or imposes conditions or requirements upon the operator. Any operator of a public water system that requests a hearing may continue to operate the system until a decision is issued after the hearing.

(4) At the time of initial permit application or at the time of permit renewal the department may impose such permit conditions, requirements for system improvements, and compliance schedules as it determines are reasonable and necessary to ensure that the system will provide a safe and reliable water supply to its users.

(5) Operating permits shall be issued for a term of one year, and shall be renewed annually, unless the operator fails to apply for a new permit or the department finds good cause to deny the application for renewal.

(6) Each application shall be accompanied by an annual fee as follows:

(a) The annual fee for public water supply systems serving fifteen to forty-nine service connections shall be twenty-five dollars.

(b) The annual fee for public water supply systems serving fifty to three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection.

(c) The annual fee for public water supply systems serving three thousand three hundred thirty-four to fifty-three thousand three hundred thirty-three service connections shall be based on a uniform per service connection fee of one dollar and fifty cents per service connection plus ten cents for each service connection in excess of three thousand three hundred thirty-three service connections.

(d) The annual fee for public water supply systems serving fifty-three thousand three hundred thirty-four or more service connections shall be ten thousand dollars.

(e) In addition to the fees under (a) through (d) of this subsection, the department may charge an additional one-

time fee of five dollars for each service connection in a new water system.

(f) Until June 30, 2007, in addition to the fees under (a) through (e) of this subsection, the department may charge municipal water suppliers, as defined in RCW 90.03.015, an additional annual fee equivalent to twenty-five cents for each residential service connection for the purpose of funding the water conservation activities in RCW 70.119A.180.

(7) The department may phase-in the implementation for any group of systems provided the schedule for implementation is established by rule. Prior to implementing the operating permit requirement on water systems having less than five hundred service connections, the department shall form a committee composed of persons operating these systems. The committee shall be composed of the department of health, two operators of water systems having under one hundred connections, two operators of water systems having between one hundred and two hundred service connections, two operators of water systems having between two hundred and three hundred service connections, two operators of water systems having between three hundred and four hundred service connections, two operators of water systems having between four hundred and five hundred service connections, and two county public health officials. The members shall be chosen from different geographic regions of the state. This committee shall develop draft rules to implement this section. The draft rules will then be subject to the rule-making procedures in accordance with chapter 34.05 RCW.

(8) The department shall notify existing public water systems of the requirements of RCW 70.119A.030, 70.119A.060, and this section at least one hundred twenty days prior to the date that an application for a permit is required pursuant to RCW 70.119A.030, 70.119A.060, and this section.

(9) The department shall issue one operating permit to any approved satellite system management agency. Operating permit fees for approved satellite system management agencies shall be one dollar per connection per year for the total number of connections under the management of the approved satellite agency. The department shall define by rule the meaning of the term "satellite system management agency." If a statutory definition of this term exists, then the department shall adopt by rule a definition consistent with the statutory definition.

(10) For purposes of this section, "group A public water system" and "system" mean those water systems with fifteen or more service connections, regardless of the number of people; or a system serving an average of twenty-five or more people per day for sixty or more days within a calendar year, regardless of the number of service connections. [2003 1st sp.s. c 5 § 18; 1991 c 304 § 5.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.115 Organic and inorganic chemicals—Area-wide waiver program. The department shall develop and implement a voluntary consolidated source monitoring program sufficient to accurately characterize the source water quality of the state's drinking water supplies and to maximize the flexibility allowed in the federal safe drinking water act to

allow public water systems to be waived from full testing requirements for organic and inorganic chemicals under the federal safe drinking water act. The department shall arrange for the initial sampling and provide for testing and programmatic costs to the extent that the legislature provides funding for this purpose in water system operating permit fees or through specific appropriation of funds from other sources. The department shall assess a fee using its authority under RCW 43.20B.020, sufficient to cover all testing and directly related costs to public water systems that otherwise are not funded. The department shall adjust the amount of the fee based on the size of the public drinking water system. Fees charged by the department for this purpose may not vary by more than a factor of ten. The department shall, to the extent feasible and cost-effective, use the services of local governments, local health departments, and private laboratories to implement the testing program. The department shall consult with the departments of agriculture and ecology for the purpose of exchanging water quality and other information. [1997 c 218 § 3; 1994 c 252 § 3.]

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Finding—Effective date—1994 c 252: See notes following RCW 70.119A.020.

70.119A.120 Safe drinking water account. The safe drinking water account is created in the general fund of the state treasury. All receipts from the operating permit fees required to be paid under RCW 70.119A.110 shall be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may be used by the department of health to carry out the purposes of chapter 304, Laws of 1991 and to carry out contracts with local governments in accordance with this chapter. [1991 c 304 § 6.]

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.130 Local government authority. Local governments may establish separate operating permit requirements for public water systems provided the operating permit requirements have been approved by the department. The department shall not approve local operating permit requirements unless the local system will result in an increased level of service to the public water system. There shall not be duplicate operating permit requirements imposed by local governments and the department. [1995 c 376 § 9; 1991 c 304 § 7.]

Effective date—1995 c 376 § 9: "Section 9 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 376 § 17.]

Findings—1995 c 376: See note following RCW 70.116.060.

Requirements effective upon adoption of rules—1991 c 304: See note following RCW 70.119A.100.

70.119A.140 Report by bottled water plant operator or water dealer of contaminant in water source. In such cases where a bottled water plant operator or water dealer knows or has reason to believe that a contaminant is present in the source water because of spill, release of a hazardous

substance, or otherwise, and the contaminant's presence would create a potential health hazard to consumers, the plant operator or water dealer must report such an occurrence to the state's department of health. [1992 c 34 § 5.]

Severability—1992 c 34: See note following RCW 69.07.170.

70.119A.150 Authority to enter premises—Search warrants—Investigations. (1)(a) Except as otherwise provided in (b) of this subsection, the secretary or his or her designee shall have the right to enter a premises under the control of a public water system at reasonable times with prior notification in order to determine compliance with laws and rules administered by the department of health to test, inspect, or sample features of a public water system and inspect, copy, or photograph monitoring equipment or other features of a public water system, or records required to be kept under laws or rules regulating public water systems. For the purposes of this section, "premises under the control of a public water system" does not include the premises or private property of a customer of a public water system past the point on the system where the service connection is made.

(b) The secretary or his or her designee need not give prior notification to enter a premises under (a) of this subsection if the purpose of the entry is to ensure compliance by the public water system with a prior order of the department or if the secretary or the secretary's designee has reasonable cause to believe the public water system is violating the law and poses a serious threat to public health and safety.

(2) The secretary or his or her designee may apply for an administrative search warrant to a court official authorized to issue a criminal search warrant. An administrative search warrant may be issued for the purposes of inspecting or examining property, buildings, premises, place, books, records, or other physical evidence, or conducting tests or taking samples. The warrant shall be issued upon probable cause. It is sufficient probable cause to show any of the following:

(a) The inspection, examination, test, or sampling is pursuant to a general administrative plan to determine compliance with laws or rules administered by the department; or

(b) The secretary or his or her designee has reason to believe that a violation of a law or rule administered by the department has occurred, is occurring, or may occur.

(3) The local health officer or the designee of a local health officer of a local board of health that is enforcing rules regulating public water systems under an agreement with the department allocating state and local responsibility is authorized to conduct investigations and to apply for, obtain, and execute administrative search warrants necessary to perform the local board's agreed-to responsibilities under the same limitations and requirements imposed on the department under this section. [1993 c 305 § 4.]

70.119A.160 Water supply advisory committee. The department shall create a water supply advisory committee. Membership on the committee shall reflect a broad range of interests in the regulation of public water supplies, including water utilities of all sizes, local governments, business groups, special purpose districts, local health jurisdictions, other state and federal agencies, financial institutions, envi-

ronmental organizations, the legislature, and other groups substantially affected by the department's role in implementing state and federal requirements for public water systems. Members shall be appointed for fixed terms of no less than two years, and may be reappointed. Any members of an existing advisory committee to the drinking water program may remain as members of the water supply advisory committee. The committee shall provide advice to the department on the organization, functions, service delivery methods, and funding of the drinking water program. The committee shall also review the adequacy and necessity of the current and prospective funding for the drinking water program, and the results of the committees' review shall be forwarded to the department. The report shall include a discussion of the extent to which the drinking water program has progressed toward achieving the objectives of the public health improvement plan, and an assessment of any changes to the program necessitated by modifications to the federal safe drinking water act. [1998 c 245 § 112; 1995 c 376 § 4.]

Findings—1995 c 376: See note following RCW 70.116.060.

70.119A.170 Drinking water assistance account—Drinking water assistance administrative account—Drinking water assistance repayment account—Program to provide financial assistance to public water systems—Responsibilities. (1) A drinking water assistance account is created in the state treasury. Such subaccounts as are necessary to carry out the purposes of this chapter are permitted to be established within the account. Therefore, the drinking water assistance administrative account and the drinking water assistance repayment account are created in the state treasury. The purpose of the account is to allow the state to use any federal funds that become available to states from congress to fund a state revolving loan fund program as part of the reauthorization of the federal safe drinking water act. Expenditures from the account may only be made by the secretary, the public works board, or the department of community, trade, and economic development, after appropriation. Moneys in the account may only be used, consistent with federal law, to assist water systems to provide safe drinking water through a program administered through the department of health, the public works board, and the department of community, trade, and economic development and for other activities authorized under federal law. Money may be placed in the account from the proceeds of bonds when authorized by the legislature, transfers from other state funds or accounts, federal capitalization grants or other financial assistance, all repayments of moneys borrowed from the account, all interest payments made by borrowers from the account or otherwise earned on the account, or any other lawful source. All interest earned on moneys deposited in the account, including repayments, shall remain in the account and may be used for any eligible purpose. Moneys in the account may only be used to assist local governments and water systems to provide safe and reliable drinking water, for other services and assistance authorized by federal law to be funded from these federal funds, and to administer the program.

(2) The department and the public works board shall establish and maintain a program to use the moneys in the

drinking water assistance account as provided by the federal government under the safe drinking water act. The department and the public works board, in consultation with purveyors, local governments, local health jurisdictions, financial institutions, commercial construction interests, other state agencies, and other affected and interested parties, shall by January 1, 1999, adopt final joint rules and requirements for the provision of financial assistance to public water systems as authorized under federal law. Prior to the effective date of the final rules, the department and the public works board may establish and utilize guidelines for the sole purpose of ensuring the timely procurement of financial assistance from the federal government under the safe drinking water act, but such guidelines shall be converted to rules by January 1, 1999. The department and the public works board shall make every reasonable effort to ensure the state's receipt and disbursement of federal funds to eligible public water systems as quickly as possible after the federal government has made them available. By December 15, 1997, the department and the public works board shall provide a report to the appropriate committees of the legislature reflecting the input from the affected interests and parties on the status of the program. The report shall include significant issues and concerns, the status of rule making and guidelines, and a plan for the adoption of final rules.

(3) If the department, public works board, or any other department, agency, board, or commission of state government participates in providing service under this section, the administering entity shall endeavor to provide cost-effective and timely services. Mechanisms to provide cost-effective and timely services include: (a) Adopting federal guidelines by reference into administrative rules; (b) using existing management mechanisms rather than creating new administrative structures; (c) investigating the use of service contracts, either with other governmental entities or with non-governmental service providers; (d) the use of joint or combined financial assistance applications; and (e) any other method or practice designed to streamline and expedite the delivery of services and financial assistance.

(4) The department shall have the authority to establish assistance priorities and carry out oversight and related activities, other than financial administration, with respect to assistance provided with federal funds. The department, the public works board, and the department of community, trade, and economic development shall jointly develop, with the assistance of water purveyors and other affected and interested parties, a memorandum of understanding setting forth responsibilities and duties for each of the parties. The memorandum of understanding at a minimum, shall include:

(a) Responsibility for developing guidelines for providing assistance to public water systems and related oversight prioritization and oversight responsibilities including requirements for prioritization of loans or other financial assistance to public water systems;

(b) Department submittal of preapplication information to the public works board for review and comment;

(c) Department submittal of a prioritized list of projects to the public works board for determination of:

(i) Financial capability of the applicant; and

(ii) Readiness to proceed, or the ability of the applicant to promptly commence the project;

(d) A process for determining consistency with existing water resource planning and management, including coordinated water supply plans, regional water resource plans, and comprehensive plans under the growth management act, chapter 36.70A RCW;

(e) A determination of:

(i) Least-cost solutions, including consolidation and restructuring of small systems, where appropriate, into more economical units;

(ii) The provision of regional facilities;

(iii) Projects and activities that facilitate compliance with the federal safe drinking water act; and

(iv) Projects and activities that are intended to achieve the public health objectives of federal and state drinking water laws;

(f) Implementation of water conservation and other demand management measures consistent with state guidelines for water utilities;

(g) Assistance for the necessary planning and engineering to assure that consistency, coordination, and proper professional review are incorporated into projects or activities proposed for funding;

(h) Minimum standards for water system capacity, financial viability, and water system planning;

(i) Testing and evaluation of the water quality of the state's public water system to assure that priority for financial assistance is provided to systems and areas with threats to public health from contaminated supplies and reduce in appropriate cases the substantial increases in costs and rates that customers of small systems would otherwise incur under the monitoring and testing requirements of the federal safe drinking water act;

(j) Coordination, to the maximum extent possible, with other state programs that provide financial assistance to public water systems and state programs that address existing or potential water quality or drinking contamination problems;

(k) Definitions of "affordability" and "disadvantaged community" that are consistent with these and similar terms in use by other state or federal assistance programs;

(l) Criteria for the financial assistance program for public water systems, which shall include, but are not limited to:

(i) Determining projects addressing the most serious risk to human health;

(ii) Determining the capacity of the system to effectively manage its resources, including meeting state financial viability criteria; and

(iii) Determining the relative benefit to the community served; and

(m) Ensure that each agency fulfills the audit, accounting, and reporting requirements under federal law for its portion of the administration of this program.

(5) The department and the public works board shall begin the process to disburse funds no later than October 1, 1997, and shall adopt such rules as are necessary under chapter 34.05 RCW to administer the program by January 1, 1999. [2001 c 141 § 4; 1997 c 218 § 4; 1995 c 376 § 10.]

Purpose—2001 c 141: See note following RCW 43.84.092.

Findings—Effective date—1997 c 218: See notes following RCW 70.119.030.

Findings—1995 c 376: See note following RCW 70.116.060.

(2004 Ed.)

70.119A.180 Water use efficiency requirements—

Rules. (1) It is the intent of the legislature that the department establish water use efficiency requirements designed to ensure efficient use of water while maintaining water system financial viability, improving affordability of supplies, and enhancing system reliability.

(2) The requirements of this section shall apply to all municipal water suppliers and shall be tailored to be appropriate to system size, forecasted system demand, and system supply characteristics.

(3) For the purposes of this section:

(a) Water use efficiency includes conservation planning requirements, water distribution system leakage standards, and water conservation performance reporting requirements; and

(b) "Municipal water supplier" and "municipal water supply purposes" have the meanings provided by RCW 90.03.015.

(4) To accomplish the purposes of this section, the department shall adopt rules necessary to implement this section by December 31, 2005. The department shall:

(a) Develop conservation planning requirements that ensure municipal water suppliers are: (i) Implementing programs to integrate conservation with water system operation and management; and (ii) identifying how to appropriately fund and implement conservation activities. Requirements shall apply to the conservation element of water system plans and small water system management programs developed pursuant to chapter 43.20 RCW. In establishing the conservation planning requirements the department shall review the current department conservation planning guidelines and include those elements that are appropriate for rule. Conservation planning requirements shall include but not be limited to:

(A) Selection of cost-effective measures to achieve a system's water conservation objectives. Requirements shall allow the municipal water supplier to select and schedule implementation of the best methods for achieving its conservation objectives;

(B) Evaluation of the feasibility of adopting and implementing water delivery rate structures that encourage water conservation;

(C) Evaluation of each system's water distribution system leakage and, if necessary, identification of steps necessary for achieving water distribution system leakage standards developed under (b) of this subsection;

(D) Collection and reporting of water consumption and source production and/or water purchase data. Data collection and reporting requirements shall be sufficient to identify water use patterns among utility customer classes, where applicable, and evaluate the effectiveness of each system's conservation program. Requirements, including reporting frequency, shall be appropriate to system size and complexity. Reports shall be available to the public; and

(E) Establishment of minimum requirements for water demand forecast methodologies such that demand forecasts prepared by municipal water suppliers are sufficient for use in determining reasonably anticipated future water needs;

(b) Develop water distribution system leakage standards to ensure that municipal water suppliers are taking appropriate steps to reduce water system leakage rates or are main-

taining their water distribution systems in a condition that results in leakage rates in compliance with the standards. Limits shall be developed in terms of percentage of total water produced and/or purchased and shall not be lower than ten percent. The department may consider alternatives to the percentage of total water supplied where alternatives provide a better evaluation of the water system's leakage performance. The department shall institute a graduated system of requirements based on levels of water system leakage. A municipal water supplier shall select one or more control methods appropriate for addressing leakage in its water system;

(c) Establish minimum requirements for water conservation performance reporting to assure that municipal water suppliers are regularly evaluating and reporting their water conservation performance. The objective of setting conservation goals is to enhance the efficient use of water by the water system customers. Performance reporting shall include:

(i) Requirements that municipal water suppliers adopt and achieve water conservation goals. The elected governing board or governing body of the water system shall set water conservation goals for the system. In setting water conservation goals the water supplier may consider historic conservation performance and conservation investment, customer base demographics, regional climate variations, forecasted demand and system supply characteristics, system financial viability, system reliability, and affordability of water rates. Conservation goals shall be established by the municipal water supplier in an open public forum;

(ii) Requirements that the municipal water supplier adopt schedules for implementing conservation program elements and achieving conservation goals to ensure that progress is being made toward adopted conservation goals;

(iii) A reporting system for regular reviews of conservation performance against adopted goals. Performance reports shall be available to customers and the public. Requirements, including reporting frequency, shall be appropriate to system size and complexity;

(iv) Requirements that any system not meeting its water conservation goals shall develop a plan for modifying its conservation program to achieve its goals along with procedures for reporting performance to the department;

(v) If a municipal water supplier determines that further reductions in consumption are not reasonably achievable, it shall identify how current consumption levels will be maintained;

(d) Adopt rules that, to the maximum extent practical, utilize existing mechanisms and simplified procedures in order to minimize the cost and complexity of implementation and to avoid placing unreasonable financial burden on smaller municipal systems.

(5) The department shall establish an advisory committee to assist the department in developing rules for water use efficiency. The advisory committee shall include representatives from public water system customers, environmental interest groups, business interest groups, a representative cross-section of municipal water suppliers, a water utility conservation professional, tribal governments, the department of ecology, and any other members determined necessary by the department. The department may use the water

supply advisory committee created pursuant to RCW 70.119A.160 augmented with additional participants as necessary to comply with this subsection to assist the department in developing rules.

(6) The department shall provide technical assistance upon request to municipal water suppliers and local governments regarding water conservation, which may include development of best management practices for water conservation programs, conservation landscape ordinances, conservation rate structures for public water systems, and general public education programs on water conservation.

(7) To ensure compliance with this section, the department shall establish a compliance process that incorporates a graduated approach employing the full range of compliance mechanisms available to the department.

(8) Prior to completion of rule making required in subsection (4) of this section, municipal water suppliers shall continue to meet the existing conservation requirements of the department and shall continue to implement their current water conservation programs. [2003 1st sp.s. c 5 § 7.]

Severability—2003 1st sp.s. c 5: See note following RCW 90.03.015.

70.119A.900 Short title—1989 c 422. This act shall be known and cited as the "Washington state safe drinking water act." [1989 c 422 § 1.]

Chapter 70.120 RCW

MOTOR VEHICLE EMISSION CONTROL

Sections

| | |
|------------|--|
| 70.120.010 | Definitions. |
| 70.120.020 | Programs. |
| 70.120.070 | Vehicle inspections—Failed—Certificate of acceptance. |
| 70.120.080 | Vehicle inspections—Fleets. |
| 70.120.100 | Vehicle inspections—Complaints. |
| 70.120.120 | Rules. |
| 70.120.130 | Authority. |
| 70.120.150 | Vehicle emission and equipment standards—Designation of noncompliance areas and emission contributing areas. |
| 70.120.160 | Noncompliance areas—Annual review. |
| 70.120.170 | Motor vehicle emission inspections—Fees—Certificate of compliance—State and local agency vehicles. |
| 70.120.190 | Used vehicles. |
| 70.120.200 | Engine conformance. |
| 70.120.210 | Clean-fuel performance and clean-fuel vehicle emissions specifications. |
| 70.120.230 | Scientific advisory board—Composition of board—Duties. |
| 70.120.901 | Captions not law—1989 c 240. |
| 70.120.902 | Effective date—1989 c 240. |

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

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

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology.

(3) "Fleet" means a group of fifteen or more motor vehicles registered in the same name and whose owner has been assigned a fleet identifier code by the department of licensing.

(4) "Motor vehicle" means any self-propelled vehicle required to be licensed pursuant to chapter 46.16 RCW.

(5) "Motor vehicle dealer" means a motor vehicle dealer, as defined in RCW 46.70.011, that is licensed pursuant to chapter 46.70 RCW.

(6) "Person" means an individual, firm, public or private corporation, association, partnership, political subdivision of the state, municipality, or governmental agency.

(7) The terms "air contaminant," "air pollution," "air quality standard," "ambient air," "emission," and "emission standard" have the meanings given them in RCW 70.94.030. [1991 c 199 § 201; 1979 ex.s. c 163 § 1.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 163 § 19.]

70.120.020 Programs. (1) The department shall conduct a public educational program regarding the health effects of air pollution emitted by motor vehicles; the purpose, operation, and effect of emission control devices and systems; and the effect that proper maintenance of motor vehicle engines has on fuel economy and air pollution emission and a public notification program identifying the geographic areas of the state that are designated as being non-compliance areas and emission contributing areas and describing the requirements imposed under this chapter for those areas.

(2)(a) The department shall grant certificates of instruction to persons who successfully complete a course of study, under general requirements established by the director, in the maintenance of motor vehicle engines, the use of engine and exhaust analysis equipment, and the repair and maintenance of emission control devices. The director may establish and implement procedures for granting certification to persons who successfully complete other training programs or who have received certification from public and private organizations which meet the requirements established in this subsection, including programs on clean fuel technology and maintenance.

(b) The department shall make available to the public a list of those persons who have received certificates of instruction under subsection (2)(a) of this section. [1991 c 199 § 202; 1989 c 240 § 5; 1979 ex.s. c 163 § 2.]

Intent—1991 c 199: "(1) It is the intent of the legislature that the state take advantage of the best emission control systems available on new motor vehicles. The department shall conduct a study to determine if requiring new vehicles sold in the state to meet California vehicle emission standards will provide a significant benefit to attainment of ambient air quality standards in this state. The department shall report the findings of its study and its recommendations to the appropriate standing committees of the legislature. The department shall not adopt the California vehicle emission standards unless authorized by the legislature.

(2) In the event that California vehicle emission standards are adopted, the department shall not include a program for in-use testing and recall of vehicles required to meet California emission standards." [1991 c 199 § 229.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

(2004 Ed.)

70.120.070 Vehicle inspections—Failed—Certificate of acceptance. (1) Any person:

(a) Whose motor vehicle is tested pursuant to this chapter and fails to comply with the emission standards established for the vehicle; and

(b) Who, following such a test, expends more than one hundred dollars on a 1980 or earlier model year motor vehicle or expends more than one hundred fifty dollars on a 1981 or later model year motor vehicle for repairs solely devoted to meeting the emission standards and that are performed by a certified emission specialist authorized by RCW 70.120.020(2)(a); and

(c) Whose vehicle fails a retest, may be issued a certificate of acceptance if (i) the vehicle has been in use for more than five years or fifty thousand miles, and (ii) any component of the vehicle installed by the manufacturer for the purpose of reducing emissions, or its appropriate replacement, is installed and operative.

To receive the certificate, the person must document compliance with (b) and (c) of this subsection to the satisfaction of the department.

Should any provision of (b) of this subsection be disapproved by the administrator of the United States environmental protection agency, all vehicles shall be required to expend at least four hundred fifty dollars to qualify for a certificate of acceptance.

(2) Persons who fail the initial tests shall be provided with:

(a) Information regarding the availability of federal warranties and certified emission specialists;

(b) Information on the availability and procedure for acquiring license trip-permits;

(c) Information on the availability and procedure for receiving a certificate of acceptance; and

(d) The local phone number of the department's local vehicle specialist. [1998 c 342 § 2; 1991 c 199 § 203; 1989 c 240 § 6; 1980 c 176 § 4; 1979 ex.s. c 163 § 7.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.080 Vehicle inspections—Fleets. The director may authorize an owner or lessee of a fleet of motor vehicles, or the owner's or lessee's agent, to inspect the vehicles in the fleet and issue certificates of compliance for the vehicles in the fleet if the director determines that: (1) The director's inspection procedures will be complied with; and (2) certificates will be issued only to vehicles in the fleet that meet emission and equipment standards adopted under RCW 70.120.150 and only when appropriate.

In addition, the director may authorize an owner or lessee of one or more diesel motor vehicles with a gross vehicle weight rating in excess of eight thousand five hundred pounds, or the owner's or lessee's agent, to inspect the vehicles and issue certificates of compliance for the vehicles. The inspections shall be conducted in compliance with inspection procedures adopted by the department and certificates of compliance shall only be issued to vehicles that meet emission and equipment standards adopted under RCW 70.120.150.

The director shall establish by rule the fee for fleet or diesel inspections provided for in this section. The fee shall be set at an amount necessary to offset the department's cost to administer the fleet and diesel inspection program authorized by this section.

Owners, leaseholders, or their agents conducting inspections under this section shall pay only the fee established in this section and not be subject to fees under RCW 70.120.170(4). [1991 c 199 § 205; 1979 ex.s. c 163 § 8.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.100 Vehicle inspections—Complaints. The department shall investigate complaints received regarding the operation of emission testing stations and shall require corrections or modifications in those operations when deemed necessary.

The department shall also review complaints received regarding the maintenance or repairs secured by owners of motor vehicles for the purpose of complying with the requirements of this chapter. When possible, the department shall assist such owners in determining the merits of the complaints.

The department shall keep a copy of all complaints received, and on request, make copies available to the public. This is not intended to require disclosure of any information that is exempt from public disclosure under chapter 42.17 RCW. [1998 c 342 § 3; 1979 ex.s. c 163 § 10.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.120 Rules. The director shall adopt rules implementing and enforcing this chapter in accordance with chapter 34.05 RCW. The department shall take into account when considering proposed modifications of emission contributing boundaries, as provided for in RCW 70.120.150(6), alternative transportation control and motor vehicle emission reduction measures that are required by local municipal corporations for the purpose of satisfying federal emission guidelines. [1991 c 199 § 206; 1989 c 240 § 8; 1979 ex.s. c 163 § 13.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.130 Authority. The authority granted by this chapter to the director and the department for controlling vehicle emissions is supplementary to the department's authority to control air pollution pursuant to chapter 70.94 RCW. [1979 ex.s. c 163 § 14.]

Severability—1979 ex.s. c 163: See note following RCW 70.120.010.

70.120.150 Vehicle emission and equipment standards—Designation of noncompliance areas and emission contributing areas. The director:

(1) Shall adopt motor vehicle emission and equipment standards to: Ensure that no less than seventy percent of the vehicles tested comply with the standards on the first inspection

conducted, meet federal clean air act requirements, and protect human health and the environment.

(2) Shall adopt rules implementing the smoke opacity testing requirement for diesel vehicles that ensure that such test is objective and repeatable and that properly maintained engines that otherwise would meet the applicable federal emission standards, as measured by the new engine certification test, would not fail the smoke opacity test.

(3) Shall designate a geographic area as being a "non-compliance area" for motor vehicle emissions if (a) the department's analysis of emission and ambient air quality data, covering a period of no less than one year, indicates that the standard has or will probably be exceeded, and (b) the department determines that the primary source of the air contaminant is motor vehicle emissions.

(4) Shall reevaluate noncompliance areas if the United States environmental protection agency modifies the relevant air quality standards, and shall discontinue the program if compliance is indicated and if the department determines that the area would continue to be in compliance after the program is discontinued. The director shall notify persons residing in noncompliance areas of the reevaluation.

(5) Shall analyze information regarding the motor vehicle traffic in a noncompliance area to determine the smallest land area within whose boundaries are present registered motor vehicles that contribute significantly to the violation of motor vehicle-related air quality standards in the noncompliance area. The director shall declare the area to be an "emission contributing area." An emission contributing area established for a carbon monoxide or oxides of nitrogen noncompliance area must contain the noncompliance area within its boundaries. An emission contributing area established for an ozone noncompliance area located in this state need not contain the ozone noncompliance area within its boundaries if it can be proven that vehicles registered in the area contribute significantly to violations of the ozone air quality standard in the noncompliance area. An emission contributing area may be established in this state for violations of federal air quality standards for ozone in an adjacent state if (a) the United States environmental protection agency designates an area to be a "nonattainment area for ozone" under the provisions of the federal Clean Air Act (42 U.S.C. 7401 et seq.), and (b) it can be proven that vehicles registered in this state contribute significantly to the violation of the federal air quality standards for ozone in the adjacent state's nonattainment area.

(6) Shall, after consultation with the appropriate local government entities, designate areas as being noncompliance areas or emission contributing areas, and shall establish the boundaries of such areas by rule. The director may also modify boundaries. In establishing the external boundaries of an emission contributing area, the director shall use the boundaries established for ZIP code service areas by the United States postal service.

(7) May make grants to units of government in support of planning efforts to reduce motor vehicle emissions. [1991 c 199 § 207; 1989 c 240 § 2.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.160 Noncompliance areas—Annual review.

(1) The director shall review annually the air quality and forecasted air quality of each area in the state designated as a non-compliance area for motor vehicle emissions.

(2) An area shall no longer be designated as a non-compliance area if the director determines that:

(a) Air quality standards for contaminants derived from motor vehicle emissions are no longer being violated in the noncompliance area; and

(b) The standards would not be violated if the emission inspection system in the emission contributing area was discontinued and the requirements of RCW 46.16.015 no longer applied. [1989 c 240 § 3.]

70.120.170 Motor vehicle emission inspections—Fees—Certificate of compliance—State and local agency vehicles.

(1) The department shall administer a system for emission inspections of all motor vehicles, except those described in RCW 46.16.015(2), that are registered within the boundaries of each emission contributing area. Under such system a motor vehicle shall be inspected biennially except where an annual program would be required to meet federal law and prevent federal sanctions. In addition, motor vehicles shall be inspected at each change of registered owner of a licensed vehicle as provided under RCW 46.16.015.

(2) The director shall:

(a) Adopt procedures for conducting emission inspections of motor vehicles. The inspections may include idle and high revolution per minute emission tests. The emission test for diesel vehicles shall consist solely of a smoke opacity test.

(b) Adopt criteria for calibrating emission testing equipment. Electronic equipment used to test for emissions standards provided for in this chapter shall be properly calibrated. The department shall examine frequently the calibration of the emission testing equipment used at the stations.

(c) Authorize, through contracts, the establishment and operation of inspection stations for conducting vehicle emission inspections authorized in this chapter. No person contracted to inspect motor vehicles may perform for compensation repairs on any vehicles. No public body may establish or operate contracted inspection stations. Any contracts must be let in accordance with the procedures established for competitive bids in chapter 43.19 RCW.

(3) Subsection (2)(c) of this section does not apply to volunteer motor vehicle inspections under RCW 70.120.020(1) if the inspections are conducted for the following purposes:

(a) Auditing;

(b) Contractor evaluation;

(c) Collection of data for establishing calibration and performance standards; or

(d) Public information and education.

(4)(a) The director shall establish by rule the fee to be charged for emission inspections. The inspection fee shall be a standard fee applicable statewide or throughout an emission contributing area and shall be no greater than fifteen dollars. Surplus moneys collected from fees over the amount due the contractor shall be paid to the state and deposited in the general fund. Fees shall be set at the minimum whole dollar amount required to (i) compensate the contractor or inspection facility owner, and (ii) offset the general fund appropriation

to the department to cover the administrative costs of the motor vehicle emission inspection program.

(b) Before each inspection, a person whose motor vehicle is to be inspected shall pay to the inspection station the fee established under this section. The person whose motor vehicle is inspected shall receive the results of the inspection. If the inspected vehicle complies with the standards established by the director, the person shall receive a dated certificate of compliance. If the inspected vehicle does not comply with those standards, one reinspection of the vehicle shall be afforded without charge.

(5) All units of local government and agencies of the state with motor vehicles garaged or regularly operated in an emissions contributing area shall test the emissions of those vehicles annually to ensure that the vehicle's emissions comply with the emission standards established by the director. All state agencies outside of emission contributing areas with more than twenty motor vehicles housed at a single facility or contiguous facilities shall test the emissions of those vehicles annually to ensure that the vehicles' emissions comply with standards established by the director. A report of the results of the tests shall be submitted to the department. [1998 c 342 § 4; 1991 c 199 § 208; 1989 c 240 § 4.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.190 Used vehicles. (1) Motor vehicle dealers selling a used vehicle not under a new vehicle warranty shall include a notice in each vehicle purchase order form that reads as follows: "The owner of a vehicle may be required to spend up to (a dollar amount established under RCW 70.120.070) for repairs if the vehicle does not meet the vehicle emission standards under this chapter. Unless expressly warranted by the motor vehicle dealer, the dealer is not warranting that this vehicle will pass any emission tests required by federal or state law."

(2) The signature of the purchaser on the notice required under subsection (1) of this section shall constitute a valid disclaimer of any implied warranty by the dealer as to a vehicle's compliance with any emission standards.

(3) The disclosure requirement of subsection (1) of this section applies to all motor vehicle dealers located in counties where state emission inspections are required. [1991 c 199 § 210.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.200 Engine conformance. Engine manufacturers shall certify that new engines conform with current exhaust emission standards of the federal environmental protection agency. [1991 c 199 § 211.]

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

70.120.210 Clean-fuel performance and clean-fuel vehicle emissions specifications. By July 1, 1992, the department shall develop, in cooperation with the departments of general administration and transportation, and

Washington State University, aggressive clean-fuel performance and clean-fuel vehicle emissions specifications including clean-fuel vehicle conversion equipment. To the extent possible, such specifications shall be equivalent for all fuel types. In developing such specifications the department shall consider the requirements of the clean air act and the findings of the environmental protection agency, other states, the American petroleum institute, the gas research institute, and the motor vehicles manufacturers association. [1996 c 186 § 518; 1991 c 199 § 212.]

Findings—Intent—Part headings not law—Effective date—1996 c 186: See notes following RCW 43.330.904.

Finding—1991 c 199: See note following RCW 70.94.011.

Effective dates—Severability—Captions not law—1991 c 199: See RCW 70.94.904 through 70.94.906.

Clean-fuel grants: RCW 70.94.960.

70.120.230 Scientific advisory board—Composition of board—Duties. The department shall establish a scientific advisory board to review plans to establish or expand the geographic area where an inspection and maintenance system for motor vehicle emissions is required. The board shall consist of three to five members. All members shall have at least a master's degree in physics, chemistry, or engineering, or a closely related field. No member may be a current employee of a local air pollution control authority, the department, the United States environmental protection agency, or a company that may benefit from a review by the board.

The board shall review an inspection and maintenance plan at the request of a local air pollution control authority, the department, or by a petition of at least fifty people living within the proposed boundaries of a vehicle emission inspection and maintenance system. The entity or entities requesting a scientific review may include specific issues for the board to consider in its review. The board shall limit its review to matters of science and shall not provide advice on penalties or issues that are strictly legal in nature.

The board shall provide a complete written review to the department. If the board members are not in agreement as to the scientific merit of any issue under review, the board may include a dissenting opinion in its report to the department. The department shall immediately make copies available to the local air pollution control authority and to the public.

The department shall conduct a public hearing, within the area affected by the proposed rule, if any significant aspect of the rule is in conflict with a majority opinion of the board. The department shall include in its responsiveness summary the rationale for including a rule that is not consistent with the review of the board, including a response to the issues raised at the public hearing.

Members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060. [1998 c 342 § 5.]

70.120.901 Captions not law—1989 c 240. Section headings as used in this act do not constitute any part of law. [1989 c 240 § 11.]

70.120.902 Effective date—1989 c 240. This act shall take effect January 1, 1990. [1989 c 240 § 14.]

[Title 70 RCW—page 346]

Chapter 70.121 RCW MILL TAILINGS—LICENSING AND PERPETUAL CARE

Sections

| | |
|------------|--|
| 70.121.010 | Legislative findings. |
| 70.121.020 | Definitions. |
| 70.121.030 | Licenses—Renewal—Hearings. |
| 70.121.040 | Facility operations and decommissioning—Monitoring. |
| 70.121.050 | Radiation perpetual maintenance fund—Licensee contributions—Disposition. |
| 70.121.060 | State authority to acquire property for surveillance sites. |
| 70.121.070 | Status of acquired state property for surveillance sites. |
| 70.121.080 | Payment for transferred sites for surveillance. |
| 70.121.090 | Authority for on-site inspections and monitoring. |
| 70.121.100 | Licensees' bond requirements. |
| 70.121.110 | Acceptable bonds. |
| 70.121.120 | Forfeited bonds—Use of fund. |
| 70.121.130 | Exemptions from bonding requirements. |
| 70.121.140 | Amounts owed to state—Lien created. |
| 70.121.150 | Amounts owed to the state—Collection by attorney general. |
| 70.121.900 | Construction. |
| 70.121.905 | Short title. |
| 70.121.910 | Severability—1979 ex.s. c 110. |

Nuclear energy and radiation: Chapter 70.98 RCW.

Radioactive waste storage and transportation act of 1980: Chapter 70.99 RCW.

70.121.010 Legislative findings. The legislature finds that:

(1) The milling of uranium and thorium creates potential hazards to the health of the citizens of the state of Washington in that potentially hazardous radioactive isotopes, decay products of uranium and thorium, naturally occurring in relatively dispersed geologic formations, are brought to one location on the surface and pulverized in the process of mining and milling uranium and thorium.

(2) These radioactive isotopes, in addition to creating a field of gamma radiation in the vicinity of the tailings area, also exude potentially hazardous radioactive gas and particulates into the atmosphere from the tailings areas, and contaminate the milling facilities, thereby creating hazards which will be present for many generations.

(3) The public health and welfare of the citizens demands that the state assure that the public health be protected by requiring that: (a) Prior to the termination of any radioactive materials license, all milling facilities and associated tailings piles will be decommissioned in such a manner as to bring the potential public health hazard to a minimum; and (b) such environmental radiation monitoring as is necessary to verify the status of decommissioned facilities will be conducted. [1979 ex.s. c 110 § 1.]

Effective date—1979 ex.s. c 110: "This act shall take effect on January 1, 1980." [1979 ex.s. c 110 § 18.]

70.121.020 Definitions. Unless the context clearly requires a different meaning, the definitions in this section apply throughout this chapter.

(1) "Department" means the department of health.

(2) "Secretary" means the secretary of health.

(3) "Site" means the restricted area as defined by the United States nuclear regulatory commission.

(4) "Tailings" means the residue remaining after extraction of uranium or thorium from the ore whether or not the residue is left in piles, but shall not include ore bodies nor ore stock piles.

(5) "License" means a radioactive materials license issued under chapter 70.98 RCW and the rules adopted under chapter 70.98 RCW.

(6) "Termination of license" means the cancellation of the license after permanent cessation of operations. Temporary interruptions or suspensions of production due to economic or other conditions are not a permanent cessation of operations.

(7) "Milling" means grinding, cutting, working, or concentrating ore which has been extracted from the earth by mechanical (conventional) or chemical (in situ) processes.

(8) "Obligor-licensee" means any person who obtains a license to operate a uranium or thorium mill in the state of Washington or any person who owns the property on which the mill operates and who owes money to the state for the licensing fee, for reclamation of the site, for perpetual surveillance and maintenance of the site, or for any other obligation owed the state under this chapter.

(9) "Statement of claim" means the document recorded or filed pursuant to this chapter, which names an obligor-licensee, names the state as obligee, describes the obligation owed to the state, and describes property owned by the obligor-licensee on which a lien will attach for the benefit of the state, and which creates the lien when filed. [1991 c 3 § 372; 1987 c 184 § 1; 1982 c 78 § 1; 1979 ex.s. c 110 § 2.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.030 Licenses—Renewal—Hearings. (1) Any person who proposes to operate a uranium or thorium mill within the state of Washington after January 1, 1980, shall obtain a license from the department to mill thorium and uranium. The period of the license shall be determined by the secretary and shall be initially valid for not more than two years and renewable thereafter for periods of not more than five years. No license may be granted unless:

(a) The owner or operator of the mill submits to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill agrees to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter except where the lands are held in trust for or are owned by any Indian tribe.

(2) Any person operating a uranium or thorium mill on January 1, 1980, shall, at the time of application for renewal of his license to mill thorium or uranium, comply with the following conditions for continued operation of the mill:

(a) The owner or operator of the mill shall submit to the department a plan for reclamation and disposal of tailings and for decommissioning the site that conforms to the criteria and standards then in effect for the protection of the public safety and health; and

(b) The owner of the mill shall agree to transfer or revert to the appropriate state or federal agency upon termination of the license all lands, buildings, and grounds, and any interests therein, necessary to fulfill the purposes of this chapter

(2004 Ed.)

except where the lands are held in trust for or are owned by any Indian tribe.

(3) The department shall, after public notice and opportunity for written comment, hold a public hearing to consider the adequacy of the proposed plan to protect the safety and health of the public required by subsections (1) and (2) of this section. The proceedings shall be recorded and transcribed. The public hearing shall provide the opportunity for cross-examination by both the department and the person proposing the plan required under this section. The department shall make a written determination as to the licensing of the mill which is based upon the findings included in the determination and upon the evidence presented during the public comment period. The determination is subject to judicial review. If a declaration of nonsignificance is issued for a license renewal application under rules adopted under chapter 43.21C RCW, the public hearing is not required.

(4) The department shall set a schedule of license and amendment fees predicated on the cost of reviewing the license application and of monitoring for compliance with the conditions of the license. A permit for construction of a uranium or thorium mill may be granted by the secretary prior to licensing. [1979 ex.s. c 110 § 3.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.040 Facility operations and decommissioning—Monitoring. The secretary or his representative shall monitor the operations of the mill for compliance with the conditions of the license by the owner or operator. The mill owner or operator shall be responsible for compliance, both during the lifetime of the facility and at shutdown, including but not limited to such requirements as fencing and posting the site; contouring, covering, and stabilizing the pile; and for decommissioning the facility. [1979 ex.s. c 110 § 4.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.050 Radiation perpetual maintenance fund—Licensee contributions—Disposition. On a quarterly basis on and after January 1, 1980, there shall be levied and the department shall collect a charge of five cents per pound on each pound of uranium or thorium compound milled out of the raw ore. All moneys paid to the department from these charges shall be deposited in a special security fund in the treasury of the state of Washington to be known as the "radiation perpetual maintenance fund". This security fund shall be used by the department when a licensee has ceased to operate and the site may still contain, or have associated with the site at which the licensed activity was conducted in spite of full compliance with RCW 70.121.030, radioactive material which will require further maintenance, surveillance, or other care. If, with respect to a licensee, the department determines that the estimated total of these charges will be less than or greater than that required to defray the estimated cost of administration of this responsibility, the department may prescribe such an increased or decreased charge as is considered necessary for this purpose. If, at termination of the license, the department determines that by the applicable standards and practices then in effect, the charges which have been collected from the licensee and earnings generated

therefrom are in excess of the amount required to defray the cost of this responsibility, the department may refund the excess portion to the licensee. If, at termination of the license or cessation of operation, the department determines, by the applicable standards and practices then in effect, that the charges which have been collected from the licensee and earnings generated therefrom are together insufficient to defray the cost of this responsibility, the department may collect the excess portion from the licensee.

Moneys in the radiation perpetual maintenance fund shall be invested by the state investment board in the manner as other state moneys. [1987 c 184 § 2; 1979 ex.s. c 110 § 5.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.060 State authority to acquire property for surveillance sites. In order to provide for the proper care and surveillance of sites under RCW 70.121.050, the state may acquire by gift or transfer from any government agency, corporation, partnership, or person, all lands, buildings, and grounds necessary to fulfill the purposes of this chapter. Any such gift or transfer shall be subject to approval by the department. In exercising the authority of this section, the department shall take into consideration the status of the ownership of the land and interests therein and the ability of the licensee to transfer title and custody thereof to the state. [1979 ex.s. c 110 § 6.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.070 Status of acquired state property for surveillance sites. Recognizing the uncertainty of the existence of a person or corporation in perpetuity, and recognizing that ultimate responsibility to protect the public health and safety must be reposed in a solvent government, without regard to the existence of any particular agency or department thereof, all lands, buildings, and grounds acquired by the state under RCW 70.121.060 shall be owned in fee simple by the state and dedicated in perpetuity to the purposes stated in RCW 70.121.060. All radioactive material received at a site and located therein at the time of acquisition of ownership by the state shall become the property of the state. [1979 ex.s. c 110 § 7.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.080 Payment for transferred sites for surveillance. If a person licensed by any governmental agency other than the state or if any other governmental agency desires to transfer a site to the state for the purpose of administering or providing perpetual care, a lump sum payment shall be made to the radiation perpetual maintenance fund. The amount of the deposit shall be determined by the department taking into consideration the factors stated in RCW 70.121.050. [1979 ex.s. c 110 § 8.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.090 Authority for on-site inspections and monitoring. Each licensee under this chapter, as a condition of his license, shall submit to whatever reasonable on-site

inspections and on-site monitoring as required in order for the department to carry out its responsibilities and duties under this chapter. Such on-site inspections and monitoring shall be conducted without the necessity of any further approval or any permit or warrant therefor. [1979 ex.s. c 110 § 9.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.100 Licensees' bond requirements. The secretary or the secretary's duly authorized representative shall require the posting of a bond by licensees to be used exclusively to provide funds in the event of abandonment, default, or other inability of the licensee to meet the requirements of the department. The secretary may establish bonding requirements by classes of licensees and by range of monetary amounts. In establishing these requirements, the secretary shall consider the potential for contamination, injury, cost of disposal, and reclamation of the property. The amount of the bond shall be sufficient to pay the costs of reclamation and perpetual maintenance. [1987 c 184 § 5; 1979 ex.s. c 110 § 10.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.110 Acceptable bonds. A bond shall be accepted by the department if it is a bond issued by a fidelity or surety company admitted to do business in the state of Washington and the fidelity or surety company is found by the state finance commission to be financially secure at licensing and licensing renewals, if it is a personal bond secured by such collateral as the secretary deems satisfactory and in accordance with RCW 70.121.100, or if it is a cash bond. [1987 c 184 § 6; 1979 ex.s. c 110 § 11.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.120 Forfeited bonds—Use of fund. All bonds forfeited shall be paid to the department for deposit in the radiation perpetual maintenance fund. All moneys in this fund may only be expended by the department as necessary for the protection of the public health and safety and shall not be used for normal operating expenses of the department. [1979 ex.s. c 110 § 12.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.130 Exemptions from bonding requirements. All state, local, or other governmental agencies, or subdivisions thereof, are exempt from the bonding requirements of this chapter. [1987 c 184 § 7; 1979 ex.s. c 110 § 13.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.140 Amounts owed to state—Lien created. If a licensee fails to pay the department within a reasonable time money owed to the state under this chapter, the obligation owed to the state shall constitute a lien on all property, both real and personal, owned by the obligor-licensee when the department records or files, pursuant to this section, a statement of claim against the obligor-licensee. The state-

ment of claim against the obligor-licensee shall name the obligor-licensee, name the state as obligee, describe the obligation, and describe the property to be held in security for the obligation.

Statements of claim creating a lien on real property, fixtures, timber, agricultural products, oil, gas, or minerals shall be recorded with the county auditor in each county where the property is located. Statements of claim creating a lien in personal property, whether tangible or intangible, shall be filed with the department of licensing.

A lien recorded or filed pursuant to this section has priority over any lien, interest, or other encumbrance previously or thereafter recorded or filed concerning any property described in the statement of claim, to the extent allowed by federal law.

A lien created pursuant to this section shall continue in force until extinguished by foreclosure or bankruptcy proceedings or until a release of the lien signed by the secretary is recorded or filed in the place where the statement of claim was recorded or filed. The secretary shall sign and record or file a release only after the obligation owed to the state under this chapter, together with accrued interest and costs of collection has been paid. [1987 c 184 § 3.]

70.121.150 Amounts owed to the state—Collection by attorney general. The attorney general shall use all available methods of obtaining funds owed to the state under this chapter. The attorney general shall foreclose on liens made pursuant to this section, obtain judgments against obligor-licensees and pursue assets of the obligor-licensees found outside the state, consider pursuing the assets of parent corporations and shareholders where an obligor-licensee corporation is an underfinanced corporation, and pursue any other legal remedy available. [1987 c 184 § 4.]

70.121.900 Construction. This chapter is cumulative and not exclusive, and no part of this chapter shall be construed to repeal any existing law specifically enacted for the protection of the public health and safety. [1979 ex.s. c 110 § 14.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.905 Short title. This chapter may be known as the "Mill Tailings Licensing and Perpetual Care Act of 1979". [1979 ex.s. c 110 § 15.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

70.121.910 Severability—1979 ex.s. c 110. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 110 § 16.]

Effective date—1979 ex.s. c 110: See note following RCW 70.121.010.

(2004 Ed.)

Chapter 70.122 RCW NATURAL DEATH ACT

Sections

| | |
|------------|--|
| 70.122.010 | Legislative findings. |
| 70.122.020 | Definitions. |
| 70.122.030 | Directive to withhold or withdraw life-sustaining treatment. |
| 70.122.040 | Revocation of directive. |
| 70.122.051 | Liability of health care provider or facility. |
| 70.122.060 | Procedures by physician—Health care facility or personnel may refuse to participate. |
| 70.122.070 | Effects of carrying out directive—Insurance. |
| 70.122.080 | Effects of carrying out directive on cause of death. |
| 70.122.090 | Criminal conduct—Penalties. |
| 70.122.100 | Mercy killing or physician-assisted suicide not authorized. |
| 70.122.110 | Discharge so that patient may die at home. |
| 70.122.120 | Directive's validity assumed. |
| 70.122.900 | Short title—1979 c 112. |
| 70.122.905 | Severability—1979 c 112. |
| 70.122.910 | Construction. |
| 70.122.915 | Application—1992 c 98. |
| 70.122.920 | Severability—1992 c 98. |

Futile treatment and emergency medical personnel: RCW 43.70.480.

70.122.010 Legislative findings. The legislature finds that adult persons have the fundamental right to control the decisions relating to the rendering of their own health care, including the decision to have life-sustaining treatment withheld or withdrawn in instances of a terminal condition or permanent unconscious condition.

The legislature further finds that modern medical technology has made possible the artificial prolongation of human life beyond natural limits.

The legislature further finds that, in the interest of protecting individual autonomy, such prolongation of the process of dying for persons with a terminal condition or permanent unconscious condition may cause loss of patient dignity, and unnecessary pain and suffering, while providing nothing medically necessary or beneficial to the patient. The legislature further believes that physicians and nurses should not withhold or unreasonably diminish pain medication for patients in a terminal condition where the primary intent of providing such medication is to alleviate pain and maintain or increase the patient's comfort.

The legislature further finds that there exists considerable uncertainty in the medical and legal professions as to the legality of terminating the use or application of life-sustaining treatment where the patient having the capacity to make health care decisions has voluntarily evidenced a desire that such treatment be withheld or withdrawn.

In recognition of the dignity and privacy which patients have a right to expect, the legislature hereby declares that the laws of the state of Washington shall recognize the right of an adult person to make a written directive instructing such person's physician to withhold or withdraw life-sustaining treatment in the event of a terminal condition or permanent unconscious condition. The legislature also recognizes that a person's right to control his or her health care may be exercised by an authorized representative who validly holds the person's durable power of attorney for health care. [1992 c 98 § 1; 1979 c 112 § 2.]

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

(1) "Adult person" means a person who has attained the age of majority as defined in RCW 26.28.010 and 26.28.015, and who has the capacity to make health care decisions.

(2) "Attending physician" means the physician selected by, or assigned to, the patient who has primary responsibility for the treatment and care of the patient.

(3) "Directive" means a written document voluntarily executed by the declarer generally consistent with the guidelines of RCW 70.122.030.

(4) "Health facility" means a hospital as defined in *RCW 70.41.020(2) or a nursing home as defined in RCW 18.51.010, a home health agency or hospice agency as defined in RCW 70.126.010, or a boarding home as defined in RCW 18.20.020.

(5) "Life-sustaining treatment" means any medical or surgical intervention that uses mechanical or other artificial means, including artificially provided nutrition and hydration, to sustain, restore, or replace a vital function, which, when applied to a qualified patient, would serve only to prolong the process of dying. "Life-sustaining treatment" shall not include the administration of medication or the performance of any medical or surgical intervention deemed necessary solely to alleviate pain.

(6) "Permanent unconscious condition" means an incurable and irreversible condition in which the patient is medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

(7) "Physician" means a person licensed under chapters 18.71 or 18.57 RCW.

(8) "Qualified patient" means an adult person who is a patient diagnosed in writing to have a terminal condition by the patient's attending physician, who has personally examined the patient, or a patient who is diagnosed in writing to be in a permanent unconscious condition in accordance with accepted medical standards by two physicians, one of whom is the patient's attending physician, and both of whom have personally examined the patient.

(9) "Terminal condition" means an incurable and irreversible condition caused by injury, disease, or illness, that, within reasonable medical judgment, will cause death within a reasonable period of time in accordance with accepted medical standards, and where the application of life-sustaining treatment serves only to prolong the process of dying. [1992 c 98 § 2; 1979 c 112 § 3.]

*Reviser's note: RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4).

70.122.030 Directive to withhold or withdraw life-sustaining treatment. (1) Any adult person may execute a directive directing the withholding or withdrawal of life-sustaining treatment in a terminal condition or permanent unconscious condition. The directive shall be signed by the declarer in the presence of two witnesses not related to the declarer by blood or marriage and who would not be entitled to any portion of the estate of the declarer upon declarer's decease under any will of the declarer or codicil thereto then existing or, at the time of the directive, by operation of law then existing. In addition, a witness to a directive shall not be the attending physician, an employee of the attending physician or a health facility in which the declarer is a patient, or any person who

has a claim against any portion of the estate of the declarer upon declarer's decease at the time of the execution of the directive. The directive, or a copy thereof, shall be made part of the patient's medical records retained by the attending physician, a copy of which shall be forwarded by the custodian of the records to the health facility when the withholding or withdrawal of life-support treatment is contemplated. The directive may be in the following form, but in addition may include other specific directions:

Health Care Directive

Directive made this day of (month, year).

I, having the capacity to make health care decisions, willfully, and voluntarily make known my desire that my dying shall not be artificially prolonged under the circumstances set forth below, and do hereby declare that:

(a) If at any time I should be diagnosed in writing to be in a terminal condition by the attending physician, or in a permanent unconscious condition by two physicians, and where the application of life-sustaining treatment would serve only to artificially prolong the process of my dying, I direct that such treatment be withheld or withdrawn, and that I be permitted to die naturally. I understand by using this form that a terminal condition means an incurable and irreversible condition caused by injury, disease, or illness, that would within reasonable medical judgment cause death within a reasonable period of time in accordance with accepted medical standards, and where the application of life-sustaining treatment would serve only to prolong the process of dying. I further understand in using this form that a permanent unconscious condition means an incurable and irreversible condition in which I am medically assessed within reasonable medical judgment as having no reasonable probability of recovery from an irreversible coma or a persistent vegetative state.

(b) In the absence of my ability to give directions regarding the use of such life-sustaining treatment, it is my intention that this directive shall be honored by my family and physician(s) as the final expression of my legal right to refuse medical or surgical treatment and I accept the consequences of such refusal. If another person is appointed to make these decisions for me, whether through a durable power of attorney or otherwise, I request that the person be guided by this directive and any other clear expressions of my desires.

(c) If I am diagnosed to be in a terminal condition or in a permanent unconscious condition (check one):

I DO want to have artificially provided nutrition and hydration.

I DO NOT want to have artificially provided nutrition and hydration.

(d) If I have been diagnosed as pregnant and that diagnosis is known to my physician, this directive shall have no force or effect during the course of my pregnancy.

(e) I understand the full import of this directive and I am emotionally and mentally capable to make the health care decisions contained in this directive.

(f) I understand that before I sign this directive, I can add to or delete from or otherwise change the wording of this directive and that I may add to or delete from this directive at any time and that any changes shall be consistent with Washington state law or federal constitutional law to be legally valid.

(g) It is my wish that every part of this directive be fully implemented. If for any reason any part is held invalid it is my wish that the remainder of my directive be implemented.

Signed

City, County, and State of Residence

The declarer has been personally known to me and I believe him or her to be capable of making health care decisions.

Witness

Witness

(2) Prior to withholding or withdrawing life-sustaining treatment, the diagnosis of a terminal condition by the attending physician or the diagnosis of a permanent unconscious state by two physicians shall be entered in writing and made a permanent part of the patient's medical records.

(3) A directive executed in another political jurisdiction is valid to the extent permitted by Washington state law and federal constitutional law. [1992 c 98 § 3; 1979 c 112 § 4.]

70.122.040 Revocation of directive. (1) A directive may be revoked at any time by the declarer, without regard to declarer's mental state or competency, by any of the following methods:

(a) By being canceled, defaced, obliterated, burned, torn, or otherwise destroyed by the declarer or by some person in declarer's presence and by declarer's direction.

(b) By a written revocation of the declarer expressing declarer's intent to revoke, signed, and dated by the declarer. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient's medical record the time and date when said physician received notification of the written revocation.

(c) By a verbal expression by the declarer of declarer's intent to revoke the directive. Such revocation shall become effective only upon communication to the attending physician by the declarer or by a person acting on behalf of the declarer. The attending physician shall record in the patient's medical record the time, date, and place of the revocation and the time, date, and place, if different, of when said physician received notification of the revocation.

(2) There shall be no criminal or civil liability on the part of any person for failure to act upon a revocation made pursuant to this section unless that person has actual or constructive knowledge of the revocation.

(3) If the declarer becomes comatose or is rendered incapable of communicating with the attending physician, the directive shall remain in effect for the duration of the comatose condition or until such time as the declarer's condition renders declarer able to communicate with the attending physician. [1979 c 112 § 5.]

70.122.051 Liability of health care provider or facility. Any physician, health care provider acting under the direction of a physician, or health facility and its personnel who participate in good faith in the withholding or withdrawal of life-sustaining treatment from a qualified patient in accordance with the requirements of this chapter, shall be immune from legal liability, including civil, criminal, or pro-

fessional conduct sanctions, unless otherwise negligent. [1992 c 98 § 5.]

70.122.060 Procedures by physician—Health care facility or personnel may refuse to participate. (1) Prior to the withholding or withdrawal of life-sustaining treatment from a qualified patient pursuant to the directive, the attending physician shall make a reasonable effort to determine that the directive complies with RCW 70.122.030 and, if the patient is capable of making health care decisions, that the directive and all steps proposed by the attending physician to be undertaken are currently in accord with the desires of the qualified patient.

(2) The attending physician or health facility shall inform a patient or patient's authorized representative of the existence of any policy or practice that would preclude the honoring of the patient's directive at the time the physician or facility becomes aware of the existence of such a directive. If the patient, after being informed of such policy or directive, chooses to retain the physician or facility, the physician or facility with the patient or the patient's representative shall prepare a written plan to be filed with the patient's directive that sets forth the physician's or facilities' intended actions should the patient's medical status change so that the directive would become operative. The physician or facility under this subsection has no obligation to honor the patient's directive if they have complied with the requirements of this subsection, including compliance with the written plan required under this subsection.

(3) The directive shall be conclusively presumed, unless revoked, to be the directions of the patient regarding the withholding or withdrawal of life-sustaining treatment. No physician, health facility, or health personnel acting in good faith with the directive or in accordance with the written plan in subsection (2) of this section shall be criminally or civilly liable for failing to effectuate the directive of the qualified patient pursuant to this subsection.

(4) No nurse, physician, or other health care practitioner may be required by law or contract in any circumstances to participate in the withholding or withdrawal of life-sustaining treatment if such person objects to so doing. No person may be discriminated against in employment or professional privileges because of the person's participation or refusal to participate in the withholding or withdrawal of life-sustaining treatment. [1992 c 98 § 6; 1979 c 112 § 7.]

70.122.070 Effects of carrying out directive—Insurance. (1) The withholding or withdrawal of life-sustaining treatment from a qualified patient pursuant to the patient's directive in accordance with the provisions of this chapter shall not, for any purpose, constitute a suicide or a homicide.

(2) The making of a directive pursuant to RCW 70.122.030 shall not restrict, inhibit, or impair in any manner the sale, procurement, or issuance of any policy of life insurance, nor shall it be deemed to modify the terms of an existing policy of life insurance. No policy of life insurance shall be legally impaired or invalidated in any manner by the withholding or withdrawal of life-sustaining treatment from an insured qualified patient, notwithstanding any term of the policy to the contrary.

(3) No physician, health facility, or other health provider, and no health care service plan, insurer issuing disability insurance, self-insured employee welfare benefit plan, or nonprofit hospital service plan, shall require any person to execute a directive as a condition for being insured for, or receiving, health care services. [1992 c 98 § 7; 1979 c 112 § 8.]

70.122.080 Effects of carrying out directive on cause of death. The act of withholding or withdrawing life-sustaining treatment, when done pursuant to a directive described in RCW 70.122.030 and which results in the death of the declarer, shall not be construed to be an intervening force or to affect the chain of proximate cause between the conduct of anyone that placed the declarer in a terminal condition or a permanent unconscious condition and the death of the declarer. [1992 c 98 § 8; 1979 c 112 § 10.]

70.122.090 Criminal conduct—Penalties. (1) Any person who willfully conceals, cancels, defaces, obliterates, or damages the directive of another without such declarer's consent is guilty of a gross misdemeanor.

(2) Any person who falsifies or forges the directive of another, or willfully conceals or withholds personal knowledge of a revocation as provided in RCW 70.122.040 with the intent to cause a withholding or withdrawal of life-sustaining treatment contrary to the wishes of the declarer, and thereby, because of any such act, directly causes life-sustaining treatment to be withheld or withdrawn and death to thereby be hastened, shall be subject to prosecution for murder in the first degree as defined in RCW 9A.32.030. [2003 c 53 § 362; 1992 c 98 § 9; 1979 c 112 § 9.]

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

70.122.100 Mercy killing or physician-assisted suicide not authorized. Nothing in this chapter shall be construed to condone, authorize, or approve mercy killing or physician-assisted suicide, or to permit any affirmative or deliberate act or omission to end life other than to permit the natural process of dying. [1992 c 98 § 10; 1979 c 112 § 11.]

70.122.110 Discharge so that patient may die at home. If a qualified patient capable of making health care decisions indicates that he or she wishes to die at home, the patient shall be discharged as soon as reasonably possible. The health care provider or facility has an obligation to explain the medical risks of an immediate discharge to the qualified patient. If the provider or facility complies with the obligation to explain the medical risks of an immediate discharge to a qualified patient, there shall be no civil or criminal liability for claims arising from such discharge. [1992 c 98 § 4.]

70.122.120 Directive's validity assumed. Any person or health facility may assume that a directive complies with this chapter and is valid. [1992 c 98 § 12.]

70.122.900 Short title—1979 c 112. This act shall be known and may be cited as the "Natural Death Act". [1979 c 112 § 1.]

70.122.905 Severability—1979 c 112. If any provision of this act or the application thereof to any person or circumstances is held invalid, such invalidity shall not affect other provisions or applications of the act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are severable. [1979 c 112 § 13.]

70.122.910 Construction. This chapter shall not be construed as providing the exclusive means by which individuals may make decisions regarding their health treatment, including but not limited to, the withholding or withdrawal of life-sustaining treatment, nor limiting the means provided by case law more expansive than chapter 98, Laws of 1992. [1992 c 98 § 11.]

70.122.915 Application—1992 c 98. A directive executed anytime before June 11, 1992, which generally complies with chapter 98, Laws of 1992 is effective under chapter 98, Laws of 1992. [1992 c 98 § 13.]

70.122.920 Severability—1992 c 98. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 98 § 17.]

Chapter 70.123 RCW SHELTERS FOR VICTIMS OF DOMESTIC VIOLENCE

Sections

| | |
|------------|---|
| 70.123.010 | Legislative findings. |
| 70.123.020 | Definitions. |
| 70.123.030 | Departmental duties and responsibilities. |
| 70.123.040 | Minimum standards to provide basic survival needs. |
| 70.123.050 | Contracts with nonprofit organizations—Purposes. |
| 70.123.070 | Duties and responsibilities of shelters. |
| 70.123.075 | Client records. |
| 70.123.080 | Department to consult. |
| 70.123.090 | Contracts for shelter services. |
| 70.123.100 | Funding for shelters. |
| 70.123.110 | Assistance to families in shelters. |
| 70.123.120 | Liability for withholding services. |
| 70.123.130 | Technical assistance grant program—Local communities. |
| 70.123.140 | Technical assistance grant for county plans. |
| 70.123.900 | Severability—1979 ex.s. c 245. |

Domestic violence—Official response: Chapter 10.99 RCW.

Domestic violence prevention: Chapter 26.50 RCW.

Donations of surplus state property: RCW 43.19.1920.

Public disclosure: RCW 42.17.310.

70.123.010 Legislative findings. The legislature finds that domestic violence is an issue of growing concern at all levels of government and that there is a present and growing need to develop innovative strategies and services which will ameliorate and reduce the trauma of domestic violence. Research findings show that domestic violence constitutes a significant percentage of homicides, aggravated assaults, and assaults and batteries in the United States. Domestic violence is a disruptive influence on personal and community life and

is often interrelated with a number of other family problems and stresses. Shelters for victims of domestic violence are essential to provide protection to victims from further abuse and physical harm and to help the victim find long-range alternative living situations, if requested. Shelters provide safety, refuge, advocacy, and helping resources to victims who may not have access to such things if they remain in abusive situations.

The legislature therefore recognizes the need for the statewide development and expansion of shelters for victims of domestic violence. [1979 ex.s. c 245 § 1.]

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

(1) "Shelter" means a place of temporary refuge, offered on a twenty-four hour, seven day per week basis to victims of domestic violence and their children.

(2) "Domestic violence" is a categorization of offenses, as defined in RCW 10.99.020, committed by one cohabitant against another.

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

(4) "Victim" means a cohabitant who has been subjected to domestic violence.

(5) "Cohabitant" means a person who is married or who is cohabiting with a person of the opposite sex like husband and wife at the present or at sometime in the past. Any person who has one or more children in common with another person, regardless of whether they have been married or lived together at any time, shall be treated as a cohabitant.

(6) "Community advocate" means a person employed by a local domestic violence program to provide ongoing assistance to victims of domestic violence in assessing safety needs, documenting the incidents and the extent of violence for possible use in the legal system, making appropriate social service referrals, and developing protocols and maintaining ongoing contacts necessary for local systems coordination.

(7) "Domestic violence program" means an agency that provides shelter, advocacy, and counseling for domestic violence victims in a supportive environment.

(8) "Legal advocate" means a person employed by a domestic violence program or court system to advocate for victims of domestic violence, within the criminal and civil justice systems, by attending court proceedings, assisting in document and case preparation, and ensuring linkage with the community advocate.

(9) "Secretary" means the secretary of the department of social and health services or the secretary's designee. [1991 c 301 § 9; 1979 ex.s. c 245 § 2.]

Finding—1991 c 301: See note following RCW 10.99.020.

70.123.030 Departmental duties and responsibilities. The department of social and health services, in consultation with the state department of health, and individuals or groups having experience and knowledge of the problems of victims of domestic violence, shall:

(1) Establish minimum standards for shelters applying for grants from the department under this chapter. Classifica-

(2004 Ed.)

tions may be made dependent upon size, geographic location, and population needs;

(2) Receive grant applications for the development and establishment of shelters for victims of domestic violence;

(3) Distribute funds, within forty-five days after approval, to those shelters meeting departmental standards;

(4) Evaluate biennially each shelter receiving departmental funds for compliance with the established minimum standards; and

(5) Review the minimum standards each biennium to ensure applicability to community and client needs. [1989 1st ex.s. c 9 § 235; 1979 ex.s. c 245 § 3.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.123.040 Minimum standards to provide basic survival needs. Minimum standards established by the department under RCW 70.123.030 shall ensure that shelters receiving grants under this chapter provide services meeting basic survival needs, where not provided by other means, such as, but not limited to, food, clothing, housing, safety, security, client advocacy, and counseling. These services shall be problem-oriented and designed to provide necessary assistance to the victims of domestic violence and their children. [1979 ex.s. c 245 § 4.]

70.123.050 Contracts with nonprofit organizations—Purposes. The department shall contract, where appropriate, with public or private nonprofit groups or organizations with experience and expertise in the field of domestic violence to:

(1) Develop and implement an educational program designed to promote public and professional awareness of the problems of domestic violence and of the availability of services for victims of domestic violence. Particular emphasis should be given to the education needs of law enforcement agencies, the legal system, the medical profession, and other relevant professions that are engaged in the prevention, identification, and treatment of domestic violence;

(2) Maintain a directory of temporary shelters and other direct service facilities for the victims of domestic violence which is current, complete, detailed, and available, as necessary, to provide useful referral services to persons seeking help on an emergency basis;

(3) Create a statewide toll-free telephone number that would provide information and referral to victims of domestic violence;

(4) Provide opportunities to persons working in the area of domestic violence to exchange information; and

(5) Provide training opportunities for both volunteer workers and staff personnel. [1979 ex.s. c 245 § 5.]

70.123.070 Duties and responsibilities of shelters. Shelters receiving state funds under this chapter shall:

(1) Make available shelter services to any person who is a victim of domestic violence and to that person's children;

(2) Encourage victims, with the financial means to do so, to reimburse the shelter for the services provided;

(3) Recruit, to the extent feasible, persons who are former victims of domestic violence to work as volunteers or

staff personnel. An effort shall also be made to provide bilingual services;

(4) Provide prevention and treatment programs to victims of domestic violence, their children and, where possible, the abuser;

(5) Provide a day program or drop-in center to assist victims of domestic violence who have found other shelter but who have a need for support services. [1979 ex.s. c 245 § 7.]

70.123.075 Client records. (1) Client records maintained by domestic violence programs shall not be subject to discovery in any judicial proceeding unless:

(a) A written pretrial motion is made to a court stating that discovery is requested of the client's domestic violence records;

(b) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why discovery is requested of the domestic violence program's records;

(c) The court reviews the domestic violence program's records in camera to determine whether the domestic violence program's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records, taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records; and

(d) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings.

(2) For purposes of this section "domestic violence program" means a program that provides shelter, advocacy, or counseling services for domestic violence victims. [1994 c 233 § 1; 1991 c 301 § 10.]

Effective date—1994 c 233: "This act shall take effect July 1, 1994." [1994 c 233 § 3.]

Finding—1991 c 301: See note following RCW 10.99.020.

70.123.080 Department to consult. The department shall consult in all phases with persons and organizations having experience and expertise in the field of domestic violence. [1979 ex.s. c 245 § 8.]

70.123.090 Contracts for shelter services. The department is authorized, under this chapter and the rules adopted to effectuate its purposes, to make available grants awarded on a contract basis to public or private nonprofit agencies, organizations, or individuals providing shelter services meeting minimum standards established by the department. Consideration as to need, geographic location, population ratios, and the extent of existing services shall be made in the award of grants. The department shall provide technical assistance to any nonprofit organization desiring to apply for the contracts if the organization does not possess the resources and expertise necessary to develop and transmit an application without assistance. [1979 ex.s. c 245 § 9.]

70.123.100 Funding for shelters. The department shall seek, receive, and make use of any funds which may be available from federal or other sources in order to augment state funds appropriated for the purpose of this chapter, and shall

make every effort to qualify for federal funding. [1997 c 160 § 1; 1979 ex.s. c 245 § 10.]

70.123.110 Assistance to families in shelters. General assistance or temporary assistance for needy families payments shall be made to otherwise eligible individuals who are residing in a secure shelter, a housing network or other shelter facility which provides shelter services to persons who are victims of domestic violence. Provisions shall be made by the department for the confidentiality of the shelter addresses where victims are residing. [1997 c 59 § 9; 1979 ex.s. c 245 § 11.]

70.123.120 Liability for withholding services. A shelter shall not be held liable in any civil action for denial or withdrawal of services provided pursuant to the provisions of this chapter. [1979 ex.s. c 245 § 12.]

70.123.130 Technical assistance grant program—Local communities. The department of social and health services shall establish a technical assistance grant program to assist local communities in determining how to respond to domestic violence. The goals of the program shall be to coordinate and expand existing services to:

(1) Serve any individual affected by domestic violence with the primary focus being the safety of the victim;

(2) Assure an integrated, comprehensive, accountable community response that is adequately funded and sensitive to the diverse needs of the community;

(3) Create a continuum of services that range from prevention, crisis intervention, and counseling through shelter, advocacy, legal intervention, and representation to longer term support, counseling, and training; and

(4) Coordinate the efforts of government, the legal system, the private sector, and a range of service providers, such as doctors, nurses, social workers, teachers, and child care workers. [1991 c 301 § 11.]

Finding—1991 c 301: See note following RCW 10.99.020.

70.123.140 Technical assistance grant for county plans. (1) A county or group of counties may apply to the department for a technical assistance grant to develop a comprehensive county plan for dealing with domestic violence. The county authority may contract with a local nonprofit entity to develop the plan.

(2) County comprehensive plans shall be developed in consultation with the department, domestic violence programs, schools, law enforcement, and health care, legal, and social service providers that provide services to persons affected by domestic violence.

(3) County comprehensive plans shall be based on the following principles:

(a) The safety of the victim is primary;

(b) The community needs to be well-educated about domestic violence;

(c) Those who want to and who should intervene need to know how to do so effectively;

(d) Adequate services, both crisis and long-term support, should exist throughout all parts of the county;

(e) Police and courts should hold the batterer accountable for his or her crimes;

(f) Treatment for batterers should be provided by qualified counselors; and

(g) Coordination teams are needed to ensure that the system continues to work over the coming decades.

(4) County comprehensive plans shall provide for the following:

(a) Public education about domestic violence;

(b) Training for professionals on how to recognize domestic violence and assist those affected by it;

(c) Development of protocols among agencies so that professionals respond to domestic violence in an effective, consistent manner;

(d) Development of services to victims of domestic violence and their families, including shelters, safe homes, transitional housing, community and legal advocates, and children's services; and

(e) Local and regional teams to oversee implementation of the system, ensure that efforts continue over the years, and assist with day-to-day and system-wide coordination. [1991 c 301 § 12.]

Finding—1991 c 301: See note following RCW 10.99.020.

70.123.900 Severability—1979 ex.s. c 245. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 245 § 15.]

Chapter 70.124 RCW

ABUSE OF PATIENTS—NURSING HOMES, STATE HOSPITALS

Sections

| | |
|------------|--|
| 70.124.010 | Legislative findings. |
| 70.124.020 | Definitions. |
| 70.124.030 | Reports of abuse or neglect. |
| 70.124.040 | Reports to department or law enforcement agency—Action required. |
| 70.124.050 | Investigations required—Seeking restraining orders authorized. |
| 70.124.060 | Liability of persons making reports. |
| 70.124.070 | Failure to report is gross misdemeanor. |
| 70.124.080 | Department reports of abused or neglected patients. |
| 70.124.090 | Publicizing objectives. |
| 70.124.100 | Retaliation against whistleblowers and residents—Remedies—Rules. |
| 70.124.900 | Severability—1979 ex.s. c 228. |

Persons over sixty, abuse: Chapter 74.34 RCW.

70.124.010 Legislative findings. (1) The Washington state legislature finds and declares that a reporting system is needed to protect state hospital patients from abuse. Instances of nonaccidental injury, neglect, death, sexual abuse, and cruelty to such patients have occurred, and in the instance where such a patient is deprived of his or her right to conditions of minimal health and safety, the state is justified in emergency intervention based upon verified information. Therefore the Washington state legislature hereby provides for the reporting of such cases to the appropriate public authorities.

(2) It is the intent of the legislature that: (a) As a result of such reports, protective services shall be made available in an effort to prevent further abuses, and to safeguard the gen-

(2004 Ed.)

eral welfare of the patients; and (b) such reports shall be maintained and disseminated with strictest regard for the privacy of the subjects of such reports and so as to safeguard against arbitrary, malicious, or erroneous information or actions. [1999 c 176 § 20; 1981 c 174 § 1; 1979 ex.s. c 228 § 1.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

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

(1) "Court" means the superior court of the state of Washington.

(2) "Law enforcement agency" means the police department, the director of public safety, or the office of the sheriff.

(3) "Practitioner of the healing arts" or "practitioner" means a person licensed by this state to practice podiatric medicine and surgery, optometry, pharmacy, physical therapy, chiropractic, nursing, dentistry, osteopathic medicine and surgery, or medicine and surgery. The term "practitioner" includes a nurse's aide and a duly accredited Christian Science practitioner.

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

(5) "Social worker" means anyone engaged in a professional capacity during the regular course of employment in encouraging or promoting the health, welfare, support, or education of patients, or providing social services to patients, whether in an individual capacity or as an employee or agent of any public or private organization or institution.

(6) "Psychologist" means any person licensed to practice psychology under chapter 18.83 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(7) "Pharmacist" means any registered pharmacist under chapter 18.64 RCW, whether acting in an individual capacity or as an employee or agent of any public or private organization or institution.

(8) "Abuse or neglect" or "patient abuse or neglect" means the nonaccidental physical injury or condition, sexual abuse, or negligent treatment of a state hospital patient under circumstances which indicate that the patient's health, welfare, or safety is harmed thereby.

(9) "Negligent treatment" means an act or omission which evinces a serious disregard of consequences of such magnitude as to constitute a clear and present danger to the patient's health, welfare, or safety.

(10) "State hospital" means any hospital operated and maintained by the state for the care of the mentally ill under chapter 72.23 RCW. [1999 c 176 § 21; 1997 c 392 § 519; 1996 c 178 § 24; 1981 c 174 § 2; 1979 ex.s. c 228 § 2.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Effective date—1996 c 178: See note following RCW 18.35.110.

70.124.030 Reports of abuse or neglect. (1) When any practitioner, social worker, psychologist, pharmacist,

employee of a state hospital, or employee of the department has reasonable cause to believe that a state hospital patient has suffered abuse or neglect, the person shall report such incident, or cause a report to be made, to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(2) Any other person who has reasonable cause to believe that a state hospital patient has suffered abuse or neglect may report such incident to either a law enforcement agency or to the department as provided in RCW 70.124.040.

(3) The department or any law enforcement agency receiving a report of an incident of abuse or neglect involving a state hospital patient who has died or has had physical injury or injuries inflicted other than by accidental means or who has been subjected to sexual abuse shall report the incident to the proper county prosecutor for appropriate action. [1999 c 176 § 22; 1981 c 174 § 3; 1979 ex.s. c 228 § 3.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

70.124.040 Reports to department or law enforcement agency—Action required. (1) Where a report is required under RCW 70.124.030, an immediate oral report must be made by telephone or otherwise to either a law enforcement agency or to the department and, upon request, must be followed by a report in writing. The reports must contain the following information, if known:

(a) The name and address of the person making the report;

(b) The name and address of the state hospital patient;

(c) The name and address of the patient's relatives having responsibility for the patient;

(d) The nature and extent of the alleged injury or injuries;

(e) The nature and extent of the alleged neglect;

(f) The nature and extent of the alleged sexual abuse;

(g) Any evidence of previous injuries, including their nature and extent; and

(h) Any other information that may be helpful in establishing the cause of the patient's death, injury, or injuries, and the identity of the perpetrator or perpetrators.

(2) Each law enforcement agency receiving such a report shall, in addition to taking the action required by RCW 70.124.050, immediately relay the report to the department, and to other law enforcement agencies, including the medic-aid fraud control unit of the office of the attorney general, as appropriate. For any report it receives, the department shall likewise take the required action and in addition relay the report to the appropriate law enforcement agency or agencies. The appropriate law enforcement agency or agencies must receive immediate notification when the department, upon receipt of such report, has reasonable cause to believe that a criminal act has been committed. [1999 c 176 § 23. Prior: 1997 c 392 § 520; 1997 c 386 § 30; 1981 c 174 § 4; 1979 ex.s. c 228 § 4.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

[Title 70 RCW—page 356]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

70.124.050 Investigations required—Seeking restraining orders authorized. Upon the receipt of a report concerning the possible occurrence of abuse or neglect, it is the duty of the law enforcement agency and the department to commence an investigation within twenty-four hours of such receipt and, where appropriate, submit a report to the appropriate prosecuting attorney. The local prosecutor may seek a restraining order to prohibit continued patient abuse. In all cases investigated by the department a report to the complainant shall be made by the department. [1983 1st ex.s. c 41 § 24; 1979 ex.s. c 228 § 5.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

70.124.060 Liability of persons making reports. (1) A person other than a person alleged to have committed the abuse or neglect participating in good faith in the making of a report pursuant to this chapter, or testifying as to alleged patient abuse or neglect in a judicial proceeding, is, in so doing, immune from any liability, civil or criminal, arising out of such reporting or testifying under any law of this state or its political subdivisions, and if such person is an employee of a state hospital it is an unfair practice under chapter 49.60 RCW for the employer to discharge, expel, or otherwise discriminate against the employee for such reporting activity.

(2) Conduct conforming with the reporting requirements of this chapter is not a violation of the confidential communication privilege of RCW 5.60.060 (3) or (4) or 18.83.110. Nothing in this chapter supersedes or abridges remedies provided in chapter 4.92 RCW. [1999 c 176 § 24; 1993 c 510 § 25; 1981 c 174 § 5; 1979 ex.s. c 228 § 6.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Severability—1993 c 510: See note following RCW 49.60.010.

70.124.070 Failure to report is gross misdemeanor.

A person who is required to make or to cause to be made a report pursuant to RCW 70.124.030 or 70.124.040 and who knowingly fails to make such report or fails to cause such report to be made is guilty of a gross misdemeanor. [1997 c 392 § 521; 1979 ex.s. c 228 § 7.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.124.080 Department reports of abused or neglected patients. The department shall forward to the appropriate state licensing authority a copy of any report received pursuant to this chapter which alleges that a person who is professionally licensed by this state has abused or neglected a patient. [1979 ex.s. c 228 § 8.]

70.124.090 Publicizing objectives. In the adoption of rules under the authority of this chapter, the department shall provide for the publication and dissemination to state hospitals and state hospital employees and the posting where appropriate by state hospitals of informational, educational, or training materials calculated to aid and assist in achieving

(2004 Ed.)

the objectives of this chapter. [1999 c 176 § 25; 1981 c 174 § 6; 1979 ex.s. c 228 § 9.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

70.124.100 Retaliation against whistleblowers and residents—Remedies—Rules. (1) An employee who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department about suspected abuse, neglect, financial exploitation, or abandonment by any person in a state hospital may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

(2)(a) An attempt to discharge a resident from a state hospital or any type of discriminatory treatment of a resident by whom, or upon whose behalf, a complaint substantiated by the department has been submitted to the department or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

(c) The presumption is rebutted by a functional assessment conducted by the department that shows that the resident's needs cannot be met by the reasonable accommodations of the facility due to the increased needs of the resident.

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or employee of a state hospital or any person licensed under Title 18 RCW, who in good faith reports alleged abuse, neglect, financial exploitation, or abandonment to the department or to a law enforcement agency;

(b) "Workplace reprisal or retaliatory action" means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower; and

(c) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(4) This section does not prohibit a state hospital from exercising its authority to terminate, suspend, or discipline an employee who engages in workplace reprisal or retaliatory action against a whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a state hospital from: (a) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (b) for facilities

(2004 Ed.)

with six or fewer residents, reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements. The department shall determine if the facility cannot meet payroll in cases where a whistleblower has been terminated or had hours of employment reduced due to the inability of a facility to meet payroll.

(5) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter.

(6) No resident who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination shall for that reason alone be considered abandoned, abused, or neglected, nor shall anything in this chapter be construed to authorize, permit, or require medical treatment contrary to the stated or clearly implied objection of such a person.

(7) The department shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes. [1999 c 176 § 26; 1997 c 392 § 201.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.124.900 Severability—1979 ex.s. c 228. If any provision of this 1979 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 228 § 12.]

Chapter 70.125 RCW

VICTIMS OF SEXUAL ASSAULT ACT

Sections

| | |
|------------|---|
| 70.125.010 | Short title. |
| 70.125.020 | Legislative findings—Program objectives. |
| 70.125.030 | Definitions. |
| 70.125.040 | Coordinating office—Biennial statewide plan. |
| 70.125.050 | Statewide program services. |
| 70.125.055 | Financial assistance to rape crisis centers. |
| 70.125.060 | Personal representative may accompany victim during treatment or proceedings. |
| 70.125.065 | Records of rape crisis centers not available as part of discovery—Exceptions. |
| 70.125.080 | Community sexual assault programs—Victim advocates. |

Public disclosure: RCW 42.17.310.

Victims of crimes

compensation, assistance: Chapter 7.68 RCW.

survivors, witnesses: Chapter 7.69 RCW.

70.125.010 Short title. This chapter may be known and cited as the Victims of Sexual Assault Act. [1979 ex.s. c 219 § 1.]

Severability—1979 ex.s. c 219: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 219 § 22.]

70.125.020 Legislative findings—Program objectives. (1) The legislature hereby finds and declares that:

(a) Sexual assault has become one of the most rapidly increasing violent crimes over the last decade;

(b) There is a lack of essential information and data concerning sexual assault;

(c) There is a lack of adequate training for law enforcement officers concerning sexual assault, the victim, the offender, and the investigation;

(d) There is a lack of community awareness and knowledge concerning sexual assault and the physical and psychological impact upon the victim;

(e) There is a lack of public information concerning sexual assault prevention and personal self-protection;

(f) Because of the lack of information, training, and services, the victims of sexual assault are not receiving the assistance they require in dealing with the physical and psychological trauma of a sexual assault;

(g) The criminal justice system and health care system should maintain close contact and cooperation with each other and with community rape crisis centers to expedite the disposition of sexual assault cases; and

(h) Persons who are victims of sexual assault will benefit directly from increased public awareness and education, increased prosecutions, and a criminal justice system which treats them in a humane manner.

(2) Therefore, a statewide sexual assault education, training, and consultation program should be developed. Such a statewide program should seek to improve treatment of victims through information-gathering, education, training, community awareness programs, and by increasing the efficiency of the criminal justice and health care systems as they relate to sexual assault. Such a program should serve a consultative and facilitative function for organizations which provide services to victims and potential victims of sexual assault. [1979 ex.s. c 219 § 2.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.030 Definitions. As used in this chapter and unless the context indicates otherwise:

(1) "Core services" means treatment services for victims of sexual assault including information and referral, crisis intervention, medical advocacy, legal advocacy, support, system coordination, and prevention for potential victims of sexual assault.

(2) "Department" means the department of community, trade, and economic development.

(3) "Law enforcement agencies" means police and sheriff's departments of this state.

(4) "Personal representative" means a friend, relative, attorney, or employee or volunteer from a community sexual assault program or specialized treatment service provider.

(5) "Rape crisis center" means a community-based social service agency which provides services to victims of sexual assault.

(6) "Community sexual assault program" means a community-based social service agency that is qualified to provide and provides core services to victims of sexual assault.

(7) "Sexual assault" means one or more of the following:

(a) Rape or rape of a child;

(b) Assault with intent to commit rape or rape of a child;

(c) Incest or indecent liberties;

(d) Child molestation;

(e) Sexual misconduct with a minor;

(f) Custodial sexual misconduct;

(g) Crimes with a sexual motivation; or

(h) An attempt to commit any of the aforementioned offenses.

(8) "Specialized services" means treatment services for victims of sexual assault including support groups, therapy, and specialized sexual assault medical examination.

(9) "Victim" means any person who suffers physical and/or mental anguish as a proximate result of a sexual assault. [2000 c 54 § 1; 1999 c 45 § 6; 1996 c 123 § 6; 1988 c 145 § 19; 1979 ex.s. c 219 § 3.]

Transfer of powers and duties—1996 c 123: "The powers and duties of the department of social and health services under this chapter shall be transferred to the department of community, trade, and economic development on July 1, 1996. The department of social and health services shall transfer all unspent appropriated funds, records, and documents necessary to facilitate a successful transfer." [1996 c 123 § 9.]

Effective date—1996 c 123: See note following RCW 43.280.010.

Effective date—Savings—Application—1988 c 145: See notes following RCW 9A.44.010.

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.040 Coordinating office—Biennial statewide plan. The department shall establish a centralized office within the department to coordinate activities of programs relating to sexual assault and to facilitate coordination and dissemination of information to personnel in fields relating to sexual assault.

The department shall develop, with the cooperation of the criminal justice training commission, the medical profession, and existing rape crisis centers, a biennial statewide plan to aid organizations which provide services to victims of sexual assault. [1985 c 34 § 1; 1979 ex.s. c 219 § 4.]

Effective date—1985 c 34: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect June 30, 1985." [1985 c 34 § 4.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.050 Statewide program services. The statewide program established under RCW 70.125.040 shall include but not be limited to provision of the following services: PROVIDED, That the department shall utilize existing rape crisis centers and contract, where appropriate, with these centers to provide the services identified in this section:

(1) Assistance to the criminal justice training commission in developing and offering training and education programs for criminal justice personnel on the scope and nature of the sexual assault problem;

(2) Assistance to health care personnel in training for the sensitive handling and correct legal procedures of sexual assault cases;

(3) Development of public education programs to increase public awareness concerning sexual assault in coordination with the activities of the attorney general's crime prevention efforts; and

(4) Technical assistance and advice to rape crisis centers, including the organization of existing community resources, volunteer training, identification of potential funding sources, evaluation, and education. Assistance shall be given

for the development of additional programs in areas of the state where such services do not exist. [1979 ex.s. c 219 § 5.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.055 Financial assistance to rape crisis centers.

The department may distribute financial assistance to rape crisis centers to supplement crisis, advocacy, and counseling services provided directly to victims. [1985 c 34 § 2.]

Effective date—1985 c 34: See note following RCW 70.125.040.

70.125.060 Personal representative may accompany victim during treatment or proceedings. If the victim of a sexual assault so desires, a personal representative of the victim's choice may accompany the victim to the hospital or other health care facility, and to proceedings concerning the alleged assault, including police and prosecution interviews and court proceedings. [1979 ex.s. c 219 § 6.]

Severability—1979 ex.s. c 219: See note following RCW 70.125.010.

70.125.065 Records of rape crisis centers not available as part of discovery—Exceptions. Records maintained by rape crisis centers shall not be made available to any defense attorney as part of discovery in a sexual assault case unless:

(1) A written pretrial motion is made by the defendant to the court stating that the defendant is requesting discovery of the rape crisis center's records;

(2) The written motion is accompanied by an affidavit or affidavits setting forth specifically the reasons why the defendant is requesting discovery of the rape crisis center's records;

(3) The court reviews the rape crisis center's records in camera to determine whether the rape crisis center's records are relevant and whether the probative value of the records is outweighed by the victim's privacy interest in the confidentiality of such records taking into account the further trauma that may be inflicted upon the victim by the disclosure of the records to the defendant; and

(4) The court enters an order stating whether the records or any part of the records are discoverable and setting forth the basis for the court's findings. [1981 c 145 § 9.]

70.125.080 Community sexual assault programs—Victim advocates. (1) Community sexual assault programs that are eligible for funding from the department under this chapter may apply for grants for the purpose of hiring, training, and supervising victim advocates to provide core services to assist victims and their families through the investigation, prosecution, and treatment process that resulted from a sexual assault. The department shall seek, receive, and make use of any funds which may be available from federal or other sources to augment state funds appropriated for the purpose of this section, and shall make every effort to qualify for federal funding. [1996 c 123 § 7; 1991 c 267 § 3.]

Transfer of powers and duties—1996 c 123: See note following RCW 70.125.030.

Effective date—1996 c 123: See note following RCW 43.280.010.

Findings—Effective date—1991 c 267: See notes following RCW 43.101.270.

Victims of crimes: Chapter 7.69 RCW.

(2004 Ed.)

Chapter 70.126 RCW

HOME HEALTH CARE AND HOSPICE CARE

Sections

- 70.126.001 Legislative finding.
- 70.126.010 Definitions.
- 70.126.020 Home health care—Services and supplies included, not included.
- 70.126.030 Hospice care—Provider, plan, services included.
- 70.126.060 Application of chapter.

Optional coverage required by certain insurers: RCW 48.21.220, 48.21A.090, 48.44.320.

70.126.001 Legislative finding. The legislature finds that the cost of medical care in general and hospital care in particular has risen dramatically in recent years, and that in 1981, such costs rose faster than in any year since World War II. The purpose of RCW 70.126.001 through *70.126.050 is to support the provision of less expensive and more appropriate levels of care, home health care and hospice care, in order to avoid hospitalization or shorten hospital stays. [1983 c 249 § 4.]

***Reviser's note:** RCW 70.126.040 and 70.126.050 were repealed by 1988 c 245 § 34, effective July 1, 1989.

Effective date—Implementation—1983 c 249: "This act shall take effect on July 1, 1984. The department of social and health services shall immediately take such steps as are necessary to insure that this act is implemented on its effective date." [1983 c 249 § 11.]

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

(1) "Hospice" means a private or public agency or organization that administers and provides hospice care and is licensed by the department of social and health services as a hospice care agency.

(2) "Hospice care" means care prescribed and supervised by the attending physician and provided by the hospice to the terminally ill in accordance with the standards of RCW 70.126.030.

(3) "Home health agency" means a private or public agency or organization that administers and provides home health care and is licensed by the department of social and health services as a home health care agency.

(4) "Home health care" means services, supplies, and medical equipment that meet the standards of RCW 70.126.020, prescribed and supervised by the attending physician, and provided through a home health agency and rendered to members in their residences when hospitalization would otherwise be required.

(5) "Home health aide" means a person employed by a home health agency or a hospice who is providing part-time or intermittent care under the supervision of a registered nurse, a physical therapist, occupational therapist, or speech therapist. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or household services that are needed to achieve the medically desired results.

(6) "Home health care plan of treatment" means a written plan of care established and periodically reviewed by a physician that describes medically necessary home health care to be provided to a patient for treatment of illness or injury.

(7) "Hospice plan of care" means a written plan of care established and periodically reviewed by a physician that describes hospice care to be provided to a terminally ill patient for palliation or medically necessary treatment of an illness or injury.

(8) "Physician" means a physician licensed under chapter 18.57 or 18.71 RCW. [1988 c 245 § 29; 1984 c 22 § 4; 1983 c 249 § 5.]

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

70.126.020 Home health care—Services and supplies included, not included. (1) Home health care shall be provided by a home health agency and shall:

(a) Be delivered by a registered nurse, physical therapist, occupational therapist, speech therapist, or home health aide on a part-time or intermittent basis;

(b) Include, as applicable under the written plan, supplies and equipment such as:

(i) Drugs and medicines that are legally obtainable only upon a physician's written prescription, and insulin;

(ii) Rental of durable medical apparatus and medical equipment such as wheelchairs, hospital beds, respirators, splints, trusses, braces, or crutches needed for treatment;

(iii) Supplies normally used for hospital inpatients and dispensed by the home health agency such as oxygen, catheters, needles, syringes, dressings, materials used in aseptic techniques, irrigation solutions, and intravenous fluids.

(2) The following services may be included when medically necessary, ordered by the attending physician, and included in the approved plan of treatment:

(a) Licensed practical nurses;

(b) Respiratory therapists;

(c) Social workers holding a master's degree;

(d) Ambulance service that is certified by the physician as necessary in the approved plan of treatment because of the patient's physical condition or for unexpected emergency situations.

(3) Services not included in home health care include:

(a) Nonmedical, custodial, or housekeeping services except by home health aides as ordered in the approved plan of treatment;

(b) "Meals on Wheels" or similar food services;

(c) Nutritional guidance;

(d) Services performed by family members;

(e) Services not included in an approved plan of treatment;

(f) Supportive environmental materials such as handrails, ramps, telephones, air conditioners, and similar appliances and devices. [1984 c 22 § 5; 1983 c 249 § 6.]

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

70.126.030 Hospice care—Provider, plan, services included. (1) Hospice care shall be provided by a hospice and shall meet the standards of RCW 70.126.020(1) (a) and (b)(ii) and (iii).

(2) A written hospice care plan shall be approved by a physician and shall be reviewed at designated intervals.

(3) The following services for necessary medical or palliative care shall be included when ordered by the attending physician and included in the approved plan of treatment:

(a) Short-term care as an inpatient;

(b) Care of the terminally ill in an individual's home on an outpatient basis as included in the approved plan of treatment;

(c) Respite care that is continuous care in the most appropriate setting for a maximum of five days per three-month period of hospice care. [1984 c 22 § 6; 1983 c 249 § 7.]

Effective date—1984 c 22: See note following RCW 48.21.220.

Effective date—1983 c 249: See note following RCW 70.126.001.

70.126.060 Application of chapter. The provisions of this chapter apply only for the purposes of determining benefits to be included in the offering of optional coverage for home health and hospice care services, as provided in RCW 48.21.220, 48.21A.090, and 48.44.320 and do not apply for the purposes of licensure. [1988 c 245 § 30.]

Effective date—Implementation—Severability—1988 c 245: See RCW 70.127.900 and 70.127.902.

Chapter 70.127 RCW

IN-HOME SERVICES AGENCIES

(Formerly: Home health, hospice, and home care agencies—Licensure)

Sections

| | |
|------------|---|
| 70.127.005 | Legislative intent. |
| 70.127.010 | Definitions. |
| 70.127.020 | Licenses required after July 1, 1990—Penalties. |
| 70.127.030 | Use of certain terms limited to licensees. |
| 70.127.040 | Persons, activities, or entities not subject to regulation under chapter. |
| 70.127.041 | Home care quality authority not subject to regulation. |
| 70.127.050 | Volunteer organizations—Use of phrase "volunteer hospice." |
| 70.127.080 | Licenses—Application procedure and requirements. |
| 70.127.085 | State licensure survey. |
| 70.127.090 | License or renewal—Fees—Sliding scale. |
| 70.127.100 | Licenses—Issuance—Prerequisites—Transfer or assignment—Surveys. |
| 70.127.120 | Rules for recordkeeping, services, staff and volunteer policies, complaints. |
| 70.127.125 | Interpretive guidelines for services. |
| 70.127.130 | Legend drugs and controlled substances—Rules. |
| 70.127.140 | Bill of rights—Billing statements. |
| 70.127.150 | Durable power of attorney—Prohibition for licensees, contractees, or employees. |
| 70.127.170 | Licenses—Denial, restriction, conditions, modification, suspension, revocation—Civil penalties. |
| 70.127.180 | Surveys and in-home visits—Notice of violations—Enforcement action. |
| 70.127.190 | Disclosure of compliance information. |
| 70.127.200 | Unlicensed agencies—Department may seek injunctive or other relief—Injunctive relief does not prohibit criminal or civil penalties—Fines. |
| 70.127.213 | Unlicensed operation of an in-home services agency—Cease and desist orders—Adjudicative proceedings—Fines. |
| 70.127.216 | Unlicensed operation of an in-home services agency—Consumer protection act. |
| 70.127.280 | Hospice care centers—Applicants—Rules. |
| 70.127.902 | Severability—1988 c 245. |

70.127.005 Legislative intent. The legislature finds that the availability of home health, hospice, and home care services has improved the quality of life for Washington's citizens. However, the delivery of these services bring risks because the in-home location of services makes their actual

delivery virtually invisible. Also, the complexity of products, services, and delivery systems in today's health care delivery system challenges even informed and healthy individuals. The fact that these services are delivered to the state's most vulnerable population, the ill or disabled who are frequently also elderly, adds to these risks.

It is the intent of the legislature to protect the citizens of Washington state by licensing home health, hospice, and home care agencies. This legislation is not intended to unreasonably restrict entry into the in-home service marketplace. Standards established are intended to be the minimum necessary to ensure safe and competent care, and should be demonstrably related to patient safety and welfare. [1988 c 245 § 1.]

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

(1) "Administrator" means an individual responsible for managing the operation of an agency.

(2) "Department" means the department of health.

(3) "Director of clinical services" means an individual responsible for nursing, therapy, nutritional, social, and related services that support the plan of care provided by in-home health and hospice agencies.

(4) "Family" means individuals who are important to, and designated by, the patient or client and who need not be relatives.

(5) "Home care agency" means a person administering or providing home care services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A home care agency that provides delegated tasks of nursing under RCW 18.79.260(3)(e) is not considered a home health agency for the purposes of this chapter.

(6) "Home care services" means nonmedical services and assistance provided to ill, disabled, or vulnerable individuals that enable them to remain in their residences. Home care services include, but are not limited to: Personal care such as assistance with dressing, feeding, and personal hygiene to facilitate self-care; homemaker assistance with household tasks, such as housekeeping, shopping, meal planning and preparation, and transportation; respite care assistance and support provided to the family; or other nonmedical services or delegated tasks of nursing under RCW 18.79.260(3)(e).

(7) "Home health agency" means a person administering or providing two or more home health services directly or through a contract arrangement to individuals in places of temporary or permanent residence. A person administering or providing nursing services only may elect to be designated a home health agency for purposes of licensure.

(8) "Home health services" means services provided to ill, disabled, or vulnerable individuals. These services include but are not limited to nursing services, home health aide services, physical therapy services, occupational therapy services, speech therapy services, respiratory therapy services, nutritional services, medical social services, and home medical supplies or equipment services.

(9) "Home health aide services" means services provided by a home health agency or a hospice agency under the supervision of a registered nurse, physical therapist, occupational therapist, or speech therapist who is employed by or under

contract to a home health or hospice agency. Such care includes ambulation and exercise, assistance with self-administered medications, reporting changes in patients' conditions and needs, completing appropriate records, and personal care or homemaker services.

(10) "Home medical supplies" or "equipment services" means diagnostic, treatment, and monitoring equipment and supplies provided for the direct care of individuals within a plan of care.

(11) "Hospice agency" means a person administering or providing hospice services directly or through a contract arrangement to individuals in places of temporary or permanent residence under the direction of an interdisciplinary team composed of at least a nurse, social worker, physician, spiritual counselor, and a volunteer.

(12) "Hospice care center" means a homelike, noninstitutional facility where hospice services are provided, and that meets the requirements for operation under RCW 70.127.280.

(13) "Hospice services" means symptom and pain management provided to a terminally ill individual, and emotional, spiritual, and bereavement support for the individual and family in a place of temporary or permanent residence, and may include the provision of home health and home care services for the terminally ill individual.

(14) "In-home services agency" means a person licensed to administer or provide home health, home care, hospice services, or hospice care center services directly or through a contract arrangement to individuals in a place of temporary or permanent residence.

(15) "Person" means any individual, business, firm, partnership, corporation, company, association, joint stock association, public or private agency or organization, or the legal successor thereof that employs or contracts with two or more individuals.

(16) "Plan of care" means a written document based on assessment of individual needs that identifies services to meet these needs.

(17) "Quality improvement" means reviewing and evaluating appropriateness and effectiveness of services provided under this chapter.

(18) "Service area" means the geographic area in which the department has given prior approval to a licensee to provide home health, hospice, or home care services.

(19) "Survey" means an inspection conducted by the department to evaluate and monitor an agency's compliance with this chapter. [2003 c 140 § 7; 2000 c 175 § 1; 1999 c 190 § 1; 1993 c 42 § 1; 1991 c 3 § 373; 1988 c 245 § 2.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: "This act takes effect January 1, 2002." [2000 c 175 § 24.]

Severability—1993 c 42: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 42 § 14.]

Effective dates—1993 c 42: "(1) Sections 1 through 10 and 12 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect June 30, 1993.

(2) Section 11 of this act shall take effect January 1, 1994." [1993 c 42 § 15.]

70.127.020 Licenses required after July 1, 1990—Penalties. (1) After July 1, 1990, a license is required for a person to advertise, operate, manage, conduct, open, or maintain an in-home services agency.

(2) An in-home services agency license is required for a nursing home, hospital, or other person that functions as a home health, hospice, hospice care center, or home care agency.

(3) Any person violating this section is guilty of a misdemeanor. Each day of a continuing violation is a separate violation.

(4) If any corporation conducts any activity for which a license is required by this chapter without the required license, it may be punished by forfeiture of its corporate charter.

(5) All fines, forfeitures, and penalties collected or assessed by a court because of a violation of this section shall be deposited in the department's local fee account. [2003 c 53 § 363; 2000 c 175 § 2; 1988 c 245 § 3.]

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

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.030 Use of certain terms limited to licensees. It is unlawful for any person to use the words:

(1) "Home health agency," "home health care services," "visiting nurse services," "home health," or "home health services" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter;

(2) "Hospice agency," "hospice," "hospice services," "hospice care," or "hospice care center" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter;

(3) "Home care agency," "home care services," or "home care" in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter; or

(4) "In-home services agency," "in-home services," or any similar term to indicate that a person is a home health, home care, hospice care center, or hospice agency in its corporate or business name, or advertise using such words unless licensed to provide those services under this chapter. [2000 c 175 § 3; 1988 c 245 § 4.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.040 Persons, activities, or entities not subject to regulation under chapter. The following are not subject to regulation for the purposes of this chapter:

(1) A family member providing home health, hospice, or home care services;

(2) A person who provides only meal services in an individual's permanent or temporary residence;

(3) An individual providing home care through a direct agreement with a recipient of care in an individual's permanent or temporary residence;

(4) A person furnishing or delivering home medical supplies or equipment that does not involve the provision of services beyond those necessary to deliver, set up, and monitor the proper functioning of the equipment and educate the user on its proper use;

(5) A person who provides services through a contract with a licensed agency;

(6) An employee or volunteer of a licensed agency who provides services only as an employee or volunteer;

(7) Facilities and institutions, including but not limited to nursing homes under chapter 18.51 RCW, hospitals under chapter 70.41 RCW, adult family homes under chapter 70.128 RCW, boarding homes under chapter 18.20 RCW, developmental disability residential programs under chapter 71A.12 RCW, other entities licensed under chapter 71.12 RCW, or other licensed facilities and institutions, only when providing services to persons residing within the facility or institution;

(8) Local and combined city-county health departments providing services under chapters 70.05 and 70.08 RCW;

(9) An individual providing care to ill, disabled, or vulnerable individuals through a contract with the department of social and health services;

(10) Nursing homes, hospitals, or other institutions, agencies, organizations, or persons that contract with licensed home health, hospice, or home care agencies for the delivery of services;

(11) In-home assessments of an ill, disabled, or vulnerable individual that does not result in regular ongoing care at home;

(12) Services conducted by and for the adherents of a church or religious denomination that rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents;

(13) A medicare-approved dialysis center operating a medicare-approved home dialysis program;

(14) A person providing case management services. For the purposes of this subsection, "case management" means the assessment, coordination, authorization, planning, training, and monitoring of home health, hospice, and home care, and does not include the direct provision of care to an individual;

(15) Pharmacies licensed under RCW 18.64.043 that deliver prescription drugs and durable medical equipment that does not involve the use of professional services beyond those authorized to be performed by licensed pharmacists pursuant to chapter 18.64 RCW and those necessary to set up and monitor the proper functioning of the equipment and educate the person on its proper use;

(16) A volunteer hospice complying with the requirements of RCW 70.127.050; and

(17) A person who provides home care services without compensation. [2003 c 275 § 3; 2003 c 140 § 8; 2000 c 175 § 4; 1993 c 42 § 2; 1988 c 245 § 5.]

Reviser's note: This section was amended by 2003 c 140 § 8 and by 2003 c 275 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.041 Home care quality authority not subject to regulation. The authority established by chapter 3, Laws of 2002 is not subject to regulation for purposes of this chapter. [2002 c 3 § 13 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

70.127.050 Volunteer organizations—Use of phrase "volunteer hospice." (1) An entity that provides hospice care without receiving compensation for delivery of any of its services is exempt from licensure pursuant to RCW 70.127.020(1) if it notifies the department, on forms provided by the department, of its name, address, name of owner, and a statement affirming that it provides hospice care without receiving compensation for delivery of any of its services. This form must be filed with the department within sixty days after being informed in writing by the department of this requirement for obtaining exemption from licensure under this chapter.

(2) For the purposes of this section, it is not relevant if the entity compensates its staff. For the purposes of this section, the word "compensation" does not include donations.

(3) Notwithstanding the provisions of RCW 70.127.030(2), an entity that provides hospice care without receiving compensation for delivery of any of its services is allowed to use the phrase "volunteer hospice."

(4) Nothing in this chapter precludes an entity providing hospice care without receiving compensation for delivery of any of its services from obtaining a hospice license if it so chooses, but that entity would be exempt from the requirements set forth in RCW 70.127.080(1)(d). [2000 c 175 § 5; 1993 c 42 § 3; 1988 c 245 § 6.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.080 Licenses—Application procedure and requirements. (1) An applicant for an in-home services agency license shall:

(a) File a written application on a form provided by the department;

(b) Demonstrate ability to comply with this chapter and the rules adopted under this chapter;

(c) Cooperate with on-site survey conducted by the department except as provided in RCW 70.127.085;

(d) Provide evidence of and maintain professional liability, public liability, and property damage insurance in an amount established by the department, based on industry standards. This subsection shall not apply to hospice agency applicants that provide hospice care without receiving compensation for delivery of services;

(e) Provide documentation of an organizational structure, and the identity of the applicant, officers, administrator, directors of clinical services, partners, managing employees, or owners of ten percent or more of the applicant's assets;

(f) File with the department for approval a description of the service area in which the applicant will operate and a description of how the applicant intends to provide management and supervision of services throughout the service area. The department shall adopt rules necessary to establish criteria

for approval that are related to appropriate management and supervision of services throughout the service area. In developing the rules, the department may not establish criteria that:

(i) Limit the number or type of agencies in any service area; or

(ii) Limit the number of persons any agency may serve within its service area unless the criteria are related to the need for trained and available staff to provide services within the service area;

(g) File with the department a list of the home health, hospice, and home care services provided directly and under contract;

(h) Pay to the department a license fee as provided in RCW 70.127.090;

(i) Comply with RCW 43.43.830 through 43.43.842 for criminal background checks; and

(j) Provide any other information that the department may reasonably require.

(2) A certificate of need under chapter 70.38 RCW is not required for licensure except for the operation of a hospice care center. [2000 c 175 § 6; 1999 c 190 § 2; 1993 c 42 § 4; 1988 c 245 § 9.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.085 State licensure survey. (1) Notwithstanding the provisions of RCW 70.127.080(1)(c), an in-home services agency that is certified by the federal medicare program, or accredited by the community health accreditation program, or the joint commission on accreditation of health care organizations as a home health or hospice agency is not subject to a state licensure survey if:

(a) The department determines that the applicable survey standards of the certification or accreditation program are substantially equivalent to those required by this chapter;

(b) An on-site survey has been conducted for the purposes of certification or accreditation during the previous twenty-four months; and

(c) The department receives directly from the certifying or accrediting entity or from the licensee applicant copies of the initial and subsequent survey reports and other relevant reports or findings that indicate compliance with licensure requirements.

(2) Notwithstanding the provisions of RCW 70.127.080(1)(c), an in-home services agency providing services under contract with the department of social and health services or area agency on aging to provide home care services and that is monitored by the department of social and health services or area agency on aging is not subject to a state licensure survey by the department of health if:

(a) The department determines that the department of social and health services or an area agency on aging monitoring standards are substantially equivalent to those required by this chapter;

(b) An on-site monitoring has been conducted by the department of social and health services or an area agency on aging during the previous twenty-four months;

(c) The department of social and health services or an area agency on aging includes in its monitoring a sample of private pay clients, if applicable; and

(d) The department receives directly from the department of social and health services copies of monitoring reports and other relevant reports or findings that indicate compliance with licensure requirements.

(3) The department retains authority to survey those service areas not addressed by the national accrediting body, department of social and health services, or an area agency on aging.

(4) In reviewing the federal, the joint commission on accreditation of health care organizations, the community health accreditation program, or the department of social and health services survey standards for substantial equivalency to those set forth in this chapter, the department is directed to provide the most liberal interpretation consistent with the intent of this chapter. In the event the department determines at any time that the survey standards are not substantially equivalent to those required by this chapter, the department is directed to notify the affected licensees. The notification shall contain a detailed description of the deficiencies in the alternative survey process, as well as an explanation concerning the risk to the consumer. The determination of substantial equivalency for alternative survey process and lack of substantial equivalency are agency actions and subject to RCW 34.05.210 through 34.05.395 and 34.05.510 through 34.05.675.

(5) The department is authorized to perform a validation survey on in-home services agencies who previously received a survey through accreditation or contracts with the department of social and health services or an area agency on aging under subsection (2) of this section. The department is authorized to perform a validation survey on no greater than ten percent of each type of certification or accreditation survey.

(6) This section does not affect the department's enforcement authority for licensed agencies. [2000 c 175 § 7; 1993 c 42 § 11.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.090 License or renewal—Fees—Sliding scale.

(1) Application and renewal fee: An application for a license or any renewal shall be accompanied by a fee as established by the department under RCW 43.70.250. The department shall adopt by rule licensure fees based on a sliding scale using such factors as the number of agency full-time equivalents, geographic area served, number of locations, or type and volume of services provided. For agencies receiving a licensure survey that requires more than two on-site surveys by the department per licensure period, an additional fee as determined by the department by rule shall be charged for each additional on-site survey. The department may set different licensure fees for each licensure category. Agencies receiving a license without necessity of an on-site survey by the department under this chapter shall pay the same licensure or transfer fee as other agencies in their licensure category.

(2) Change of ownership fee: The department shall charge a reasonable fee for processing changes in ownership. The fee for transfer of ownership may not exceed fifty percent of the base licensure fee.

(3) Late fee: The department may establish a late fee for failure to apply for licensure or renewal as required by this chapter. [2000 c 175 § 8; 1999 c 190 § 3; 1993 c 42 § 5; 1988 c 245 § 10.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.100 Licenses—Issuance—Prerequisites—Transfer or assignment—Surveys. Upon receipt of an application under RCW 70.127.080 for a license and the license fee, the department shall issue a license if the applicant meets the requirements established under this chapter. A license issued under this chapter shall not be transferred or assigned without thirty days prior notice to the department and the department's approval. A license, unless suspended or revoked, is effective for a period of two years, however an initial license is only effective for twelve months. The department shall conduct a survey within each licensure period and may conduct a licensure survey after ownership transfer. [2000 c 175 § 9; 1993 c 42 § 6; 1988 c 245 § 11.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.120 Rules for recordkeeping, services, staff and volunteer policies, complaints. The department shall adopt rules consistent with RCW 70.127.005 necessary to implement this chapter under chapter 34.05 RCW. In order to ensure safe and adequate care, the rules shall address at a minimum the following:

(1) Maintenance and preservation of all records relating directly to the care and treatment of individuals by licensees;

(2) Establishment and implementation of a procedure for the receipt, investigation, and disposition of complaints regarding services provided;

(3) Establishment and implementation of a plan for ongoing care of individuals and preservation of records if the licensee ceases operations;

(4) Supervision of services;

(5) Establishment and implementation of written policies regarding response to referrals and access to services;

(6) Establishment and implementation of written personnel policies, procedures and personnel records for paid staff that provide for prehire screening, minimum qualifications, regular performance evaluations, including observation in the home, participation in orientation and in-service training, and involvement in quality improvement activities. The department may not establish experience or other qualifications for agency personnel or contractors beyond that required by state law;

(7) Establishment and implementation of written policies and procedures for volunteers who have direct patient/client contact and that provide for background and health screening, orientation, and supervision;

(8) Establishment and implementation of written policies for obtaining regular reports on patient satisfaction;

(9) Establishment and implementation of a quality improvement process;

(10) Establishment and implementation of policies related to the delivery of care including:

(a) Plan of care for each individual served;
 (b) Periodic review of the plan of care;
 (c) Supervision of care and clinical consultation as necessary;

(d) Care consistent with the plan;
 (e) Admission, transfer, and discharge from care; and
 (f) For hospice services:
 (i) Availability of twenty-four hour seven days a week hospice registered nurse consultation and in-home services as appropriate;

(ii) Interdisciplinary team communication as appropriate and necessary; and

(iii) The use and availability of volunteers to provide family support and respite care; and

(11) Establishment and implementation of policies related to agency implementation and oversight of nurse delegation as defined in RCW 18.79.260(3)(e). [2003 c 140 § 9; 2000 c 175 § 10; 1993 c 42 § 8; 1988 c 245 § 13.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.125 Interpretive guidelines for services. The department is directed to continue to develop, with opportunity for comment from licensees, interpretive guidelines that are specific to each type of service and consistent with legislative intent. [2000 c 175 § 11; 1993 c 42 § 7.]

Effective date—2000 c 175: See note following RCW 70.127.010.

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.130 Legend drugs and controlled substances—Rules. Licensees shall conform to the standards of RCW 69.41.030 and 69.50.308. Rules adopted by the department concerning the use of legend drugs or controlled substances shall reference and be consistent with board of pharmacy rules. [1993 c 42 § 9; 1988 c 245 § 14.]

Severability—Effective dates—1993 c 42: See notes following RCW 70.127.010.

70.127.140 Bill of rights—Billing statements. (1) An in-home services agency shall provide each individual or designated representative with a written bill of rights affirming each individual's right to:

(a) A listing of the in-home services offered by the in-home services agency and those being provided;

(b) The name of the individual supervising the care and the manner in which that individual may be contacted;

(c) A description of the process for submitting and addressing complaints;

(d) Submit complaints without retaliation and to have the complaint addressed by the agency;

(e) Be informed of the state complaint hotline number;

(f) A statement advising the individual or representative of the right to ongoing participation in the development of the plan of care;

(2004 Ed.)

(g) A statement providing that the individual or representative is entitled to information regarding access to the department's listing of providers and to select any licensee to provide care, subject to the individual's reimbursement mechanism or other relevant contractual obligations;

(h) Be treated with courtesy, respect, privacy, and freedom from abuse and discrimination;

(i) Refuse treatment or services;

(j) Have property treated with respect;

(k) Privacy of personal information and confidentiality of health care records;

(l) Be cared for by properly trained staff with coordination of services;

(m) A fully itemized billing statement upon request, including the date of each service and the charge. Licensees providing services through a managed care plan shall not be required to provide itemized billing statements; and

(n) Be informed about advanced directives and the agency's responsibility to implement them.

(2) An in-home services agency shall ensure rights under this section are implemented and updated as appropriate. [2000 c 175 § 12; 1988 c 245 § 15.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.150 Durable power of attorney—Prohibition for licensees, contractees, or employees. No licensee, contractee, or employee may hold a durable power of attorney on behalf of any individual who is receiving care from the licensee. [2000 c 175 § 13; 1988 c 245 § 16.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.170 Licenses—Denial, restriction, conditions, modification, suspension, revocation—Civil penalties. Pursuant to chapter 34.05 RCW and RCW 70.127.180(3), the department may deny, restrict, condition, modify, suspend, or revoke a license under this chapter or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation, or require a refund of any amounts billed to, and collected from, the consumer or third-party payor in any case in which it finds that the licensee, or any applicant, officer, director, partner, managing employee, or owner of ten percent or more of the applicant's or licensee's assets:

(1) Failed or refused to comply with the requirements of this chapter or the standards or rules adopted under this chapter;

(2) Was the holder of a license issued pursuant to this chapter that was revoked for cause and never reissued by the department, or that was suspended for cause and the terms of the suspension have not been fulfilled and the licensee has continued to operate;

(3) Has knowingly or with reason to know made a misrepresentation of, false statement of, or failed to disclose, a material fact to the department in an application for the license or any data attached thereto or in any record required by this chapter or matter under investigation by the department, or during a survey, or concerning information requested by the department;

(4) Refused to allow representatives of the department to inspect any book, record, or file required by this chapter to be maintained or any portion of the licensee's premises;

(5) Willfully prevented, interfered with, or attempted to impede in any way the work of any representative of the department and the lawful enforcement of any provision of this chapter. This includes but is not limited to: Willful misrepresentation of facts during a survey, investigation, or administrative proceeding or any other legal action; or use of threats or harassment against any patient, client, or witness, or use of financial inducements to any patient, client, or witness to prevent or attempt to prevent him or her from providing evidence during a survey or investigation, in an administrative proceeding, or any other legal action involving the department;

(6) Willfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of this chapter or the rules adopted under this chapter;

(7) Failed to pay any civil monetary penalty assessed by the department pursuant to this chapter within ten days after the assessment becomes final;

(8) Used advertising that is false, fraudulent, or misleading;

(9) Has repeated incidents of personnel performing services beyond their authorized scope of practice;

(10) Misrepresented or was fraudulent in any aspect of the conduct of the licensee's business;

(11) Within the last five years, has been found in a civil or criminal proceeding to have committed any act that reasonably relates to the person's fitness to establish, maintain, or administer an agency or to provide care in the home of another;

(12) Was the holder of a license to provide care or treatment to ill, disabled, or vulnerable individuals that was denied, restricted, not renewed, surrendered, suspended, or revoked by a competent authority in any state, federal, or foreign jurisdiction. A certified copy of the order, stipulation, or agreement is conclusive evidence of the denial, restriction, nonrenewal, surrender, suspension, or revocation;

(13) Violated any state or federal statute, or administrative rule regulating the operation of the agency;

(14) Failed to comply with an order issued by the secretary or designee;

(15) Aided or abetted the unlicensed operation of an in-home services agency;

(16) Operated beyond the scope of the in-home services agency license;

(17) Failed to adequately supervise staff to the extent that the health or safety of a patient or client was at risk;

(18) Compromised the health or safety of a patient or client, including, but not limited to, the individual performing services beyond their authorized scope of practice;

(19) Continued to operate after license revocation, suspension, or expiration, or operating outside the parameters of a modified, conditioned, or restricted license;

(20) Failed or refused to comply with chapter 70.02 RCW;

(21) Abused, neglected, abandoned, or financially exploited a patient or client as these terms are defined in RCW 74.34.020;

(22) Misappropriated the property of an individual;

(23) Is unqualified or unable to operate or direct the operation of the agency according to this chapter and the rules adopted under this chapter;

(24) Obtained or attempted to obtain a license by fraudulent means or misrepresentation; or

(25) Failed to report abuse or neglect of a patient or client in violation of chapter 74.34 RCW. [2003 c 140 § 10; 2000 c 175 § 14; 1988 c 245 § 18.]

Effective date—2003 c 140: See note following RCW 18.79.040.

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.180 Surveys and in-home visits—Notice of violations—Enforcement action. (1) The department may at any time conduct a survey of all records and operations of a licensee in order to determine compliance with this chapter. The department may conduct in-home visits to observe patient/client care and services. The right to conduct a survey shall extend to any premises and records of persons whom the department has reason to believe are providing home health, hospice, or home care services without a license.

(2) Following a survey, the department shall give written notice of any violation of this chapter or the rules adopted under this chapter. The notice shall describe the reasons for noncompliance.

(3) The licensee may be subject to formal enforcement action under RCW 70.127.170 if the department determines: (a) The licensee has previously been subject to a formal enforcement action for the same or similar type of violation of the same statute or rule, or has been given previous notice of the same or similar type of violation of the same statute or rule; (b) the licensee failed to achieve compliance with a statute, rule, or order by the date established in a previously issued notice or order; (c) the violation resulted in actual serious physical or emotional harm or immediate threat to the health, safety, welfare, or rights of one or more individuals; or (d) the violation has a potential for serious physical or emotional harm or immediate threat to the health, safety, welfare, or rights of one or more individuals. [2000 c 175 § 15; 1988 c 245 § 19.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.190 Disclosure of compliance information. All information received by the department through filed reports, surveys, and in-home visits conducted under this chapter shall not be disclosed publicly in any manner that would identify individuals receiving care under this chapter. [2000 c 175 § 16; 1988 c 245 § 20.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.200 Unlicensed agencies—Department may seek injunctive or other relief—Injunctive relief does not prohibit criminal or civil penalties—Fines. (1) Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law and upon the advice of the attorney general, who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction or other process against any person to restrain or prevent the advertising, operating, maintaining, managing, or opening of a home health, hospice, hospice care

center, or home care agency without an in-home services agency license under this chapter.

(2) The injunction shall not relieve the person operating an in-home services agency without a license from criminal prosecution, or the imposition of a civil fine under RCW 70.127.213(2), but the remedy by injunction shall be in addition to any criminal liability or civil fine. A person that violates an injunction issued under this chapter shall pay a civil penalty, as determined by the court, of not more than twenty-five thousand dollars, which shall be deposited in the department's local fee account. For the purpose of this section, the superior court issuing any injunction shall retain jurisdiction and the cause shall be continued, and in such cases the attorney general acting in the name of the state may petition for the recovery of civil penalties. All fines, forfeitures, and penalties collected or assessed by a court because of a violation of RCW 70.127.020 shall be deposited in the department's local fee account. [2000 c 175 § 17; 1988 c 245 § 21.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.213 Unlicensed operation of an in-home services agency—Cease and desist orders—Adjudicative proceedings—Fines. (1) The department may issue a notice of intention to issue a cease and desist order to any person whom the department has reason to believe is engaged in the unlicensed operation of an in-home services agency. The person to whom the notice of intent is issued may request an adjudicative proceeding to contest the charges. The request for hearing must be filed within twenty days after service of the notice of intent to issue a cease and desist order. The failure to request a hearing constitutes a default, whereupon the department may enter a permanent cease and desist order, which may include a civil fine. All proceedings shall be conducted in accordance with chapter 34.05 RCW.

(2) If the department makes a final determination that a person has engaged or is engaging in unlicensed operation of an in-home services agency, the department may issue a cease and desist order. In addition, the department may impose a civil fine in an amount not exceeding one thousand dollars for each day upon which the person engaged in unlicensed operation of an in-home services agency. The proceeds of such fines shall be deposited in the department's local fee account.

(3) If the department makes a written finding of fact that the public interest will be irreparably harmed by delay in issuing an order, the department may issue a temporary cease and desist order. The person receiving a temporary cease and desist order shall be provided an opportunity for a prompt hearing. The temporary cease and desist order shall remain in effect until further order of the department. The failure to request a prompt or regularly scheduled hearing constitutes a default, whereupon the department may enter a permanent cease and desist order, which may include a civil fine.

(4) Neither the issuance of a cease and desist order nor payment of a civil fine shall relieve the person so operating an in-home services agency without a license from criminal prosecution, but the remedy of a cease and desist order or civil fine shall be in addition to any criminal liability. The cease and desist order is conclusive proof of unlicensed operation and may be enforced under RCW 7.21.060. This

(2004 Ed.)

method of enforcement of the cease and desist order or civil fine may be used in addition to, or as an alternative to, any provisions for enforcement of agency orders set out in chapter 34.05 RCW. [2000 c 175 § 19.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.216 Unlicensed operation of an in-home services agency—Consumer protection act. The legislature finds that the operation of an in-home services agency without a license in violation of this chapter is a matter vitally affecting the public interest for the purpose of applying the consumer protection act, chapter 19.86 RCW. Operation of an in-home services agency without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [2000 c 175 § 20.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.280 Hospice care centers—Applicants—Rules. (1) Applicants desiring to operate a hospice care center are subject to the following:

(a) The application may only be made by a licensed hospice agency. The agency shall list which of the following service categories will be provided:

- (i) General inpatient care;
- (ii) Continuous home care;
- (iii) Routine home care; or
- (iv) Inpatient respite care;

(b) A certificate of need is required under chapter 70.38 RCW;

(c) A hospice agency may operate more than one hospice care center in its service area;

(d) For hospice agencies that operate a hospice care center, no more than forty-nine percent of patient care days, in the aggregate on a biennial basis, may be provided in the hospice care center;

(e) The maximum number of beds in a hospice care center is twenty;

(f) The maximum number of individuals per room is one, unless the individual requests a roommate;

(g) A hospice care center may either be owned or leased by a hospice agency. If the agency leases space, all delivery of interdisciplinary services, to include staffing and management, shall be done by the hospice agency; and

(h) A hospice care center may either be freestanding or a separate portion of another building.

(2) The department is authorized to develop rules to implement this section. The rules shall be specific to each hospice care center service category provided. The rules shall at least specifically address the following:

(a) Adequate space for family members to visit, meet, cook, share meals, and stay overnight with patients or clients;

(b) A separate external entrance, clearly identifiable to the public when part of an existing structure;

(c) Construction, maintenance, and operation of a hospice care center;

(d) Means to inform the public which hospice care center service categories are provided; and

(e) A registered nurse present twenty-four hours a day, seven days a week for hospice care centers delivering general inpatient services.

(3) Hospice agencies which as of January 1, 2000, operate the functional equivalent of a hospice care center through licensure as a hospital, under chapter 70.41 RCW, shall be exempt from the certificate of need requirement for hospice care centers if they apply for and receive a license as an in-home services agency to operate a hospice home care center by July 1, 2002. [2000 c 175 § 21.]

Effective date—2000 c 175: See note following RCW 70.127.010.

70.127.902 Severability—1988 c 245. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 245 § 39.]

Chapter 70.128 RCW ADULT FAMILY HOMES

Sections

| | |
|------------|---|
| 70.128.005 | Findings—Intent. |
| 70.128.007 | Purpose. |
| 70.128.010 | Definitions. |
| 70.128.030 | Exemptions. |
| 70.128.040 | Adoption of rules and standards. |
| 70.128.050 | License—Required as of July 1, 1990. |
| 70.128.055 | Operating without a license—Misdemeanor. |
| 70.128.057 | Operating without a license—Injunction or civil penalty. |
| 70.128.058 | Operating without a license—Application of consumer protection act. |
| 70.128.060 | License—Generally. |
| 70.128.064 | Priority processing for license applications—Provisional license. |
| 70.128.065 | Multiple facility operators—Requirements. |
| 70.128.070 | License—Inspections—Correction of violations. |
| 70.128.080 | License and inspection report—Availability for review. |
| 70.128.090 | Inspections—Generally. |
| 70.128.100 | Immediate suspension of license when conditions warrant. |
| 70.128.105 | Injunction if conditions warrant. |
| 70.128.110 | Prohibition against recommending unlicensed home—Report and investigation of unlicensed home. |
| 70.128.120 | Adult family home provider, resident manager—Minimum qualifications. |
| 70.128.122 | Adult family homes licensed by Indian tribes. |
| 70.128.125 | Resident rights. |
| 70.128.130 | Adult family homes—Requirements. |
| 70.128.135 | Compliance with chapter 70.24 RCW. |
| 70.128.140 | Compliance with local codes and state and local fire safety regulations. |
| 70.128.150 | Adult family homes to work with local quality assurance projects—Interference with representative of ombudsman program—Penalty. |
| 70.128.160 | Department authority to take actions in response to noncompliance or violations. |
| 70.128.163 | Temporary management program—Purposes—Voluntary participation—Temporary management duties, duration—Rules. |
| 70.128.167 | Disputed violations, enforcement remedies—Informal dispute resolution process. |
| 70.128.170 | Homes relying on prayer for healing—Application of chapter. |
| 70.128.175 | Definitions. |
| 70.128.200 | Toll-free telephone number for complaints—Discrimination or retaliation prohibited. |
| 70.128.210 | Training standards review—Delivery system—Issues reviewed—Report to the legislature. |
| 70.128.220 | Elder care—Professionalization of providers. |
| 70.128.225 | Advisory committee. |
| 70.128.230 | Long-term caregiver training. |
| 70.128.240 | Approval system—Department-approved training—Adoption of rules. |
| 70.128.900 | Severability—1989 c 427. |

70.128.005 Findings—Intent. The legislature finds that adult family homes are an important part of the state's long-term care system. Adult family homes provide an alternative to institutional care and promote a high degree of independent living for residents. Persons with functional limitations have broadly varying service needs. Adult family homes that can meet those needs are an essential component of a long-term system. The legislature further finds that different populations living in adult family homes, such as the developmentally disabled and the elderly, often have significantly different needs and capacities from one another.

It is the legislature's intent that department rules and policies relating to the licensing and operation of adult family homes recognize and accommodate the different needs and capacities of the various populations served by the homes. Furthermore, the development and operation of adult family homes that can provide quality personal care and special care services should be encouraged.

The legislature finds that many residents of community-based long-term care facilities are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and residents' needs increase. The legislature intends that current training standards be enhanced.

The legislature finds that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of vulnerable adults residing in adult family homes. The health, safety, and well-being of vulnerable adults must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, or whether to take other licensing actions. [2001 c 319 § 1; 2000 c 121 § 4; 1995 c 260 § 1; 1989 c 427 § 14.]

70.128.007 Purpose. The purposes of this chapter are to:

(1) Encourage the establishment and maintenance of adult family homes that provide a humane, safe, and residential home environment for persons with functional limitations who need personal and special care;

(2) Establish standards for regulating adult family homes that adequately protect residents;

(3) Encourage consumers, families, providers, and the public to become active in assuring their full participation in development of adult family homes that provide high quality and cost-effective care;

(4) Provide for appropriate care of residents in adult family homes by requiring that each resident have a care plan that promotes the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice; and

(5) Accord each resident the right to participate in the development of the care plan and in other major decisions involving the resident and their care. [2001 c 319 § 5; 1995 1st sp.s. c 18 § 19; 1989 c 427 § 15.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

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

(1) "Adult family home" means a residential home in which a person or persons provide personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(2) "Provider" means any person who is licensed under this chapter to operate an adult family home. For the purposes of this section, "person" means any individual, partnership, corporation, association, or limited liability company.

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

(4) "Resident" means an adult in need of personal or special care in an adult family home who is not related to the provider.

(5) "Adults" means persons who have attained the age of eighteen years.

(6) "Home" means an adult family home.

(7) "Imminent danger" means serious physical harm to or death of a resident has occurred, or there is a serious threat to resident life, health, or safety.

(8) "Special care" means care beyond personal care as defined by the department, in rule.

(9) "Capacity" means the maximum number of persons in need of personal or special care permitted in an adult family home at a given time. This number shall include related children or adults in the home and who received special care.

(10) "Resident manager" means a person employed or designated by the provider to manage the adult family home. [2001 c 319 § 6; 2001 c 319 § 2; 1995 c 260 § 2; 1989 c 427 § 16.]

Reviser's note: This section was amended by 2001 c 319 § 2 and by 2001 c 319 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

70.128.030 Exemptions. The following residential facilities shall be exempt from the operation of this chapter:

(1) Nursing homes licensed under chapter 18.51 RCW;

(2) Boarding homes licensed under chapter 18.20 RCW;

(3) Facilities approved and certified under chapter 71A.22 RCW;

(4) Residential treatment centers for the mentally ill licensed under chapter 71.24 RCW;

(5) Hospitals licensed under chapter 70.41 RCW;

(6) Homes for the developmentally disabled licensed under chapter 74.15 RCW. [1989 c 427 § 17.]

70.128.040 Adoption of rules and standards. (1) The department shall adopt rules and standards with respect to adult family homes and the operators thereof to be licensed under this chapter to carry out the purposes and requirements of this chapter. The rules and standards relating to applicants and operators shall address the differences between individual providers and providers that are partnerships, corporations, associations, or companies. The rules and standards shall also recognize and be appropriate to the different needs and capacities of the various populations served by adult family homes such as but not limited to the developmentally

(2004 Ed.)

disabled and the elderly. In developing rules and standards the department shall recognize the residential family-like nature of adult family homes and not develop rules and standards which by their complexity serve as an overly restrictive barrier to the development of the adult family homes in the state. Procedures and forms established by the department shall be developed so they are easy to understand and comply with. Paper work requirements shall be minimal. Easy to understand materials shall be developed for applicants and providers explaining licensure requirements and procedures.

(2) In developing the rules and standards, the department shall consult with all divisions and administrations within the department serving the various populations living in adult family homes, including the division of developmental disabilities and the aging and adult services administration. Involvement by the divisions and administration shall be for the purposes of assisting the department to develop rules and standards appropriate to the different needs and capacities of the various populations served by adult family homes. During the initial stages of development of proposed rules, the department shall provide notice of development of the rules to organizations representing adult family homes and their residents, and other groups that the department finds appropriate. The notice shall state the subject of the rules under consideration and solicit written recommendations regarding their form and content.

(3) Except where provided otherwise, chapter 34.05 RCW shall govern all department rule-making and adjudicative activities under this chapter. [1995 c 260 § 3; 1989 c 427 § 18.]

70.128.050 License—Required as of July 1, 1990.

After July 1, 1990, no person shall operate or maintain an adult family home in this state without a license under this chapter. [1989 c 427 § 19.]

70.128.055 Operating without a license—Misdemeanor. A person operating or maintaining an adult family home without a license under this chapter is guilty of a misdemeanor. Each day of a continuing violation after conviction is considered a separate offense. [1991 c 40 § 1.]

70.128.057 Operating without a license—Injunction or civil penalty. Notwithstanding the existence or use of any other remedy, the department may, in the manner provided by law, upon the advice of the attorney general who shall represent the department in the proceedings, maintain an action in the name of the state for an injunction, civil penalty, or other process against a person to restrain or prevent the operation or maintenance of an adult family home without a license under this chapter. [1995 1st sp.s. c 18 § 20; 1991 c 40 § 2.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.058 Operating without a license—Application of consumer protection act. The legislature finds that the operation of an adult family home without a license in violation of this chapter is a matter vitally affecting the public interest for the purpose of applying the consumer protection

act, chapter 19.86 RCW. Operation of an adult family home without a license in violation of this chapter is not reasonable in relation to the development and preservation of business. Such a violation is an unfair or deceptive act in trade or commerce and an unfair method of competition for the purpose of applying the consumer protection act, chapter 19.86 RCW. [1995 1st sp.s. c 18 § 21.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.060 License—Generally. (1) An application for license shall be made to the department upon forms provided by it and shall contain such information as the department reasonably requires.

(2) Subject to the provisions of this section, the department shall issue a license to an adult family home if the department finds that the applicant and the home are in compliance with this chapter and the rules adopted under this chapter, unless (a) the applicant or a person affiliated with the applicant has prior violations of this chapter relating to the adult family home subject to the application or any other adult family home, or of any other law regulating residential care facilities within the past five years that resulted in revocation, suspension, or nonrenewal of a license or contract with the department; or (b) the applicant or a person affiliated with the applicant has a history of significant noncompliance with federal, state, or local laws, rules, or regulations relating to the provision of care or services to vulnerable adults or to children. A person is considered affiliated with an applicant if the person is listed on the license application as a partner, officer, director, resident manager, or majority owner of the applying entity, or is the spouse of the applicant.

(3) The license fee shall be submitted with the application.

(4) The department shall serve upon the applicant a copy of the decision granting or denying an application for a license. An applicant shall have the right to contest denial of his or her application for a license as provided in chapter 34.05 RCW by requesting a hearing in writing within twenty-eight days after receipt of the notice of denial.

(5) The department shall not issue a license to a provider if the department finds that the provider or spouse of the provider or any partner, officer, director, managerial employee, or majority owner has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children.

(6) The department shall license an adult family home for the maximum level of care that the adult family home may provide. The department shall define, in rule, license levels based upon the education, training, and caregiving experience of the licensed provider or staff.

(7) The department shall establish, by rule, standards used to license nonresident providers and multiple facility operators.

(8) The department shall establish, by rule, for multiple facility operators educational standards substantially equivalent to recognized national certification standards for residential care administrators.

(9) The license fee shall be set at fifty dollars per year for each home. A fifty dollar processing fee shall also be charged each home when the home is initially licensed.

(10) A provider who receives notification of the department's initiation of a denial, suspension, nonrenewal, or revocation of an adult family home license may, in lieu of appealing the department's action, surrender or relinquish the license. The department shall not issue a new license to or contract with the provider, for the purposes of providing care to vulnerable adults or children, for a period of twenty years following the surrendering or relinquishment of the former license. The licensing record shall indicate that the provider relinquished or surrendered the license, without admitting the violations, after receiving notice of the department's initiation of a denial, suspension, nonrenewal, or revocation of a license.

(11) The department shall establish, by rule, the circumstances requiring a change in the licensed provider, which include, but are not limited to, a change in ownership or control of the adult family home or provider, a change in the provider's form of legal organization, such as from sole proprietorship to partnership or corporation, and a dissolution or merger of the licensed entity with another legal organization. The new provider is subject to the provisions of this chapter, the rules adopted under this chapter, and other applicable law. In order to ensure that the safety of residents is not compromised by a change in provider, the new provider is responsible for correction of all violations that may exist at the time of the new license. [2004 c 140 § 3; 2001 c 193 § 9; 1995 c 260 § 4; 1989 c 427 § 20.]

70.128.064 Priority processing for license applications—Provisional license. In order to prevent disruption to current residents, at the request of the current licensed provider, the department shall give processing priority to the application of a person seeking to be licensed as the new provider for the adult family home. The department may issue a provisional license when a currently licensed adult family home provider has applied to be licensed as the new provider for a currently licensed adult family home, the application has been initially processed, and all that remains to complete the application process is an on-site inspection. [2001 c 319 § 10.]

70.128.065 Multiple facility operators—Requirements. A multiple facility operator must successfully demonstrate to the department financial solvency and management experience for the homes under its ownership and the ability to meet other relevant safety, health, and operating standards pertaining to the operation of multiple homes, including ways to mitigate the potential impact of vehicular traffic related to the operation of the homes. [1996 c 81 § 6.]

Reviser's note: 1996 c 81 directed that this section be added to chapter 18.48 RCW. However, it appears that placement is erroneous and the appropriate placement is in chapter 70.128 RCW.

Effective date—1996 c 81: See note following RCW 70.128.120.

70.128.070 License—Inspections—Correction of violations. (1) A license shall remain valid unless voluntarily surrendered, suspended, or revoked in accordance with this chapter.

(2)(a) Homes applying for a license shall be inspected at the time of licensure.

(b) Homes licensed by the department shall be inspected at least every eighteen months, subject to available funds. However, an adult family home may be allowed to continue without inspection for two years if the adult family home had no inspection citations for the past three consecutive inspections and has received no written notice of violations resulting from complaint investigations during that same time period.

(c) The department may make an unannounced inspection of a licensed home at any time to assure that the home and provider are in compliance with this chapter and the rules adopted under this chapter.

(3) If the department finds that the home is not in compliance with this chapter, it shall require the home to correct any violations as provided in this chapter. [2004 c 143 § 1; 1998 c 272 § 4; 1995 1st sp.s. c 18 § 22; 1989 c 427 § 22.]

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.080 License and inspection report—Availability for review. An adult family home shall have readily available for review by the department, residents, and the public:

(1) Its license to operate; and

(2) A copy of each inspection report received by the home from the department for the past three years. [1995 1st sp.s. c 18 § 23; 1989 c 427 § 21.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.090 Inspections—Generally. (1) During inspections of an adult family home, the department shall have access and authority to examine areas and articles in the home used to provide care or support to residents, including residents' records, accounts, and the physical premises, including the buildings, grounds, and equipment. The personal records of the provider are not subject to department inspection nor is the separate bedroom of the provider, not used in direct care of a client, subject to review. The department may inspect all rooms during the initial licensing of the home. However, during a complaint investigation, the department shall have access to the entire premises and all pertinent records when necessary to conduct official business. The department also shall have the authority to interview the provider and residents of an adult family home.

(2) Whenever an inspection is conducted, the department shall prepare a written report that summarizes all information obtained during the inspection, and if the home is in violation of this chapter, serve a copy of the inspection report upon the provider at the same time as a notice of violation. This notice shall be mailed to the provider within ten working days of the completion of the inspection process. If the home is not in violation of this chapter, a copy of the inspection report shall be mailed to the provider within ten calendar days of the inspection of the home. All inspection reports shall be made available to the public at the department during business hours.

(3) The provider shall develop corrective measures for any violations found by the department's inspection. The

(2004 Ed.)

department shall upon request provide consultation and technical assistance to assist the provider in developing effective corrective measures. The department shall include a statement of the provider's corrective measures in the department's inspection report. [2001 c 319 § 7; 1995 1st sp.s. c 18 § 24; 1989 c 427 § 30.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.100 Immediate suspension of license when conditions warrant. The department has the authority to immediately suspend a license if it finds that conditions there constitute an imminent danger to residents. [1989 c 427 § 32.]

70.128.105 Injunction if conditions warrant. The department may commence an action in superior court to enjoin the operation of an adult family home if it finds that conditions there constitute an imminent danger to residents. [1991 c 40 § 3.]

70.128.110 Prohibition against recommending unlicensed home—Report and investigation of unlicensed home. (1) No public agency contractor or employee shall place, refer, or recommend placement of a person into an adult family home that is operating without a license.

(2) Any public agency contractor or employee who knows that an adult family home is operating without a license shall report the name and address of the home to the department. The department shall investigate any report filed under this section. [1989 c 427 § 23.]

70.128.120 Adult family home provider, resident manager—Minimum qualifications. Each adult family home provider and each resident manager shall have the following minimum qualifications:

(1) Twenty-one years of age or older;

(2) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, a United States high school diploma or general educational development (GED) certificate or any English or translated government documentation of the following:

(a) Successful completion of government-approved public or private school education in a foreign country that includes an annual average of one thousand hours of instruction over twelve years or no less than twelve thousand hours of instruction;

(b) A foreign college, foreign university, or United States community college two-year diploma;

(c) Admission to, or completion of coursework at, a foreign university or college for which credit was granted;

(d) Admission to, or completion of coursework at, a United States college or university for which credits were awarded;

(e) Admission to, or completion of postgraduate coursework at, a United States college or university for which credits were awarded; or

(f) Successful passage of the United States board examination for registered nursing, or any professional medical

occupation for which college or university education preparation was required;

(3) Good moral and responsible character and reputation;

(4) Literacy in the English language, however, a person not literate in the English language may meet the requirements of this subsection by assuring that there is a person on staff and available who is able to communicate or make provisions for communicating with the resident in his or her primary language and capable of understanding and speaking English well enough to be able to respond appropriately to emergency situations and be able to read and understand resident care plans;

(5) Management and administrative ability to carry out the requirements of this chapter;

(6) Satisfactory completion of department-approved basic training and continuing education training as specified by the department in rule, based on recommendations of the community long-term care training and education steering committee and working in collaboration with providers, consumers, caregivers, advocates, family members, educators, and other interested parties in the rule-making process;

(7) Satisfactory completion of department-approved, or equivalent, special care training before a provider may provide special care services to a resident;

(8) Not been convicted of any crime listed in RCW 43.43.830 and 43.43.842; and

(9) For those applying after September 1, 2001, to be licensed as providers, and for resident managers whose employment begins after September 1, 2001, at least three hundred twenty hours of successful, direct caregiving experience obtained after age eighteen to vulnerable adults in a licensed or contracted setting prior to operating or managing an adult family home. [2002 c 223 § 1; 2001 c 319 § 8; 2000 c 121 § 5; 1996 c 81 § 1; 1995 1st sp.s. c 18 § 117; 1995 c 260 § 5; 1989 c 427 § 24.]

Effective date—2002 c 223 § 1: "Section 1 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 28, 2002]." [2002 c 223 § 7.]

Effective date—1996 c 81: "This act shall take effect July 1, 1996." [1996 c 81 § 7.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.122 Adult family homes licensed by Indian tribes. The legislature recognizes that adult family homes located within the boundaries of a federally recognized Indian reservation may be licensed by the Indian tribe. The department may pay for care for persons residing in such homes, if there has been a tribal or state criminal background check of the provider and any staff, and the client is otherwise eligible for services administered by the department. [1995 1st sp.s. c 18 § 25.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.125 Resident rights. RCW 70.129.005 through 70.129.030, 70.129.040(1), and 70.129.050 through 70.129.170 apply to this chapter and persons regulated under this chapter. [1994 c 214 § 24.]

[Title 70 RCW—page 372]

Severability—Conflict with federal requirements—Captions not law—1994 c 214: See RCW 70.129.900 through 70.129.902.

70.128.130 Adult family homes—Requirements. (1)

Adult family homes shall be maintained internally and externally in good repair and condition. Such homes shall have safe and functioning systems for heating, cooling, hot and cold water, electricity, plumbing, garbage disposal, sewage, cooking, laundry, artificial and natural light, ventilation, and any other feature of the home.

(2) Adult family homes shall be maintained in a clean and sanitary manner, including proper sewage disposal, food handling, and hygiene practices.

(3) Adult family homes shall develop a fire drill plan for emergency evacuation of residents, shall have smoke detectors in each bedroom where a resident is located, shall have fire extinguishers on each floor of the home, and shall not keep nonambulatory patients above the first floor of the home.

(4) Adult family homes shall have clean, functioning, and safe household items and furnishings.

(5) Adult family homes shall provide a nutritious and balanced diet and shall recognize residents' needs for special diets.

(6) Adult family homes shall establish health care procedures for the care of residents including medication administration and emergency medical care.

(a) Adult family home residents shall be permitted to self-administer medications.

(b) Adult family home providers may administer medications and deliver special care only to the extent authorized by law.

(7) Adult family home providers shall either: (a) Reside at the adult family home; or (b) employ or otherwise contract with a qualified resident manager to reside at the adult family home. The department may exempt, for good cause, a provider from the requirements of this subsection by rule.

(8) A provider will ensure that any volunteer, student, employee, or person residing within the adult family home who will have unsupervised access to any resident shall not have been convicted of a crime listed under RCW 43.43.830 or 43.43.842. Except that a person may be conditionally employed pending the completion of a criminal conviction background inquiry.

(9) A provider shall offer activities to residents under care as defined by the department in rule.

(10) An adult family home provider must ensure that staff are competent and receive necessary training to perform assigned tasks. Staff must satisfactorily complete department-approved staff orientation, basic training, and continuing education as specified by the department by rule. [2000 c 121 § 6; 1995 c 260 § 6; 1989 c 427 § 26.]

70.128.135 Compliance with chapter 70.24 RCW.

Adult family homes shall comply with the provisions of chapter 70.24 RCW. [2001 c 319 § 9.]

70.128.140 Compliance with local codes and state and local fire safety regulations. Each adult family home shall meet applicable local licensing, zoning, building, and housing codes, and state and local fire safety regulations as

(2004 Ed.)

they pertain to a single-family residence. It is the responsibility of the home to check with local authorities to ensure all local codes are met. [1995 1st sp.s. c 18 § 26; 1989 c 427 § 27.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.150 Adult family homes to work with local quality assurance projects—Interference with representative of ombudsman program—Penalty. Whenever possible adult family homes are encouraged to contact and work with local quality assurance projects such as the volunteer ombudsman with the goal of assuring high quality care is provided in the home.

An adult family home may not willfully interfere with a representative of the long-term care ombudsman program in the performance of official duties. The department shall impose a penalty of not more than one thousand dollars for any such willful interference. [1995 1st sp.s. c 18 § 27; 1989 c 427 § 28.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.160 Department authority to take actions in response to noncompliance or violations. (1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that an adult family home provider has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated an adult family home without a license or under a revoked license;

(c) Knowingly or with reason to know made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a license;

(b) Impose reasonable conditions on a license, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a license; or

(e) Suspend admissions to the adult family home by imposing stop placement.

(3) When the department orders stop placement, the facility shall not admit any person until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement,

the previous stop placement shall remain in effect until the new stop placement is imposed.

(4) After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(5) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing license suspension, stop placement, or conditions for continuation of a license are effective immediately upon notice and shall continue in effect pending any hearing. [2001 c 193 § 5; 1995 1st sp.s. c 18 § 28; 1989 c 427 § 31.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.163 Temporary management program—Purposes—Voluntary participation—Temporary management duties, duration—Rules. (1) When the department has summarily suspended a license, the licensee may, subject to the department's approval, elect to participate in a temporary management program. All provisions of this section shall apply.

The purposes of a temporary management program are as follows:

(a) To mitigate dislocation and transfer trauma of residents while the department and licensee may pursue dispute resolution or appeal of a summary suspension of license;

(b) To facilitate the continuity of safe and appropriate resident care and services;

(c) To preserve a residential option that meets a specialized service need and/or is in a geographical area that has a lack of available providers; and

(d) To provide residents with the opportunity for orderly discharge.

(2) Licensee participation in the temporary management program is voluntary. The department shall have the discretion to approve any temporary manager and the temporary management arrangements. The temporary management shall assume the total responsibility for the daily operations of the home.

(3) The temporary management shall contract with the licensee as an independent contractor and is responsible for ensuring that all minimum licensing requirements are met. The temporary management shall protect the health, safety, and well-being of the residents for the duration of the tempo-

rary management and shall perform all acts reasonably necessary to ensure that residents' needs are met. The licensee is responsible for all costs related to administering the temporary management program and contracting with the temporary management. The temporary management agreement shall at a minimum address the following:

(a) Provision of liability insurance to protect residents and their property;

(b) Preservation of resident trust funds;

(c) The timely payment of past due or current accounts, operating expenses, including but not limited to staff compensation, and all debt that comes due during the period of the temporary management;

(d) The responsibilities for addressing all other financial obligations that would interfere with the ability of the temporary manager to provide adequate care and services to residents; and

(e) The authority of the temporary manager to manage the home, including the hiring, managing, and firing of employees for good cause, and to provide adequate care and services to residents.

(4) The licensee and department shall provide written notification immediately to all residents, legal representatives, interested family members, and the state long-term care ombudsman program, of the temporary management and the reasons for it. This notification shall include notice that residents may move from the home without notifying the licensee in advance, and without incurring any charges, fees, or costs otherwise available for insufficient advance notice, during the temporary management period.

(5) The temporary management period under this section concludes twenty-eight days after issuance of the formal notification of enforcement action or conclusion of administrative proceedings, whichever date is later. Nothing in this section precludes the department from revoking its approval of the temporary management and/or exercising its licensing enforcement authority under this chapter. The department's decision whether to approve or to revoke a temporary management arrangement is not subject to the administrative procedure act, chapter 34.05 RCW.

(6) The department is authorized to adopt rules implementing this section. In implementing this section, the department shall consult with consumers, advocates, the adult family home advisory committee established under chapter 18.48 RCW, and organizations representing adult family homes. The department may recruit and approve qualified, licensed providers interested in serving as temporary managers. [2001 c 193 § 6.]

***Reviser's note:** Chapter 18.48 RCW was repealed in its entirety by 2002 c 223 § 2.

70.128.167 Disputed violations, enforcement remedies—Informal dispute resolution process. (1) The licensee or its designee has the right to an informal dispute resolution process to dispute any violation found or enforcement remedy imposed by the department during a licensing inspection or complaint investigation. The purpose of the informal dispute resolution process is to provide an opportunity for an exchange of information that may lead to the modification, deletion, or removal of a violation, or parts of a violation, or enforcement remedy imposed by the department.

(2) The informal dispute resolution process provided by the department shall include, but is not necessarily limited to, an opportunity for review by a department employee who did not participate in, or oversee, the determination of the violation or enforcement remedy under dispute. The department shall develop, or further develop, an informal dispute resolution process consistent with this section.

(3) A request for an informal dispute resolution shall be made to the department within ten working days from the receipt of a written finding of a violation or enforcement remedy. The request shall identify the violation or violations and enforcement remedy or remedies being disputed. The department shall convene a meeting, when possible, within ten working days of receipt of the request for informal dispute resolution, unless by mutual agreement a later date is agreed upon.

(4) If the department determines that a violation or enforcement remedy should not be cited or imposed, the department shall delete the violation or immediately rescind or modify the enforcement remedy. Upon request, the department shall issue a clean copy of the revised report, statement of deficiencies, or notice of enforcement action.

(5) The request for informal dispute resolution does not delay the effective date of any enforcement remedy imposed by the department, except that civil monetary fines are not payable until the exhaustion of any formal hearing and appeal rights provided under this chapter. The licensee shall submit to the department, within the time period prescribed by the department, a plan of correction to address any undisputed violations, and including any violations that still remain following the informal dispute resolution. [2001 c 193 § 8.]

70.128.170 Homes relying on prayer for healing—Application of chapter. Nothing in this chapter or the rules adopted under it may be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents in any adult family home conducted by and for the adherents of a church or religious denomination who rely upon spiritual means alone through prayer for healing in accordance with the tenets and practices of such church or religious denomination and the bona fide religious beliefs genuinely held by such adherents. [1989 c 427 § 33.]

70.128.175 Definitions. (1) Unless the context clearly requires otherwise, these definitions shall apply throughout this section and RCW 35.63.140, 35A.63.149, 36.70.755, 35.22.680, and 36.32.560:

(a) "Adult family home" means a regular family abode in which a person or persons provides personal care, special care, room, and board to more than one but not more than six adults who are not related by blood or marriage to the person or persons providing the services.

(b) "Residential care facility" means a facility that cares for at least five, but not more than fifteen functionally disabled persons, that is not licensed pursuant to chapter 70.128 RCW.

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

(2) An adult family home shall be considered a residential use of property for zoning and public and private utility

rate purposes. Adult family homes shall be a permitted use in all areas zoned for residential or commercial purposes, including areas zoned for single family dwellings. [1997 c 392 § 401; 1995 1st sp.s. c 18 § 29; 1989 1st ex.s. c 9 § 815.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

70.128.200 Toll-free telephone number for complaints—Discrimination or retaliation prohibited. (1) The department shall maintain a toll-free telephone number for receiving complaints regarding adult family homes.

(2) An adult family home shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number.

(3) No adult family home shall discriminate or retaliate in any manner against a resident on the basis or for the reason that such resident or any other person made a complaint to the department or the long-term care ombudsman or cooperated with the investigation of such a complaint. [1995 1st sp.s. c 18 § 30.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.128.210 Training standards review—Delivery system—Issues reviewed—Report to the legislature. (1) The department of social and health services shall review, in coordination with the department of health, the nursing care quality assurance commission, adult family home providers, boarding home providers, in-home personal care providers, and long-term care consumers and advocates, training standards for providers, resident managers, and resident caregiving staff. The departments and the commission shall submit to the appropriate committees of the house of representatives and the senate by December 1, 1998, specific recommendations on training standards and the delivery system, including necessary statutory changes and funding requirements. Any proposed enhancements shall be consistent with this section, shall take into account and not duplicate other training requirements applicable to adult family homes and staff, and shall be developed with the input of adult family home and resident representatives, health care professionals, and other vested interest groups. Training standards and the delivery system shall be relevant to the needs of residents served by the adult family home and recipients of long-term in-home personal care services and shall be sufficient to ensure that providers, resident managers, and caregiving staff have the skills and knowledge necessary to provide high quality, appropriate care.

(2) The recommendations on training standards and the delivery system developed under subsection (1) of this section shall be based on a review and consideration of the following: Quality of care; availability of training; affordability, including the training costs incurred by the department of social and health services and private providers; portability of existing training requirements; competency testing; practical and clinical course work; methods of delivery of training;

standards for management; uniform caregiving staff training; necessary enhancements for special needs populations; and resident rights training. Residents with special needs include, but are not limited to, residents with a diagnosis of mental illness, dementia, or developmental disability. Development of training recommendations for developmental disabilities services shall be coordinated with the study requirements in section 6, chapter 272, Laws of 1998.

(3) The department of social and health services shall report to the appropriate committees of the house of representatives and the senate by December 1, 1998, on the cost of implementing the proposed training standards for state-funded residents, and on the extent to which that cost is covered by existing state payment rates. [1998 c 272 § 3.]

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

70.128.220 Elder care—Professionalization of providers. Adult family homes have developed rapidly in response to the health and social needs of the aging population in community settings, especially as the aging population has increased in proportion to the general population. The growing demand for elder care with a new focus on issues affecting senior citizens, including persons with developmental disabilities, mental illness, or dementia, has prompted a growing professionalization of adult family home providers to address quality care and quality of life issues consistent with standards of accountability and regulatory safeguards for the health and safety of the residents. The establishment of an advisory committee to the department of social and health services under RCW 70.128.225 formalizes a stable process for discussing and considering these issues among residents and their advocates, regulatory officials, and adult family home providers. The dialogue among all stakeholders interested in maintaining a healthy option for the aging population in community settings assures the highest regard for the well-being of these residents within a benign and functional regulatory environment. The secretary shall be advised by an advisory committee on adult family homes established under RCW 70.128.225. [2002 c 223 § 3; 1998 c 272 § 9.]

Findings—Severability—Effective date—1998 c 272: See notes following RCW 18.20.230.

70.128.225 Advisory committee. (1) In an effort to ensure a cooperative process among the department, adult family home provider representatives, and resident and family representatives on matters pertaining to the adult family home program, the secretary, or his or her designee, shall designate an advisory committee. The advisory committee must include: Representatives from the industry including four adult family home providers, at least two of whom are affiliated with recognized adult family home associations; one representative from the state long-term care ombudsman program; one representative from the statewide resident council program; and two representatives of families and other consumers. The secretary shall appoint a chairperson for the committee from the committee membership for a term of one year. In appointing the chairperson, the secretary shall consult with members of the committee. Depending on the topic to be discussed, the department may invite other repre-

sentatives in addition to the named members of the advisory committee. The secretary, or his or her designee, shall periodically, but not less than quarterly, convene a meeting of the advisory committee to encourage open dialogue on matters affecting the adult family home program. It is, minimally, expected that the department will discuss with the advisory committee the department's inspection, enforcement, and quality improvement activities, in addition to seeking their comments and recommendations on matters described under subsection (2) of this section.

(2) The secretary, or his or her designee, shall seek comments and recommendations from the advisory committee prior to the adoption of rules and standards, implementation of adult family home provider programs, or development of methods and rates of payment.

(3) Establishment of the advisory committee shall not prohibit the department of social and health services from utilizing other advisory activities that the department of social and health services deems necessary for program development.

(4) Members of the advisory committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 from license fees collected under chapter 70.128 RCW. [2002 c 223 § 4.]

70.128.230 Long-term caregiver training. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Caregiver" includes all adult family home resident managers and any person who provides residents with hands-on personal care on behalf of an adult family home, except volunteers who are directly supervised.

(b) "Indirect supervision" means oversight by a person who has demonstrated competency in the core areas or has been fully exempted from the training requirements pursuant to this section and is quickly and easily available to the caregiver, but not necessarily on-site.

(2) Training must have three components: Orientation, basic training, and continuing education. All adult family home providers, resident managers, and employees, or volunteers who routinely interact with residents shall complete orientation. Caregivers shall complete orientation, basic training, and continuing education.

(3) Orientation consists of introductory information on residents' rights, communication skills, fire and life safety, and universal precautions. Orientation must be provided at the facility by appropriate adult family home staff to all adult family home employees before the employees have routine interaction with residents.

(4) Basic training consists of modules on the core knowledge and skills that caregivers need to learn and understand to effectively and safely provide care to residents. Basic training must be outcome-based, and the effectiveness of the basic training must be measured by demonstrated competency in the core areas through the use of a competency test. Basic training must be completed by caregivers within one hundred twenty days of the date on which they begin to provide hands-on care or within one hundred twenty days of September 1, 2002, whichever is later. Until competency in the core areas has been demonstrated, caregivers shall not provide

hands-on personal care to residents without indirect supervision.

(5) For adult family homes that serve residents with special needs such as dementia, developmental disabilities, or mental illness, specialty training is required of providers and resident managers. Specialty training consists of modules on the core knowledge and skills that providers and resident managers need to effectively and safely provide care to residents with special needs. Specialty training should be integrated into basic training wherever appropriate. Specialty training must be outcome-based, and the effectiveness of the specialty training measured by demonstrated competency in the core specialty areas through the use of a competency test. Specialty training must be completed by providers and resident managers before admitting and serving residents who have been determined to have special needs related to mental illness, dementia, or a developmental disability. Should a resident develop special needs while living in a home without specialty designation, the provider and resident manager have one hundred twenty days to complete specialty training.

(6) Continuing education consists of ongoing delivery of information to caregivers on various topics relevant to the care setting and care needs of residents. Competency testing is not required for continuing education. Continuing education is not required in the same calendar year in which basic or modified basic training is successfully completed. Continuing education is required in each calendar year thereafter. If specialty training is completed, the specialty training applies toward any continuing education requirement for up to two years following the completion of the specialty training.

(7) Persons who successfully challenge the competency test for basic training are fully exempt from the basic training requirements of this section. Persons who successfully challenge the specialty training competency test are fully exempt from the specialty training requirements of this section.

(8) Licensed persons who perform the tasks for which they are licensed are fully or partially exempt from the training requirements of this section, as specified by the department in rule.

(9) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges, private associations, or other entities, as defined by the department.

(10) Adult family homes that desire to deliver facility-based training with facility designated trainers, or adult family homes that desire to pool their resources to create shared training systems, must be encouraged by the department in their efforts. The department shall develop criteria for reviewing and approving trainers and training materials. The department may approve a curriculum based upon attestation by an adult family home administrator that the adult family home's training curriculum addresses basic and specialty training competencies identified by the department, and shall review a curriculum to verify that it meets these requirements. The department may conduct the review as part of the next regularly scheduled inspection authorized under RCW

70.128.070. The department shall rescind approval of any curriculum if it determines that the curriculum does not meet these requirements.

(11) The department shall adopt rules by September 1, 2002, for the implementation of this section.

(12) The orientation, basic training, specialty training, and continuing education requirements of this section commence September 1, 2002, and shall be applied to (a) employees hired subsequent to September 1, 2002; or (b) existing employees that on September 1, 2002, have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 and this section. Existing employees who have not successfully completed the training requirements under RCW 70.128.120 or 70.128.130 shall be subject to all applicable requirements of this section. However, until September 1, 2002, nothing in this section affects the current training requirements under RCW 70.128.120 and 70.128.130. [2002 c 233 § 3; 2000 c 121 § 3.]

Effective date—2002 c 233: See note following RCW 18.20.270.

70.128.240 Approval system—Department-approved training—Adoption of rules. By March 1, 2002, the department must, by rule, create an approval system for those seeking to conduct department-approved training under RCW 70.128.230, *70.128.120 (5) and (6), and 70.128.130(10). The department shall adopt rules based on recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190. [2000 c 121 § 7.]

***Reviser's note:** RCW 70.128.120 was amended by 2001 c 319 § 8, changing subsections (5) and (6) to subsections (6) and (7).

70.128.900 Severability—1989 c 427. See RCW 74.39.900.

Chapter 70.129 RCW

LONG-TERM CARE RESIDENT RIGHTS

Sections

- 70.129.005 Intent—Basic rights.
- 70.129.007 Rights are minimal—Other rights not diminished.
- 70.129.010 Definitions.
- 70.129.020 Exercise of rights.
- 70.129.030 Notice of rights and services—Admission of individuals.
- 70.129.040 Protection of resident's funds—Financial affairs rights.
- 70.129.050 Privacy and confidentiality of personal and medical records.
- 70.129.060 Grievances.
- 70.129.070 Examination of survey or inspection results—Contact with client advocates.
- 70.129.080 Mail and telephone—Privacy in communications.
- 70.129.090 Advocacy, access, and visitation rights.
- 70.129.100 Personal property—Storage space.
- 70.129.105 Waiver of liability and resident rights limited.
- 70.129.110 Disclosure, transfer, and discharge requirements.
- 70.129.120 Restraints—Physical or chemical.
- 70.129.130 Abuse, punishment, seclusion—Background checks.
- 70.129.140 Quality of life—Rights.
- 70.129.150 Disclosure of fees and notice requirements—Deposits.
- 70.129.160 Ombudsman implementation duties.
- 70.129.170 Nonjudicial remedies through regulatory authorities encouraged—Remedies cumulative.
- 70.129.900 Severability—1994 c 214.
- 70.129.901 Conflict with federal requirements—1994 c 214.
- 70.129.902 Captions not law.

70.129.005 Intent—Basic rights. The legislature recognizes that long-term care facilities are a critical part of the

state's long-term care services system. It is the intent of the legislature that individuals who reside in long-term care facilities receive appropriate services, be treated with courtesy, and continue to enjoy their basic civil and legal rights.

It is also the intent of the legislature that long-term care facility residents have the opportunity to exercise reasonable control over life decisions. The legislature finds that choice, participation, privacy, and the opportunity to engage in religious, political, civic, recreational, and other social activities foster a sense of self-worth and enhance the quality of life for long-term care residents.

The legislature finds that the public interest would be best served by providing the same basic resident rights in all long-term care settings. Residents in nursing facilities are guaranteed certain rights by federal law and regulation, 42 U.S.C. 1396r and 42 C.F.R. part 483. It is the intent of the legislature to extend those basic rights to residents in veterans' homes, boarding homes, and adult family homes.

The legislature intends that a facility should care for its residents in a manner and in an environment that promotes maintenance or enhancement of each resident's quality of life. A resident should have a safe, clean, comfortable, and homelike environment, allowing the resident to use his or her personal belongings to the extent possible. [1994 c 214 § 1.]

Zoning—1994 c 214: "Nothing in this act shall affect the classifying of an adult family home for the purposes of zoning." [1994 c 214 § 30.]

70.129.007 Rights are minimal—Other rights not diminished. The rights set forth in this chapter are the minimal rights guaranteed to all residents of long-term care facilities, and are not intended to diminish rights set forth in other state or federal laws that may contain additional rights. [1994 c 214 § 20.]

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

- (1) "Department" means the department of state government responsible for licensing the provider in question.
- (2) "Facility" means a long-term care facility.
- (3) "Long-term care facility" means a facility that is licensed or required to be licensed under chapter 18.20, 72.36, or 70.128 RCW.
- (4) "Resident" means the individual receiving services in a long-term care facility, that resident's attorney in fact, guardian, or other legal representative acting within the scope of their authority.
- (5) "Physical restraint" means a manual method, obstacle, or physical or mechanical device, material, or equipment attached or adjacent to the resident's body that restricts freedom of movement or access to his or her body, is used for discipline or convenience, and not required to treat the resident's medical symptoms.
- (6) "Chemical restraint" means a psychopharmacologic drug that is used for discipline or convenience and not required to treat the resident's medical symptoms.
- (7) "Representative" means a person appointed under RCW 7.70.065.
- (8) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabili-

ties act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations. [1997 c 392 § 203; 1994 c 214 § 2.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.129.020 Exercise of rights. The resident has a right to a dignified existence, self-determination, and communication with and access to persons and services inside and outside the facility. A facility must protect and promote the rights of each resident and assist the resident which include:

(1) The resident has the right to exercise his or her rights as a resident of the facility and as a citizen or resident of the United States and the state of Washington.

(2) The resident has the right to be free of interference, coercion, discrimination, and reprisal from the facility in exercising his or her rights.

(3) In the case of a resident adjudged incompetent by a court of competent jurisdiction, the rights of the resident are exercised by the person appointed to act on the resident's behalf.

(4) In the case of a resident who has not been adjudged incompetent by a court of competent jurisdiction, a representative may exercise the resident's rights to the extent provided by law. [1994 c 214 § 3.]

70.129.030 Notice of rights and services—Admission of individuals. (1) The facility must inform the resident both orally and in writing in a language that the resident understands of his or her rights and all rules and regulations governing resident conduct and responsibilities during the stay in the facility. The notification must be made prior to or upon admission. Receipt of the information must be acknowledged in writing.

(2) The resident or his or her legal representative has the right:

(a) Upon an oral or written request, to access all records pertaining to himself or herself including clinical records within twenty-four hours; and

(b) After receipt of his or her records for inspection, to purchase at a cost not to exceed the community standard photocopies of the records or portions of them upon request and two working days' advance notice to the facility.

(3) The facility shall only admit or retain individuals whose needs it can safely and appropriately serve in the facility with appropriate available staff and through the provision of reasonable accommodations required by state or federal law. Except in cases of genuine emergency, the facility shall not admit an individual before obtaining a thorough assessment of the resident's needs and preferences. The assessment shall contain, unless unavailable despite the best efforts of the facility, the resident applicant, and other interested parties, the following minimum information: Recent medical history; necessary and contraindicated medications; a licensed medical or other health professional's diagnosis, unless the individual objects for religious reasons; significant known behaviors or symptoms that may cause concern or require special care; mental illness, except where protected by confidentiality laws; level of personal care needs; activities and service preferences; and preferences regarding other issues

important to the resident applicant, such as food and daily routine.

(4) The facility must inform each resident in writing in a language the resident or his or her representative understands before admission, and at least once every twenty-four months thereafter of: (a) Services, items, and activities customarily available in the facility or arranged for by the facility as permitted by the facility's license; (b) charges for those services, items, and activities including charges for services, items, and activities not covered by the facility's per diem rate or applicable public benefit programs; and (c) the rules of facility operations required under RCW 70.129.140(2). Each resident and his or her representative must be informed in writing in advance of changes in the availability or the charges for services, items, or activities, or of changes in the facility's rules. Except in emergencies, thirty days' advance notice must be given prior to the change. However, for facilities licensed for six or fewer residents, if there has been a substantial and continuing change in the resident's condition necessitating substantially greater or lesser services, items, or activities, then the charges for those services, items, or activities may be changed upon fourteen days' advance written notice.

(5) The facility must furnish a written description of resident rights that includes:

(a) A description of the manner of protecting personal funds, under RCW 70.129.040;

(b) A posting of names, addresses, and telephone numbers of the state survey and certification agency, the state licensure office, the state ombudsmen program, and the protection and advocacy systems; and

(c) A statement that the resident may file a complaint with the appropriate state licensing agency concerning alleged resident abuse, neglect, and misappropriation of resident property in the facility.

(6) Notification of changes.

(a) A facility must immediately consult with the resident's physician, and if known, make reasonable efforts to notify the resident's legal representative or an interested family member when there is:

(i) An accident involving the resident which requires or has the potential for requiring physician intervention;

(ii) A significant change in the resident's physical, mental, or psychosocial status (i.e., a deterioration in health, mental, or psychosocial status in either life-threatening conditions or clinical complications).

(b) The facility must promptly notify the resident or the resident's representative shall make reasonable efforts to notify an interested family member, if known, when there is:

(i) A change in room or roommate assignment; or

(ii) A decision to transfer or discharge the resident from the facility.

(c) The facility must record and update the address and phone number of the resident's representative or interested family member, upon receipt of notice from them. [1998 c 272 § 5; 1997 c 386 § 31; 1994 c 214 § 4.]

Effective date—1998 c 272 § 5: "Section 5 of this act takes effect July 1, 1998." [1998 c 272 § 23.]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

70.129.040 Protection of resident's funds—Financial affairs rights. (1) The resident has the right to manage his or her financial affairs, and the facility may not require residents to deposit their personal funds with the facility.

(2) Upon written authorization of a resident, if the facility agrees to manage the resident's personal funds, the facility must hold, safeguard, manage, and account for the personal funds of the resident deposited with the facility as specified in this section.

(a) The facility must deposit a resident's personal funds in excess of one hundred dollars in an interest-bearing account or accounts that is separate from any of the facility's operating accounts, and that credits all interest earned on residents' funds to that account. In pooled accounts, there must be a separate accounting for each resident's share.

(b) The facility must maintain a resident's personal funds that do not exceed one hundred dollars in a noninterest-bearing account, interest-bearing account, or petty cash fund.

(3) The facility must establish and maintain a system that assures a full and complete and separate accounting of each resident's personal funds entrusted to the facility on the resident's behalf.

(a) The system must preclude any commingling of resident funds with facility funds or with the funds of any person other than another resident.

(b) The individual financial record must be available on request to the resident or his or her legal representative.

(4) Upon the death of a resident with a personal fund deposited with the facility the facility must convey within forty-five days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; but in the case of a resident who received long-term care services paid for by the state, the funds and accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery. The department shall establish a release procedure for use for burial expenses. [1995 1st sp.s. c 18 § 66; 1994 c 214 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

70.129.050 Privacy and confidentiality of personal and medical records. The resident has the right to personal privacy and confidentiality of his or her personal and clinical records.

(1) Personal privacy includes accommodations, medical treatment, written and telephone communications, personal care, visits, and meetings of family and resident groups. This does not require the facility to provide a private room for each resident however, a resident cannot be prohibited by the facility from meeting with guests in his or her bedroom if no roommates object.

(2) The resident may approve or refuse the release of personal and clinical records to an individual outside the facility unless otherwise provided by law. [1994 c 214 § 6.]

70.129.060 Grievances. A resident has the right to:

(1) Voice grievances. Such grievances include those with respect to treatment that has been furnished as well as that which has not been furnished; and

(2) Prompt efforts by the facility to resolve grievances the resident may have, including those with respect to the behavior of other residents. [1994 c 214 § 7.]

70.129.070 Examination of survey or inspection results—Contact with client advocates. A resident has the right to:

(1) Examine the results of the most recent survey or inspection of the facility conducted by federal or state surveyors or inspectors and plans of correction in effect with respect to the facility. A notice that the results are available must be publicly posted with the facility's state license, and the results must be made available for examination by the facility in a place readily accessible to residents; and

(2) Receive information from agencies acting as client advocates, and be afforded the opportunity to contact these agencies. [1994 c 214 § 8.]

70.129.080 Mail and telephone—Privacy in communications. The resident has the right to privacy in communications, including the right to:

(1) Send and promptly receive mail that is unopened;

(2) Have access to stationery, postage, and writing implements at the resident's own expense; and

(3) Have reasonable access to the use of a telephone where calls can be made without being overheard. [1994 c 214 § 9.]

70.129.090 Advocacy, access, and visitation rights.

(1) The resident has the right and the facility must not interfere with access to any resident by the following:

(a) Any representative of the state;

(b) The resident's individual physician;

(c) The state long-term care ombudsman as established under chapter 43.190 RCW;

(d) The agency responsible for the protection and advocacy system for developmentally disabled individuals as established under part C of the developmental disabilities assistance and bill of rights act;

(e) The agency responsible for the protection and advocacy system for mentally ill individuals as established under the protection and advocacy for mentally ill individuals act;

(f) Subject to reasonable restrictions to protect the rights of others and to the resident's right to deny or withdraw consent at any time, immediate family or other relatives of the resident and others who are visiting with the consent of the resident;

(g) The agency responsible for the protection and advocacy system for individuals with disabilities as established under section 509 of the rehabilitation act of 1973, as amended, who are not served under the mandates of existing protection and advocacy systems created under federal law.

(2) The facility must provide reasonable access to a resident by his or her representative or an entity or individual that provides health, social, legal, or other services to the resident, subject to the resident's right to deny or withdraw consent at any time.

(3) The facility must allow representatives of the state ombudsman to examine a resident's clinical records with the permission of the resident or the resident's legal representa-

tive, and consistent with state and federal law. [1994 c 214 § 10.]

70.129.100 Personal property—Storage space. (1) The resident has the right to retain and use personal possessions, including some furnishings, and appropriate clothing, as space permits, unless to do so would infringe upon the rights or health and safety of other residents.

(2) The facility shall, upon request, provide the resident with a lockable container or other lockable storage space for small items of personal property, unless the resident's individual room is lockable with a key issued to the resident. [1994 c 214 § 11.]

70.129.105 Waiver of liability and resident rights limited. No long-term care facility or nursing facility licensed under chapter 18.51 RCW shall require or request residents to sign waivers of potential liability for losses of personal property or injury, or to sign waivers of residents' rights set forth in this chapter or in the applicable licensing or certification laws. [1997 c 392 § 211; 1994 c 214 § 17.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.129.110 Disclosure, transfer, and discharge requirements. (1) The facility must permit each resident to remain in the facility, and not transfer or discharge the resident from the facility unless:

(a) The transfer or discharge is necessary for the resident's welfare and the resident's needs cannot be met in the facility;

(b) The safety of individuals in the facility is endangered;

(c) The health of individuals in the facility would otherwise be endangered;

(d) The resident has failed to make the required payment for his or her stay; or

(e) The facility ceases to operate.

(2) All long-term care facilities shall fully disclose to potential residents or their legal representative the service capabilities of the facility prior to admission to the facility. If the care needs of the applicant who is medicaid eligible are in excess of the facility's service capabilities, the department shall identify other care settings or residential care options consistent with federal law.

(3) Before a long-term care facility transfers or discharges a resident, the facility must:

(a) First attempt through reasonable accommodations to avoid the transfer or discharge, unless agreed to by the resident;

(b) Notify the resident and representative and make a reasonable effort to notify, if known, an interested family member of the transfer or discharge and the reasons for the move in writing and in a language and manner they understand;

(c) Record the reasons in the resident's record; and

(d) Include in the notice the items described in subsection (5) of this section.

(4)(a) Except when specified in this subsection, the notice of transfer or discharge required under subsection (3)

of this section must be made by the facility at least thirty days before the resident is transferred or discharged.

(b) Notice may be made as soon as practicable before transfer or discharge when:

(i) The safety of individuals in the facility would be endangered;

(ii) The health of individuals in the facility would be endangered;

(iii) An immediate transfer or discharge is required by the resident's urgent medical needs; or

(iv) A resident has not resided in the facility for thirty days.

(5) The written notice specified in subsection (3) of this section must include the following:

(a) The reason for transfer or discharge;

(b) The effective date of transfer or discharge;

(c) The location to which the resident is transferred or discharged;

(d) The name, address, and telephone number of the state long-term care ombudsman;

(e) For residents with developmental disabilities, the mailing address and telephone number of the agency responsible for the protection and advocacy of developmentally disabled individuals established under part C of the developmental disabilities assistance and bill of rights act; and

(f) For residents who are mentally ill, the mailing address and telephone number of the agency responsible for the protection and advocacy of mentally ill individuals established under the protection and advocacy for mentally ill individuals act.

(6) A facility must provide sufficient preparation and orientation to residents to ensure safe and orderly transfer or discharge from the facility.

(7) A resident discharged in violation of this section has the right to be readmitted immediately upon the first availability of a gender-appropriate bed in the facility. [1997 c 392 § 205; 1994 c 214 § 12.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.129.120 Restraints—Physical or chemical. The resident has the right to be free from physical restraint or chemical restraint. This section does not require or prohibit facility staff from reviewing the judgment of the resident's physician in prescribing psychopharmacologic medications. [1994 c 214 § 13.]

70.129.130 Abuse, punishment, seclusion—Background checks. The resident has the right to be free from verbal, sexual, physical, and mental abuse, corporal punishment, and involuntary seclusion.

(1) The facility must not use verbal, mental, sexual, or physical abuse, including corporal punishment or involuntary seclusion.

(2) Subject to available resources, the department of social and health services shall provide background checks required by RCW 43.43.842 for employees of facilities licensed under chapter 18.20 RCW without charge to the facility. [1994 c 214 § 14.]

70.129.140 Quality of life—Rights. (1) The facility must promote care for residents in a manner and in an environment that maintains or enhances each resident's dignity and respect in full recognition of his or her individuality.

(2) Within reasonable facility rules designed to protect the rights and quality of life of residents, the resident has the right to:

(a) Choose activities, schedules, and health care consistent with his or her interests, assessments, and plans of care;

(b) Interact with members of the community both inside and outside the facility;

(c) Make choices about aspects of his or her life in the facility that are significant to the resident;

(d) Wear his or her own clothing and determine his or her own dress, hair style, or other personal effects according to individual preference;

(e) Unless adjudged incompetent or otherwise found to be legally incapacitated, participate in planning care and treatment or changes in care and treatment;

(f) Unless adjudged incompetent or otherwise found to be legally incapacitated, to direct his or her own service plan and changes in the service plan, and to refuse any particular service so long as such refusal is documented in the record of the resident.

(3)(a) A resident has the right to organize and participate in resident groups in the facility.

(b) A resident's family has the right to meet in the facility with the families of other residents in the facility.

(c) The facility must provide a resident or family group, if one exists, with meeting space.

(d) Staff or visitors may attend meetings at the group's invitation.

(e) When a resident or family group exists, the facility must listen to the views and act upon the grievances and recommendations of residents and families concerning proposed policy and operational decisions affecting resident care and life in the facility.

(f) The resident has the right to refuse to perform services for the facility except as voluntarily agreed by the resident and the facility in the resident's service plan.

(4) A resident has the right to participate in social, religious, and community activities that do not interfere with the rights of other residents in the facility.

(5) A resident has the right to:

(a) Reside and receive services in the facility with reasonable accommodation of individual needs and preferences, except when the health or safety of the individual or other residents would be endangered; and

(b) Receive notice before the resident's room or roommate in the facility is changed.

(6) A resident has the right to share a double room with his or her spouse when married residents live in the same facility and both spouses consent to the arrangement. [1994 c 214 § 15.]

70.129.150 Disclosure of fees and notice requirements—Deposits. (1) Prior to admission, all long-term care facilities or nursing facilities licensed under chapter 18.51 RCW that require payment of an admissions fee, deposit, or a minimum stay fee, by or on behalf of a person seeking admission to the long-term care facility or nursing facility, shall

provide the resident, or his or her representative, full disclosure in writing in a language the resident or his or her representative understands, a statement of the amount of any admissions fees, deposits, prepaid charges, or minimum stay fees. The facility shall also disclose to the person, or his or her representative, the facility's advance notice or transfer requirements, prior to admission. In addition, the long-term care facility or nursing facility shall also fully disclose in writing prior to admission what portion of the deposits, admissions fees, prepaid charges, or minimum stay fees will be refunded to the resident or his or her representative if the resident leaves the long-term care facility or nursing facility. Receipt of the disclosures required under this subsection must be acknowledged in writing. If the facility does not provide these disclosures, the deposits, admissions fees, prepaid charges, or minimum stay fees may not be kept by the facility. If a resident dies or is hospitalized or is transferred to another facility for more appropriate care and does not return to the original facility, the facility shall refund any deposit or charges already paid less the facility's per diem rate for the days the resident actually resided or reserved or retained a bed in the facility notwithstanding any minimum stay policy or discharge notice requirements, except that the facility may retain an additional amount to cover its reasonable, actual expenses incurred as a result of a private-pay resident's move, not to exceed five days' per diem charges, unless the resident has given advance notice in compliance with the admission agreement. All long-term care facilities or nursing facilities covered under this section are required to refund any and all refunds due the resident or his or her representative within thirty days from the resident's date of discharge from the facility. Nothing in this section applies to provisions in contracts negotiated between a nursing facility or long-term care facility and a certified health plan, health or disability insurer, health maintenance organization, managed care organization, or similar entities.

(2) Where a long-term care facility or nursing facility requires the execution of an admission contract by or on behalf of an individual seeking admission to the facility, the terms of the contract shall be consistent with the requirements of this section, and the terms of an admission contract by a long-term care facility shall be consistent with the requirements of this chapter. [1997 c 392 § 206; 1994 c 214 § 16.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

70.129.160 Ombudsman implementation duties. The long-term care ombudsman shall monitor implementation of this chapter and determine the degree to which veterans' homes, nursing facilities, adult family homes, and boarding homes ensure that residents are able to exercise their rights. The long-term care ombudsman shall consult with the departments of health and social and health services, long-term care facility organizations, resident groups, and senior and disabled citizen organizations. [1998 c 245 § 113; 1994 c 214 § 18.]

70.129.170 Nonjudicial remedies through regulatory authorities encouraged—Remedies cumulative. The leg-

islature intends that long-term care facility or nursing home residents, their family members or guardians, the long-term care ombudsman, protection and advocacy personnel identified in *RCW 70.129.110(4) (e) and (f), and others who may seek to assist long-term care facility or nursing home residents, use the least formal means available to satisfactorily resolve disputes that may arise regarding the rights conferred by the provisions of chapter 70.129 RCW and RCW 18.20.180, 18.51.009, 72.36.037, and 70.128.125. Wherever feasible, direct discussion with facility personnel or administrators should be employed. Failing that, and where feasible, recourse may be sought through state or federal long-term care or nursing home licensing or other regulatory authorities. However, the procedures suggested in this section are cumulative and shall not restrict an agency or person from seeking a remedy provided by law or from obtaining additional relief based on the same facts, including any remedy available to an individual at common law. Chapter 214, Laws of 1994 is not intended to, and shall not be construed to, create any right of action on the part of any individual beyond those in existence under any common law or statutory doctrine. Chapter 214, Laws of 1994 is not intended to, and shall not be construed to, operate in derogation of any right of action on the part of any individual in existence on June 9, 1994. [1994 c 214 § 19.]

***Reviser's note:** RCW 70.129.110 was amended by 1997 c 392 § 205, changing subsection (4) to subsection (5).

70.129.900 Severability—1994 c 214. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 214 § 26.]

70.129.901 Conflict with federal requirements—1994 c 214. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [1994 c 214 § 27.]

70.129.902 Captions not law. Captions as used in this act constitute no part of the law. [1994 c 214 § 28.]

Chapter 70.132 RCW BEVERAGE CONTAINERS

Sections

| | |
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| 70.132.010 | Legislative findings. |
| 70.132.020 | Definitions. |
| 70.132.030 | Sale of containers with detachable metal rings or tabs prohibited. |
| 70.132.040 | Enforcement—Rules. |
| 70.132.050 | Penalty. |
| 70.132.900 | Effective date—Implementation—1982 c 113. |

70.132.010 Legislative findings. The legislature finds that beverage containers designed to be opened through the use of detachable metal rings or tabs are hazardous to the health and welfare of the citizens of this state and detrimental to certain wildlife. The detachable parts are susceptible to ingestion by human beings and wildlife. The legislature intends to eliminate the danger posed by these unnecessary containers by prohibiting their retail sale in this state. [1982 c 113 § 1.]

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

(1) "Beverage" means beer or other malt beverage or mineral water, soda water, or other drink in liquid form and intended for human consumption. The term does not include milk-based, soy-based, or similar products requiring heat and pressure in the canning process.

(2) "Beverage container" means a separate and sealed can containing a beverage.

(3) "Department" means the department of ecology created under chapter 43.21A RCW. [1983 c 257 § 1; 1982 c 113 § 2.]

70.132.030 Sale of containers with detachable metal rings or tabs prohibited. No person may sell or offer to sell at retail in this state any beverage container so designed and constructed that a metal part of the container is detachable in opening the container through use of a metal ring or tab. Nothing in this section prohibits the sale of a beverage container which container's only detachable part is a piece of pressure sensitive or metallic tape. [1982 c 113 § 3.]

70.132.040 Enforcement—Rules. The department shall administer and enforce this chapter. The department shall adopt rules interpreting and implementing this chapter. Any rule adopted under this section shall be adopted under the administrative procedure act, chapter 34.05 RCW. [1982 c 113 § 4.]

70.132.050 Penalty. Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, any person who violates any provision of this chapter or any rule adopted under this chapter is subject to a civil penalty not exceeding five hundred dollars for each violation. Each day of a continuing violation is a separate violation. [1995 c 403 § 632; 1982 c 113 § 5.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

70.132.900 Effective date—Implementation—1982 c 113. This act shall take effect on July 1, 1983. The director of the department of ecology is authorized to take such steps prior to such date as are necessary to ensure that this act is implemented on its effective date. [1982 c 113 § 7.]

Chapter 70.136 RCW

HAZARDOUS MATERIALS INCIDENTS

Sections

- 70.136.010 Legislative intent.
- 70.136.020 Definitions.
- 70.136.030 Incident command agencies—Designation by political subdivisions.
- 70.136.035 Incident command agencies—Assistance from state patrol.
- 70.136.040 Incident command agencies—Emergency assistance agreements.
- 70.136.050 Persons and agencies rendering emergency aid in hazardous materials incidents—Immunity from liability—Limitations.
- 70.136.055 Person causing hazardous materials incident—Responsibility for incident clean-up—Liability.
- 70.136.060 Written emergency assistance agreements—Terms and conditions—Records.
- 70.136.070 Verbal emergency assistance agreements—Good Samaritan law—Notification—Form.

Emergency management: Chapter 38.52 RCW.

Hazardous waste disposal: Chapter 70.105 RCW.

Radioactive and hazardous waste emergency response programs, state coordinator: RCW 38.52.030.

Transport of hazardous materials, state patrol authority over: Chapter 46.48 RCW.

70.136.010 Legislative intent. It is the intent of the legislature to promote and encourage advance planning, cooperation, and mutual assistance between applicable political subdivisions of the state and persons with equipment, personnel, and expertise in the handling of hazardous materials incidents, by establishing limitations on liability for those persons responding in accordance with the provisions of RCW 70.136.020 through 70.136.070. [1982 c 172 § 1.]

Reviser's note: Although 1982 c 172 directed that sections 1 through 7 of that enactment be added to chapter 4.24 RCW, codification of these sections as a new chapter in Title 70 RCW appears more appropriate.

70.136.020 Definitions. The definitions set forth in this section apply throughout RCW 70.136.010 through 70.136.070.

(1) "Hazardous materials" means:

(a) Materials which, if not contained may cause unacceptable risks to human life within a specified area adjacent to the spill, seepage, fire, explosion, or other release, and will, consequently, require evacuation;

(b) Materials that, if spilled, could cause unusual risks to the general public and to emergency response personnel responding at the scene;

(c) Materials that, if involved in a fire will pose unusual risks to emergency response personnel;

(d) Materials requiring unusual storage or transportation conditions to assure safe containment; or

(e) Materials requiring unusual treatment, packaging, or vehicles during transportation to assure safe containment.

(2) "Applicable political subdivisions of the state" means cities, towns, counties, fire districts, and those port authorities with emergency response capabilities.

(3) "Person" means an individual, partnership, corporation, or association.

(4) "Public agency" means any agency, political subdivision, or unit of local government of this state including, but not limited to, municipal corporations, quasi-municipal corporations, special purpose districts, and local service districts; any agency of the state government; any agency of the

(2004 Ed.)

United States; any Indian tribe recognized as such by the federal government; and any political subdivision of another state.

(5) "Hazardous materials incident" means an incident creating a danger to persons, property, or the environment as a result of spillage, seepage, fire, explosion, or release of hazardous materials, or the possibility thereof.

(6) "Governing body" means the elected legislative council, board, or commission or the chief executive of the applicable political subdivision of the state with public safety responsibility.

(7) "Incident command agency" means the predesignated or appointed agency charged with coordinating all activities and resources at the incident scene.

(8) "Representative" means an agent from the designated hazardous materials incident command agency with the authority to secure the services of persons with hazardous materials expertise or equipment.

(9) "Profit" means compensation for rendering care, assistance, or advice in excess of expenses actually incurred. [1987 c 238 § 1; 1982 c 172 § 2.]

70.136.030 Incident command agencies—Designation by political subdivisions. The governing body of each applicable political subdivision of this state shall designate a hazardous materials incident command agency within its respective boundaries, and file this designation with the director of community, trade, and economic development. In designating an incident command agency, the political subdivision shall consider the training, manpower, expertise, and equipment of various available agencies as well as the Uniform Fire Code and other existing codes and regulations. Along state and interstate highway corridors, the Washington state patrol shall be the designated incident command agency unless by mutual agreement that role has been assumed by another designated incident command agency. If a political subdivision has not designated an incident command agency within six months after July 26, 1987, the Washington state patrol shall then assume the role of incident command agency by action of the chief until a designation has been made. [1995 c 399 § 197; 1987 c 238 § 2; 1986 c 266 § 50; 1985 c 7 § 132; 1984 c 165 § 1; 1982 c 172 § 4.]

Severability—1986 c 266: See note following RCW 38.52.005.

70.136.035 Incident command agencies—Assistance from state patrol. In political subdivisions where an incident command agency has been designated, the Washington state patrol shall continue to respond with a supervisor to provide assistance to the incident command agency. [1987 c 238 § 3.]

70.136.040 Incident command agencies—Emergency assistance agreements. Hazardous materials incident command agencies, so designated by all applicable political subdivisions of the state, are authorized and encouraged, prior to a hazardous materials incident, to enter individually or jointly into written hazardous materials emergency assistance agreements with any person whose knowledge or expertise is deemed potentially useful. [1982 c 172 § 3.]

70.136.050 Persons and agencies rendering emergency aid in hazardous materials incidents—Immunity from liability—Limitations. An incident command agency in the good faith performance of its duties, is not liable for civil damages resulting from any act or omission in the performance of its duties, other than acts or omissions constituting gross negligence or wilful or wanton misconduct.

Any person or public agency whose assistance has been requested by an incident command agency, who has entered into a written hazardous materials assistance agreement before or at the scene of the incident pursuant to RCW 70.136.060 and 70.136.070, and who, in good faith, renders emergency care, assistance, or advice with respect to a hazardous materials incident, is not liable for civil damages resulting from any act or omission in the rendering of such care, assistance, or advice, other than acts or omissions constituting gross negligence or wilful or wanton misconduct. [1987 c 238 § 4; 1984 c 165 § 2; 1982 c 172 § 5.]

70.136.055 Person causing hazardous materials incident—Responsibility for incident clean-up—Liability. See RCW 4.24.314.

70.136.060 Written emergency assistance agreements—Terms and conditions—Records. Hazardous materials emergency assistance agreements which are executed prior to a hazardous materials incident shall include the following terms and conditions:

- (1) The person or public agency requested to assist shall not be obligated to assist;
- (2) The person or public agency requested to assist may act only under the direction of the incident command agency or its representative;
- (3) The person or public agency requested to assist may withdraw its assistance if it deems the actions or directions of the incident command agency to be contrary to accepted hazardous materials response practices;
- (4) The person or public agency requested to assist shall not profit from rendering the assistance;
- (5) Any person responsible for causing the hazardous materials incident shall not be covered by the liability standard defined in RCW 70.136.050.

It is the responsibility of both parties to ensure that mutually agreeable procedures are established for identifying the incident command agency when assistance is requested, for recording the name of the person or public agency whose assistance is requested, and the time and date of the request, which records shall be retained for three years by the incident command agency. A copy of the official incident command agency designation shall be a part of the assistance agreement specified in this section. [1987 c 238 § 5; 1982 c 172 § 6.]

70.136.070 Verbal emergency assistance agreements—Good Samaritan law—Notification—Form. (1) Verbal hazardous materials emergency assistance agreements may be entered into at the scene of an incident where execution of a written agreement prior to the incident is not possible. A notification of the terms of this section shall be presented at the scene by the incident command agency or its representative to the person or public agency whose assistance is requested. The incident command agency and the

person or public agency whose assistance is requested shall both sign the notification which appears in subsection (2) of this section, indicating the date and time of signature. If a requesting incident command agency deliberately misrepresents individual or agency status, that agency shall assume full liability for any damages resulting from the actions of the person or public agency whose assistance is requested, other than those damages resulting from gross negligence or wilful or wanton misconduct.

(2) The notification required by subsection (1) of this section shall be in substantially the following form:

NOTIFICATION OF "GOOD SAMARITAN" LAW

You have been requested to provide emergency assistance by a representative of a hazardous materials incident command agency. To encourage your assistance, the Washington state legislature has passed "Good Samaritan" legislation (RCW 70.136.050) to protect you from potential liability. The law reads, in part:

"Any person or public agency whose assistance has been requested by an incident command agency, who has entered into a written hazardous materials assistance agreement . . . at the scene of the incident pursuant to . . . RCW 70.136.070, and who, in good faith, renders emergency care, assistance, or advice with respect to a hazardous materials incident, is not liable for civil damages resulting from any act or omission in the rendering of such care, assistance, or advice, other than acts or omissions constituting gross negligence or wilful or wanton misconduct."

The law requires that you be advised of certain conditions to ensure your protection:

- 1. You are not obligated to assist and you may withdraw your assistance at any time.
- 2. You cannot profit from assisting.
- 3. You must agree to act under the direction of the incident command agency.
- 4. You are not covered by this law if you caused the initial accident.

I have read and understand the above.

(Name)

Date Time

I am a representative of a designated hazardous materials incident command agency and I am authorized to make this request for assistance.

(Name)

(Agency)

Date Time

[1987 c 238 § 6; 1982 c 172 § 7.]

**Chapter 70.138 RCW
INCINERATOR ASH RESIDUE**

Sections

- 70.138.010 Legislative findings.
- 70.138.020 Definitions.
- 70.138.030 Review and approval of management plans—Disposal permits.
- 70.138.040 Civil penalties.
- 70.138.050 Violations—Orders.

- 70.138.060 Enforcement—Injunctive relief.
- 70.138.070 Criminal penalties.
- 70.138.900 Application of chapter to certain incinerators.
- 70.138.901 Short title.
- 70.138.902 Severability—1987 c 528.

Environmental certification programs—Fees—Rules—Liability: RCW 43.21A.175.

70.138.010 Legislative findings. The legislature finds:

(1) Solid wastes generated in the state are to be managed in the following order of descending priority: (a) Waste reduction; (b) recycling; (c) treatment; (d) energy recovery or incineration; (e) solidification/stabilization; and (f) landfill.

(2) Special incinerator ash residues from the incineration of municipal solid waste that would otherwise be regulated as hazardous wastes need a separate regulatory scheme in order to (a) ease the permitting and reporting requirements of chapter 70.105 RCW, the state hazardous waste management act, and (b) supplement the environmental protection provisions of chapter 70.95 RCW, the state solid waste management act.

(3) Raw garbage poses significant environmental and public health risks. Municipal solid waste incineration constitutes a higher waste management priority than the land disposal of untreated municipal solid waste due to its reduction of waste volumes and environmental health risks.

It is therefore the purpose of this chapter to establish management requirements for special incinerator ash that otherwise would be regulated as hazardous waste under chapter 70.105 RCW, the hazardous waste management act. [1987 c 528 § 1.]

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

(1) "Department" means the department of ecology.

(2) "Director" means the director of the department of ecology or the director's designee.

(3) "Dispose" or "disposal" means the treatment, utilization, processing, or final deposit of special incineration ash.

(4) "Generate" means any act or process which produces special incinerator ash or which first causes special incinerator ash to become subject to regulation.

(5) "Management" means the handling, storage, collection, transportation, and disposal of special incinerator ash.

(6) "Person" means any person, firm, association, county, public or municipal or private corporation, agency, or other entity whatsoever.

(7) "Facility" means all structures, other appurtenances, improvements, and land used for recycling, storing, treating, or disposing of special incinerator ash.

(8) "Special incinerator ash" means ash residues resulting from the operation of incinerator or energy recovery facilities managing municipal solid waste, including solid waste from residential, commercial, and industrial establishments, if the ash residues (a) would otherwise be regulated as hazardous wastes under chapter 70.105 RCW; and (b) are not regulated as a hazardous waste under the federal resource conservation and recovery act, 42 U.S.C. Sec. 6901 et seq. [1987 c 528 § 2.]

70.138.030 Review and approval of management plans—Disposal permits. (1) Prior to managing special

incinerator ash, persons who generate special incinerator ash shall develop plans for managing the special incinerator ash. These plans shall:

(a) Identify procedures for all aspects relating to the management of the special incinerator ash that are necessary to protect employees, human health, and the environment;

(b) Identify alternatives for managing solid waste prior to incineration for the purpose of (i) reducing the toxicity of the special incinerator ash; and (ii) reducing the quantity of the special incinerator ash;

(c) Establish a process for submittal of an annual report to the department disclosing the results of a testing program to identify the toxic properties of the special incinerator ash as necessary to ensure that the procedures established in the plans submitted pursuant to this chapter are adequate to protect employees, human health, and the environment; and

(d) Comply with the rules established by the department in accordance with this section.

(2) Prior to managing any special incinerator ash, any person required to develop a plan pursuant to subsection (1) of this section shall submit the plan to the department for review and approval. Prior to approving a plan, the department shall find that the plan complies with the provisions of this chapter, including any rules adopted under this chapter. Approval may be conditioned upon additional requirements necessary to protect employees, human health, and the environment, including special management requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(3) The department shall give notice of receipt of a proposed plan to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall approve, approve with conditions, or reject the plan submitted pursuant to this section within ninety days of submittal.

(4) Prior to accepting any special incinerator ash for disposal, persons owning or operating facilities for the disposal of the incinerator ash shall apply to the department for a permit. The department shall issue a permit if the disposal will provide adequate protection of human health and the environment. Prior to issuance of any permit, the department shall find that the facility meets the requirements of chapter 70.95 RCW and any rules adopted under this chapter. The department may place conditions on the permit to include additional requirements necessary to protect employees, human health, and the environment, including special management requirements, waste segregation, or treatment techniques such as neutralization, detoxification, and solidification/stabilization.

(5) The department shall give notice of its receipt of a permit application to interested persons and the public and shall accept public comment for a minimum of thirty days. The department shall issue, issue with conditions, or deny the permit within ninety days of submittal.

(6) The department shall adopt rules to implement the provisions of this chapter. The rules shall (a) establish minimum requirements for the management of special incinerator ash as necessary to protect employees, human health, and the environment, (b) clearly define the elements of the plans required by this chapter, and (c) require special incinerator

ash to be disposed at facilities that are operating in compliance with this chapter. [1987 c 528 § 3.]

70.138.040 Civil penalties. (1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, any person who violates any provision of a department regulation or regulatory order relating to the management of special incinerator ash shall incur in addition to any other penalty provided by law, a penalty in an amount up to ten thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense. In case of continuing violation, every day's continuance shall be a separate and distinct violation. Every person who, through an act of commission or omission, procures, aids, or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty herein provided.

(2) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department, describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, the department may remit or mitigate the penalty upon whatever terms the department in its discretion deems proper, giving consideration to the degree of hazard associated with the violation, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rules as it may deem proper.

(3) Any penalty imposed by this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or petition for review by the hearings board is filed. When such an application for remission or mitigation is made, any penalty incurred pursuant to this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county, or any county in which such violator may do business, to recover such penalty. In all such actions, the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise provided in this chapter. [1995 c 403 § 633; 1987 c 528 § 4.]

Findings—Short title—Intent—1995 c 403: See note following RCW 34.05.328.

Part headings not law—Severability—1995 c 403: See RCW 43.05.903 and 43.05.904.

70.138.050 Violations—Orders. Whenever a person violates any provision of this chapter or any permit or regulation the department may issue an order appropriate under the circumstances to assure compliance with the chapter, permit, or regulation. Such an order must be served personally or by

registered mail upon any person to whom it is directed. [1987 c 528 § 5.]

70.138.060 Enforcement—Injunctive relief. The department, with the assistance of the attorney general, may bring any appropriate action at law or in equity, including action for injunctive relief as may be necessary to enforce the provisions of this chapter or any permit or regulation issued thereunder. [1987 c 528 § 6.]

70.138.070 Criminal penalties. Any person found guilty of wilfully violating, without sufficient cause, any of the provisions of this chapter, or permit or order issued pursuant to this chapter is guilty of a gross misdemeanor and upon conviction shall be punished by a fine of up to ten thousand dollars and costs of prosecution, or by imprisonment for up to one year, or by both. Each day of violation may be deemed a separate violation. [1987 c 528 § 7.]

70.138.900 Application of chapter to certain incinerators. This chapter shall not apply to municipal solid waste incinerators that are in operation on May 19, 1987, until a special incinerator waste disposal permit is issued in the county where the municipal solid waste incinerator is located, or July 1, 1989, whichever is sooner. [1987 c 528 § 12.]

70.138.901 Short title. This chapter shall be known as the special incinerator ash disposal act. [1987 c 528 § 11.]

70.138.902 Severability—1987 c 528. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 528 § 14.]

Chapter 70.142 RCW CHEMICAL CONTAMINANTS AND WATER QUALITY

Sections

- 70.142.010 Establishment of standards for chemical contaminants in drinking water by state board of health.
- 70.142.020 Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health.
- 70.142.030 Monitoring requirements—Considerations.
- 70.142.040 Establishment of water quality standards by local health department in large counties.
- 70.142.050 Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers.

Reviser's note: Powers and duties of the department of social and health services and the secretary of social and health services transferred to the department of health and the secretary of health. See RCW 43.70.060.

70.142.010 Establishment of standards for chemical contaminants in drinking water by state board of health.

(1) In order to protect public health from chemical contaminants in drinking water, the state board of health shall conduct public hearings and, where technical data allow, establish by rule standards for allowable concentrations. For purposes of this chapter, the words "chemical contaminants" are limited to synthetic organic chemical contaminants and to any other contaminants which in the opinion of the board

constitute a threat to public health. If adequate data to support setting of a standard is available, the state board of health shall adopt by rule a maximum contaminant level for water provided to consumers' taps. Standards set for contaminants known to be toxic shall consider both short-term and chronic toxicity. Standards set for contaminants known to be carcinogenic shall be consistent with risk levels established by the state board of health.

(2) The board shall consider the best available scientific information in establishing the standards. The board may review and revise the standards. State and local standards for chemical contaminants may be more strict than the federal standards. [1984 c 187 § 1.]

70.142.020 Establishment of monitoring requirements for chemical contaminants in public water supplies by state board of health. The state board of health shall conduct public hearings and establish by rule monitoring requirements for chemical contaminants in public water supplies. Results of tests conducted pursuant to such requirements shall be submitted to the department of health and to the local health department. The state board of health may review and revise monitoring requirements for chemical contaminants. [1991 c 3 § 374; 1984 c 187 § 2.]

70.142.030 Monitoring requirements—Considerations. The state board of health in determining monitoring requirements for public water supply systems shall take into consideration economic impacts as well as public health risks. [1984 c 187 § 5.]

70.142.040 Establishment of water quality standards by local health department in large counties. Each local health department serving a county with a population of one hundred twenty-five thousand or more may establish water quality standards for its jurisdiction more stringent than standards established by the state board of health. Each local health department establishing such standards shall base the standards on the best available scientific information. [1991 c 363 § 145; 1984 c 187 § 3.]

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

70.142.050 Noncomplying public water supply systems—Submission of corrective plan—Notification to system's customers. Public water supply systems as defined by RCW 70.119.020 that the state board of health or local health department determines do not comply with the water quality standards applicable to the system shall immediately initiate preparation of a corrective plan designed to meet or exceed the minimum standards for submission to the department of health. The owner of such system shall within one year take any action required to bring the water into full compliance with the standards. The department of health may require compliance as promptly as necessary to abate an immediate public health threat or may extend the period of compliance if substantial new construction is required: PROVIDED FURTHER, That the extension shall be granted only upon a determination by the department, after a public hearing, that the extension will not pose an imminent threat to

(2004 Ed.)

public health. Each such system shall include a notice identifying the water quality standards exceeded, and the amount by which the water tested exceeded the standards, in all customer bills mailed after such determination. The notification shall continue until water quality tests conducted in accordance with this chapter establish that the system meets or exceeds the minimum standards. [1991 c 3 § 375; 1984 c 187 § 4.]

Chapter 70.146 RCW WATER POLLUTION CONTROL FACILITIES FINANCING

Sections

| | |
|------------|--|
| 70.146.010 | Purpose—Legislative intent. |
| 70.146.020 | Definitions. |
| 70.146.030 | Water quality account—Progress report. |
| 70.146.040 | Level of grant or loan not precedent. |
| 70.146.050 | Compliance schedule for secondary treatment. |
| 70.146.060 | Water quality account distributions—Limitations. |
| 70.146.070 | Grants or loans for water pollution control facilities—Considerations. |
| 70.146.075 | Extended grant payments. |
| 70.146.080 | Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues. |
| 70.146.090 | Grants and loans to local governments—Statement of environmental benefits—Development of outcome-focused performance measures. |
| 70.146.900 | Severability—1986 c 3. |

70.146.010 Purpose—Legislative intent. The long-range health and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, enjoyment, and economic benefit of its people. It is the purpose of this chapter to provide financial assistance to the state and to local governments for the planning, design, acquisition, construction, and improvement of water pollution control facilities and related activities in the achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that distribution of moneys for water pollution control facilities under this chapter be made on an equitable basis taking into consideration legal mandates, local effort, ratepayer impacts, and past distributions of state and federal moneys for water pollution control facilities.

It is the intent of this chapter that the cost of any water pollution control facility attributable to increased or additional capacity that exceeds one hundred ten percent of existing needs at the time of application for assistance under this chapter shall be entirely a local or private responsibility. It is the intent of this chapter that industrial pretreatment be paid by industries and that the water quality account shall not be used for such purposes. [1986 c 3 § 1.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

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

(1) "Account" means the water quality account in the state treasury.

(2) "Department" means the department of ecology.

(3) "Eligible cost" means the cost of that portion of a water pollution control facility that can be financed under this chapter excluding any portion of a facility's cost attributable to capacity that is in excess of that reasonably required to address one hundred ten percent of the applicant's needs for water pollution control existing at the time application is submitted for assistance under this chapter.

(4) "Water pollution control facility" or "facilities" means any facilities or systems for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential, commercial, industrial, and agricultural wastes, which are causing water quality degradation due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities include all equipment, utilities, structures, real property, and interests in and improvements on real property necessary for or incidental to such purpose. Water pollution control facilities also include such facilities, equipment, and collection systems as are necessary to protect federally designated sole source aquifers.

(5) "Water pollution control activities" means actions taken by a public body for the following purposes: (a) To prevent or mitigate pollution of underground water; (b) to control nonpoint sources of water pollution; (c) to restore the water quality of fresh water lakes; and (d) to maintain or improve water quality through the use of water pollution control facilities or other means. During the 1995-1997 fiscal biennium, "water pollution control activities" includes activities by state agencies to protect public drinking water supplies and sources.

(6) "Public body" means the state of Washington or any agency, county, city or town, conservation district, other political subdivision, municipal corporation, quasi-municipal corporation, and those Indian tribes now or hereafter recognized as such by the federal government.

(7) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(8) "Nonpoint source water pollution" means pollution that enters any waters of the state from any dispersed water-based or land-use activities, including, but not limited to, atmospheric deposition, surface water runoff from agricultural lands, urban areas, and forest lands, subsurface or underground sources, and discharges from boats or other marine vessels.

(9) "Sole source aquifer" means the sole or principal source of public drinking water for an area designated by the administrator of the environmental protection agency pursuant to Public Law 93-523, Sec. 1424(b). [1995 2nd sp.s. c 18 § 920; 1993 sp.s. c 24 § 923; 1987 c 436 § 5; 1986 c 3 § 2.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

[Title 70 RCW—page 388]

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.030 Water quality account—Progress report.

(1) The water quality account is hereby created in the state treasury. Moneys in the account may be used only in a manner consistent with this chapter. Moneys deposited in the account shall be administered by the department of ecology and shall be subject to legislative appropriation. Moneys placed in the account shall include tax receipts as provided in RCW 82.24.027, 82.26.025, and 82.32.390, principal and interest from the repayment of any loans granted pursuant to this chapter, and any other moneys appropriated to the account by the legislature.

(2) The department may use or permit the use of any moneys in the account to make grants or loans to public bodies, including grants to public bodies as cost-sharing moneys in any case where federal, local, or other funds are made available on a cost-sharing basis, for water pollution control facilities and activities, or for purposes of assisting a public body to obtain an ownership interest in water pollution control facilities and/or to defray a part of the payments made by a public body to a service provider under a service agreement entered into pursuant to RCW 70.150.060, within the purposes of this chapter and for related administrative expenses. For the period July 1, 2003, to June 30, 2005, moneys in the account may be used to process applications received by the department that seek to make changes to or transfer existing water rights, for water conveyance projects, and for grants and technical assistance to public bodies for watershed planning under chapter 90.82 RCW. No more than three percent of the moneys deposited in the account may be used by the department to pay for the administration of the grant and loan program authorized by this chapter.

(3) Beginning with the biennium ending June 30, 1997, the department shall present a biennial progress report on the use of moneys from the account to the chairs of the senate committee on ways and means and the house of representatives committee on appropriations. The first report is due June 30, 1996, and the report for each succeeding biennium is due December 31 of the odd-numbered year. The report shall consist of a list of each recipient, project description, and amount of the grant, loan, or both. [2004 c 277 § 909; 2003 1st sp.s. c 25 § 934; 2002 c 371 § 921; 2001 2nd sp.s. c 7 § 922; 1996 c 37 § 2; 1995 2nd sp.s. c 18 § 921; 1991 sp.s. c 13 § 61. Prior: 1987 c 505 § 64; 1987 c 436 § 6; 1986 c 3 § 3.]

Severability—Effective dates—2004 c 277: See notes following RCW 89.08.550.

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

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective dates—1986 c 3: See note following RCW 82.24.027.

(2004 Ed.)

70.146.040 Level of grant or loan not precedent. No grant or loan made in this chapter for fiscal year 1987 shall be construed to establish a precedent for levels of grants or loans made from the water quality account thereafter. [1986 c 3 § 6.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.050 Compliance schedule for secondary treatment. The department of ecology may provide for a phased in compliance schedule for secondary treatment which addresses local factors that may impede compliance with secondary treatment requirements of the federal clean water act.

In determining the length of time to be granted for compliance, the department shall consider the criteria specified in the federal clean water act. [1986 c 3 § 8.]

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.060 Water quality account distributions—Limitations. During the period from July 1, 1987, until June 30, 1995, the following limitations shall apply to the department's total distribution of funds appropriated from the water quality account:

(1) Not more than fifty percent for water pollution control facilities which discharge directly into marine waters;

(2) Not more than twenty percent for water pollution control activities that prevent or mitigate pollution of underground waters and facilities that protect federally designated sole source aquifers with at least two-thirds for the Spokane-Rathdrum Prairie Aquifer;

(3) Not more than ten percent for water pollution control activities that protect freshwater lakes and rivers including but not limited to Lake Chelan and the Yakima and Columbia rivers;

(4) Not more than ten percent for activities which control nonpoint source water pollution;

(5) Ten percent and such sums as may be remaining from the categories specified in subsections (1) through (4) of this section for water pollution control activities or facilities as determined by the department; and

(6) Two and one-half percent of the total amounts of moneys under subsections (1) through (5) of this section from February 21, 1986, until December 31, 1995, shall be appropriated biennially to the state conservation commission for the purposes of this chapter. Not less than ten percent of the moneys received by the state conservation commission under the provisions of this section shall be expended on research activities.

The distribution under this section shall not be required to be met in any single fiscal year.

Funds provided for facilities and activities under this chapter may be used for payments to a service provider under a service agreement pursuant to RCW 70.150.060. If funds are to be used for such payments, the department may make periodic disbursements to a public body or may make a single lump sum disbursement. Disbursements of funds with respect to a facility owned or operated by a service provider shall be equivalent in value to disbursements that would otherwise be made if that facility were owned or operated by a public body. Payments under this chapter for waste disposal and management facilities made to public bodies entering into

service agreements pursuant to RCW 70.150.060 shall not exceed amounts paid to public bodies not entering into service agreements. [1987 c 527 § 1; 1987 c 436 § 7; 1986 c 3 § 9.]

Reviser's note: This section was amended by 1987 c 436 § 7 and by 1987 c 527 § 1, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.070 Grants or loans for water pollution control facilities—Considerations. (1) When making grants or loans for water pollution control facilities, the department shall consider the following:

(a) The protection of water quality and public health;

(b) The cost to residential ratepayers if they had to finance water pollution control facilities without state assistance;

(c) Actions required under federal and state permits and compliance orders;

(d) The level of local fiscal effort by residential ratepayers since 1972 in financing water pollution control facilities;

(e) The extent to which the applicant county or city, or if the applicant is another public body, the extent to which the county or city in which the applicant public body is located, has established programs to mitigate nonpoint pollution of the surface or subterranean water sought to be protected by the water pollution control facility named in the application for state assistance; and

(f) The recommendations of the Puget Sound action team and any other board, council, commission, or group established by the legislature or a state agency to study water pollution control issues in the state.

(2) Except where necessary to address a public health need or substantial environmental degradation, a county, city, or town planning under RCW 36.70A.040 may not receive a grant or loan for water pollution control facilities unless it has adopted a comprehensive plan, including a capital facilities plan element, and development regulations as required by RCW 36.70A.040. This subsection does not require any county, city, or town planning under RCW 36.70A.040 to adopt a comprehensive plan or development regulations before requesting or receiving a grant or loan under this chapter if such request is made before the expiration of the time periods specified in RCW 36.70A.040. A county, city, or town planning under RCW 36.70A.040 which has not adopted a comprehensive plan and development regulations within the time periods specified in RCW 36.70A.040 is not prohibited from receiving a grant or loan under this chapter if the comprehensive plan and development regulations are adopted as required by RCW 36.70A.040 before submitting a request for a grant or loan.

(3) Whenever the department is considering awarding grants or loans for public facilities to special districts requesting funding for a proposed facility located in a county, city, or town planning under RCW 36.70A.040, it shall consider whether the county, city, or town planning under RCW 36.70A.040 in whose planning jurisdiction the proposed facility is located has adopted a comprehensive plan and development regulations as required by RCW 36.70A.040.

[1999 c 164 § 603; 1997 c 429 § 30; 1991 sp.s. c 32 § 24; 1986 c 3 § 10.]

Findings—Intent—Part headings and subheadings not law—Effective date—Severability—1999 c 164: See notes following RCW 43.160.010.

Savings—1999 c 164 §§ 301-303, 305, 306, and 601-603: See note following RCW 82.60.020.

Effective date—1997 c 429 §§ 29 and 30: See note following RCW 43.155.070.

Severability—1997 c 429: See note following RCW 36.70A.3201.

Section headings not law—1991 sp.s. c 32: See RCW 36.70A.902.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.075 Extended grant payments. (1) The department of ecology may enter into contracts with local jurisdictions which provide for extended grant payments under which eligible costs may be paid on an advanced or deferred basis.

(2) Extended grant payments shall be in equal annual payments, the total of which does not exceed, on a net present value basis, fifty percent of the total eligible cost of the project incurred at the time of design and construction. The duration of such extended grant payments shall be for a period not to exceed twenty years. The total of federal and state grant moneys received for the eligible costs of the project shall not exceed fifty percent of the eligible costs.

(3) Any moneys appropriated by the legislature from the water quality account shall be first used by the department of ecology to satisfy the conditions of the extended grant payment contracts. [1987 c 516 § 1.]

70.146.080 Determination of tax receipts in water quality account—Transfer of sufficient moneys from general revenues. Within thirty days after June 30, 1987, and within thirty days after each succeeding fiscal year thereafter, the state treasurer shall determine the tax receipts deposited into the water quality account for the preceding fiscal year. If the tax receipts deposited into the account in each of the fiscal years 1988 and 1989 are less than forty million dollars, the state treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total receipts in each fiscal year up to forty million dollars.

For the biennium ending June 30, 1991, if the tax receipts deposited into the water quality account and the earnings on investment of balances credited to the account are less than ninety million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to ninety million dollars. The determination and transfer shall be made by July 31, 1991.

For fiscal year 1992 and for fiscal years 1995 and 1996 and thereafter, if the tax receipts deposited into the water quality account for each fiscal year are less than forty-five million dollars, the treasurer shall transfer sufficient moneys from general state revenues into the water quality account to bring the total revenue up to forty-five million dollars. However, during the 2003-05 fiscal biennium, the legislature may specify the transfer of a different amount in the operating budget bill. Determinations and transfers shall be made by July 31 for the preceding fiscal year. [2003 1st sp.s. c 25 §

935; 1994 sp.s. c 6 § 902; 1993 sp.s. c 24 § 924; 1991 sp.s. c 16 § 923; 1986 c 3 § 11.]

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

Severability—Effective date—1994 sp.s. c 6: See notes following RCW 28A.310.020.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Severability—Effective date—1991 sp.s. c 16: See notes following RCW 9.46.100.

Effective dates—1986 c 3: See note following RCW 82.24.027.

70.146.090 Grants and loans to local governments—Statement of environmental benefits—Development of outcome-focused performance measures. In providing grants and loans to local governments, the department shall require recipients to incorporate the environmental benefits of the project into their applications, and the department shall utilize the statement of environmental benefits in its grant and loan prioritization and selection process. The department shall also develop appropriate outcome-focused performance measures to be used both for management and performance assessment of the grant and loan program. To the extent possible, the department should coordinate its performance measure system with other natural resource-related agencies as defined in RCW 43.41.270. The department shall consult with affected interest groups in implementing this section. [2001 c 227 § 6.]

Findings—Intent—2001 c 227: See note following RCW 43.41.270.

70.146.900 Severability—1986 c 3. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 3 § 16.]

Chapter 70.148 RCW

UNDERGROUND PETROLEUM STORAGE TANKS

Sections

| | |
|------------|--|
| 70.148.005 | Finding—Intent. |
| 70.148.010 | Definitions. |
| 70.148.020 | Pollution liability insurance program trust account. |
| 70.148.025 | Reinsurance for heating oil pollution liability protection program. |
| 70.148.030 | Pollution liability insurance program—Generally—Ad hoc committees. |
| 70.148.035 | Program design—Cost coverage. |
| 70.148.040 | Rules. |
| 70.148.050 | Powers and duties of director. |
| 70.148.060 | Disclosure of reports and information—Penalty. |
| 70.148.070 | Insurer selection process and criteria. |
| 70.148.080 | Cancellation or refusal by insurer—Appeal. |
| 70.148.090 | Exemptions from Title 48 RCW—Exceptions. |
| 70.148.110 | Reservation of legislative power. |
| 70.148.120 | Financial assistance for corrective actions in small communities—Intent. |
| 70.148.130 | Financial assistance—Criteria. |
| 70.148.140 | Financial assistance—Private owner or operator. |
| 70.148.150 | Financial assistance—Public owner or operator. |
| 70.148.160 | Financial assistance—Rural hospitals. |
| 70.148.170 | Certification. |
| 70.148.900 | Expiration of chapter. |
| 70.148.901 | Severability—1989 c 383. |

70.148.005 Finding—Intent. (Expires June 1, 2007.)
(1) The legislature finds that:

(a) Final regulations adopted by the United States environmental protection agency (EPA) require owners and operators of underground petroleum storage tanks to demonstrate financial responsibility for accidental releases of petroleum as a precondition to continued ownership and operation of such tanks;

(b) Financial responsibility is demonstrated through the purchase of pollution liability insurance or an acceptable alternative such as coverage under a state financial responsibility program, in the amount of at least five hundred thousand dollars per occurrence and one million dollars annual aggregate depending upon the nature, use, and number of tanks owned or operated;

(c) Many owners and operators of underground petroleum storage tanks cannot purchase pollution liability insurance either because private insurance is unavailable at any price or because owners and operators cannot meet the rigid underwriting standards of existing insurers, nor can many owners and operators meet the strict regulatory standards imposed for alternatives to the purchase of insurance; and

(d) Without a state financial responsibility program for owners and operators of underground petroleum storage tanks, many tank owners and operators will be forced to discontinue the ownership and operation of these tanks.

(2) The purpose of this chapter is to create a state financial responsibility program meeting EPA standards for owners and operators of underground petroleum storage tanks in a manner that:

(a) Minimizes state involvement in pollution liability claims management and insurance administration;

(b) Protects the state of Washington from unwanted and unanticipated liability for accidental release claims;

(c) Creates incentives for private insurers to provide needed liability insurance; and

(d) Parallels generally accepted principles of insurance and risk management.

To that end, this chapter establishes a temporary program to provide pollution liability reinsurance at a price that will encourage a private insurance company or risk retention group to sell pollution liability insurance in accordance with the requirements of this chapter to owners and operators of underground petroleum storage tanks, thereby allowing the owners and operators to comply with the financial responsibility regulations of the EPA.

(3) It is not the intent of this chapter to permit owners and operators of underground petroleum storage tanks to obtain pollution liability insurance without regard to the quality or condition of their storage tanks or without regard to the risk management practices of tank owners and operators, nor is it the intent of this chapter to provide coverage or funding for past or existing petroleum releases. Further, it is the intent of the legislature that the program follow generally accepted insurance underwriting and actuarial principles and to deviate from those principles only to the extent necessary and within the tax revenue limits provided, to make pollution liability insurance reasonably affordable and available to owners and operators who meet the requirements of this chapter, particularly to those owners and operators whose underground storage tanks meet a vital economic need within the affected community. [1990 c 64 § 1; 1989 c 383 § 1.]

(2004 Ed.)

70.148.010 Definitions. (Expires June 1, 2007.)

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

(1) "Accidental release" means any sudden or nonsudden release of petroleum arising from operating an underground storage tank that results in a need for corrective action, bodily injury, or property damage neither expected nor intended by the owner or operator.

(2) "Director" means the Washington pollution liability insurance program director.

(3) "Bodily injury" means bodily injury, sickness, or disease sustained by any person, including death at any time resulting from the injury, sickness, or disease.

(4) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with any statute, ordinance, rule, regulation, directive, order, or similar legal requirement of the United States, the state of Washington, or any political subdivision of the United States or the state of Washington in effect at the time of an accidental release. "Corrective action" includes, when agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release. "Corrective action" does not include:

(a) Replacement or repair of storage tanks or other receptacles;

(b) Replacement or repair of piping, connections, and valves of storage tanks or other receptacles;

(c) Excavation or backfilling done in conjunction with (a) or (b) of this subsection; or

(d) Testing for a suspected accidental release if the results of the testing indicate that there has been no accidental release.

(5) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or any political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(6) "Washington pollution liability insurance program" or "program" means the reinsurance program created by this chapter.

(7) "Insured" means the owner or operator who is provided insurance coverage in accordance with this chapter.

(8) "Insurer" means the insurance company or risk retention group licensed or qualified to do business in Washington and authorized by the director to provide insurance coverage in accordance with this chapter.

(9) "Loss reserve" means the amount traditionally set aside by commercial liability insurers for costs and expenses related to claims that have been made. "Loss reserve" does not include losses that have been incurred but not reported to the insurer.

(10) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from an underground storage tank.

(11) "Operator" means a person in control of, or having responsibility for, the daily operation of an underground storage tank.

(12) "Owner" means a person who owns an underground storage tank.

(13) "Person" means an individual, trust, firm, joint stock company, corporation (including government corporation), partnership, association, consortium, joint venture, commercial entity, state, municipality, commission, political subdivision of a state, interstate body, the federal government, or any department or agency of the federal government.

(14) "Petroleum" means crude oil or any fraction of crude oil that is liquid at standard conditions of temperature and pressure, which means at sixty degrees Fahrenheit and 14.7 pounds per square inch absolute and includes gasoline, kerosene, heating oils, and diesel fuels.

(15) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(16) "Release" means the emission, discharge, disposal, dispersal, seepage, or escape of petroleum from an underground storage tank into or upon land, ground water, surface water, subsurface soils, or the atmosphere.

(17) "Surplus reserve" means the amount traditionally set aside by commercial property and casualty insurance companies to provide financial protection from unexpected losses and to serve, in part, as a measure of an insurance company's net worth.

(18) "Tank" means a stationary device, designed to contain an accumulation of petroleum, that is constructed primarily of nonearthen materials such as wood, concrete, steel, or plastic that provides structural support.

(19) "Underground storage tank" means any one or a combination of tanks including underground pipes connected to the tank, that is used to contain an accumulation of petroleum and the volume of which (including the volume of the underground pipes connected to the tank) is ten percent or more beneath the surface of the ground. [1990 c 64 § 2; 1989 c 383 § 2.]

70.148.020 Pollution liability insurance program trust account. (Expires June 1, 2007.) (1) The pollution liability insurance program trust account is established in the custody of the state treasurer. All funds appropriated for this chapter and all premiums collected for reinsurance shall be deposited in the account. Expenditures from the account shall be used exclusively for the purposes of this chapter including payment of costs of administering the pollution liability insurance and underground storage tank community assistance programs. Expenditures for payment of administrative and operating costs of the agency are subject to the allotment procedures under chapter 43.88 RCW and may be made only

after appropriation by statute. No appropriation is required for other expenditures from the account.

(2) Each calendar quarter, the director shall report to the insurance commissioner the loss and surplus reserves required for the calendar quarter. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter.

(3) Each calendar quarter the director shall determine the amount of reserves necessary to fund commitments made to provide financial assistance under RCW 70.148.130 to the extent that the financial assistance reserves do not jeopardize the operations and liabilities of the pollution liability insurance program. The director shall notify the department of revenue of this amount by the fifteenth day of each calendar quarter. The director may immediately establish an initial financial assistance reserve of five million dollars from available revenues. The director may not expend more than fifteen million dollars for the financial assistance program.

(4) This section expires June 1, 2001 [2007]. [1999 c 73 § 1; 1998 c 245 § 114; 1991 sp.s. c 13 § 90; 1991 c 4 § 7; 1990 c 64 § 3; 1989 c 383 § 3.]

Expiration date—1998 c 245 §§ 114 and 115: "Sections 114 and 115 of this act expire June 1, 2007." [2000 c 16 § 4; 1998 c 245 § 178.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.025 Reinsurance for heating oil pollution liability protection program. (Expires June 1, 2007.) The director shall provide reinsurance through the pollution liability insurance program trust account to the heating oil pollution liability protection program under chapter 70.149 RCW. [1995 c 20 § 12.]

Severability—1995 c 20: See RCW 70.149.901.

70.148.030 Pollution liability insurance program—Generally—Ad hoc committees. (Expires June 1, 2007.)

(1) The Washington pollution liability insurance program is created as an independent agency of the state. The administrative head and appointing authority of the program shall be the director who shall be appointed by the governor, with the consent of the senate, and shall serve at the pleasure of the governor. The salary for this office shall be set by the governor pursuant to RCW 43.03.040. The director shall appoint a deputy director. The director, deputy director, and up to three other employees are exempt from the civil service law, chapter 41.06 RCW.

(2) The director shall employ such other staff as are necessary to fulfill the responsibilities and duties of the director. The staff is subject to the civil service law, chapter 41.06 RCW. In addition, the director may contract with third parties for services necessary to carry out its activities where this will promote economy, avoid duplication of effort, and make best use of available expertise. To the extent necessary to protect the state from unintended liability and ensure quality program and contract design, the director shall contract with an organization or organizations with demonstrated experience and ability in managing and designing pollution liability insurance and with an organization or organizations with demonstrated experience and ability in managing and designing pollution liability reinsurance. The director shall enter

into such contracts after competitive bid but need not select the lowest bid. Any such contractor or consultant is prohibited from releasing, publishing, or otherwise using any information made available to it under its contractual responsibility without specific permission of the program director. The director may call upon other agencies of the state to provide technical support and available information as necessary to assist the director in meeting the director's responsibilities under this chapter. Agencies shall supply this support and information as promptly as circumstances permit.

(3) The director may appoint ad hoc technical advisory committees to obtain expertise necessary to fulfill the purposes of this chapter. [1994 sp.s. c 9 § 805; 1990 c 64 § 4; 1989 c 383 § 4.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

70.148.035 Program design—Cost coverage. (Expires June 1, 2007.) The director may design the program to cover the costs incurred in determining whether a proposed applicant for pollution insurance under the program meets the underwriting standards of the insurer. In covering such costs the director shall consider the financial resources of the applicant, shall take into consideration the economic impact of the discontinued use of the applicant's storage tank upon the affected community, shall provide coverage within the revenue limits provided under this chapter, and shall limit coverage of such costs to the extent that coverage would be detrimental to providing affordable insurance under the program. [1990 c 64 § 11.]

70.148.040 Rules. (Expires June 1, 2007.) The director may adopt rules consistent with this chapter to carry out the purposes of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. [1990 c 64 § 5; 1989 c 383 § 5.]

70.148.050 Powers and duties of director. (Expires June 1, 2007.) The director has the following powers and duties:

(1) To design and from time to time revise a reinsurance contract providing coverage to an insurer meeting the requirements of this chapter. Before initially entering into a reinsurance contract, the director shall prepare an actuarial report describing the various reinsurance methods considered by the director and describing each method's costs. In designing the reinsurance contract the director shall consider common insurance industry reinsurance contract provisions and shall design the contract in accordance with the following guidelines:

(a) The contract shall provide coverage to the insurer for the liability risks of owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action that are underwritten by the insurer.

(b) In the event of an insolvency of the insurer, the reinsurance contract shall provide reinsurance payable directly to the insurer or to its liquidator, receiver, or successor on the basis of the liability of the insurer in accordance with the reinsurance contract. In no event may the program be liable for or provide coverage for that portion of any covered loss

(2004 Ed.)

that is the responsibility of the insurer whether or not the insurer is able to fulfill the responsibility.

(c) The total limit of liability for reinsurance coverage shall not exceed one million dollars per occurrence and two million dollars annual aggregate for each policy underwritten by the insurer less the ultimate net loss retained by the insurer as defined and provided for in the reinsurance contract.

(d) Disputes between the insurer and the insurance program shall be settled through arbitration.

(2) To design and implement a structure of periodic premiums due the director from the insurer that takes full advantage of revenue collections and projected revenue collections to ensure affordable premiums to the insured consistent with sound actuarial principles.

(3) To periodically review premium rates for reinsurance to determine whether revenue appropriations supporting the program can be reduced without substantially increasing the insured's premium costs.

(4) To solicit bids from insurers and select an insurer to provide pollution liability insurance to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action.

(5) To monitor the activities of the insurer to ensure compliance with this chapter and protect the program from excessive loss exposure resulting from claims mismanagement by the insurer.

(6) To monitor the success of the program and periodically make such reports and recommendations to the legislature as the director deems appropriate, and to annually publish a financial report on the pollution liability insurance program trust account showing, among other things, administrative and other expenses paid from the fund.

(7) To annually report the financial and loss experience of the insurer as to policies issued under the program and the financial and loss experience of the program to the legislature.

(8) To evaluate the effects of the program upon the private market for liability insurance for owners and operators of underground storage tanks and make recommendations to the legislature on the necessity for continuing the program to ensure availability of such coverage.

(9) To enter into contracts with public and private agencies to assist the director in his or her duties to design, revise, monitor, and evaluate the program and to provide technical or professional assistance to the director.

(10) To examine the affairs, transactions, accounts, records, documents, and assets of insurers as the director deems advisable. [1998 c 245 § 115; 1995 c 12 § 1; 1990 c 64 § 6; 1989 c 383 § 6.]

Expiration date—1998 c 245 §§ 114 and 115: See note following RCW 70.148.020.

Effective date—1995 c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 12, 1995]." [1995 c 12 § 3.]

70.148.060 Disclosure of reports and information—Penalty. (Expires June 1, 2007.) (1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director shall not be

made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) Subsection (1) of this section notwithstanding, the director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

(a) The Washington state insurance commissioner;

(b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and

(c) The attorney general in his or her role as legal advisor to the director.

(3) Subsection (1) of this section notwithstanding, the director may furnish all or part of the examination or proprietary reports or information obtained by the director to:

(a) The Washington state insurance commissioner; and

(b) A person, firm, corporation, association, governmental body, or other entity with whom the director has contracted for services necessary to perform his or her official duties.

(4) Examination reports and proprietary information obtained by the director and the director's staff are not subject to public disclosure under chapter 42.17 RCW.

(5) A person who violates any provision of this section is guilty of a gross misdemeanor. [1990 c 64 § 7; 1989 c 383 § 7.]

70.148.070 Insurer selection process and criteria. (*Expires June 1, 2007.*) (1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of underground storage tanks, the director shall evaluate bids based upon criteria established by the director that shall include:

(a) The insurer's ability to underwrite pollution liability insurance;

(b) The insurer's ability to settle pollution liability claims quickly and efficiently;

(c) The insurer's estimate of underwriting and claims adjustment expenses;

(d) The insurer's estimate of premium rates for providing coverage;

(e) The insurer's ability to manage and invest premiums; and

(f) The insurer's ability to provide risk management guidance to insureds.

The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(2) The successful bidder shall agree to provide liability insurance coverage to owners and operators of underground storage tanks for third party bodily injury and property damage and corrective action consistent with the following minimum standards:

(a) The insurer shall provide coverage for defense costs.

(b) The insurer shall collect a deductible from the insured for corrective action in an amount approved by the director.

(c) The insurer shall provide coverage for accidental releases in the amount of five hundred thousand dollars per occurrence and one million dollars annual aggregate but no more than one million dollars per occurrence and two million dollars annual aggregate exclusive of defense costs.

(d) The insurer shall require insurance applicants to meet at least the following underwriting standards before issuing coverage to the applicant:

(i) The applicant must be in compliance with statutes, ordinances, rules, regulations, and orders governing the ownership and operation of underground storage tanks as identified by the director by rule; and

(ii) The applicant must exercise adequate underground storage tank risk management as specified by the director by rule.

(e) The insurer may exclude coverage for losses arising before the effective date of coverage, and the director may adopt rules establishing standards for determining whether a loss was incurred before the effective date of coverage.

(f) The insurer may exclude coverage for bodily injury, property damage, and corrective action as permitted by the director by rule.

(g) The insurer shall use a variable rate schedule approved by the director taking into account tank type, tank age, and other factors specified by the director.

(3) The director shall adopt all rules necessary to implement this section. In developing and adopting rules governing rates, deductibles, underwriting standards, and coverage conditions, limitations, and exclusions, the director shall balance the owner and operator's need for coverage with the need to maintain the actuarial integrity of the program, shall take into consideration the economic impact of the discontinued use of a storage tank upon the affected community, and shall consult with the *standing technical advisory committee established under RCW 70.148.030(3). In developing and adopting rules governing coverage exclusions affecting corrective action, the director shall consult with the Washington state department of ecology.

(4) Notwithstanding the definitions contained in RCW 70.148.010, the director may permit an insurer to use different words or phrases describing the coverage provided under the program. In permitting such deviations from the definitions contained in RCW 70.148.010, the director shall consider the regulations adopted by the United States environmental protection agency requiring financial responsibility by owners and operators of underground petroleum storage tanks.

(5) Owners and operators of underground storage tanks or sites containing underground storage tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:

(a) The owner or operator must have a plan for proceeding with corrective action; and

(b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or oper-

ator demonstrates to the satisfaction of the director that corrective action has been completed.

(6) When a reinsurance contract has been entered into by the agency and insurance companies, the director shall notify the department of ecology of the letting of the contract. Within thirty days of that notification, the department of ecology shall notify all known owners and operators of petroleum underground storage tanks that appropriate levels of financial responsibility must be established by October 26, 1990, in accordance with federal environmental protection agency requirements, and that insurance under the program is available. All owners and operators of petroleum underground storage tanks must also be notified that declaration of method of financial responsibility or intent to seek to be insured under the program must be made to the state by November 1, 1990. If the declaration of method of financial responsibility is not made by November 1, 1990, the department of ecology shall, pursuant to chapter 90.76 RCW, prohibit the owner or operator of an underground storage tank from obtaining a tank tag or receiving petroleum products until such time as financial responsibility has been established. [1990 c 64 § 8; 1989 c 383 § 8.]

***Reviser's note:** The "standing technical advisory committee" was abolished by 1994 sp.s. c 9 § 805 and in its place the director was given authority to appoint ad hoc technical advisory committees.

70.148.080 Cancellation or refusal by insurer—Appeal. (Expires June 1, 2007.) If the insurer cancels or refuses to issue or renew a policy, the affected owner or operator may appeal the insurer's decision to the director. The director shall conduct a brief adjudicative proceeding under chapter 34.05 RCW. [1990 c 64 § 9; 1989 c 383 § 9.]

70.148.090 Exemptions from Title 48 RCW—Exceptions. (Expires June 1, 2007.) (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of underground storage tanks are exempt from the requirements of Title 48 RCW except for:

- (a) Chapter 48.03 RCW pertaining to examinations;
- (b) RCW 48.05.250 pertaining to annual reports;
- (c) Chapter 48.12 RCW pertaining to assets and liabilities;
- (d) Chapter 48.13 RCW pertaining to investments;
- (e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and
- (f) Chapter 48.92 RCW pertaining to liability risk retention.

(2) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance coverage to owners and operators of underground storage tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of underground storage tanks issued in connection with the program. [1990 c 64 § 10; 1989 c 383 § 10.]

(2004 Ed.)

70.148.110 Reservation of legislative power. (Expires June 1, 2007.) The legislature reserves the right to amend or repeal all or any part of this chapter at any time, and there is no vested right of any kind against such amendment or repeal. All the rights, privileges, or immunities conferred by this chapter or any acts done under it exist subject to the power of the legislature to amend or repeal this chapter at any time. [1989 c 383 § 12.]

70.148.120 Financial assistance for corrective actions in small communities—Intent. (Expires June 1, 2007.) The legislature recognizes as a fundamental government purpose the need to protect the environment and human health and safety. To that end the state has enacted laws designed to limit and prevent environmental damage and risk to public health and safety caused by underground petroleum storage tank leaks. Because of the costs associated with compliance with such laws and the high costs associated with correcting past environmental damage, many owners and operators of underground petroleum storage tanks have discontinued the use of or have planned to discontinue the use of such tanks. As a consequence, isolated communities face the loss of their source of motor vehicle fuel and face the risk that the owner or operator will have insufficient funds to take corrective action for pollution caused by past leaks from the tanks. In particular, rural communities face the risk that essential emergency, medical, fire and police services may be disrupted through the diminution or elimination of local sellers of petroleum products and by the closure of underground storage tanks owned by local government entities serving these communities.

The legislature also recognizes as a fundamental government purpose the need to preserve a minimum level of economic viability in rural communities so that public revenues generated from economic activity are sufficient to sustain necessary governmental functions. The closing of local service stations adversely affects local economies by reducing or eliminating reasonable access to fuel for agricultural, commercial, and transportation needs.

The legislature intends to assist small communities within this state by authorizing:

- (1) Cities, towns, and counties to certify that a local private owner or operator of an underground petroleum storage tank meets a vital local government, public health or safety need thereby qualifying the owner or operator for state financial assistance in complying with environmental regulations and assistance in taking needed corrective action for existing tank leaks; and
- (2) Local government entities to obtain state financial assistance to bring local government underground petroleum storage tanks into compliance with environmental regulations and to take needed corrective action for existing tank leaks. [1991 c 4 § 1.]

Severability—1991 c 4: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 4 § 10.]

70.148.130 Financial assistance—Criteria. (Expires June 1, 2007.) (1) Subject to the conditions and limitations of RCW 70.148.120 through 70.148.170, the director shall

establish and manage a program for providing financial assistance to public and private owners and operators of underground storage tanks who have been certified by the governing body of the county, city, or town in which the tanks are located as meeting a vital local government, public health or safety need. In providing such financial assistance the director shall:

(a) Require owners and operators, including local government owners and operators, to demonstrate serious financial hardship;

(b) Limit assistance to only that amount necessary to supplement applicant financial resources;

(c) Limit assistance to no more than one hundred fifty thousand dollars in value for any one underground storage tank site of which amount no more than seventy-five thousand dollars in value may be provided for corrective action; and

(d) Whenever practicable, provide assistance through the direct payment of contractors and other professionals for labor, materials, and other services.

(2) Except as otherwise provided in RCW 70.148.120 through 70.148.170, no grant of financial assistance may be used for any purpose other than for corrective action and repair, replacement, reconstruction, and improvement of underground storage tanks and tank sites. If at any time prior to providing financial assistance or in the course of providing such assistance, it appears to the director that corrective action costs may exceed seventy-five thousand dollars, the director may not provide further financial assistance until the owner or operator has developed and implemented a corrective action plan with the department of ecology.

(3) When requests for financial assistance exceed available funds, the director shall give preference to providing assistance first to those underground storage tank sites which constitute the sole source of petroleum products in remote rural communities.

(4) The director shall consult with the department of ecology in approving financial assistance for corrective action to ensure compliance with regulations governing underground petroleum storage tanks and corrective action.

(5) The director shall approve or disapprove applications for financial assistance within sixty days of receipt of a completed application meeting the requirements of RCW 70.148.120 through 70.148.170. The certification by local government of an owner or operator shall not preclude the director from disapproving an application for financial assistance if the director finds that such assistance would not meet the purposes of RCW 70.148.120 through 70.148.170.

(6) The director may adopt all rules necessary to implement the financial assistance program and shall consult with the technical advisory committee established under RCW 70.148.030 in developing such rules and in reviewing applications for financial assistance. [1991 c 4 § 2.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.140 Financial assistance—Private owner or operator. (Expires June 1, 2007.) (1) To qualify for financial assistance, a private owner or operator retailing petroleum products to the public must:

(a) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(b) If the director makes a preliminary determination of possible eligibility for financial assistance, apply to the appropriate governing body of the city or town in which the tanks are located or in the case where the tanks are located outside of the jurisdiction of a city or town, then to the appropriate governing body of the county in which the tanks are located, for a determination by the governing body of the city, town, or county that the continued operation of the tanks meets a vital local government, or public health or safety need; and

(c) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided.

(2) In consideration for financial assistance and prior to receiving such assistance the owner and operator must enter into an agreement with the state whereby the owner and operator agree:

(a) To sell petroleum products to the public;

(b) To maintain the tank site for use in the retail sale of petroleum products for a period of not less than fifteen years from the date of agreement;

(c) To sell petroleum products to local government entities within the affected community on a cost-plus basis periodically negotiated between the owner and operator and the city, town, or county in which the tanks are located; and

(d) To maintain compliance with state underground storage tank financial responsibility and environmental regulations.

(3) The agreement shall be filed as a real property lien against the tank site with the county auditor [of the county] in which the tanks are located. If the owner or operator transfers his or her interest in such property, the new owner or operator must agree to abide by the agreement or any financial assistance provided under RCW 70.148.120 through 70.148.170 shall be immediately repaid to the state by the owner or operator who received such assistance.

(4) As determined by the director, if an owner or operator materially breaches the agreement, any financial assistance provided shall be immediately repaid by such owner or operator.

(5) The agreement between an owner and operator and the state required under this section shall expire fifteen years from the date of entering into the agreement. [1991 c 4 § 3.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.150 Financial assistance—Public owner or operator. (Expires June 1, 2007.) (1) To qualify for financial assistance, a public owner or operator must:

(a) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(b) Provide to the director a copy of the resolution by the governing body of the city, town, or county having jurisdiction, finding that the continued operation of the tanks is necessary to maintain vital local public health, education, or safety needs;

(c) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided.

(2) The director shall give priority to and shall encourage local government entities to consolidate multiple operational underground storage tank sites into as few sites as possible. For this purpose, the director may provide financial assistance for the establishment of a new local government underground storage tank site contingent upon the closure of other operational sites in accordance with environmental regulations. Within the per site financial limits imposed under RCW 70.148.120 through 70.148.170, the director may authorize financial assistance for the closure of operational sites when closure is for the purpose of consolidation. [1991 c 4 § 4.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.160 Financial assistance—Rural hospitals. (Expires June 1, 2007.) To qualify for financial assistance, a rural hospital as defined in *RCW 18.89.020, owning or operating an underground storage tank must:

(1) First apply for insurance from the pollution liability insurance program and request financial assistance in a form and manner required by the director;

(2) Apply to the governing body of the city, town, or county in which the hospital is located for certification that the continued operation of the tank or tanks is necessary to maintain vital local public health or safety needs;

(3) Qualify for insurance coverage from the pollution liability insurance program if such financial assistance were to be provided; and

(4) Agree to provide charity care as defined in **RCW 70.39.020 in an amount of equivalent value to the financial assistance provided under RCW 70.148.120 through 70.148.170. The director shall consult with the department of health to monitor and determine the time period over which such care should be expected to be provided in the local community. [1991 c 4 § 5.]

Reviser's note: *(1) RCW 18.89.020 was amended by 1997 c 334 § 3, deleting the definition of "rural hospital."

***(2) RCW 70.39.020 was repealed by 1982 c 223 § 10, effective June 30, 1990.

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.170 Certification. (Expires June 1, 2007.) (1) The director shall develop and distribute to appropriate cities, towns, and counties a form for use by the local government in making the certification required for all private owner and operator financial assistance along with instructions on the use of such form.

(2) In certifying a private owner or operator retailing petroleum products to the public as meeting vital local government, public health or safety needs, the local government shall:

(a) Consider and find that other retail suppliers of petroleum products are located remote from the local community;

(b) Consider and find that the owner or operator requesting certification is capable of faithfully fulfilling the agreement required for financial assistance;

(c) Designate the local government official who will be responsible for negotiating the price of petroleum products to

(2004 Ed.)

be sold on a cost-plus basis to the local government entities in the affected communities and the entities eligible to receive petroleum products at such price; and

(d) State the vital need or needs that the owner or operator meets.

(3) In certifying a hospital as meeting local public health and safety needs the local government shall:

(a) Consider and find that the continued use of the underground storage tank by the hospital is necessary; and

(b) Consider and find that the hospital provides health care services to the poor and otherwise provides charity care.

(4) The director shall notify the governing body of the city, town, or county providing certification when financial assistance for a private owner or operator has been approved. [1991 c 4 § 6.]

Severability—1991 c 4: See note following RCW 70.148.120.

70.148.900 Expiration of chapter. This chapter shall expire June 1, 2007. [2000 c 16 § 1; 1995 c 12 § 2; 1989 c 383 § 13.]

Effective date—1995 c 12: See note following RCW 70.148.050.

70.148.901 Severability—1989 c 383. (Expires June 1, 2007.) If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1989 c 383 § 20.]

Chapter 70.149 RCW

HEATING OIL POLLUTION LIABILITY PROTECTION ACT

Sections

| | |
|------------|---|
| 70.149.010 | Intent—Findings. |
| 70.149.020 | Short title. |
| 70.149.030 | Definitions. |
| 70.149.040 | Duties of director. |
| 70.149.050 | Selection of insurer to provide pollution liability insurance—Eligibility for coverage. |
| 70.149.060 | Exemptions from Title 48 RCW—Exceptions. |
| 70.149.070 | Heating oil pollution liability trust account. |
| 70.149.080 | Pollution liability insurance fee. |
| 70.149.090 | Certain information confidential and exempt from chapter 42.17 RCW—Exceptions. |
| 70.149.100 | Application of RCW 19.86.020 through 19.86.060. |
| 70.149.900 | Expiration of chapter. |
| 70.149.901 | Severability—1995 c 20. |

70.149.010 Intent—Findings. (Expires June 1, 2007.) It is the intent of the legislature to establish a temporary regulatory program to assist owners and operators of heating oil tanks. The legislature finds that it is in the best interests of all citizens for heating oil tanks to be operated safely and for tank leaks or spills to be dealt with expeditiously. The legislature further finds that it is necessary to protect tank owners from the financial hardship related to damaged heating oil tanks. The problem is especially acute because owners and operators of heating oil tanks used for space heating have been unable to obtain pollution liability insurance or insurance has been unaffordable. [1995 c 20 § 1.]

70.149.020 Short title. (*Expires June 1, 2007.*) This chapter may be known and cited as the Washington state heating oil pollution liability protection act. [1995 c 20 § 2.]

70.149.030 Definitions. (*Expires June 1, 2007.*) Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Accidental release" means a sudden or nonsudden release of heating oil, occurring after July 23, 1995, from operating a heating oil tank that results in bodily injury, property damage, or a need for corrective action, neither expected nor intended by the owner or operator.

(2) "Bodily injury" means bodily injury, sickness, or disease sustained by a person, including death at any time, resulting from the injury, sickness, or disease.

(3)(a) "Corrective action" means those actions reasonably required to be undertaken by the insured to remove, treat, neutralize, contain, or clean up an accidental release in order to comply with a statute, ordinance, rule, regulation, directive, order, or similar legal requirement, in effect at the time of an accidental release, of the United States, the state of Washington, or a political subdivision of the United States or the state of Washington. "Corrective action" includes, where agreed to in writing, in advance by the insurer, action to remove, treat, neutralize, contain, or clean up an accidental release to avert, reduce, or eliminate the liability of the insured for corrective action, bodily injury, or property damage. "Corrective action" also includes actions reasonably necessary to monitor, assess, and evaluate an accidental release.

(b) "Corrective action" does not include:

(i) Replacement or repair of heating oil tanks or other receptacles; or

(ii) Replacement or repair of piping, connections, and valves of tanks or other receptacles.

(4) "Defense costs" include the costs of legal representation, expert fees, and related costs and expenses incurred in defending against claims or actions brought by or on behalf of:

(a) The United States, the state of Washington, or a political subdivision of the United States or state of Washington to require corrective action or to recover costs of corrective action; or

(b) A third party for bodily injury or property damage caused by an accidental release.

(5) "Director" means the director of the Washington state pollution liability insurance agency or the director's appointed representative.

(6) "Heating oil" means any petroleum product used for space heating in oil-fired furnaces, heaters, and boilers, including stove oil, diesel fuel, or kerosene. "Heating oil" does not include petroleum products used as fuels in motor vehicles, marine vessels, trains, buses, aircraft, or any off-highway equipment not used for space heating, or for industrial processing or the generation of electrical energy.

(7) "Heating oil tank" means a tank and its connecting pipes, whether above or below ground, or in a basement, with pipes connected to the tank for space heating of human living or working space on the premises where the tank is located. "Heating oil tank" does not include a decommissioned or abandoned heating oil tank, or a tank used solely for indus-

trial process heating purposes or generation of electrical energy.

(8) "Occurrence" means an accident, including continuous or repeated exposure to conditions, that results in a release from a heating oil tank.

(9) "Owner or operator" means a person in control of, or having responsibility for, the daily operation of a heating oil tank.

(10) "Pollution liability insurance agency" means the Washington state pollution liability insurance agency.

(11) "Property damage" means:

(a) Physical injury to, destruction of, or contamination of tangible property, including the loss of use of the property resulting from the injury, destruction, or contamination; or

(b) Loss of use of tangible property that has not been physically injured, destroyed, or contaminated but has been evacuated, withdrawn from use, or rendered inaccessible because of an accidental release.

(12) "Release" means a spill, leak, emission, escape, or leaching into the environment.

(13) "Remedial action costs" means reasonable costs that are attributable to or associated with a remedial action.

(14) "Tank" means a stationary device, designed to contain an accumulation of heating oil, that is constructed primarily of nonferrous materials such as concrete, steel, fiberglass, or plastic that provides structural support.

(15) "Third-party liability" means the liability of a heating oil tank owner to another person due to property damage or personal injury that results from a leak or spill. [1995 c 20 § 3.]

70.149.040 Duties of director. (*Expires June 1, 2007.*)

The director shall:

(1) Design a program for providing pollution liability insurance for heating oil tanks that provides up to sixty thousand dollars per occurrence coverage and aggregate limits, and protects the state of Washington from unwanted or unanticipated liability for accidental release claims;

(2) Administer, implement, and enforce the provisions of this chapter. To assist in administration of the program, the director is authorized to appoint up to two employees who are exempt from the civil service law, chapter 41.06 RCW, and who shall serve at the pleasure of the director;

(3) Administer the heating oil pollution liability trust account, as established under RCW 70.149.070;

(4) Employ and discharge, at his or her discretion, agents, attorneys, consultants, companies, organizations, and employees as deemed necessary, and to prescribe their duties and powers, and fix their compensation;

(5) Adopt rules under chapter 34.05 RCW as necessary to carry out the provisions of this chapter;

(6) Design and from time to time revise a reinsurance contract providing coverage to an insurer or insurers meeting the requirements of this chapter. The director is authorized to provide reinsurance through the pollution liability insurance program trust account;

(7) Solicit bids from insurers and select an insurer to provide pollution liability insurance for third-party bodily injury and property damage, and corrective action to owners and operators of heating oil tanks;

(8) Register, and design a means of accounting for, operating heating oil tanks;

(9) Implement a program to provide advice and technical assistance to owners and operators of active and abandoned heating oil tanks if contamination from an active or abandoned heating oil tank is suspected. Advice and assistance regarding administrative and technical requirements may include observation of testing or site assessments and review of the results of reports. If the director finds that contamination is not present or that the contamination is apparently minor and not a threat to human health or the environment, the director may provide written opinions and conclusions on the results of the investigation to owners and operators of active and abandoned heating oil tanks. The agency is authorized to collect, from persons requesting advice and assistance, the costs incurred by the agency in providing such advice and assistance. The costs may include travel costs and expenses associated with review of reports and preparation of written opinions and conclusions. Funds from cost reimbursement must be deposited in the heating oil pollution liability trust account. The state of Washington, the pollution liability insurance agency, and its officers and employees are immune from all liability, and no cause of action arises from any act or omission in providing, or failing to provide, such advice, opinion, conclusion, or assistance;

(10) Establish a public information program to provide information regarding liability, technical, and environmental requirements associated with active and abandoned heating oil tanks;

(11) Monitor agency expenditures and seek to minimize costs and maximize benefits to ensure responsible financial stewardship;

(12) Create an advisory committee of stakeholders to advise the director on all aspects of program operations and fees authorized by this chapter, including pollution prevention programs. The advisory committee must have one member each from the Pacific Northwest oil heat council, the Washington oil marketers association, the western states petroleum association, and the department of ecology and three members from among the owners of home heating oil tanks registered with the pollution liability insurance agency who are generally representative of the geographical distribution and types of registered owners. The committee should meet at least quarterly, or more frequently at the discretion of the director; and

(13) Study if appropriate user fees to supplement program funding are necessary and develop recommendations for legislation to authorize such fees. [2004 c 203 § 1; 1997 c 8 § 1; 1995 c 20 § 4.]

Expiration date—1997 c 8: "This act expires June 1, 2007." [2000 c 16 § 5; 1997 c 8 § 3.]

70.149.050 Selection of insurer to provide pollution liability insurance—Eligibility for coverage. (Expires June 1, 2007.) (1) In selecting an insurer to provide pollution liability insurance coverage to owners and operators of heating oil tanks used for space heating, the director shall evaluate bids based upon criteria established by the director that shall include:

(a) The insurer's ability to underwrite pollution liability insurance;

(2004 Ed.)

(b) The insurer's ability to settle pollution liability claims quickly and efficiently;

(c) The insurer's estimate of underwriting and claims adjustment expenses;

(d) The insurer's estimate of premium rates for providing coverage;

(e) The insurer's ability to manage and invest premiums; and

(f) The insurer's ability to provide risk management guidance to insureds.

(2) The director shall select the bidder most qualified to provide insurance consistent with this chapter and need not select the bidder submitting the least expensive bid. The director may consider bids by groups of insurers and management companies who propose to act in concert in providing coverage and who otherwise meet the requirements of this chapter.

(3) Owners and operators of heating oil tanks, or sites containing heating oil tanks where a preexisting release has been identified or where the owner or operator knows of a preexisting release are eligible for coverage under the program subject to the following conditions:

(a) The owner or operator must have a plan for proceeding with corrective action; and

(b) If the owner or operator files a claim with the insurer, the owner or operator has the burden of proving that the claim is not related to a preexisting release until the owner or operator demonstrates to the satisfaction of the director that corrective action has been completed. [1995 c 20 § 5.]

70.149.060 Exemptions from Title 48 RCW—Exceptions. (Expires June 1, 2007.) (1) The activities and operations of the program are exempt from the provisions and requirements of Title 48 RCW and to the extent of their participation in the program, the activities and operations of the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks are exempt from the requirements of Title 48 RCW except for:

(a) Chapter 48.03 RCW pertaining to examinations;

(b) RCW 48.05.250 pertaining to annual reports;

(c) Chapter 48.12 RCW pertaining to assets and liabilities;

(d) Chapter 48.13 RCW pertaining to investments;

(e) Chapter 48.30 RCW pertaining to deceptive, false, or fraudulent acts or practices; and

(f) Chapter 48.92 RCW pertaining to liability risk retention.

(2) To the extent of their participation in the program, the insurer selected by the director to provide liability insurance coverage to owners and operators of heating oil tanks shall not participate in the Washington insurance guaranty association nor shall the association be liable for coverage provided to owners and operators of heating oil tanks issued in connection with the program. [1995 c 20 § 6.]

70.149.070 Heating oil pollution liability trust account. (Expires June 1, 2007.) (1) The heating oil pollution liability trust account is created in the custody of the state treasurer. All receipts from the pollution liability insurance fee collected under RCW 70.149.080 and reinsurance premi-

ums shall be deposited into the account. Expenditures from the account may be used only for the purposes set out under this chapter. Only the director or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. Any residue in the account in excess of funds needed to meet administrative costs for January of the following year shall be transferred at the end of the calendar year to the pollution liability insurance program trust account.

(2) Money in the account may be used by the director for the following purposes:

- (a) Corrective action costs;
- (b) Third-party liability claims;
- (c) Costs associated with claims administration;
- (d) Purchase of an insurance policy to cover all registered heating oil tanks, and reinsurance of the policy; and
- (e) Administrative expenses of the program, including personnel, equipment, supplies, and providing advice and technical assistance. [2004 c 203 § 2; 1997 c 8 § 2; 1995 c 20 § 7.]

Expiration date—1997 c 8: See note following RCW 70.149.040.

70.149.080 Pollution liability insurance fee. (Expires June 1, 2007.) (1) A pollution liability insurance fee of one and two-tenths cents per gallon of heating oil purchased within the state shall be imposed on every special fuel dealer, as the term is defined in chapter 82.38 RCW, making sales of heating oil to a user or consumer.

(2) The pollution liability insurance fee shall be remitted by the special fuel dealer to the department of licensing.

(3) The fee proceeds shall be used for the specific regulatory purposes of this chapter.

(4) The fee imposed by this section shall not apply to heating oil exported or sold for export from the state. [2004 c 203 § 3; 1995 c 20 § 8.]

Effective date—2004 c 203 § 3: "Section 3 of this act takes effect July 1, 2004." [2004 c 203 § 5.]

70.149.090 Certain information confidential and exempt from chapter 42.17 RCW—Exceptions. (Expires June 1, 2007.) The following shall be confidential and exempt under chapter 42.17 RCW, subject to the conditions set forth in this section:

(1) All examination and proprietary reports and information obtained by the director and the director's staff in soliciting bids from insurers and in monitoring the insurer selected by the director may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(2) All information obtained by the director or the director's staff related to registration of heating oil tanks to be insured may not be made public or otherwise disclosed to any person, firm, corporation, agency, association, governmental body, or other entity.

(3) The director may furnish all or part of examination reports prepared by the director or by any person, firm, corporation, association, or other entity preparing the reports on behalf of the director to:

- (a) The Washington state insurance commissioner;

(b) A person or organization officially connected with the insurer as officer, director, attorney, auditor, or independent attorney or independent auditor; and

(c) The attorney general in his or her role as legal advisor to the director. [1995 c 20 § 9.]

70.149.100 Application of RCW 19.86.020 through 19.86.060. (Expires June 1, 2007.) Nothing contained in this chapter shall authorize any commercial conduct which is prohibited by RCW 19.86.020 through 19.86.060, and no section of this chapter shall be deemed to be an implied repeal of any of those sections of the Revised Code of Washington. [1995 c 20 § 10.]

70.149.900 Expiration of chapter. Sections 1 through 11 of this act shall expire June 1, 2007. [2000 c 16 § 2; 1995 c 20 § 14.]

70.149.901 Severability—1995 c 20. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1995 c 20 § 16.]

Chapter 70.150 RCW

WATER QUALITY JOINT DEVELOPMENT ACT

Sections

| | |
|------------|---|
| 70.150.010 | Purpose—Legislative intent. |
| 70.150.020 | Definitions. |
| 70.150.030 | Agreements with service providers—Contents—Sources of funds for periodic payments under agreements. |
| 70.150.040 | Service agreements and related agreements—Procedural requirements. |
| 70.150.050 | Sale, lease, or assignment of public property to service provider—Use for services to public body. |
| 70.150.060 | Public body eligible for grants or loans—Use of grants or loans. |
| 70.150.070 | RCW 70.150.030 through 70.150.060 to be additional method of providing services. |
| 70.150.080 | Application of other chapters to service agreements under this chapter—Prevailing wages. |
| 70.150.900 | Short title. |
| 70.150.905 | Severability—1986 c 244. |

70.150.010 Purpose—Legislative intent. The long-range health and economic and environmental goals for the state of Washington require the protection of the state's surface and underground waters for the health, safety, use, and enjoyment of its people. It is the purpose of this chapter to provide public bodies an additional means by which to provide for financing, development, and operation of water pollution control facilities needed for achievement of state and federal water pollution control requirements for the protection of the state's waters.

It is the intent of the legislature that public bodies be authorized to provide service from water pollution control facilities by means of service agreements with public or private parties as provided in this chapter. [1986 c 244 § 1.]

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

(1) "Water pollution control facilities" or "facilities" means any facilities, systems, or subsystems owned or operated by a public body, or owned or operated by any person or entity for the purpose of providing service to a public body, for the control, collection, storage, treatment, disposal, or recycling of wastewater, including but not limited to sanitary sewage, storm water, residential wastes, commercial wastes, industrial wastes, and agricultural wastes, that are causing or threatening the degradation of subterranean or surface bodies of water due to concentrations of conventional, nonconventional, or toxic pollutants. Water pollution control facilities do not include dams or water supply systems.

(2) "Public body" means the state of Washington or any agency, county, city or town, political subdivision, municipal corporation, or quasi-municipal corporation.

(3) "Water pollution" means such contamination, or other alteration of the physical, chemical, or biological properties of any surface or subterranean waters of the state, including change in temperature, taste, color, turbidity, or odor of the waters, or such discharge of any liquid, gaseous, solid, radioactive, or other substance into any waters of the state as will or is likely to create a nuisance or render such waters harmful, detrimental, or injurious to the public health, safety, or welfare, or to domestic, commercial, industrial, agricultural, recreational, or other legitimate beneficial uses, or to livestock, wild animals, birds, fish, or other aquatic life.

(4) "Agreement" means any agreement to which a public body and a service provider are parties by which the service provider agrees to deliver service to such public body in connection with its design, financing, construction, ownership, operation, or maintenance of water pollution control facilities in accordance with this chapter.

(5) "Service provider" means any privately owned or publicly owned profit or nonprofit corporation, partnership, joint venture, association, or other person or entity that is legally capable of contracting for and providing service with respect to the design, financing, ownership, construction, operation, or maintenance of water pollution control facilities in accordance with this chapter. [1986 c 244 § 2.]

70.150.030 Agreements with service providers—Contents—Sources of funds for periodic payments under agreements. (1) Public bodies may enter into agreements with service providers for the furnishing of service in connection with water pollution control facilities pursuant to the process set forth in RCW 70.150.040. The agreements may provide that a public body pay a minimum periodic fee in consideration of the service actually available without regard to the amount of service actually used during all or any part of the contractual period. Agreements may be for a term not to exceed forty years or the life of the facility, whichever is longer, and may be renewable.

(2) The source of funds to meet periodic payment obligations assumed by a public body pursuant to an agreement permitted under this section may be paid from taxes, or solely from user fees, charges, or other revenues pledged to the payment of the periodic obligations, or any of these sources. [1986 c 244 § 3.]

70.150.040 Service agreements and related agreements—Procedural requirements. The legislative authority of a public body may secure services by means of an agreement with a service provider. Such an agreement may obligate a service provider to design, finance, construct, own, operate, or maintain water pollution control facilities by which services are provided to the public body. Service agreements and related agreements under this chapter shall be entered into in accordance with the following procedure:

(1) The legislative authority of the public body shall publish notice that it is seeking to secure certain specified services by means of entering into an agreement with a service provider. The notice shall be published in the official newspaper of the public body, or if there is no official newspaper then in a newspaper in general circulation within the boundaries of the public body, at least once each week for two consecutive weeks. The final notice shall appear not less than sixty days before the date for submission of proposals. The notice shall state (a) the nature of the services needed, (b) the location in the public body's offices where the requirements and standards for construction, operation, or maintenance of projects needed as part of the services are available for inspection, and (c) the final date for the submission of proposals. The legislative authority may undertake a prequalification process by the same procedure set forth in this subsection.

(2) The request for proposals shall (a) indicate the time and place responses are due, (b) include evaluation criteria to be considered in selecting a service provider, (c) specify minimum requirements or other limitations applying to selection, (d) insofar as practicable, set forth terms and provisions to be included in the service agreement, and (e) require the service provider to demonstrate in its proposal that a public body's annual costs will be lower under its proposal than they would be if the public body financed, constructed, owned, operated, and maintained facilities required for service.

(3) The criteria set forth in the request for proposals shall be those determined to be relevant by the legislative authority of the public body, which may include but shall not be limited to: The respondent's prior experience, including design, construction, or operation of other similar facilities; respondent's management capability, schedule availability, and financial resources; cost of the service; nature of facility design proposed by respondents; system reliability; performance standards required for the facilities; compatibility with existing service facilities operated by the public body or other providers of service to the public body; project performance warranties; penalty and other enforcement provisions; environmental protection measures to be used; and allocation of project risks. The legislative authority shall designate persons or entities (a) to assist it in issuing the request for proposals to ensure that proposals will be responsive to its needs, and (b) to assist it in evaluating the proposals received. The designee shall not be a member of the legislative authority.

(4) After proposals under subsections (1) through (3) of this section have been received, the legislative authority's designee shall determine, on the basis of its review of the proposals, whether one or more proposals have been received from respondents which are (a) determined to be qualified to provide the requested services, and (b) responsive to the notice and evaluation criteria, which shall include, but not be

limited to, cost of services. These chosen respondents shall be referred to as the selected respondents in this section. The designee shall conduct a bidder's conference to include all these selected respondents to assure a full understanding of the proposals. The bidder's conference shall also allow the designee to make these selected respondents aware of any changes in the request for proposal. Any information related to revisions in the request for proposal shall be made available to all these selected respondents. Any selected respondent shall be accorded a reasonable opportunity for revision of its proposal prior to commencement of the negotiation provided in subsection (5) of this section, for the purpose of obtaining best and final proposals.

(5) After such conference is held, the designee may negotiate with the selected respondent whose proposal it determines to be the most advantageous to the public body, considering the criteria set forth in the request for proposals. If the negotiation is unsuccessful, the legislative authority may authorize the designee to commence negotiations with any other selected respondent. On completion of this process, the designee shall report to the legislative authority on his or her recommendations and the reasons for them.

(6) Any person aggrieved by the legislative authority's approval of a contract may appeal the determination to an appeals board selected by the public body, which shall consist of not less than three persons determined by the legislative authority to be qualified for such purposes. Such board shall promptly hear and determine whether the public body entered into the agreement in accordance with this chapter and other applicable law. The hearing shall be conducted in the same manner as an adjudicative proceeding under chapter 34.05 RCW. The board shall have the power only to affirm or void the agreement.

(7) Notwithstanding the foregoing, where contracting for design services by the public body is done separately from contracting for other services permitted under this chapter, the contracting for design of water pollution control facilities shall be done in accordance with chapter 39.80 RCW.

(8) A service agreement shall include provision for an option by which a public body may acquire at fair market value facilities dedicated to such service.

(9) Before any service agreement is entered into by the public body, it shall be reviewed and approved by the department of ecology to ensure that the purposes of chapter 90.48 RCW are implemented.

(10) Prior to entering into any service agreement under this chapter, the public body must have made written findings, after holding a public hearing on the proposal, that it is in the public interest to enter into the service agreement and that the service agreement is financially sound and advantageous compared to other methods.

(11) Each service agreement shall include project performance bonds or other security by the service provider which in the judgment of the public body is sufficient to secure adequate performance by the service provider. [1989 c 175 § 136; 1986 c 244 § 4.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Competitive bids—Inapplicability to certain agreements: RCW 35.22.625 and 36.32.265.

70.150.050 Sale, lease, or assignment of public property to service provider—Use for services to public body. A public body may sell, lease, or assign public property for fair market value to any service provider as part of a service agreement entered into under the authority of this chapter. The property sold or leased shall be used by the provider, directly or indirectly, in providing services to the public body. Such use may include demolition, modification, or other use of the property as may be necessary to execute the purposes of the service agreement. [1986 c 244 § 5.]

70.150.060 Public body eligible for grants or loans—Use of grants or loans. A public body that enters into a service agreement pursuant to this chapter, under which a facility is owned wholly or partly by a service provider, shall be eligible for grants or loans to the extent permitted by law or regulation as if the entire portion of the facility dedicated to service to such public body were publicly owned. The grants or loans shall be made to and shall inure to the benefit of the public body and not the service provider. Such grants or loans shall be used by the public body for all or part of its ownership interest in the facility, and/or to defray a part of the payments it makes to the service provider under a service agreement if such uses are permitted under the grant or loan program. [1986 c 244 § 6.]

70.150.070 RCW 70.150.030 through 70.150.060 to be additional method of providing services. RCW 70.150.030 through 70.150.060 shall be deemed to provide an additional method for the provision of services from and in connection with facilities and shall be regarded as supplemental and additional to powers conferred by other state laws and by federal laws. [1986 c 244 § 7.]

70.150.080 Application of other chapters to service agreements under this chapter—Prevailing wages. (1) The provisions of chapters 39.12, 39.19, and *39.25 RCW shall apply to a service agreement entered into under this chapter to the same extent as if the facilities dedicated to such service were owned by a public body.

(2) Subsection (1) of this section shall not be construed to apply to agreements or actions by persons or entities which are not undertaken pursuant to this chapter.

(3) Except for RCW 39.04.175, this chapter shall not be construed as a limitation or restriction on the application of Title 39 RCW to public bodies.

(4) Prevailing wages shall be established as the prevailing wage in the largest city of the county in which facilities are built. [1986 c 244 § 8.]

***Reviser's note:** Chapter 39.25 RCW was repealed by 1994 c 138 § 2.

70.150.900 Short title. This chapter may be cited as the water quality joint development act. [1986 c 244 § 9.]

70.150.905 Severability—1986 c 244. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 244 § 18.]

Chapter 70.155 RCW

TOBACCO—ACCESS TO MINORS

Sections

| | |
|------------|---|
| 70.155.005 | Finding. |
| 70.155.010 | Definitions. |
| 70.155.020 | Cigarette wholesaler or retailer licensee duties—Prohibition sign to be posted. |
| 70.155.030 | Cigarette machine location. |
| 70.155.040 | Cigarettes must be sold in original package—Exception. |
| 70.155.050 | Sampling—License required. |
| 70.155.060 | Sampling in public places. |
| 70.155.070 | Coupons. |
| 70.155.080 | Purchasing, possessing by persons under eighteen—Civil infraction—Jurisdiction. |
| 70.155.090 | Age identification requirement. |
| 70.155.100 | Penalties, sanctions, and actions against licensees. |
| 70.155.105 | Delivery sale of cigarettes—Requirements, unlawful practices—Penalties—Enforcement. |
| 70.155.110 | Liquor control board authority. |
| 70.155.120 | Youth tobacco prevention account—Source and use of funds. |
| 70.155.130 | Preemption of political subdivisions. |
| 70.155.900 | Severability—1993 c 507. |

70.155.005 Finding. The legislature finds that while present state law prohibits the sale and distribution of tobacco to minors, youth obtain tobacco products with ease. Availability and lack of enforcement put tobacco products in the hands of youth.

Federal law requires states to enforce laws prohibiting sale and distribution of tobacco products to minors in a manner that can reasonably be expected to reduce the extent to which the products are available to minors. It is imperative to effectively reduce the sale, distribution, and availability of tobacco products to minors. [1993 c 507 § 1.]

Minors and tobacco: RCW 26.28.080.

Taxation: Chapters 82.24 and 82.26 RCW.

Tobacco on school grounds: RCW 28A.210.310.

70.155.010 Definitions. The definitions set forth in RCW 82.24.010 shall apply to RCW 70.155.020 through 70.155.130. In addition, for the purposes of this chapter, unless otherwise required by the context:

(1) "Board" means the Washington state liquor control board.

(2) "Delivery sale" means any sale of cigarettes to a consumer in the state where either: (a) The purchaser submits an order for a sale by means of a telephonic or other method of voice transmission, mail delivery, any other delivery service, or the internet or other on-line service; or (b) the cigarettes are delivered by use of mail delivery or any other delivery service. A sale of cigarettes shall be a delivery sale regardless of whether the seller is located within or without the state. A sale of cigarettes not for personal consumption to a person who is a wholesaler licensed pursuant to chapter 82.24 RCW or a retailer pursuant to chapter 82.24 RCW is not a delivery sale.

(3) "Delivery service" means any private carrier engaged in the commercial delivery of letters, packages, or other containers that requires the recipient of that letter, package, or container to sign to accept delivery.

(4) "Minor" refers to an individual who is less than eighteen years old.

(5) "Public place" means a public street, sidewalk, or park, or any area open to the public in a publicly owned and operated building.

(2004 Ed.)

(6) "Sample" means a tobacco product distributed to members of the general public at no cost or at nominal cost for product promotion purposes.

(7) "Sampler" means a person engaged in the business of sampling other than a retailer.

(8) "Sampling" means the distribution of samples to members of the general public in a public place.

(9) "Shipping container" means a container in which cigarettes are shipped in connection with a delivery sale.

(10) "Shipping documents" means bills of lading, airbills, or any other documents used to evidence the undertaking by a delivery service to deliver letters, packages, or other containers.

(11) "Tobacco product" means a product that contains tobacco and is intended for human consumption. [2003 c 113 § 1; 1993 c 507 § 2.]

70.155.020 Cigarette wholesaler or retailer licensee duties—Prohibition sign to be posted. A person who holds a license issued under RCW 82.24.520 or 82.24.530 shall:

(1) Display the license or a copy in a prominent location at the outlet for which the license is issued; and

(2) Display a sign concerning the prohibition of tobacco sales to minors.

Such sign shall:

(a) Be posted so that it is clearly visible to anyone purchasing tobacco products from the licensee;

(b) Be designed and produced by the department of health to read: "THE SALE OF TOBACCO PRODUCTS TO PERSONS UNDER AGE 18 IS STRICTLY PROHIBITED BY STATE LAW. IF YOU ARE UNDER 18, YOU COULD BE PENALIZED FOR PURCHASING A TOBACCO PRODUCT; PHOTO ID REQUIRED"; and

(c) Be provided free of charge by the liquor control board. [1993 c 507 § 3.]

70.155.030 Cigarette machine location. No person shall sell or permit to be sold any tobacco product through any device that mechanically dispenses tobacco products unless the device is located fully within premises from which minors are prohibited or in industrial worksites where minors are not employed and not less than ten feet from all entrance or exit ways to and from each premise. The board shall adopt rules that allow an exception to the requirement that a device be located not less than ten feet from all entrance or exit ways to and from a premise if it is architecturally impractical for the device to be located not less than ten feet from all entrance and exit ways. [1994 c 202 § 1; 1993 c 507 § 4.]

70.155.040 Cigarettes must be sold in original package—Exception. No person shall sell or permit to be sold cigarettes not in the original unopened package or container to which the stamps required by RCW 82.24.060 have been affixed.

This section does not apply to the sale of loose leaf tobacco by a retail business that generates a minimum of sixty percent of annual gross sales from the sale of tobacco products. [1993 c 507 § 5.]

70.155.050 Sampling—License required. (1) No person may engage in the business of sampling within the state unless licensed to do so by the board. If a firm contracts with a manufacturer to distribute samples of the manufacturer's products, that firm is deemed to be the person engaged in the business of sampling.

(2) The board shall issue a license to a sampler not otherwise disqualified by RCW 70.155.100 upon application and payment of the fee.

(3) A sampler's license expires on the thirtieth day of June of each year and must be renewed annually upon payment of the appropriate fee.

(4) The board shall annually determine the fee for a sampler's license and each renewal. However, the fee for a manufacturer whose employees distribute samples within the state is five hundred dollars per annum, and the fee for all other samplers must be not less than fifty dollars per annum.

(5) A sampler's license entitles the licensee, and employees or agents of the licensee, to distribute samples at any lawful location in the state during the term of the license. A person engaged in sampling under the license shall carry the license or a copy at all times. [1993 c 507 § 6.]

70.155.060 Sampling in public places. (1) No person may distribute or offer to distribute samples in a public place. This prohibition does not apply to sampling (a) in an area to which persons under the age of eighteen are denied admission, (b) in or at a store or concession to which a retailer's license has been issued, or (c) at or adjacent to a production, repair, or outdoor construction site or facility.

(2) Notwithstanding subsection (1) of this section, no person may distribute or offer to distribute samples in or on a public street, sidewalk, or park that is within five hundred feet of a playground, school, or other facility when that facility is being used primarily by persons under the age of eighteen for recreational, educational, or other purposes. [1993 c 507 § 7.]

70.155.070 Coupons. No person shall give or distribute cigarettes or other tobacco products to a person by a coupon if such coupon is redeemed in any manner that does not require an in-person transaction in a retail store. [1993 c 507 § 8.]

70.155.080 Purchasing, possessing by persons under eighteen—Civil infraction—Jurisdiction. (1) A person under the age of eighteen who purchases or attempts to purchase, possesses, or obtains or attempts to obtain cigarettes or tobacco products commits a class 3 civil infraction under chapter 7.80 RCW and is subject to a fine as set out in chapter 7.80 RCW or participation in up to four hours of community restitution, or both. The court may also require participation in a smoking cessation program. This provision does not apply if a person under the age of eighteen, with parental authorization, is participating in a controlled purchase as part of a liquor control board, law enforcement, or local health department activity.

(2) Municipal and district courts within the state have jurisdiction for enforcement of this section. [2002 c 175 § 47; 1998 c 133 § 2; 1993 c 507 § 9.]

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

Finding—Intent—1998 c 133: "The legislature finds that the protection of adolescents' health requires a strong set of comprehensive health and law enforcement interventions. We know that youth are deterred from using alcohol in public because of existing laws making possession illegal. However, while the purchase of tobacco by youth is clearly prohibited, the possession of tobacco is not. It is the legislature's intent that youth hear consistent messages from public entities, including law enforcement, about public opposition to their illegal use of tobacco products." [1998 c 133 § 1.]

70.155.090 Age identification requirement. (1) Where there may be a question of a person's right to purchase or obtain tobacco products by reason of age, the retailer, sampler, or agent thereof, shall require the purchaser to present any one of the following officially issued identification that shows the purchaser's age and bears his or her signature and photograph: Liquor control authority card of identification of a state or province of Canada; driver's license, instruction permit, or identification card of a state or province of Canada; "identocard" issued by the Washington state department of licensing under chapter 46.20 RCW; United States military identification; passport; or merchant marine identification card issued by the United States coast guard.

(2) It is a defense to a prosecution under *RCW 26.28.080(4) that the person making a sale reasonably relied on any of the officially issued identification as defined in subsection (1) of this section. The liquor control board shall waive the suspension or revocation of a license if the licensee clearly establishes that he or she acted in good faith to prevent violations and a violation occurred despite the licensee's exercise of due diligence. [1993 c 507 § 10.]

*Reviser's note: RCW 26.28.080 was amended by 1994 sp.s. c 7 § 437, and no longer has numbered subsections.

70.155.100 Penalties, sanctions, and actions against licensees. (1) The liquor control board may suspend or revoke a retailer's license held by a business at any location, or may impose a monetary penalty as set forth in subsection (2) of this section, if the liquor control board finds that the licensee has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.060, 70.155.070, or 70.155.090.

(2) The sanctions that the liquor control board may impose against a person licensed under RCW 82.24.530 and 70.155.050 and 70.155.060 based upon one or more findings under subsection (1) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(b) For violations of RCW 70.155.030, a monetary penalty in the amount of one hundred dollars for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040 occurring on the licensed premises:

(i) A monetary penalty of one hundred dollars for the first violation within any two-year period;

(ii) A monetary penalty of three hundred dollars for the second violation within any two-year period;

(iii) A monetary penalty of one thousand dollars and suspension of the license for a period of six months for the third violation within any two-year period;

(iv) A monetary penalty of one thousand five hundred dollars and suspension of the license for a period of twelve months for the fourth violation within any two-year period;

(v) Revocation of the license with no possibility of reinstatement for a period of five years for the fifth or more violation within any two-year period;

(d) For violations of RCW 70.155.050 and 70.155.060, a monetary penalty in the amount of three hundred dollars for each violation;

(e) For violations of RCW 70.155.070, a monetary penalty in the amount of one thousand dollars for each violation.

(3) The liquor control board may impose a monetary penalty upon any person other than a licensed cigarette retailer or licensed sampler if the liquor control board finds that the person has violated RCW 26.28.080, 70.155.020, 70.155.030, 70.155.040, 70.155.050, 70.155.060, 70.155.070, or 70.155.090.

(4) The monetary penalty that the liquor control board may impose based upon one or more findings under subsection (3) of this section may not exceed the following:

(a) For violation of RCW 26.28.080 or 70.155.020, fifty dollars for the first violation and one hundred dollars for each subsequent violation;

(b) For violations of RCW 70.155.030, one hundred dollars for each day upon which such violation occurred;

(c) For violations of RCW 70.155.040, one hundred dollars for each violation;

(d) For violations of RCW 70.155.050 and 70.155.060, three hundred dollars for each violation;

(e) For violations of RCW 70.155.070, one thousand dollars for each violation.

(5) The liquor control board may develop and offer a class for retail clerks and use this class in lieu of a monetary penalty for the clerk's first violation.

(6) The liquor control board may issue a cease and desist order to any person who is found by the liquor control board to have violated or intending to violate the provisions of this chapter, RCW 26.28.080 or 82.24.500, requiring such person to cease specified conduct that is in violation. The issuance of a cease and desist order shall not preclude the imposition of other sanctions authorized by this statute or any other provision of law.

(7) The liquor control board may seek injunctive relief to enforce the provisions of RCW 26.28.080 or 82.24.500 or this chapter. The liquor control board may initiate legal action to collect civil penalties imposed under this chapter if the same have not been paid within thirty days after imposition of such penalties. In any action filed by the liquor control board under this chapter, the court may, in addition to any

other relief, award the liquor control board reasonable attorneys' fees and costs.

(8) All proceedings under subsections (1) through (6) of this section shall be conducted in accordance with chapter 34.05 RCW.

(9) The liquor control board may reduce or waive either the penalties or the suspension or revocation of a license, or both, as set forth in this chapter where the elements of proof are inadequate or where there are mitigating circumstances. Mitigating circumstances may include, but are not limited to, an exercise of due diligence by a retailer. Further, the board may exceed penalties set forth in this chapter based on aggravating circumstances. [1998 c 133 § 3; 1993 c 507 § 11.]

Finding—Intent—1998 c 133: See note following RCW 70.155.080.

70.155.105 Delivery sale of cigarettes—Requirements, unlawful practices—Penalties—Enforcement. (1) It is unlawful for a person who mails, ships, or otherwise delivers cigarettes to fail to:

(a) Verify the age of the receiver of the cigarettes upon delivery; and

(b) Obtain in writing, before the first delivery sale of cigarettes, verification of the receiver's address and that the receiver of the cigarettes is not a minor. The statement must also confirm that the purchaser understands: (i) That signing another person's name to the certification is a violation of RCW 9A.60.040(1)(a); (ii) that the sale of cigarettes to a minor is a violation of RCW 26.28.080; (iii) that the purchase of cigarettes by minors is a violation of RCW 70.155.080; and (iv) that he or she has the option to receive mailings from a tobacco company about tobacco products.

(2) It is unlawful for a person to mail, ship, or otherwise deliver cigarettes in connection with a delivery sale unless before the first delivery sale to the consumer that person:

(a) Either verifies the information contained in the certification provided by the prospective consumer in subsection (1) of this section against a commercially available data base, or obtains a photocopy of an officially issued identification containing the bearer's age, signature, and photograph. The only forms of identification that are acceptable as proof of age for the purchase for tobacco products are: (i) A liquor control authority card of identification issued by a state of the United States or a province of Canada, (ii) a driver's license, instruction permit, or identification card issued by a state of the United States or a province of Canada, (iii) a United States military identification card, (iv) a passport, or (v) a merchant marine identification card issued by the United States coast guard;

(b) Provides to the prospective consumer through electronic mail or other means a notice that meets the requirements of subsection (3) of this section; and

(c) In the case of an order for cigarettes pursuant to an advertisement on the internet, receives payment for the delivery sale from the prospective consumer by a credit card or debit card, or by check that has been issued in the prospective consumer's name.

(3) The notice required under subsection (2)(b) of this section must include:

(a) A prominent and clearly legible statement that cigarette sales to minors are illegal;

(b) A prominent and clearly legible statement that consists of one of the warnings set forth in section 4(a)(1) of the federal cigarette labeling and advertising act (15 U.S.C. Sec. 1333(a)(1)) rotated on a quarterly basis;

(c) A prominent and clearly legible statement that sales of cigarettes are restricted to those consumers who provide verifiable proof of age in accordance with subsection (1) of this section; and

(d) A prominent and clearly legible statement that cigarette sales are subject to tax pursuant to chapters 82.24 and 82.12 RCW, with an explanation of how the tax has been or is to be paid with respect to a delivery sale.

(4) It is unlawful for a person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale to fail to:

(a) Include as part of the bill of lading, or other shipping documents, a clear and conspicuous statement that states: "Cigarettes: Washington Law Prohibits Shipping to Individuals Under 18, and Requires the Payment of all Applicable Taxes";

(b) Contract only with private carriers who employ delivery agents who will verify the receiver of the cigarettes is not a minor upon delivery. The only forms of identification that are acceptable as proof of age for the purchase for tobacco products are: (i) A liquor control authority card of identification issued by a state of the United States or a province of Canada, (ii) a driver's license, instruction permit, or identification card issued by a state of the United States or a province of Canada, (iii) a United States military identification card, (iv) a passport, or (v) a merchant marine identification card issued by the United States coast guard;

(c) Provide to the delivery service retained for the delivery sale evidence of full compliance with this section.

(5)(a) Before making delivery sales or mailings, shipping, or otherwise delivering cigarettes to a Washington address in connection with any sales, any person who mails, ships, or otherwise delivers cigarettes shall file with the board a statement setting forth the person's name, trade name, and the address of the person's principal place of business and any other place of business.

(b) Any person who mails, ships, or otherwise delivers cigarettes in connection with a delivery sale shall within fifteen days after the first of each month file with the board a report of all delivery sales made by the person within this state for the preceding month. The report shall show the name and address of the consumer to whom the cigarettes were sold, the kind and quality, and the date of delivery thereof.

(6)(a) Any person other than a delivery service who violates any of the provisions of this section is guilty of a class C felony punishable by up to five years in prison and a fine of ten thousand dollars, and payment of the cost of investigation and prosecution, including attorneys' fees.

(b) Any person other than a delivery service who commits a second or subsequent violation of this section is [guilty of] a class B felony punishable by up to ten years in prison and a fine of twenty thousand dollars, and payment of the cost of investigation and prosecution, including attorneys' fees.

(c) Any delivery service that violates any provision of this section shall be guilty of a gross misdemeanor punish-

able by up to one year in jail and a fine of five thousand dollars.

(7) Any person that fails to collect or remit to the department of revenue any tax required under chapter 82.24 RCW in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of five times the retail value of the cigarettes involved.

(8) For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this title, the board or any of its agents may inspect the books, documents, and records of any person who makes delivery sales or mailings, or ships or otherwise delivers cigarettes or retains another person to make delivery sales or mailings, or to ship or otherwise deliver cigarettes insofar as such books, documents, and/or records pertain to the financial transaction involved. If such a person neglects or refuses to produce and submit for inspection any book, record, or document as required by this section when requested to do so by the board or its agent, then the board or the attorney general may seek an order in superior court compelling such production of books, records, or documents. [2003 c 113 § 2.]

70.155.110 Liquor control board authority. (1) The liquor control board shall, in addition to the board's other powers and authorities, have the authority to enforce the provisions of this chapter and *RCW 26.28.080(4) and 82.24.500. The liquor control board shall have full power to revoke or suspend the license of any retailer or wholesaler in accordance with the provisions of RCW 70.155.100.

(2) The liquor control board and the board's authorized agents or employees shall have full power and authority to enter any place of business where tobacco products are sold for the purpose of enforcing the provisions of this chapter.

(3) For the purpose of enforcing the provisions of this chapter and *RCW 26.28.080(4) and 82.24.500, a peace officer or enforcement officer of the liquor control board who has reasonable grounds to believe a person observed by the officer purchasing, attempting to purchase, or in possession of tobacco products is under the age of eighteen years of age, may detain such person for a reasonable period of time and in such a reasonable manner as is necessary to determine the person's true identity and date of birth. Further, tobacco products possessed by persons under the age of eighteen years of age are considered contraband and may be seized by a peace officer or enforcement officer of the liquor control board.

(4) The liquor control board may work with local county health departments or districts and local law enforcement agencies to conduct random, unannounced, inspections to assure compliance. [1993 c 507 § 12.]

*Reviser's note: RCW 26.28.080 was amended by 1994 sp.s. c 7 § 437, and no longer has numbered subsections.

70.155.120 Youth tobacco prevention account—Source and use of funds. (1) The youth tobacco prevention account is created in the state treasury. All fees collected pursuant to RCW 82.24.520 and 82.24.530 and funds collected by the liquor control board from the imposition of monetary penalties and samplers' fees shall be deposited into this account, except that ten percent of all such fees and penalties shall be deposited in the state general fund.

(2) Moneys appropriated from the youth tobacco prevention account to the department of health shall be used by the department of health for implementation of this chapter, including collection and reporting of data regarding enforcement and the extent to which access to tobacco products by youth has been reduced.

(3) The department of health shall enter into interagency agreements with the liquor control board to pay the costs incurred, up to thirty percent of available funds, in carrying out its enforcement responsibilities under this chapter. Such agreements shall set forth standards of enforcement, consistent with the funding available, so as to reduce the extent to which tobacco products are available to individuals under the age of eighteen. The agreements shall also set forth requirements for data reporting by the liquor control board regarding its enforcement activities.

(4) The department of health and the department of revenue shall enter into an interagency agreement for payment of the cost of administering the tobacco retailer licensing system and for the provision of quarterly documentation of tobacco wholesaler, retailer, and vending machine names and locations.

(5) The department of health shall, within up to seventy percent of available funds, provide grants to local health departments or other local community agencies to develop and implement coordinated tobacco intervention strategies to prevent and reduce tobacco use by youth. [1993 c 507 § 13.]

70.155.130 Preemption of political subdivisions. This chapter preempts political subdivisions from adopting or enforcing requirements for the licensure and regulation of tobacco product promotions and sales within retail stores, except that political subdivisions that have adopted ordinances prohibiting sampling by January 1, 1993, may continue to enforce these ordinances. No political subdivision may: (1) Impose fees or license requirements on retail businesses for possessing or selling cigarettes or tobacco products, other than general business taxes or license fees not primarily levied on tobacco products; or (2) regulate or prohibit activities covered by RCW 70.155.020 through 70.155.080. This chapter does not otherwise preempt political subdivisions from adopting ordinances regulating the sale, purchase, use, or promotion of tobacco products not inconsistent with chapter 507, Laws of 1993. [1993 c 507 § 14.]

70.155.900 Severability—1993 c 507. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 507 § 20.]

Chapter 70.157 RCW

**NATIONAL UNIFORM TOBACCO SETTLEMENT—
NONPARTICIPATING TOBACCO
PRODUCT MANUFACTURERS**

Sections

- 70.157.005 Findings and purpose.
- 70.157.010 Definitions.
- 70.157.020 Requirements.
- 70.157.030 Contingent expiration date—Court action.

(2004 Ed.)

70.157.005 Findings and purpose. (a) Cigarette smoking presents serious public health concerns to the State and to the citizens of the State. The Surgeon General has determined that smoking causes lung cancer, heart disease and other serious diseases, and that there are hundreds of thousands of tobacco-related deaths in the United States each year. These diseases most often do not appear until many years after the person in question begins smoking.

(b) Cigarette smoking also presents serious financial concerns for the State. Under certain health-care programs, the State may have a legal obligation to provide medical assistance to eligible persons for health conditions associated with cigarette smoking, and those persons may have a legal entitlement to receive such medical assistance.

(c) Under these programs, the State pays millions of dollars each year to provide medical assistance for these persons for health conditions associated with cigarette smoking.

(d) It is the policy of the State that financial burdens imposed on the State by cigarette smoking be borne by tobacco product manufacturers rather than by the State to the extent that such manufacturers either determine to enter into a settlement with the State or are found culpable by the courts.

(e) On November 23, 1998, leading United States tobacco product manufacturers entered into a settlement agreement, entitled the "Master Settlement Agreement," with the State. The Master Settlement Agreement obligates these manufacturers, in return for a release of past, present and certain future claims against them as described therein, to pay substantial sums to the State (tied in part to their volume of sales); to fund a national foundation devoted to the interests of public health; and to make substantial changes in their advertising and marketing practices and corporate culture, with the intention of reducing underage smoking.

(f) It would be contrary to the policy of the State if tobacco product manufacturers who determine not to enter into such a settlement could use a resulting cost advantage to derive large, short-term profits in the years before liability may arise without ensuring that the State will have an eventual source of recovery from them if they are proven to have acted culpably. It is thus in the interest of the State to require that such manufacturers establish a reserve fund to guarantee a source of compensation and to prevent such manufacturers from deriving large, short-term profits and then becoming judgment-proof before liability may arise. [1999 c 393 § 1.]

Captions not law—1999 c 393: "Captions used in this act are not part of the law." [1999 c 393 § 5.]

Effective date—1999 c 393: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 18, 1999]." [1999 c 393 § 6.]

70.157.010 Definitions. (a) "Adjusted for inflation" means increased in accordance with the formula for inflation adjustment set forth in Exhibit C to the Master Settlement Agreement.

(b) "Affiliate" means a person who directly or indirectly owns or controls, is owned or controlled by, or is under common ownership or control with, another person. Solely for purposes of this definition, the terms "owns," "is owned" and "ownership" mean ownership of an equity interest, or the

equivalent thereof, of ten percent or more, and the term "person" means an individual, partnership, committee, association, corporation or any other organization or group of persons.

(c) "Allocable share" means Allocable Share as that term is defined in the Master Settlement Agreement.

(d) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains (1) any roll of tobacco wrapped in paper or in any substance not containing tobacco; or (2) tobacco, in any form, that is functional in the product, which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette; or (3) any roll of tobacco wrapped in any substance containing tobacco which, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to, or purchased by, consumers as a cigarette described in clause (1) of this definition. The term "cigarette" includes "roll-your-own" (i.e., any tobacco which, because of its appearance, type, packaging, or labeling is suitable for use and likely to be offered to, or purchased by, consumers as tobacco for making cigarettes). For purposes of this definition of "cigarette," 0.09 ounces of "roll-your-own" tobacco shall constitute one individual "cigarette".

(e) "Master Settlement Agreement" means the settlement agreement (and related documents) entered into on November 23, 1998 by the State and leading United States tobacco product manufacturers.

(f) "Qualified escrow fund" means an escrow arrangement with a federally or State chartered financial institution having no affiliation with any tobacco product manufacturer and having assets of at least \$1,000,000,000 where such arrangement requires that such financial institution hold the escrowed funds' principal for the benefit of releasing parties and prohibits the tobacco product manufacturer placing the funds into escrow from using, accessing or directing the use of the funds' principal except as consistent with RCW 70.157.020(b).

(g) "Released claims" means Released Claims as that term is defined in the Master Settlement Agreement.

(h) "Releasing parties" means Releasing Parties as that term is defined in the Master Settlement Agreement.

(i) "Tobacco Product Manufacturer" means an entity that after the date of enactment of this Act directly (and not exclusively through any affiliate):

(1) manufactures cigarettes anywhere that such manufacturer intends to be sold in the United States, including cigarettes intended to be sold in the United States through an importer (except where such importer is an original participating manufacturer (as that term is defined in the Master Settlement Agreement) that will be responsible for the payments under the Master Settlement Agreement with respect to such cigarettes as a result of the provisions of subsections II(mm) of the Master Settlement Agreement and that pays the taxes specified in subsection II(z) of the Master Settlement Agreement, and provided that the manufacturer of such cigarettes does not market or advertise such cigarettes in the United States);

(2) is the first purchaser anywhere for resale in the United States of cigarettes manufactured anywhere that the

manufacturer does not intend to be sold in the United States; or

(3) becomes a successor of an entity described in paragraph (1) or (2).

The term "Tobacco Product Manufacturer" shall not include an affiliate of a tobacco product manufacturer unless such affiliate itself falls within any of (1)-(3) above.

(j) "Units sold" means the number of individual cigarettes sold in the State by the applicable tobacco product manufacturer (whether directly or through a distributor, retailer or similar intermediary or intermediaries) during the year in question, as measured by excise taxes collected by the State on packs bearing the excise tax stamp of the State or "roll-your-own" tobacco containers. The department of revenue shall promulgate such regulations as are necessary to ascertain the amount of State excise tax paid on the cigarettes of such tobacco product manufacturer for each year. [1999 c 393 § 2.]

Captions not law—Effective date—1999 c 393: See notes following RCW 70.157.005.

70.157.020 Requirements. (Contingent expiration date.) Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after May 18, 1999, shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—

1999: \$.0094241 per unit sold after May 18, 1999;

2000: \$.0104712 per unit sold;

for each of 2001 and 2002: \$.0136125 per unit sold;

for each of 2003 through 2006: \$.0167539 per unit sold;

for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow on account of units sold in the state in a particular year was greater than the Master Settlement Agreement payments, as determined pursuant to section IX(i) of that Agreement including after final determination of all adjustments, that such manufacturer would have been required to make on account of such units sold, had it been a Participating Manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. The violator shall also pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3). [2003 c 342 § 1; 1999 c 393 § 3.]

Captions not law—Effective date—1999 c 393: See notes following RCW 70.157.005.

70.157.020 Requirements. (Contingent effective date.) Any tobacco product manufacturer selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary or intermediaries) after May 18, 1999, shall do one of the following:

(a) become a participating manufacturer (as that term is defined in section II(jj) of the Master Settlement Agreement) and generally perform its financial obligations under the Master Settlement Agreement; or

(b)(1) place into a qualified escrow fund by April 15 of the year following the year in question the following amounts (as such amounts are adjusted for inflation)—

- 1999: \$.0094241 per unit sold after May 18, 1999;
- 2000: \$.0104712 per unit sold;
- for each of 2001 and 2002: \$.0136125 per unit sold;
- for each of 2003 through 2006: \$.0167539 per unit sold;
- for each of 2007 and each year thereafter: \$.0188482 per unit sold.

(2004 Ed.)

(2) A tobacco product manufacturer that places funds into escrow pursuant to paragraph (1) shall receive the interest or other appreciation on such funds as earned. Such funds themselves shall be released from escrow only under the following circumstances—

(A) to pay a judgment or settlement on any released claim brought against such tobacco product manufacturer by the State or any releasing party located or residing in the State. Funds shall be released from escrow under this subparagraph (i) in the order in which they were placed into escrow and (ii) only to the extent and at the time necessary to make payments required under such judgment or settlement;

(B) to the extent that a tobacco product manufacturer establishes that the amount it was required to place into escrow in a particular year was greater than the State's allocable share of the total payments that such manufacturer would have been required to make in that year under the Master Settlement Agreement (as determined pursuant to section IX(i)(2) of the Master Settlement Agreement, and before any of the adjustments or offsets described in section IX(i)(3) of that Agreement other than the Inflation Adjustment) had it been a participating manufacturer, the excess shall be released from escrow and revert back to such tobacco product manufacturer; or

(C) to the extent not released from escrow under subparagraphs (A) or (B), funds shall be released from escrow and revert back to such tobacco product manufacturer twenty-five years after the date on which they were placed into escrow.

(3) Each tobacco product manufacturer that elects to place funds into escrow pursuant to this subsection shall annually certify to the Attorney General that it is in compliance with this subsection. The Attorney General may bring a civil action on behalf of the State against any tobacco product manufacturer that fails to place into escrow the funds required under this section. Any tobacco product manufacturer that fails in any year to place into escrow the funds required under this section shall—

(A) be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 5 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 100 percent of the original amount improperly withheld from escrow;

(B) in the case of a knowing violation, be required within 15 days to place such funds into escrow as shall bring it into compliance with this section. The court, upon a finding of a knowing violation of this subsection, may impose a civil penalty to be paid to the general fund of the state in an amount not to exceed 15 percent of the amount improperly withheld from escrow per day of the violation and in a total amount not to exceed 300 percent of the original amount improperly withheld from escrow; and

(C) in the case of a second knowing violation, be prohibited from selling cigarettes to consumers within the State (whether directly or through a distributor, retailer or similar intermediary) for a period not to exceed 2 years.

Each failure to make an annual deposit required under this section shall constitute a separate violation. The violator

shall also pay the State's costs and attorney's fees incurred during a successful prosecution under this paragraph (3). [1999 c 393 § 3.]

Captions not law—Effective date—1999 c 393: See notes following RCW 70.157.005.

70.157.030 Contingent expiration date—Court action. If chapter 342, Laws of 2003 is held by a court of competent jurisdiction to be unconstitutional, then RCW 70.157.020(b)(2)(B) shall be repealed in its entirety. If RCW 70.157.020(b)(2) shall thereafter be held by a court of competent jurisdiction to be unconstitutional, then chapter 342, Laws of 2003 shall be repealed, and RCW 70.157.020(b)(2)(B) be restored as if no amendments had been made. Neither any holding of unconstitutionality nor the repeal of RCW 70.157.020(b)(2)(B) shall affect, impair, or invalidate any other portion of RCW 70.157.020 or the application of that section to any other person or circumstance, and the remaining portions of RCW 70.157.020 shall at all times continue in full force and effect. [2003 c 342 § 2.]

Chapter 70.158 RCW

TOBACCO PRODUCT MANUFACTURERS

Sections

| | |
|------------|---|
| 70.158.010 | Findings. |
| 70.158.020 | Definitions. |
| 70.158.030 | Tobacco product manufacturers—Certification—Attorney general to publish directory—Violations. |
| 70.158.040 | Nonresident, nonparticipating manufacturers—Agent for service of process. |
| 70.158.050 | Reports, records—Confidentiality, disclosures, voluntary waivers—Escrow payments. |
| 70.158.060 | Penalties—Application of consumer protection act. |
| 70.158.070 | Attorney general's directory decision to be final agency action—Due dates for reports, certifications, directory—Rules—Costs—Penalties. |
| 70.158.900 | Conflict of law—Severability—2003 c 25. |
| 70.158.901 | Effective date—2003 c 25. |

70.158.010 Findings. The legislature finds that violations of RCW 70.157.020 threaten the integrity of the tobacco master settlement agreement, the fiscal soundness of the state, and the public health. The legislature finds the enacting procedural enhancements will help prevent violations and aid the enforcement of RCW 70.157.020 and thereby safeguard the master settlement agreement, the fiscal soundness of the state, and the public health. The provisions of chapter 25, Laws of 2003 are not intended to and shall not be interpreted to amend chapter 70.157 RCW. [2003 c 25 § 1.]

70.158.020 Definitions. The following definitions apply to this chapter unless the context clearly requires otherwise.

(1) "Brand family" means all styles of cigarettes sold under the same trademark and differentiated from one another by means of additional modifiers or descriptors, including, but not limited to, "menthol," "lights," "kings," and "100s," and includes any brand name alone or in conjunction with any other word, trademark, logo, symbol, motto, selling message, recognizable pattern of colors, or any other indicia of product identification identical or similar to, or identifiable with, a previously known brand of cigarettes.

(2) "Board" means the liquor control board.

(3) "Cigarette" has the same meaning as in RCW 70.157.010(d).

(4) "Director" means the director of the department of revenue except as otherwise noted.

(5) "Directory" means the directory to be created and published on a web site by the attorney general pursuant to RCW 70.158.030(2).

(6) "Distributor" has the same meaning as in RCW 82.26.010(3), except that for purposes of this chapter, no person is a distributor if that person does not deal with cigarettes as defined in this section.

(7) "Master settlement agreement" has the same meaning as in RCW 70.157.010(e).

(8) "Nonparticipating manufacturer" means any tobacco product manufacturer that is not a participating manufacturer.

(9) "Participating manufacturer" has the meaning given that term in section II(jj) of the master settlement agreement.

(10) "Qualified escrow fund" has the same meaning as in RCW 70.157.010(f).

(11) "Stamp" means "stamp" as defined in RCW 82.24.010(7) or as referred to in RCW 43.06.455(4).

(12) "Tobacco product manufacturer" has the same meaning as in RCW 70.157.010(i).

(13) "Units sold" has the same meaning as in RCW 70.157.010(j).

(14) "Wholesaler" has the same meaning as in RCW 82.24.010. [2003 c 25 § 2.]

70.158.030 Tobacco product manufacturers—Certification—Attorney general to publish directory—Violations. (1) Every tobacco product manufacturer whose cigarettes are sold in this state, whether directly or through a wholesaler, distributor, retailer, or similar intermediary or intermediaries, shall execute and deliver on a form prescribed by the attorney general a certification to the attorney general, no later than the thirtieth day of April each year, certifying under penalty of perjury that, as of the date of such certification, the tobacco product manufacturer is either a participating manufacturer; or is in full compliance with RCW 70.157.020(b)(1), including all payments required by that section or chapter 25, Laws of 2003.

(a) A participating manufacturer shall include in its certification a list of its brand families. The participating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing and delivering a supplemental certification to the attorney general.

(b) A nonparticipating manufacturer shall include in its certification: (i) A list of all of its brand families and the number of units sold for each brand family that were sold in the state during the preceding calendar year; (ii) a list of all of its brand families that have been sold in the state at anytime during the current calendar year; (iii) indicating, by an asterisk, any brand family sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of such certification; and (iv) identifying by name and address any other manufacturer of brand families in the preceding or current calendar year. The nonparticipating manufacturer shall update the list thirty calendar days prior to any addition to or modification of its brand families by executing

and delivering a supplemental certification to the attorney general.

(c) In the case of a nonparticipating manufacturer, the certification shall further certify:

(i) That the nonparticipating manufacturer is registered to do business in the state or has appointed a resident agent for service of process and provided notice as required by RCW 70.158.040;

(ii) That the nonparticipating manufacturer: (A) Has established and continues to maintain a qualified escrow fund; and (B) has executed a qualified escrow agreement that has been reviewed and approved by the attorney general and that governs the qualified escrow fund;

(iii) That the nonparticipating manufacturer is in full compliance with RCW 70.157.020(b)(1) and this chapter, and any rules adopted pursuant thereto; and

(iv)(A) The name, address, and telephone number of the financial institution where the nonparticipating manufacturer has established a qualified escrow fund required pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder; (B) the account number of the qualified escrow fund and any sub-account number for the state of Washington; (C) the amount the nonparticipating manufacturer placed in the fund for cigarettes sold in the state during the preceding calendar year, the date and amount of each deposit, and evidence or verification as may be deemed necessary by the attorney general to confirm the foregoing; and (D) the amount and date of any withdrawal or transfer of funds the nonparticipating manufacturer made at any time from the fund or from any other qualified escrow fund into which it ever made escrow payments pursuant to RCW 70.157.020(b)(1) and all rules adopted thereunder.

(d) A tobacco product manufacturer may not include a brand family in its certification unless: (i) In the case of a participating manufacturer, the participating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of calculating its payments under the master settlement agreement for the relevant year, in the volume and shares determined pursuant to the master settlement agreement; and (ii) in the case of a nonparticipating manufacturer, the nonparticipating manufacturer affirms that the brand family is to be deemed to be its cigarettes for purposes of RCW 70.157.020(b)(1). Nothing in this section limits or otherwise affects the state's right to maintain that a brand family constitutes cigarettes of a different tobacco product manufacturer for purposes of calculating payments under the master settlement agreement or for purposes of RCW 70.157.020.

(e) A tobacco product manufacturer shall maintain all invoices and documentation of sales and other information relied upon for such certification for a period of five years, unless otherwise required by law to maintain them for a greater period of time.

(2) Not later than November 1, 2003, the attorney general shall develop and publish on its web site a directory listing all tobacco product manufacturers that have provided current and accurate certifications conforming to the requirements of this section and all brand families that are listed in these certifications, except as noted below:

(a) The attorney general shall not include or retain in the directory the name or brand families of any nonparticipating

manufacturer that has failed to provide the required certification or whose certification the attorney general determines is not in compliance with subsection (1)(b) and (c) of this section, unless the attorney general has determined that the violation has been cured to the satisfaction of the attorney general.

(b) Neither a tobacco product manufacturer nor brand family shall be included or retained in the directory if the attorney general concludes, in the case of a nonparticipating manufacturer, that: (i) Any escrow payment required pursuant to RCW 70.157.020(b)(1) for any period for any brand family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a qualified escrow fund governed by a qualified escrow agreement that has been approved by the attorney general; or (ii) any outstanding final judgment, including interest, for a violation of RCW 70.157.020(b)(1) that has not been fully satisfied for the brand family or manufacturer.

(c) The attorney general shall update the directory as necessary in order to correct mistakes and to add or remove a tobacco product manufacturer or brand family to keep the directory in conformity with the requirements of this chapter. The attorney general shall transmit, by e-mail or other practicable means to each wholesaler or distributor, notice of any addition to or removal from the directory of any tobacco product manufacturer or brand family. Unless otherwise provided by agreement between the wholesaler or distributor and a tobacco product manufacturer, the wholesaler or distributor shall be entitled to a refund from a tobacco product manufacturer for any money paid by the wholesaler or distributor to the tobacco product manufacturer for any cigarettes of the tobacco product manufacturer still held by the wholesaler or distributor on the date of notice by the attorney general of the removal from the directory of that tobacco product manufacturer or the brand family of the cigarettes. The attorney general shall not restore to the directory the tobacco product manufacturer or the brand family until the tobacco product manufacturer has paid the wholesaler or distributor any refund due.

(d) Every wholesaler and distributor shall provide and update as necessary an electronic mail address to the attorney general for the purpose of receiving any notifications as may be required by this chapter.

(e) A tobacco product manufacturer included in the directory may request that a new brand family be certified and added to the directory. Within forty-five business days of receiving the request, the attorney general will respond by either: (i) Certifying the new brand family; or (ii) denying the request. However, in cases where the attorney general determines that it needs clarification as to whether the requestor is actually the tobacco product manufacturer, the attorney general may take more time as needed to clarify the request, to locate and assemble information or documents needed to process the request, and to notify persons or agencies affected by the request.

(f) The web site will state that chapter 25, Laws of 2003 applies only to cigarettes including, pursuant to the definition of "cigarettes" in chapter 25, Laws of 2003, roll-your-own tobacco.

(3) It is unlawful for any person (a) to affix a stamp to a package or other container of cigarettes of a tobacco product

manufacturer or brand family not included in the directory, or to pay or cause to be paid the tobacco products tax on any package or container; or (b) to sell, offer, or possess for sale in this state or import for sale in this state, any cigarettes of a tobacco product manufacturer or brand family not included in the directory. [2003 c 25 § 3.]

70.158.040 Nonresident, nonparticipating manufacturers—Agent for service of process. (1) Any nonresident or foreign nonparticipating manufacturer that has not registered to do business in the state as a foreign corporation or business entity shall, as a condition precedent to having its brand families included or retained in the directory, appoint and continually engage without interruption the services of an agent in this state to act as agent for the service of process on whom all process, and any action or proceeding against it concerning or arising out of the enforcement of this chapter and RCW 70.157.020(b)(1), may be served in any manner authorized by law. The service shall constitute legal and valid service of process on the nonparticipating manufacturer. The nonparticipating manufacturer shall provide the name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of the attorney general.

(2) The nonparticipating manufacturer shall provide notice to the attorney general thirty calendar days prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney general of the appointment of a new agent no less than five calendar days prior to the termination of an existing agent appointment. In the event an agent terminates an agency appointment, the nonparticipating manufacturer shall notify the attorney general of the termination within five calendar days and include proof to the satisfaction of the attorney general of the appointment of a new agent.

(3) Any nonparticipating manufacturer whose cigarettes are sold in this state, who has not appointed and engaged an agent as required in this section, shall be deemed to have appointed the secretary of state as the agent and may be proceeded against in courts of this state by service of process upon the secretary of state. However, the appointment of the secretary of state as agent shall not satisfy the condition precedent for having the brand families of the nonparticipating manufacturer included or retained in the directory. [2003 c 25 § 4.]

70.158.050 Reports, records—Confidentiality, disclosures, voluntary waivers—Escrow payments. (1) In addition to the reporting requirements under *RCW 70.157.010(j) and the rules adopted thereunder, not later than twenty-five calendar days after the end of each calendar month, and more frequently if directed by the director, each wholesaler and distributor shall submit information the director requires to facilitate compliance with this chapter, including, but not limited to, a list by brand family of the total number of cigarettes, or, in the case of roll-your-own, the equivalent stick count for which the wholesaler or distributor affixed stamps during the previous calendar month or otherwise paid the tax due for the cigarettes. Each wholesaler and distributor shall maintain and make available to the director,

all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general or the director for a period of five years.

(2) Information or records required to be furnished to the department, the board, or the attorney general are confidential and shall not be disclosed. However, the director and the board are authorized to disclose to the attorney general any information received under this chapter and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this chapter. The director, the board, and the attorney general may share with each other the information received under this chapter, and may share information with other federal, state, or local agencies, including without limitation the board, only for purposes of enforcement of this chapter, RCW 70.157.020, or corresponding laws of other states. If a tobacco product manufacturer that is required to establish a qualified escrow fund under RCW 70.157.020 disputes the attorney general's determination of what that manufacturer needs to place into escrow, and the attorney general determines that the dispute can likely be resolved by disclosing reports from the relevant distributors and wholesalers indicating the sales or purchases of the tobacco manufacturer's products, then the attorney general shall request voluntary waivers of confidentiality so that the reports may be disclosed to the tobacco product manufacturer to help resolve the dispute. If the waivers are provided, then the director and the attorney general are authorized to disclose the waived confidential information collected on the sales or purchases of cigarettes to the tobacco product manufacturer. However, before the attorney general or the director discloses the waived confidential information, the tobacco product manufacturer must provide to the attorney general all records relating to its sales or purchases of cigarettes in dispute. The information provided to a tobacco product manufacturer pursuant to this subsection (2) shall be limited to brands or products of that manufacturer only, may be used only for the limited purpose of determining the appropriate escrow deposit, and may not be disclosed by the tobacco product manufacturer.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof, from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with RCW 70.157.020(b)(1), of the amount of money in the fund, exclusive of interest, the amount and date of each deposit to the fund, and the amount and date of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to RCW 70.158.030, this section, and chapters 82.24 and 82.26 RCW, the director, the board, or the attorney general may require a wholesaler, distributor, or tobacco product manufacturer to submit any additional information including, but not limited to, samples of the packaging or labeling of each brand family, as is necessary to enable the attorney general to determine whether a tobacco product manufacturer is in compliance with this chapter. If the director, the board, or the attorney general makes a request for information pursuant to this subsection (4), the tobacco product manufacturer, distributor, or wholesaler shall comply promptly.

(5) A nonparticipating manufacturer that either: (a) Has not previously made escrow payments to the state of Washington pursuant to RCW 70.157.020; or (b) has not actually made any escrow payments for more than one year, shall make the required escrow deposits in quarterly installments during the first year in which the sales covered by the deposits are made or in the first year in which the payments are made. The director or the attorney general may require production of information sufficient to enable the attorney general to determine the adequacy of the amount of the installment deposit. [2003 c 25 § 5.]

*Reviser's note: For rules and reporting requirements adopted pursuant to RCW 70.157.010, see WAC 458-20-264.

70.158.060 Penalties—Application of consumer protection act. (1) In addition to or in lieu of any other civil or criminal remedy provided by law, upon a determination that a wholesaler has violated RCW 70.158.030(3) or any rule adopted pursuant to this chapter, the director or the board may revoke or suspend the license of the wholesaler in the manner provided by chapter 82.24 or 82.32 RCW. Each stamp affixed and each sale or offer to sell cigarettes in violation of RCW 70.158.030(3) shall constitute a separate violation. For each violation of this chapter, the director or the board may also impose a civil penalty in an amount not to exceed the greater of five hundred percent of the retail value of the cigarettes or five thousand dollars upon a determination of violation of RCW 70.158.030(3) or any rules adopted pursuant thereto. The penalty shall be imposed in the manner provided by chapter 82.24 RCW.

(2) The attorney general may seek an injunction in superior court to restrain a threatened or actual violation of RCW 70.158.030(3) or 70.158.050 (1) or (4) by a person and to compel the person to comply with these sections. In any action brought pursuant to this section, the state shall be entitled to recover the costs of investigation, costs of the action, and reasonable attorney fees.

(3) It is unlawful for a person to: (a) Sell or distribute cigarettes or (b) acquire, hold, own, possess, transport, import, or cause to be imported cigarettes, that the person knows or should know are intended for distribution or sale in the state in violation of RCW 70.158.030(3). A violation of this subsection (3) is a gross misdemeanor.

(4) Any violation of this chapter is not reasonable in relation to the development and preservation of business and is an unfair and deceptive act or practice and an unfair method of competition in the conduct of trade or commerce in violation of RCW 19.86.020. Standing to bring an action to enforce RCW 19.86.020 for violation of this chapter shall lie solely with the attorney general. Remedies provided by chapter 19.86 RCW are cumulative and not exclusive. [2003 c 25 § 6.]

70.158.070 Attorney general's directory decision to be final agency action—Due dates for reports, certifications, directory—Rules—Costs—Penalties. (1) A determination of the attorney general not to include or to remove from the directory a brand family or tobacco product manufacturer shall be final agency action for purposes of review under RCW 34.05.570(4).

(2004 Ed.)

(2) No person shall be issued a license or granted a renewal of a license to act as a wholesaler unless the person has certified in writing under penalty of perjury, that the person will comply fully with this section.

(3) The first reports of wholesalers and distributors are due August 25, 2003. The certifications by a tobacco product manufacturer described in RCW 70.158.030(1) are due September 15, 2003. The directory described in RCW 70.158.030(2) shall be published or made available by November 1, 2003.

(4) The attorney general, the board, and the director may adopt rules as necessary to effect the administration of this chapter.

(5) In any action brought by the state to enforce this chapter, the state is entitled to recover the costs of investigation, expert witness fees, costs of the action, and reasonable attorney fees.

(6) If a court determines that a person has violated this chapter, the court shall order any profits, gain, gross receipts, or other benefit from the violation to be disgorged and paid to the general fund. Unless otherwise expressly provided, the remedies or penalties provided by this chapter are cumulative to each other and to the remedies or penalties available under all other laws of this state. [2003 c 25 § 7.]

70.158.900 Conflict of law—Severability—2003 c 25.

If a court of competent jurisdiction finds that the provisions of chapter 25, Laws of 2003 and chapter 70.157 RCW conflict and cannot be harmonized, then the provisions of chapter 70.157 RCW shall control. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of chapter 25, Laws of 2003 causes chapter 70.157 RCW no longer to constitute a qualifying or model statute, as those terms are defined in the master settlement agreement, then that portion of chapter 25, Laws of 2003 shall not be valid. If any section, subsection, subdivision, paragraph, sentence, clause, or phrase of chapter 25, Laws of 2003 is for any reason held to be invalid, unlawful, or unconstitutional, the decision shall not affect the validity of the remaining portions of chapter 25, Laws of 2003 or any part thereof. [2003 c 25 § 8.]

70.158.901 Effective date—2003 c 25. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003. [2003 c 25 § 13.]

Chapter 70.160 RCW

WASHINGTON CLEAN INDOOR AIR ACT

Sections

| | |
|------------|--|
| 70.160.010 | Legislative intent. |
| 70.160.020 | Definitions. |
| 70.160.030 | Smoking in public places except designated smoking areas prohibited. |
| 70.160.040 | Designation of smoking areas in public places—Exceptions—Restaurant smoking areas—Entire facility or area may be designated as nonsmoking. |
| 70.160.050 | Owners, lessees to post signs prohibiting or permitting smoking—Boundaries to be clearly designated. |
| 70.160.060 | Intent of chapter as applied to certain private workplaces. |
| 70.160.070 | Intentional violation of chapter—Removing, defacing, or destroying required sign—Fine—Notice of infraction— |

Exceptions—Violations of RCW 70.160.040 or 70.160.050—Subsequent violations—Fine—Enforcement by fire officials.

70.160.080 Local regulations authorized.

70.160.100 Penalty assessed under this chapter paid to jurisdiction bringing action.

70.160.900 Short title—1985 c 236.

Smoking in municipal transit vehicle, unlawful bus conduct: RCW 9.91.025.

70.160.010 Legislative intent. The legislature recognizes the increasing evidence that tobacco smoke in closely confined places may create a danger to the health of some citizens of this state. In order to protect the health and welfare of those citizens, it is necessary to prohibit smoking in public places except in areas designated as smoking areas. [1985 c 236 § 1.]

70.160.020 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly indicates otherwise.

(1) "Smoke" or "smoking" means the carrying or smoking of any kind of lighted pipe, cigar, cigarette, or any other lighted smoking equipment.

(2) "Public place" means that portion of any building or vehicle used by and open to the public, regardless of whether the building or vehicle is owned in whole or in part by private persons or entities, the state of Washington, or other public entity, and regardless of whether a fee is charged for admission.

Public places include, but are not limited to: Elevators, public conveyances or transportation facilities, museums, concert halls, theaters, auditoriums, exhibition halls, indoor sports arenas, hospitals, nursing homes, health care facilities or clinics, enclosed shopping centers, retail stores, retail service establishments, financial institutions, educational facilities, ticket areas, public hearing facilities, state legislative chambers and immediately adjacent hallways, public restrooms, libraries, restaurants, waiting areas, lobbies, and reception areas. A public place does not include a private residence. This chapter is not intended to restrict smoking in private facilities which are occasionally open to the public except upon the occasions when the facility is open to the public.

(3) "Restaurant" means any building, structure, or area used, maintained, or advertised as, or held out to the public to be, an enclosure where meals are made available to be consumed on the premises, for consideration of payment. [1985 c 236 § 2.]

70.160.030 Smoking in public places except designated smoking areas prohibited. No person may smoke in a public place except in designated smoking areas. [1985 c 236 § 3.]

70.160.040 Designation of smoking areas in public places—Exceptions—Restaurant smoking areas—Entire facility or area may be designated as nonsmoking. (1) A smoking area may be designated in a public place by the owner or, in the case of a leased or rented space, by the lessee or other person in charge except in:

(a) Elevators; buses, except for private hire; streetcars; taxis, except those clearly and visibly designated by the

owner to permit smoking; public areas of retail stores and lobbies of financial institutions; office reception areas and waiting rooms of any building owned or leased by the state of Washington or by any city, county, or other municipality in the state of Washington; museums; public meetings or hearings; classrooms and lecture halls of schools, colleges, and universities; and the seating areas and aisle ways which are contiguous to seating areas of concert halls, theaters, auditoriums, exhibition halls, and indoor sports arenas; and

(b) Hallways of health care facilities, with the exception of nursing homes, and lobbies of concert halls, theaters, auditoriums, exhibition halls, and indoor sports arenas, if the area is not physically separated. Owners or other persons in charge are not required to incur any expense to make structural or other physical modifications in providing these areas.

Except as provided in other provisions of this chapter, no public place, other than a bar, tavern, bowling alley, tobacco shop, or restaurant, may be designated as a smoking area in its entirety. If a bar, tobacco shop, or restaurant is designated as a smoking area in its entirety, this designation shall be posted conspicuously on all entrances normally used by the public.

(2) Where smoking areas are designated, existing physical barriers and ventilation systems shall be used to minimize the toxic effect of smoke in adjacent nonsmoking areas.

(3) Managers of restaurants who choose to provide smoking areas shall designate an adequate amount of seating to meet the demands of restaurant patrons who wish to smoke. Owners of restaurants are not required to incur any expense to make structural or other physical modifications in providing these areas. Restaurant patrons shall be informed that separate smoking and nonsmoking sections are available.

(4) Except as otherwise provided in this chapter, a facility or area may be designated in its entirety as a nonsmoking area by the owner or other person in charge. [1985 c 236 § 4.]

70.160.050 Owners, lessees to post signs prohibiting or permitting smoking—Boundaries to be clearly designated. Owners, or in the case of a leased or rented space the lessee or other person in charge, of a place regulated under this chapter shall make every reasonable effort to prohibit smoking in public places by posting signs prohibiting or permitting smoking as appropriate under this chapter. Signs shall be posted conspicuously at each building entrance. In the case of retail stores and retail service establishments, signs shall be posted conspicuously at each entrance and in prominent locations throughout the place. The boundary between a nonsmoking area and a smoking permitted area shall be clearly designated so that persons may differentiate between the two areas. [1985 c 236 § 5.]

70.160.060 Intent of chapter as applied to certain private workplaces. This chapter is not intended to regulate smoking in a private enclosed workplace, within a public place, even though such workplace may be visited by nonsmokers, excepting places in which smoking is prohibited by the chief of the Washington state patrol, through the director of fire protection, or by other law, ordinance, or regulation. [1995 c 369 § 60; 1986 c 266 § 121; 1985 c 236 § 6.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

70.160.070 Intentional violation of chapter—Removing, defacing, or destroying required sign—Fine—Notice of infraction—Exceptions—Violations of RCW 70.160.040 or 70.160.050—Subsequent violations—Fine—Enforcement by fire officials. (1) Any person intentionally violating this chapter by smoking in a public place not designated as a smoking area or any person removing, defacing, or destroying a sign required by this chapter is subject to a civil fine of up to one hundred dollars. Local law enforcement agencies shall enforce this section by issuing a notice of infraction to be assessed in the same manner as traffic infractions. The provisions contained in chapter 46.63 RCW for the disposition of traffic infractions apply to the disposition of infractions for violation of this subsection except as follows:

(a) The provisions in chapter 46.63 RCW relating to the provision of records to the department of licensing in accordance with RCW 46.20.270 are not applicable to this chapter; and

(b) The provisions in chapter 46.63 RCW relating to the imposition of sanctions against a person's driver's license or vehicle license are not applicable to this chapter.

The form for the notice of infraction for a violation of this subsection shall be prescribed by rule of the supreme court.

(2) When violations of RCW 70.160.040 or 70.160.050 occur, a warning shall first be given to the owner or other person in charge. Any subsequent violation is subject to a civil fine of up to one hundred dollars. Each day upon which a violation occurs or is permitted to continue constitutes a separate violation.

(3) Local fire departments or fire districts shall enforce RCW 70.160.040 or 70.160.050 regarding the duties of owners or persons in control of public places, and local health departments shall enforce RCW 70.160.040 or 70.160.050 regarding the duties of owners of restaurants by either of the following actions:

(a) Serving notice requiring the correction of any violation; or

(b) Calling upon the city or town attorney or county prosecutor to maintain an action for an injunction to enforce RCW 70.160.040 and 70.160.050, to correct a violation, and to assess and recover a civil penalty for the violation. [1985 c 236 § 7.]

70.160.080 Local regulations authorized. Local fire departments or fire districts and local health departments may adopt regulations as required to implement this chapter. [1985 c 236 § 9.]

70.160.100 Penalty assessed under this chapter paid to jurisdiction bringing action. Any penalty assessed and recovered in an action brought under this chapter shall be paid to the city or county bringing the action. [1985 c 236 § 8.]

(2004 Ed.)

70.160.900 Short title—1985 c 236. This chapter shall be known as the Washington clean indoor air act. [1985 c 236 § 10.]

Chapter 70.162 RCW

INDOOR AIR QUALITY IN PUBLIC BUILDINGS

Sections

| | |
|------------|---|
| 70.162.005 | Finding—Intent. |
| 70.162.010 | Definitions. |
| 70.162.020 | Department duties. |
| 70.162.030 | State building code council duties. |
| 70.162.040 | Public agencies—Directive. |
| 70.162.050 | Superintendent of public instruction—Model program. |
| 70.162.900 | Severability—1989 c 315. |

70.162.005 Finding—Intent. The legislature finds that many Washington residents spend a significant amount of their time working indoors and that exposure to indoor air pollutants may occur in public buildings, schools, work places, and other indoor environments. Scientific studies indicate that pollutants common in the indoor air may include radon, asbestos, volatile organic chemicals including formaldehyde and benzene, combustion byproducts including carbon monoxide, nitrogen oxides, and carbon dioxide, metals and gases including lead, chlorine, and ozone, respirable particles, tobacco smoke, biological contaminants, micro-organisms, and other contaminants. In some circumstances, exposure to these substances may cause adverse health effects, including respiratory illnesses, multiple chemical sensitivities, skin and eye irritations, headaches, and other related symptoms. There is inadequate information about indoor air quality within the state of Washington, including the sources and nature of indoor air pollution.

The intent of the legislature is to develop a control strategy that will improve indoor air quality, provide for the evaluation of indoor air quality in public buildings, and encourage voluntary measures to improve indoor air quality. [1989 c 315 § 1.]

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

(1) "Department" means the department of labor and industries.

(2) "Public agency" means a state office, commission, committee, bureau, or department.

(3) "Industry standard" means the 62-1981R standard established by the American society of heating, refrigerating, and air conditioning engineers as codified in M-1602 of the building officials and code administrators international manual as of January 1, 1990. [1989 c 315 § 2.]

70.162.020 Department duties. The department shall, in coordination with other appropriate state agencies:

(1) Recommend a policy for evaluation and prioritization of state-owned or leased buildings with respect to indoor air quality;

(2) Recommend stronger workplace regulation of indoor air quality under the Washington industrial safety and health act;

(3) Review indoor air quality programs in public schools administered by the superintendent of public instruction and the department of social and health services;

(4) Provide educational and informational pamphlets or brochures to state agencies on indoor air quality standards; and

(5) Recommend to the legislature measures to implement the recommendations, if any, for the improvement of indoor air quality in public buildings within a reasonable period of time. [1989 c 315 § 3.]

70.162.030 State building code council duties. The state building code council is directed to:

(1) Review the state building code to determine the adequacy of current mechanical ventilation and filtration standards prescribed by the state compared to the industry standard; and

(2) Make appropriate changes in the building code to bring the state prescribed standards into conformity with the industry standard. [1989 c 315 § 4.]

70.162.040 Public agencies—Directive. Public agencies are encouraged to:

(1) Evaluate the adequacy of mechanical ventilation and filtration systems in light of the recommendations of the American society of heating, refrigerating, and air conditioning engineers and the building officials and code administrators international; and

(2) Maintain and operate any mechanical ventilation and filtration systems in a manner that allows for maximum operating efficiency consistent with the recommendations of the American society of heating, refrigerating, and air conditioning engineers and the building officials and code administrators international. [1989 c 315 § 5.]

70.162.050 Superintendent of public instruction—Model program. (1) The superintendent of public instruction may implement a model indoor air quality program in a school district selected by the superintendent.

(2) The superintendent shall ensure that the model program includes:

(a) An initial evaluation by an indoor air quality expert of the current indoor air quality in the school district. The evaluation shall be completed within ninety days after the beginning of the school year;

(b) Establishment of procedures to ensure the maintenance and operation of any ventilation and filtration system used. These procedures shall be implemented within thirty days of the initial evaluation;

(c) A reevaluation by an indoor air quality expert, to be conducted approximately two hundred seventy days after the initial evaluation; and

(d) The implementation of other procedures or plans that the superintendent deems necessary to implement the model program. [1998 c 245 § 116; 1989 c 315 § 6.]

70.162.900 Severability—1989 c 315. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1989 c 315 § 7.]

Chapter 70.164 RCW

LOW-INCOME RESIDENTIAL WEATHERIZATION PROGRAM

Sections

| | |
|------------|--|
| 70.164.010 | Legislative findings. |
| 70.164.020 | Definitions. |
| 70.164.030 | Low-income weatherization assistance account. |
| 70.164.040 | Proposals for low-income weatherization programs—Matching funds. |
| 70.164.050 | Program compliance with laws and rules—Energy assessment required. |
| 70.164.060 | Weatherization of leased or rented residences—Limitations. |
| 70.164.070 | Payments to low-income weatherization assistance account. |
| 70.164.900 | Severability—1987 c 36. |

70.164.010 Legislative findings. The legislature finds and declares that weatherization of the residences of low-income households will help conserve energy resources in this state and can reduce the need to obtain energy from more costly conventional energy resources. The legislature also finds that rising energy costs have made it difficult for low-income citizens of the state to afford adequate fuel for residential space heat. Weatherization of residences will lower energy consumption, making space heat more affordable for persons in low-income households. It will also reduce the uncollectible accounts of fuel suppliers resulting from low-income customers not being able to pay fuel bills.

The program implementing the policy of this chapter is necessary to support the poor and infirm and also to benefit the health, safety, and general welfare of all citizens of the state. [1987 c 36 § 1.]

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

(1) "Department" means the department of community, trade, and economic development.

(2) "Energy assessment" means an analysis of a dwelling unit to determine the need for cost-effective energy conservation measures as determined by the department.

(3) "Household" means an individual or group of individuals living in a dwelling unit as defined by the department.

(4) "Low income" means household income that is at or below one hundred twenty-five percent of the federally established poverty level.

(5) "Nonutility sponsor" means any sponsor other than a public service company, municipality, public utility district, mutual or cooperative, furnishing gas or electricity used to heat low-income residences.

(6) "Residence" means a dwelling unit as defined by the department.

(7) "Sponsor" means any entity that submits a proposal under RCW 70.164.040, including but not limited to any local community action agency, community service agency, or any other participating agency or any public service company, municipality, public utility district, mutual or cooperative, or any combination of such entities that jointly submits a proposal.

(8) "Sponsor match" means the share, if any, of the cost of weatherization to be paid by the sponsor.

(9) "Weatherization" means materials or measures, and their installation, that are used to improve the thermal efficiency of a residence.

(10) "Weatherizing agency" means any approved department grantee or any public service company, municipality, public utility district, mutual or cooperative, or other entity that bears the responsibility for ensuring the performance of weatherization of residences under this chapter and has been approved by the department. [1995 c 399 § 199; 1987 c 36 § 2.]

70.164.030 Low-income weatherization assistance account. The low-income weatherization assistance account is created in the state treasury. All moneys from the money distributed to the state pursuant to *Exxon v. United States*, 561 F.Supp. 816 (1983), affirmed 773 F.2d 1240 (1985), or any other oil overcharge settlements or judgments distributed by the federal government, that are allocated to the low-income weatherization assistance account shall be deposited in the account. The department may accept such gifts, grants, and endowments from public or private sources as may be made from time to time, in trust or otherwise, and shall deposit such funds in the account. Any moneys received from sponsor match payments shall be deposited in the account. The legislature may also appropriate moneys to the account. Moneys in the account shall be spent pursuant to appropriation and only for the purposes and in the manner provided in RCW 70.164.040. Any moneys appropriated that are not spent by the department shall return to the account. [1991 sp.s. c 13 § 62; 1987 c 36 § 3.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

70.164.040 Proposals for low-income weatherization programs—Matching funds. (1) The department shall solicit proposals for low-income weatherization programs from potential sponsors. A proposal shall state the amount of the sponsor match, the amount requested from the low-income weatherization assistance account, the name of the weatherizing agency, and any other information required by the department.

(2)(a) A sponsor may use its own moneys, including corporate or ratepayer moneys, or moneys provided by landlords, charitable groups, government programs, the Bonneville Power Administration, or other sources to pay the sponsor match.

(b) Moneys provided by a sponsor pursuant to requirements in this section shall be in addition to and shall not supplant any funding for low-income weatherization that would otherwise have been provided by the sponsor or any other entity enumerated in (a) of this subsection.

(c) No proposal may require any contribution as a condition of weatherization from any household whose residence is weatherized under the proposal.

(d) Proposals shall provide that full levels of all cost-effective structurally feasible measures, as determined by the department, shall be installed when a low-income residence is weatherized.

(2004 Ed.)

(3) The department may in its discretion accept, accept in part, or reject proposals submitted. The department shall allocate funds appropriated from the low-income weatherization assistance account among proposals accepted or accepted in part so as to achieve the greatest possible expected monetary and energy savings by low-income households and other energy consumers and shall, to the extent feasible, ensure a balance of participation in proportion to population among low-income households for: (a) Geographic regions in the state; (b) types of fuel used for heating; (c) owner-occupied and rental residences; and (d) single-family and multifamily dwellings. The department may allocate funds to a nonutility sponsor without requiring a sponsor match if the department determines that such an allocation is necessary to provide the greatest benefits to low-income residents of the state.

(4)(a) A sponsor may elect to: (i) Pay a sponsor match as a lump sum at the time of weatherization, or (ii) make yearly payments to the low-income weatherization assistance account over a period not to exceed ten years. If a sponsor elects to make yearly payments, the value of the payments shall not be less than the value of the lump sum payment that would have been made under (i) of this subsection.

(b) The department may permit a sponsor to meet its match requirement in whole or in part through providing labor, materials, or other in-kind expenditures.

(5) The department shall adopt rules to carry out this section. [1987 c 36 § 4.]

70.164.050 Program compliance with laws and rules—Energy assessment required. (1) The department is responsible for ensuring that sponsors and weatherizing agencies comply with the state laws, the department's rules, and the sponsor's proposal in carrying out proposals.

(2) Before a residence is weatherized, the department shall require that an energy assessment be conducted. [1987 c 36 § 5.]

70.164.060 Weatherization of leased or rented residences—Limitations. Before a leased or rented residence is weatherized, written permission shall be obtained from the owner of the residence for the weatherization. The department shall adopt rules to ensure that: (1) The benefits of weatherization assistance in connection with a leased or rented residence accrue primarily to low-income tenants; (2) as a result of weatherization provided under this chapter, the rent on the residence is not increased and the tenant is not evicted; and (3) as a result of weatherization provided under this chapter, no undue or excessive enhancement occurs in the value of the residence. This section is in the public interest and any violation by a landlord of the rules adopted under this section shall be an act in trade or commerce violating chapter 19.86 RCW, the consumer protection act. [1987 c 36 § 6.]

70.164.070 Payments to low-income weatherization assistance account. Payments to the low-income weatherization assistance account shall be treated, for purposes of state law, as payments for energy conservation and shall be eligible for any tax credits or deductions, equity returns, or

other benefits for which conservation investments are eligible. [1987 c 36 § 7.]

70.164.900 Severability—1987 c 36. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 36 § 9.]

Chapter 70.168 RCW

STATEWIDE TRAUMA CARE SYSTEM

Sections

| | |
|------------|--|
| 70.168.010 | Legislative finding. |
| 70.168.015 | Definitions. |
| 70.168.020 | Steering committee—Composition—Appointment. |
| 70.168.030 | Analysis of state's trauma system—Plan. |
| 70.168.040 | Emergency medical services and trauma care system trust account. |
| 70.168.050 | Emergency medical services and trauma care system—Department to establish—Rule making—Gifts. |
| 70.168.060 | Department duties—Timelines. |
| 70.168.070 | Provision of trauma care service—Designation. |
| 70.168.080 | Prehospital trauma care service—Verification—Compliance—Variance. |
| 70.168.090 | Statewide data registry—Quality assurance program—Confidentiality. |
| 70.168.100 | Regional emergency medical services and trauma care councils. |
| 70.168.110 | Planning and service regions. |
| 70.168.120 | Local and regional emergency medical services and trauma care councils—Power and duties. |
| 70.168.130 | Disbursement of funds to regional emergency medical services and trauma care councils—Grants to nonprofit agencies—Purposes. |
| 70.168.135 | Grant program for designated trauma care services—Rules. |
| 70.168.140 | Prehospital provider liability. |
| 70.168.900 | Short title. |
| 70.168.901 | Severability—1990 c 269. |

70.168.010 Legislative finding. The legislature finds and declares that:

(1) Trauma is a severe health problem in the state of Washington and a major cause of death;

(2) Presently, trauma care is very limited in many parts of the state, and health care in rural areas is in transition with the danger that some communities will be without emergency medical care;

(3) It is in the best interest of the citizens of Washington state to establish an efficient and well-coordinated statewide emergency medical services and trauma care system to reduce costs and incidence of inappropriate and inadequate trauma care and emergency medical service and minimize the human suffering and costs associated with preventable mortality and morbidity;

(4) The goals and objectives of an emergency medical services and trauma care system are to: (a) Pursue trauma prevention activities to decrease the incidence of trauma; (b) provide optimal care for the trauma victim; (c) prevent unnecessary death and disability from trauma and emergency illness; and (d) contain costs of trauma care and trauma system implementation; and

(5) In other parts of the United States where trauma care systems have failed and trauma care centers have closed, there is a direct relationship between such failures and closures and a lack of commitment to fair and equitable reim-

bursement for trauma care participating providers and system overhead costs. [1990 c 269 § 1; 1988 c 183 § 1.]

70.168.015 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Communications system" means a radio and land-line network which provides rapid public access, coordinated central dispatching of services, and coordination of personnel, equipment, and facilities in an emergency medical services and trauma care system.

(2) "Emergency medical service" means medical treatment and care that may be rendered at the scene of any medical emergency or while transporting any patient in an ambulance to an appropriate medical facility, including ambulance transportation between medical facilities.

(3) "Emergency medical services medical program director" means a person who is an approved program director as defined by RCW 18.71.205(4).

(4) "Department" means the department of health.

(5) "Designation" means a formal determination by the department that hospitals or health care facilities are capable of providing designated trauma care services as authorized in RCW 70.168.070.

(6) "Designated trauma care service" means a level I, II, III, IV, or V trauma care service or level I, II, or III pediatric trauma care service or level I, I-pediatric, II, or III trauma-related rehabilitative service.

(7) "Emergency medical services and trauma care system plan" means a statewide plan that identifies statewide emergency medical services and trauma care objectives and priorities and identifies equipment, facility, personnel, training, and other needs required to create and maintain a statewide emergency medical services and trauma care system. The plan also includes a plan of implementation that identifies the state, regional, and local activities that will create, operate, maintain, and enhance the system. The plan is formulated by incorporating the regional emergency medical services and trauma care plans required under this chapter. The plan shall be updated every two years and shall be made available to the state board of health in sufficient time to be considered in preparation of the biennial state health report required in RCW 43.20.050.

(8) "Emergency medical services and trauma care planning and service regions" means geographic areas established by the department under this chapter.

(9) "Facility patient care protocols" means the written procedures adopted by the medical staff that direct the care of the patient. These procedures shall be based upon the assessment of the patients' medical needs. The procedures shall follow minimum statewide standards for trauma care services.

(10) "Hospital" means a facility licensed under chapter 70.41 RCW, or comparable health care facility operated by the federal government or located and licensed in another state.

(11) "Level I pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall provide definitive, comprehensive, specialized care for pediatric trauma patients and shall also provide ongoing research and health care professional education in pediatric trauma care.

(12) "Level II pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall provide initial stabilization and evaluation of pediatric trauma patients and provide comprehensive general medicine and surgical care to pediatric patients who can be maintained in a stable or improving condition without the specialized care available in the level I hospital. Complex surgeries and research and health care professional education in pediatric trauma care activities are not required.

(13) "Level III pediatric trauma care services" means pediatric trauma care services as established in RCW 70.168.060. Hospitals providing level III services shall provide initial evaluation and stabilization of patients. The range of pediatric trauma care services provided in level III hospitals are not as comprehensive as level I and II hospitals.

(14) "Level I rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I rehabilitative services provide rehabilitative treatment to patients with traumatic brain injuries, spinal cord injuries, complicated amputations, and other diagnoses resulting in functional impairment, with moderate to severe impairment or complexity. These facilities serve as referral facilities for facilities authorized to provide level II and III rehabilitative services.

(15) "Level I-pediatric rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level I-pediatric rehabilitative services provide the same services as facilities authorized to provide level I rehabilitative services except these services are exclusively for children under the age of fifteen years.

(16) "Level II rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level II rehabilitative services treat individuals with musculoskeletal trauma, peripheral nerve lesions, lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area, with moderate to severe impairment or complexity.

(17) "Level III rehabilitative services" means rehabilitative services as established in RCW 70.168.060. Facilities providing level III rehabilitative services provide treatment to individuals with musculoskeletal injuries, peripheral nerve injuries, uncomplicated lower extremity amputations, and other diagnoses resulting in functional impairment in more than one functional area but with minimal to moderate impairment or complexity.

(18) "Level I trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level I services shall have specialized trauma care teams and provide ongoing research and health care professional education in trauma care.

(19) "Level II trauma care services" means trauma care services as established in RCW 70.168.060. Hospitals providing level II services shall be similar to those provided by level I hospitals, although complex surgeries and research and health care professional education activities are not required to be provided.

(20) "Level III trauma care services" means trauma care services as established in RCW 70.168.060. The range of trauma care services provided by level III hospitals are not as comprehensive as level I and II hospitals.

(21) "Level IV trauma care services" means trauma care services as established in RCW 70.168.060.

(22) "Level V trauma care services" means trauma care services as established in RCW 70.168.060. Facilities providing level V services shall provide stabilization and transfer of all patients with potentially life-threatening injuries.

(23) "Patient care procedures" means written operating guidelines adopted by the regional emergency medical services and trauma care council, in consultation with local emergency medical services and trauma care councils, emergency communication centers, and the emergency medical services medical program director, in accordance with minimum statewide standards. The patient care procedures shall identify the level of medical care personnel to be dispatched to an emergency scene, procedures for triage of patients, the level of trauma care facility to first receive the patient, and the name and location of other trauma care facilities to receive the patient should an interfacility transfer be necessary. Procedures on interfacility transfer of patients shall be consistent with the transfer procedures required in chapter 70.170 RCW.

(24) "Pediatric trauma patient" means trauma patients known or estimated to be less than fifteen years of age.

(25) "Prehospital" means emergency medical care or transportation rendered to patients prior to hospital admission or during interfacility transfer by licensed ambulance or aid service under chapter 18.73 RCW, by personnel certified to provide emergency medical care under chapters 18.71 and 18.73 RCW, or by facilities providing level V trauma care services as provided for in this chapter.

(26) "Prehospital patient care protocols" means the written procedures adopted by the emergency medical services medical program director that direct the out-of-hospital emergency care of the emergency patient which includes the trauma patient. These procedures shall be based upon the assessment of the patients' medical needs and the treatment to be provided for serious conditions. The procedures shall meet or exceed statewide minimum standards for trauma and other prehospital care services.

(27) "Rehabilitative services" means a formal program of multidisciplinary, coordinated, and integrated services for evaluation, treatment, education, and training to help individuals with disabling impairments achieve and maintain optimal functional independence in physical, psychosocial, social, vocational, and avocational realms. Rehabilitation is indicated for the trauma patient who has sustained neurologic or musculoskeletal injury and who needs physical or cognitive intervention to return to home, work, or society.

(28) "Secretary" means the secretary of the department of health.

(29) "Trauma" means a major single or multisystem injury requiring immediate medical or surgical intervention or treatment to prevent death or permanent disability.

(30) "Trauma care system" means an organized approach to providing care to trauma patients that provides personnel, facilities, and equipment for effective and coordinated trauma care. The trauma care system shall: Identify facilities with specific capabilities to provide care, triage trauma victims at the scene, and require that all trauma victims be sent to an appropriate trauma facility. The trauma care system

includes prevention, prehospital care, hospital care, and rehabilitation.

(31) "Triage" means the sorting of patients in terms of disposition, destination, or priority. Triage of prehospital trauma victims requires identifying injury severity so that the appropriate care level can be readily assessed according to patient care guidelines.

(32) "Verification" means the identification of prehospital providers who are capable of providing verified trauma care services and shall be a part of the licensure process required in chapter 18.73 RCW.

(33) "Verified trauma care service" means prehospital service as provided for in RCW 70.168.080, and identified in the regional emergency medical services and trauma care plan as required by RCW 70.168.100. [1990 c 269 § 4.]

70.168.020 Steering committee—Composition—

Appointment. (1) There is hereby created an emergency medical services and trauma care steering committee composed of representatives of individuals knowledgeable in emergency medical services and trauma care, including emergency medical providers such as physicians, nurses, hospital personnel, emergency medical technicians, paramedics, ambulance services, a member of the emergency medical services licensing and certification advisory committee, local government officials, state officials, consumers, and persons affiliated professionally with health science schools. The governor shall appoint members of the steering committee. Members shall be appointed for a period of three years. The department shall provide administrative support to the committee. All appointive members of the committee, in the performance of their duties, may be entitled to receive travel expenses as provided in RCW 43.03.050 and 43.03.060. The governor may remove members from the committee who have three unexcused absences from committee meetings. The governor shall fill any vacancies of the committee in a timely manner. The terms of those members representing the same field shall not expire at the same time.

The committee shall elect a chair and a vice-chair whose terms of office shall be for one year each. The chair shall be ineligible for reelection after serving four consecutive terms.

The committee shall meet on call by the governor, the secretary, or the chair.

(2) The emergency medical services and trauma care steering committee shall:

(a) Advise the department regarding emergency medical services and trauma care needs throughout the state.

(b) Review the regional emergency medical services and trauma care plans and recommend changes to the department before the department adopts the plans.

(c) Review proposed departmental rules for emergency medical services and trauma care.

(d) Recommend modifications in rules regarding emergency medical services and trauma care. [2000 c 93 § 20; 1990 c 269 § 5; 1988 c 183 § 2.]

70.168.030 Analysis of state's trauma system—Plan.

(1) Upon the recommendation of the steering committee, the director of the office of financial management shall contract

with an independent party for an analysis of the state's trauma system.

(2) The analysis shall contain at a minimum, the following:

(a) The identification of components of a functional statewide trauma care system, including standards; and

(b) An assessment of the current trauma care program compared with the functional statewide model identified in subsection (a) of this section, including an analysis of deficiencies and reasons for the deficiencies.

(3) The analysis shall provide a design for a statewide trauma care system based on the findings of the committee under subsection (2) of this section, with a plan for phased-in implementation. The plan shall include, at a minimum, the following:

(a) Responsibility for implementation;

(b) Administrative authority at the state, regional, and local levels;

(c) Facility, equipment, and personnel standards;

(d) Triage and care criteria;

(e) Data collection and use;

(f) Cost containment strategies;

(g) System evaluation; and

(h) Projected costs. [1998 c 245 § 117; 1988 c 183 § 3.]

70.168.040 Emergency medical services and trauma care system trust account.

The emergency medical services and trauma care system trust account is hereby created in the state treasury. Moneys shall be transferred to the emergency medical services and trauma care system trust account from the public safety education account or other sources as appropriated, and as collected under RCW *46.63.110(6) and 46.12.042. Disbursements shall be made by the department subject to legislative appropriation. Expenditures may be made only for the purposes of the state trauma care system under this chapter, including emergency medical services, trauma care services, rehabilitative services, and the planning and development of related services under this chapter and for reimbursement by the department of social and health services for trauma care services provided by designated trauma centers. During the 2001-2003 fiscal biennium, the legislature may transfer from the emergency medical services and trauma care system trust account to the state general fund such amounts as reflect the excess fund balance of the account. [2002 c 371 § 922; 1997 c 331 § 2; 1990 c 269 § 17; 1988 c 183 § 4.]

*Reviser's note: RCW 46.63.110 was amended by 2002 c 279 § 15, changing subsection (6) to subsection (7).

Severability—Effective date—2002 c 371: See notes following RCW 9.46.100.

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

70.168.050 Emergency medical services and trauma care system—Department to establish—Rule making—

Gifts. (1) The department, in consultation with, and having solicited the advice of, the emergency medical services and trauma care steering committee, shall establish the Washington state emergency medical services and trauma care system.

(2) The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall

be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for facilities and other participants. The department shall assure an opportunity for consultation, review, and comment by the public and providers of emergency medical services and trauma care before adoption of rules. When developing rules to implement this chapter the department shall consider the report of the Washington state trauma project established under chapter 183, Laws of 1988. Nothing in this chapter requires the department to follow any specific recommendation in that report except as it may also be included in this chapter.

(3) The department may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including any activities related to the design, maintenance, or enhancements of the emergency medical services and trauma care system in the state. The department shall make available upon request to the appropriate legislative committees information concerning the source, amount, and use of such gifts or payments. [1990 c 269 § 3.]

70.168.060 Department duties—Timelines. The department, in consultation with and having solicited the advice of the emergency medical services and trauma care steering committee, shall:

(1) Establish the following on a statewide basis:

(a) By September 1990, minimum standards for facility, equipment, and personnel for level I, II, III, IV, and V trauma care services;

(b) By September 1990, minimum standards for facility, equipment, and personnel for level I, I-pediatric, II, and III trauma-related rehabilitative services;

(c) By September 1990, minimum standards for facility, equipment, and personnel for level I, II, and III pediatric trauma care services;

(d) By September 1990, minimum standards required for verified prehospital trauma care services, including equipment and personnel;

(e) Personnel training requirements and programs for providers of trauma care. The department shall design programs which are accessible to rural providers including on-site training;

(f) Statewide emergency medical services and trauma care system objectives and priorities;

(g) Minimum standards for the development of facility patient care protocols and prehospital patient care protocols and patient care procedures;

(h) By July 1991, minimum standards for an effective emergency medical communication system;

(i) Minimum standards for an effective emergency medical services transportation system; and

(j) By July 1991, establish a program for emergency medical services and trauma care research and development;

(2) Establish statewide standards, personnel training requirements and programs, system objectives and priorities, protocols and guidelines as required in subsection (1) of this section, by utilizing those standards adopted in the report of the Washington trauma advisory committee as authorized by chapter 183, Laws of 1988. In establishing standards for level

IV or V trauma care services the department may adopt similar standards adopted for services provided in rural health care facilities authorized in chapter 70.175 RCW. The department may modify standards, personnel training requirements and programs, system objectives and priorities, and guidelines in rule if the department determines that such modifications are necessary to meet federal and other state requirements or are essential to allow the department and others to establish the system or should it determine that public health considerations or efficiencies in the delivery of emergency medical services and trauma care warrant such modifications;

(3) Designate emergency medical services and trauma care planning and service regions as provided for in this chapter;

(4) By July 1, 1992, establish the minimum and maximum number of hospitals and health care facilities in the state and within each emergency medical services and trauma care planning and service region that may provide designated trauma care services based upon approved regional emergency medical services and trauma care plans;

(5) By July 1, 1991, establish the minimum and maximum number of prehospital providers in the state and within each emergency medical services and trauma care planning and service region that may provide verified trauma care services based upon approved regional emergency medical services and trauma care plans;

(6) By July 1993, begin the designation of hospitals and health care facilities to provide designated trauma care services in accordance with needs identified in the statewide emergency medical services and trauma care plan;

(7) By July 1990, adopt a format for submission of the regional plans to the department;

(8) By July 1991, begin the review and approval of regional emergency medical services and trauma care plans;

(9) By July 1992, prepare regional plans for those regions that do not submit a regional plan to the department that meets the requirements of this chapter;

(10) By October 1992, prepare and implement the statewide emergency medical services and trauma care system plan incorporating the regional plans;

(11) Coordinate the statewide emergency medical services and trauma care system to assure integration and smooth operation between the regions;

(12) Facilitate coordination between the emergency medical services and trauma care steering committee and the emergency medical services licensing and certification advisory committee;

(13) Monitor the statewide emergency medical services and trauma care system;

(14) Conduct a study of all costs, charges, expenses, and levels of reimbursement associated with providers of trauma care services, and provide its findings and any recommendations regarding adequate and equitable reimbursement to trauma care providers to the legislature by July 1, 1991;

(15) Monitor the level of public and private payments made on behalf of trauma care patients to determine whether health care providers have been adequately reimbursed for the costs of care rendered such persons;

(16) By July 1991, design and establish the statewide trauma care registry as authorized in RCW 70.168.090 to (a) assess the effectiveness of emergency medical services and

trauma care delivery, and (b) modify standards and other system requirements to improve the provision of emergency medical services and trauma care;

(17) By July 1991, develop patient outcome measures to assess the effectiveness of emergency medical services and trauma care in the system;

(18) By July 1993, develop standards for regional emergency medical services and trauma care quality assurance programs required in RCW 70.168.090;

(19) Administer funding allocated to the department for the purpose of creating, maintaining, or enhancing the statewide emergency medical services and trauma care system; and

(20) By October 1990, begin coordination and development of trauma prevention and education programs. [1990 c 269 § 8.]

70.168.070 Provision of trauma care service—Designation. Any hospital or health care facility that desires to be authorized to provide a designated trauma care service shall request designation from the department. Designation involves a contractual relationship between the state and a hospital or health care facility whereby each agrees to maintain a level of commitment and resources sufficient to meet responsibilities and standards required by the statewide emergency medical services and trauma care system plan. By January 1992, the department shall determine by rule the manner and form of such requests. Upon receiving a request, the department shall review the request to determine whether the hospital or health care facility is in compliance with standards for the trauma care service or services for which designation is desired. If requests are received from more than one hospital or health care facility within the same emergency medical planning and trauma care planning and service region, the department shall select the most qualified applicant or applicants to be selected through a competitive process. Any applicant not designated may request a hearing to review the decision.

Designations are valid for a period of three years and are renewable upon receipt of a request for renewal prior to expiration from the hospital or health care facility. When an authorization for designation is due for renewal other hospitals and health care facilities in the area may also apply and compete for designation. Regional emergency medical and trauma care councils shall be notified promptly of designated hospitals and health care facilities in their region so they may incorporate them into the regional plan as required by this chapter. The department may revoke or suspend the designation should it determine that the hospital or health care facility is substantially out of compliance with the standards and has refused or been unable to comply after a reasonable period of time has elapsed. The department shall promptly notify the regional emergency medical and trauma care planning and service region of suspensions or revocations. Any facility whose designation has been revoked or suspended may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

As a part of the process to designate and renew the designation of hospitals authorized to provide level I, II, or III trauma care services or level I, II, and III pediatric trauma care services, the department shall contract for on-site

reviews of such hospitals to determine compliance with required standards. The department may contract for on-site reviews of hospitals and health care facilities authorized to provide level IV or V trauma care services or level I, I-pediatric, II, or III trauma-related rehabilitative services to determine compliance with required standards. Members of on-site review teams and staff included in site visits are exempt from RCW 42.17.250 through 42.17.450. They may not divulge and cannot be subpoenaed to divulge information obtained or reports written pursuant to this section in any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (1) In actions arising out of the department's designation of a hospital or health care facility pursuant to this section; (2) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under this section; or (3) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in *RCW 70.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent. When a facility requests designation for more than one service, the department may coordinate the joint consideration of such requests.

The department may establish fees to help defray the costs of this section, though such fees shall not be assessed to health care facilities authorized to provide level IV and V trauma care services.

This section shall not restrict the authority of a hospital or a health care provider licensed under Title 18 RCW to provide services which it has been authorized to provide by state law. [1990 c 269 § 9.]

***Reviser's note:** The reference to RCW 70.70.020 appears to be erroneous. RCW 7.70.020 was apparently intended.

70.168.080 Prehospital trauma care service—Verification—Compliance—Variance. (1) Any provider desiring to provide a verified prehospital trauma care service shall indicate on the licensing application how they meet the standards required for verification as a provider of this service. The department shall notify the regional emergency medical services and trauma care councils of the providers of verified trauma care services in their regions. The department may conduct on-site reviews of prehospital providers to assess compliance with the applicable standards.

(2) Should the department determine that a prehospital provider is substantially out of compliance with the standards, the department shall notify the regional emergency medical services and trauma care council. If the failure of a prehospital provider to comply with the applicable standards results in the region being out of compliance with its regional plan, the council shall take such steps necessary to assure the region is brought into compliance within a reasonable period of time. The council may seek assistance and funding from the department and others to provide training or grants necessary to bring a prehospital provider into compliance. The council may appeal to the department for modification of the regional plan if it is unable to assure continued compliance with the regional plan. The department may authorize modi-

fication of the plan if such modifications meet the requirements of this chapter. The department may suspend or revoke the authorization of a prehospital provider to provide a verified prehospital service if the provider has refused or been unable to comply after a reasonable period of time has elapsed. The council shall be notified promptly of any revocations or suspensions. Any prehospital provider whose verification has been suspended or revoked may request a hearing to review the action by the department as provided for in chapter 34.05 RCW.

(3) The department may grant a variance from provisions of this section if the department determines: (a) That no detriment to public health and safety will result from the variance, and (b) compliance with provisions of this section will cause a reduction or loss of existing prehospital services. Variances may be granted for a period not to exceed one year. A variance may be renewed by the department. If a renewal is granted, a plan of compliance shall be prepared specifying steps necessary to bring a provider or region into compliance and expected date of compliance.

(4) This section shall not restrict the authority of a provider licensed under Title 18 RCW to provide services which it has been authorized to provide by state law. [1990 c 269 § 10.]

70.168.090 Statewide data registry—Quality assurance program—Confidentiality. (1) By July 1991, the department shall establish a statewide data registry to collect and analyze data on the incidence, severity, and causes of trauma, including traumatic brain injury. The department shall collect additional data on traumatic brain injury should additional data requirements be enacted by the legislature. The registry shall be used to improve the availability and delivery of prehospital and hospital trauma care services. Specific data elements of the registry shall be defined by rule by the department. To the extent possible, the department shall coordinate data collection from hospitals for the trauma registry with the *statewide hospital data system authorized in chapter 70.170 RCW. Every hospital, facility, or health care provider authorized to provide level I, II, III, IV, or V trauma care services, level I, II, or III pediatric trauma care services, level I, level I-pediatric, II, or III trauma-related rehabilitative services, and prehospital trauma-related services in the state shall furnish data to the registry. All other hospitals and prehospital providers shall furnish trauma data as required by the department by rule.

The department may respond to requests for data and other information from the registry for special studies and analysis consistent with requirements for confidentiality of patient and quality assurance records. The department may require requestors to pay any or all of the reasonable costs associated with such requests that might be approved.

(2) By January 1994, in each emergency medical services and trauma care planning and service region, a regional emergency medical services and trauma care systems quality assurance program shall be established by those facilities authorized to provide levels I, II, and III trauma care services. The systems quality assurance program shall evaluate trauma care delivery, patient care outcomes, and compliance with the requirements of this chapter. The emergency medical services medical program director and all other health care pro-

viders and facilities who provide trauma care services within the region shall be invited to participate in the regional emergency medical services and trauma care quality assurance program.

(3) Data elements related to the identification of individual patient's, provider's and facility's care outcomes shall be confidential, shall be exempt from RCW 42.17.250 through 42.17.450, and shall not be subject to discovery by subpoena or admissible as evidence.

(4) Patient care quality assurance proceedings, records, and reports developed pursuant to this section are confidential, exempt from RCW 42.17.250 through 42.17.450, and are not subject to discovery by subpoena or admissible as evidence. In any civil action, except, after in camera review, pursuant to a court order which provides for the protection of sensitive information of interested parties including the department: (a) In actions arising out of the department's designation of a hospital or health care facility pursuant to RCW 70.168.070; (b) in actions arising out of the department's revocation or suspension of designation status of a hospital or health care facility under RCW 70.168.070; or (c) in actions arising out of the restriction or revocation of the clinical or staff privileges of a health care provider as defined in RCW 7.70.020 (1) and (2), subject to any further restrictions on disclosure in RCW 4.24.250 that may apply. Information that identifies individual patients shall not be publicly disclosed without the patient's consent. [1990 c 269 § 11.]

***Reviser's note:** The "statewide hospital data system" was redesignated as the "health care data system" by 1993 c 492 § 259.

70.168.100 Regional emergency medical services and trauma care councils. Regional emergency medical services and trauma care councils are established. The councils shall:

(1) By June 1990, begin the development of regional emergency medical services and trauma care plans to:

(a) Assess and analyze regional emergency medical services and trauma care needs;

(b) Identify personnel, agencies, facilities, equipment, training, and education to meet regional and local needs;

(c) Identify specific activities necessary to meet statewide standards and patient care outcomes and develop a plan of implementation for regional compliance;

(d) Establish and review agreements with regional providers necessary to meet state standards;

(e) Establish agreements with providers outside the region to facilitate patient transfer;

(f) Include a regional budget;

(g) Establish the number and level of facilities to be designated which are consistent with state standards and based upon availability of resources and the distribution of trauma within the region;

(h) Identify the need for and recommend distribution and level of care of prehospital services to assure adequate availability and avoid inefficient duplication and lack of coordination of prehospital services within the region; and

(i) Include other specific elements defined by the department;

(2) By June 1991, begin the submission of the regional emergency services and trauma care plan to the department;

(3) Advise the department on matters relating to the delivery of emergency medical services and trauma care within the region;

(4) Provide data required by the department to assess the effectiveness of the emergency medical services and trauma care system;

(5) May apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including any activities related to the design, maintenance, or enhancements of the emergency medical services and trauma care system in the region. The councils shall report in the regional budget the amount, source, and purpose of all gifts and payments. [1990 c 269 § 13.]

70.168.110 Planning and service regions. The department shall designate at least eight emergency medical services and trauma care planning and service regions so that all parts of the state are within such an area. These regional designations are to be made on the basis of efficiency of delivery of needed emergency medical services and trauma care. [1990 c 269 § 14; 1987 c 214 § 4; 1973 1st ex.s. c 208 § 6. Formerly RCW 18.73.060.]

70.168.120 Local and regional emergency medical services and trauma care councils—Power and duties. (1) A county or group of counties may create a local emergency medical services and trauma care council composed of representatives of hospital and prehospital trauma care and emergency medical services providers, local elected officials, consumers, local law enforcement officials, and local government agencies involved in the delivery of emergency medical services and trauma care.

(2) The department shall establish regional emergency medical services and trauma care councils and shall appoint members to be comprised of a balance of hospital and prehospital trauma care and emergency medical services providers, local elected officials, consumers, local law enforcement representatives, and local government agencies involved in the delivery of trauma care and emergency medical services recommended by the local emergency medical services and trauma care councils within the region.

(3) Local emergency medical services and trauma care councils shall review, evaluate, and provide recommendations to the regional emergency medical services and trauma care council regarding the provision of emergency medical services and trauma care in the region, and provide recommendations to the regional emergency medical services and trauma care councils on the plan for emergency medical services and trauma care. [1990 c 269 § 15; 1987 c 214 § 6; 1983 c 112 § 8. Formerly RCW 18.73.073.]

70.168.130 Disbursement of funds to regional emergency medical services and trauma care councils—Grants to nonprofit agencies—Purposes. (1) The department, with the assistance of the emergency medical services and trauma care steering committee, shall adopt a program for the disbursement of funds for the development, implementation, and enhancement of the emergency medical ser-

vices and trauma care system. Under the program, the department shall disburse funds to each emergency medical services and trauma care regional council, or their chosen fiscal agent or agents, which shall be city or county governments, stipulating the purpose for which the funds shall be expended. The regional emergency medical services and trauma care council shall use such funds to make available matching grants in an amount not to exceed fifty percent of the cost of the proposal for which the grant is made; provided, the department may waive or modify the matching requirement if it determines insufficient local funding exists and the public health and safety would be jeopardized if the proposal were not funded. Grants shall be made to any public or private nonprofit agency which, in the judgment of the regional emergency medical services and trauma care council, will best fulfill the purpose of the grant.

(2) Grants may be awarded for any of the following purposes:

(a) Establishment and initial development of an emergency medical services and trauma care system;

(b) Expansion and improvement of an emergency medical services and trauma care system;

(c) Purchase of equipment for the operation of an emergency medical services and trauma care system;

(d) Training and continuing education of emergency medical and trauma care personnel; and

(e) Department approved research and development activities pertaining to emergency medical services and trauma care.

(3) Any emergency medical services agency or trauma care provider which receives a grant shall stipulate that it will:

(a) Operate in accordance with applicable provisions and standards required under this chapter;

(b) Provide, without prior inquiry as to ability to pay, emergency medical and trauma care to all patients requiring such care; and

(c) Be consistent with applicable provisions of the regional emergency medical services and trauma care plan and the statewide emergency medical services and trauma care system plan. [1990 c 269 § 16; 1987 c 214 § 8; 1979 ex.s. c 261 § 8. Formerly RCW 18.73.085.]

70.168.135 Grant program for designated trauma care services—Rules. The department shall establish by rule a grant program for designated trauma care services. The grants shall be made from the emergency medical services and trauma care system trust account and shall require regional matching funds. The trust account funds and regional match shall be in a seventy-five to twenty-five percent ratio. [1997 c 331 § 1.]

Effective date—1997 c 331: "Sections 1 through 8 of this act take effect January 1, 1998." [1997 c 331 § 11.]

70.168.140 Prehospital provider liability. (1) No act or omission of any prehospital provider done or omitted in good faith while rendering emergency medical services in accordance with the approved regional plan shall impose any liability upon that provider.

(2) This section does not apply to the commission or omission of an act which is not within the field of the medical expertise of the provider.

(3) This section does not relieve a provider of any duty otherwise imposed by law.

(4) This section does not apply to any act or omission which constitutes gross negligence or willful or wanton misconduct.

(5) This section applies in addition to provisions already established in RCW 18.71.210. [1990 c 269 § 26.]

70.168.900 Short title. This chapter shall be known and cited as the "statewide emergency medical services and trauma care system act." [1990 c 269 § 2.]

70.168.901 Severability—1990 c 269. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1990 c 269 § 30.]

Chapter 70.170 RCW

HEALTH DATA AND CHARITY CARE

Sections

| | |
|------------|--|
| 70.170.010 | Intent. |
| 70.170.020 | Definitions. |
| 70.170.050 | Requested studies—Costs. |
| 70.170.060 | Charity care—Prohibited and required hospital practices and policies—Rules—Department to monitor and report. |
| 70.170.070 | Penalties. |
| 70.170.080 | Assessments—Costs. |
| 70.170.090 | Confidentiality. |
| 70.170.900 | Effective date—1989 1st ex.s. c 9. |
| 70.170.905 | Severability—1989 1st ex.s. c 9. |

Hospital discharge data—Financial reports—Data retrieval—American Indian health data: RCW 43.70.052.

70.170.010 Intent. (1) The legislature finds and declares that there is a need for health care information that helps the general public understand health care issues and how they can be better consumers and that is useful to purchasers, payers, and providers in making health care choices and negotiating payments. It is the purpose and intent of this chapter to establish a hospital data collection, storage, and retrieval system which supports these data needs and which also provides public officials and others engaged in the development of state health policy the information necessary for the analysis of health care issues.

(2) The legislature finds that rising health care costs and access to health care services are of vital concern to the people of this state. It is, therefore, essential that strategies be explored that moderate health care costs and promote access to health care services.

(3) The legislature further finds that access to health care is among the state's goals and the provision of such care should be among the purposes of health care providers and facilities. Therefore, the legislature intends that charity care requirements and related enforcement provisions for hospitals be explicitly established.

(4) The lack of reliable statistical information about the delivery of charity care is a particular concern that should be addressed. It is the purpose and intent of this chapter to

(2004 Ed.)

require hospitals to provide, and report to the state, charity care to persons with acute care needs, and to have a state agency both monitor and report on the relative commitment of hospitals to the delivery of charity care services, as well as the relative commitment of public and private purchasers or payers to charity care funding. [1989 1st ex.s. c 9 § 501.]

70.170.020 Definitions. As used in this chapter:

(1) "Department" means department of health.

(2) "Hospital" means any health care institution which is required to qualify for a license under *RCW 70.41.020(2); or as a psychiatric hospital under chapter 71.12 RCW.

(3) "Secretary" means secretary of health.

(4) "Charity care" means necessary hospital health care rendered to indigent persons, to the extent that the persons are unable to pay for the care or to pay deductibles or co-insurance amounts required by a third-party payer, as determined by the department.

(5) "Sliding fee schedule" means a hospital-determined, publicly available schedule of discounts to charges for persons deemed eligible for charity care; such schedules shall be established after consideration of guidelines developed by the department.

(6) "Special studies" means studies which have not been funded through the department's biennial or other legislative appropriations. [1995 c 269 § 2203; 1989 1st ex.s. c 9 § 502.]

***Reviser's note:** RCW 70.41.020 was amended by 2002 c 116 § 2, changing subsection (2) to subsection (4).

Effective date—1995 c 269: See note following RCW 9.94A.850.

Part headings not law—Severability—1995 c 269: See notes following RCW 13.40.005.

70.170.050 Requested studies—Costs. The department shall have the authority to respond to requests of others for special studies or analysis. The department may require such sponsors to pay any or all of the reasonable costs associated with such requests that might be approved, but in no event may costs directly associated with any such special study be charged against the funds generated by the assessment authorized under RCW 70.170.080. [1989 1st ex.s. c 9 § 505.]

70.170.060 Charity care—Prohibited and required hospital practices and policies—Rules—Department to monitor and report. (1) No hospital or its medical staff shall adopt or maintain admission practices or policies which result in:

(a) A significant reduction in the proportion of patients who have no third-party coverage and who are unable to pay for hospital services;

(b) A significant reduction in the proportion of individuals admitted for inpatient hospital services for which payment is, or is likely to be, less than the anticipated charges for or costs of such services; or

(c) The refusal to admit patients who would be expected to require unusually costly or prolonged treatment for reasons other than those related to the appropriateness of the care available at the hospital.

(2) No hospital shall adopt or maintain practices or policies which would deny access to emergency care based on ability to pay. No hospital which maintains an emergency

department shall transfer a patient with an emergency medical condition or who is in active labor unless the transfer is performed at the request of the patient or is due to the limited medical resources of the transferring hospital. Hospitals must follow reasonable procedures in making transfers to other hospitals including confirmation of acceptance of the transfer by the receiving hospital.

(3) The department shall develop definitions by rule, as appropriate, for subsection (1) of this section and, with reference to federal requirements, subsection (2) of this section. The department shall monitor hospital compliance with subsections (1) and (2) of this section. The department shall report individual instances of possible noncompliance to the state attorney general or the appropriate federal agency.

(4) The department shall establish and maintain by rule, consistent with the definition of charity care in RCW 70.170.020, the following:

(a) Uniform procedures, data requirements, and criteria for identifying patients receiving charity care;

(b) A definition of residual bad debt including reasonable and uniform standards for collection procedures to be used in efforts to collect the unpaid portions of hospital charges that are the patient's responsibility.

(5) For the purpose of providing charity care, each hospital shall develop, implement, and maintain a charity care policy which, consistent with subsection (1) of this section, shall enable people below the federal poverty level access to appropriate hospital-based medical services, and a sliding fee schedule for determination of discounts from charges for persons who qualify for such discounts by January 1, 1990. The department shall develop specific guidelines to assist hospitals in setting sliding fee schedules required by this section. All persons with family income below one hundred percent of the federal poverty standard shall be deemed charity care patients for the full amount of hospital charges, provided that such persons are not eligible for other private or public health coverage sponsorship. Persons who may be eligible for charity care shall be notified by the hospital.

(6) Each hospital shall make every reasonable effort to determine the existence or nonexistence of private or public sponsorship which might cover in full or part the charges for care rendered by the hospital to a patient; the family income of the patient as classified under federal poverty income guidelines; and the eligibility of the patient for charity care as defined in this chapter and in accordance with hospital policy. An initial determination of sponsorship status shall precede collection efforts directed at the patient.

(7) The department shall monitor the distribution of charity care among hospitals, with reference to factors such as relative need for charity care in hospital service areas and trends in private and public health coverage. The department shall prepare reports that identify any problems in distribution which are in contradiction of the intent of this chapter. The report shall include an assessment of the effects of the provisions of this chapter on access to hospital and health care services, as well as an evaluation of the contribution of all purchasers of care to hospital charity care.

(8) The department shall issue a report on the subjects addressed in this section at least annually, with the first report due on July 1, 1990. [1998 c 245 § 118; 1989 1st ex.s. c 9 § 506.]

70.170.070 Penalties. (1) Every person who shall violate or knowingly aid and abet the violation of RCW 70.170.060 (5) or (6), 70.170.080, or *70.170.100, or any valid orders or rules adopted pursuant to these sections, or who fails to perform any act which it is herein made his or her duty to perform, shall be guilty of a misdemeanor. Following official notice to the accused by the department of the existence of an alleged violation, each day of noncompliance upon which a violation occurs shall constitute a separate violation. Any person violating the provisions of this chapter may be enjoined from continuing such violation. The department has authority to levy civil penalties not exceeding one thousand dollars for violations of this chapter and determined pursuant to this section.

(2) Every person who shall violate or knowingly aid and abet the violation of RCW 70.170.060 (1) or (2), or any valid orders or rules adopted pursuant to such section, or who fails to perform any act which it is herein made his or her duty to perform, shall be subject to the following criminal and civil penalties:

(a) For any initial violations: The violating person shall be guilty of a misdemeanor, and the department may impose a civil penalty not to exceed one thousand dollars as determined pursuant to this section.

(b) For a subsequent violation of RCW 70.170.060 (1) or (2) within five years following a conviction: The violating person shall be guilty of a misdemeanor, and the department may impose a penalty not to exceed three thousand dollars as determined pursuant to this section.

(c) For a subsequent violation with intent to violate RCW 70.170.060 (1) or (2) within five years following a conviction: The criminal and civil penalties enumerated in (a) of this subsection; plus up to a three-year prohibition against the issuance of tax exempt bonds under the authority of the Washington health care facilities authority; and up to a three-year prohibition from applying for and receiving a certificate of need.

(d) For a violation of RCW 70.170.060 (1) or (2) within five years of a conviction under (c) of this subsection: The criminal and civil penalties and prohibition enumerated in (a) and (b) of this subsection; plus up to a one-year prohibition from participation in the state medical assistance or medical care services authorized under chapter 74.09 RCW.

(3) The provisions of chapter 34.05 RCW shall apply to all noncriminal actions undertaken by the department of health, the department of social and health services, and the Washington health care facilities authority pursuant to chapter 9, Laws of 1989 1st ex. sess. [1989 1st ex.s. c 9 § 507.]

***Reviser's note:** RCW 70.170.100 was repealed by 1995 c 265 § 27 and by 1995 c 267 § 12, effective July 1, 1995.

70.170.080 Assessments—Costs. The basic expenses for the hospital data collection and reporting activities of this chapter shall be financed by an assessment against hospitals of no more than four one-hundredths of one percent of each hospital's gross operating costs, to be levied and collected from and after that date, upon which the similar assessment levied under *chapter 70.39 RCW is terminated, for the provision of hospital services for its last fiscal year ending on or before June 30th of the preceding calendar year. Budgetary requirements in excess of that limit must be financed by a

general fund appropriation by the legislature. All moneys collected under this section shall be deposited by the state treasurer in the hospital data collection account which is hereby created in the state treasury. The department may also charge, receive, and dispense funds or authorize any contractor or outside sponsor to charge for and reimburse the costs associated with special studies as specified in RCW 70.170.050.

During the 1993-1995 fiscal biennium, moneys in the hospital data collection account may be expended, pursuant to appropriation, for hospital data analysis and the administration of the health information program.

Any amounts raised by the collection of assessments from hospitals provided for in this section which are not required to meet appropriations in the budget act for the current fiscal year shall be available to the department in succeeding years. [1993 sp.s. c 24 § 925; 1991 sp.s. c 13 § 71; 1989 1st ex.s. c 9 § 508.]

***Reviser's note:** Chapter 70.39 RCW was repealed by 1982 c 223 § 10, effective June 30, 1990.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

70.170.090 Confidentiality. The department and any of its contractors or agents shall maintain the confidentiality of any information which may, in any manner, identify individual patients. [1989 1st ex.s. c 9 § 509.]

70.170.900 Effective date—1989 1st ex.s. c 9. See RCW 43.70.910.

70.170.905 Severability—1989 1st ex.s. c 9. See RCW 43.70.920.

Chapter 70.175 RCW

RURAL HEALTH SYSTEM PROJECT

Sections

| | |
|------------|--|
| 70.175.010 | Legislative findings. |
| 70.175.020 | Definitions. |
| 70.175.030 | Project established—Implementation. |
| 70.175.040 | Rules. |
| 70.175.050 | Secretary's powers and duties. |
| 70.175.060 | Duties and responsibilities of participating communities. |
| 70.175.070 | Cooperation of state agencies. |
| 70.175.080 | Powers and duties of secretary—Contracting. |
| 70.175.090 | Participants authorized to contract—Penalty—Secretary and state exempt from liability. |
| 70.175.100 | Licensure—Rules. |
| 70.175.110 | Licensure—Rules—Duties of department. |
| 70.175.120 | Rural health care facility not a hospital. |
| 70.175.130 | Rural health care plan. |
| 70.175.140 | Consultative advice for licensees or applicants. |
| 70.175.900 | Effective date—1989 1st ex.s. c 9. |
| 70.175.910 | Severability—1989 1st ex.s. c 9. |

Rural health access account: RCW 43.70.325.

Rural hospitals: RCW 70.38.105, 70.38.111, 70.41.090.

Rural public hospital districts: RCW 70.44.450.

70.175.010 Legislative findings. (1) The legislature declares that availability of health services to rural citizens is an issue on which a state policy is needed.

The legislature finds that changes in the demand for health care, in reimbursement policies of public and private

purchasers, [and] in the economic and demographic conditions in rural areas threaten the availability of care services.

In addition, many factors inhibit needed changes in the delivery of health care services to rural areas which include inappropriate and outdated regulatory laws, aging and inefficient health care facilities, the absence of local planning and coordination of rural health care services, the lack of community understanding of the real costs and benefits of supporting rural hospitals, the lack of regional systems to assure access to care that cannot be provided in every community, and the absence of state health care policy objectives.

The legislature further finds that the creation of effective health care delivery systems that assure access to health care services provided in an affordable manner will depend on active local community involvement. It further finds that it is the duty of the state to create a regulatory environment and health care payment policy that promotes innovation at the local level to provide such care.

It further declares that it is the responsibility of the state to develop policy that provides direction to local communities with regard to such factors as a definition of health care services, identification of statewide health status outcomes, clarification of state, regional, [and] community responsibilities and interrelationships for assuring access to affordable health care and continued assurances that quality health care services are provided.

(2) The legislature further finds that many rural communities do not operate hospitals in a cost-efficient manner. The cost of operating the rural hospital often exceeds the revenues generated. Some of these hospitals face closure, which may result in the loss of health care services for the community. Many communities are struggling to retain health care services by operating a cost-efficient facility located in the community. Current regulatory laws do not provide for the facilities licensure option that is appropriate for rural areas. A major barrier to the development of an appropriate rural licensure model is federal medicare approval to guarantee reimbursement for the costs of providing care and operating the facility. Medicare certification typically elaborates upon state licensure requirements. Medicare approval of reimbursement is more likely if the state has developed legal criteria for a rural-appropriate health facility. Medicare has begun negotiations with other states facing similar problems to develop exceptions with the goal of allowing reimbursement of rural alternative health care facilities. It is in the best interests of rural citizens for Washington state to begin negotiations with the federal government with the objective of designing a medicare eligible rural health care facility structured to meet the health care needs of rural Washington and be eligible for federal and state financial support for its development and operation. [1989 1st ex.s. c 9 § 701.]

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

(1) "Administrative structure" means a system of contracts or formal agreements between organizations and persons providing health services in an area that establishes the roles and responsibilities each will assume in providing the services of the rural health care facility.

(2) "Department" means the department of health.

(3) "Health care delivery system" means services and personnel involved in providing health care to a population in a geographic area.

(4) "Health care facility" means any land, structure, system, machinery, equipment, or other real or personal property or appurtenances useful for or associated with delivery of inpatient or outpatient health care service or support for such care or any combination thereof which is operated or undertaken in connection with a hospital, clinic, health maintenance organization, diagnostic or treatment center, extended care facility, or any facility providing or designed to provide therapeutic, convalescent or preventive health care services.

(5) "Health care system strategic plan" means a plan developed by the participant and includes identification of health care service needs of the participant, services and personnel necessary to meet health care service needs, identification of health status outcomes and outcome measures, identification of funding sources, and strategies to meet health care needs including measures of effectiveness.

(6) "Institutions of higher education" means educational institutions as defined in RCW 28B.10.016.

(7) "Local administrator" means an individual or organization representing the participant who may enter into legal agreements on behalf of the participant.

(8) "Participant" means communities, counties, and regions that serve as a health care catchment area where the project site is located.

(9) "Project" means the Washington rural health system project.

(10) "Project site" means a site selected to participate in the project.

(11) "Rural health care facility" means a facility, group, or other formal organization or arrangement of facilities, equipment, and personnel capable of providing or assuring availability of health services in a rural area. The services to be provided by the rural health care facility may be delivered in a single location or may be geographically dispersed in the community health service catchment area so long as they are organized under a common administrative structure or through a mechanism that provides appropriate referral, treatment, and follow-up.

(12) "Secretary" means the secretary of health. [1989 1st ex.s. c 9 § 702.]

70.175.030 Project established—Implementation.

(1) The department shall establish the Washington rural health system project to provide financial and technical assistance to participants. The goal of the project is to help assure access to affordable health care services to citizens in the rural areas of Washington state.

(2) Administrative costs necessary to implement this project shall be kept at a minimum to insure the maximum availability of funds for participants.

(3) The secretary may contract with third parties for services necessary to carry out activities to implement this chapter where this will promote economy, avoid duplication of effort, and make the best use of available expertise.

(4) The secretary may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts,

including the undertaking of special studies and other projects related to the delivery of health care in rural areas.

(5) In designing and implementing the project the secretary shall consider the report of the Washington rural health care commission established under chapter 207, Laws of 1988. Nothing in this chapter requires the secretary to follow any specific recommendation contained in that report except as it may also be included in this chapter. [1994 sp.s. c 9 § 806; 1989 1st ex.s. c 9 § 703.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

70.175.040 Rules. The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for participants and should not be complex in nature so as to serve as a barrier or disincentive for prospective participants applying for the project. [1989 1st ex.s. c 9 § 704.]

70.175.050 Secretary's powers and duties. The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. Project sites that receive seed grant funding may hire consultants and shall perform other activities necessary to meet participant requirements defined in this chapter. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) where a financially vulnerable health care facility is present, (c) where a financially vulnerable health care facility is present and an adjoining community in the same catchment area has a competing facility, or (d) where improvements in the delivery of primary care services, including preventive care services, is needed.

The department may obtain technical assistance support for project sites that are not selected to be funded sites. The secretary shall select these assisted project sites based upon merit and to the extent possible, based upon the desire to address specific health status outcomes;

(2) To design acceptable outcome measures which are based upon health status outcomes and are to be part of the community plan, to work with communities to set acceptable local outcome targets in the health care delivery system strategic plan, and to serve as a general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve community strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To define health care catchment areas, identify financially vulnerable health care facilities, and to identify rural populations which are not receiving adequate health care services;

(5) To identify existing private and public resources which may serve as eligible consultants, identify technical assistance resources for communities in the project, create a

register of public and private technical resource services available and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(6) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(7) To administer available funds for community use while participating in the project and establish procedures to assure accountability in the use of seed grant funds by participants;

(8) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(9) To act as facilitator for multiple applicants and entrants to the project;

(10) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery goals and an ongoing evaluation of the project. [1991 c 224 § 1; 1989 1st ex.s. c 9 § 705.]

70.175.060 Duties and responsibilities of participating communities. The duties and responsibilities of participating communities shall include:

(1) To involve major health care providers, businesses, public officials, and other community leaders in project design, administration, and oversight;

(2) To identify an individual or organization to serve as the local administrator of the project. The secretary may require the local administrator to maintain acceptable accountability of seed grant funding;

(3) To coordinate and avoid duplication of public health and other health care services;

(4) To assess and analyze community health care needs;

(5) To identify services and providers necessary to meet needs;

(6) To develop outcome measures to assess the long-term effectiveness of modifications initiated through the project;

(7) To write a health care delivery system strategic plan including to the extent possible, identification of outcome measures needed to achieve health status outcomes identified in the plan. New organizational structures created should integrate existing programs and activities of local health providers so as to maximize the efficient planning and delivery of health care by local providers and promote more accessible and affordable health care services to rural citizens. Participants should create health care delivery system strategic plans which promote health care services which the participant can financially sustain;

(8) To screen and contract with consultants for technical assistance if the project site was selected to receive funding and assistance is needed;

(9) To monitor and evaluate the project in an ongoing manner;

(10) To implement necessary changes as defined in the plans such as converting existing facilities, developing or modifying services, recruiting providers, or obtaining agree-

(2004 Ed.)

ments with other communities to provide some or all health care services; and

(11) To provide data and comply with other requirements of the administrator that are intended to evaluate the effectiveness of the projects. [1989 1st ex.s. c 9 § 706.]

70.175.070 Cooperation of state agencies. (1) The secretary may call upon other agencies of the state to provide available information to assist the secretary in meeting the responsibilities under this chapter. This information shall be supplied as promptly as circumstances permit.

(2) The secretary may call upon other state agencies including institutions of higher education as authorized under Title 28B RCW to identify and coordinate the delivery of technical assistance services to participants in meeting the responsibilities of this chapter. The state agencies and institutions of higher education shall cooperate and provide technical assistance to the secretary to the extent that current funding for these agencies and institutions of higher education permits. [1989 1st ex.s. c 9 § 707.]

70.175.080 Powers and duties of secretary—Contracting. In addition to the powers and duties specified in RCW 70.175.050 the secretary has the power to enter into contracts for the following functions and services:

(1) With public or private agencies, to assist the secretary in the secretary's duties to design or revise the health status outcomes, or to monitor or evaluate the performance of participants.

(2) With public or private agencies, to provide technical or professional assistance to project participants. [1989 1st ex.s. c 9 § 708.]

70.175.090 Participants authorized to contract—Penalty—Secretary and state exempt from liability. (1) Participants are authorized to use funding granted to them by the secretary for the purpose of contracting for technical assistance services. Participants shall use only consultants identified by the secretary for consulting services unless the participant can show that an alternative consultant is qualified to provide technical assistance and is approved by the secretary. Adequate records shall be kept by the participant showing project site expenditures from grant moneys. Inappropriate use of grant funding shall be a gross misdemeanor.

(2) In providing a list of qualified consultants the secretary and the state shall not be held responsible for assuring qualifications of consultants and shall be held harmless for the actions of consultants. Furthermore, the secretary and the state shall not be held liable for the failure of participants to meet contractual obligations established in connection with project participation. [1989 1st ex.s. c 9 § 709.]

70.175.100 Licensure—Rules. (1) The department shall establish and adopt such standards and rules pertaining to the construction, maintenance, and operation of a rural health care facility and the scope of health care services, and rescind, amend, or modify the rules from time to time as necessary in the public interest. In developing the rules, the department shall consult with representatives of rural hospitals, community mental health centers, public health depart-

ments, community and migrant health clinics, and other providers of health care in rural communities. The department shall also consult with third-party payers, consumers, local officials, and others to ensure broad participation in defining regulatory standards and requirements that are appropriate for a rural health care facility.

(2) When developing the rural health care facility licensure rules, the department shall consider the report of the Washington rural health care commission established under chapter 207, Laws of 1988. Nothing in this chapter requires the department to follow any specific recommendation contained in that report except as it may also be included in this chapter.

(3) Upon developing rules, the department shall enter into negotiations with appropriate federal officials to seek medicare approval of the facility and financial participation of medicare and other federal programs in developing and operating the rural health care facility. [1998 c 245 § 119; 1989 1st ex.s. c 9 § 710.]

70.175.110 Licensure—Rules—Duties of department. In developing the rural health care facility licensure regulations, the department shall:

(1) Minimize regulatory requirements to permit local flexibility and innovation in providing services;

(2) Promote the cost-efficient delivery of health care and other social services as is appropriate for the particular local community;

(3) Promote the delivery of services in a coordinated and nonduplicative manner;

(4) Maximize the use of existing health care facilities in the community;

(5) Permit regionalization of health care services when appropriate;

(6) Provide for linkages with hospitals, tertiary care centers, and other health care facilities to provide services not available in the facility; and

(7) Achieve health care outcomes defined by the community through a community planning process. [1989 1st ex.s. c 9 § 711.]

70.175.120 Rural health care facility not a hospital. The rural health care facility is not considered a hospital for building occupancy purposes. [1989 1st ex.s. c 9 § 712.]

70.175.130 Rural health care plan. The department may develop and implement a rural health care plan and may approve hospital and rural health care facility requests to be designated as essential access community hospitals or rural primary care hospitals so that such facilities may form rural health networks to preserve health care services in rural areas and thereby be eligible for federal program funding and enhanced medicare reimbursement. The department may monitor any rural health care plan and designated facilities to assure continued compliance with the rural health care plan. [1992 c 27 § 4; 1990 c 271 § 18.]

70.175.140 Consultative advice for licensees or applicants. Any licensee or applicant desiring to make alterations or additions to its facilities or to construct new facilities may

contact the department for consultative advice before commencing such alteration, addition, or new construction. [1992 c 27 § 5.]

70.175.900 Effective date—1989 1st ex.s. c 9. See RCW 43.70.910.

70.175.910 Severability—1989 1st ex.s. c 9. See RCW 43.70.920.

Chapter 70.180 RCW RURAL HEALTH CARE

Sections

| | |
|------------|---|
| 70.180.005 | Finding—Health care professionals. |
| 70.180.009 | Finding—Rural training opportunities. |
| 70.180.011 | Definitions. |
| 70.180.020 | Health professional temporary substitute resource pool. |
| 70.180.030 | Registry of health care professionals available to rural communities—Conditions of participation. |
| 70.180.040 | Request procedure—Acceptance of gifts. |
| 70.180.110 | Rural training opportunities—Plan development. |
| 70.180.120 | Midwifery—Statewide plan. |
| 70.180.130 | Expenditures, funding. |

Rural health access account: RCW 43.70.325.

Rural public hospital districts: RCW 70.44.450.

70.180.005 Finding—Health care professionals. The legislature finds that a health care access problem exists in rural areas of the state because rural health care providers are unable to leave the community for short-term periods of time to attend required continuing education training or for personal matters because their absence would leave the community without adequate medical care coverage. The lack of adequate medical coverage in geographically remote rural communities constitutes a threat to the health and safety of the people in those communities.

The legislature declares that it is in the public interest to recruit and maintain a pool of physicians, physician assistants, pharmacists, and advanced registered nurse practitioners willing and able on short notice to practice in rural communities on a short-term basis to meet the medical needs of the community. [1991 c 332 § 27; 1990 c 271 § 1.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

70.180.009 Finding—Rural training opportunities. The legislature finds that a shortage of physicians, nurses, pharmacists, and physician assistants exists in rural areas of the state. In addition, many education programs to train these health care providers do not include options for practical training experience in rural settings. As a result, many health care providers find their current training does not prepare them for the unique demands of rural practice.

The legislature declares that the availability of rural training opportunities as a part of professional medical, nursing, pharmacist, and physician assistant education would provide needed practical experience, serve to attract providers to rural areas, and help address the current shortage of these providers in rural Washington. [1990 c 271 § 14.]

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

(1) "Department" means the department of health.

(2) "Rural areas" means a rural area in the state of Washington as identified by the department. [1991 c 332 § 29.]

Application to scope of practice—Captions not law—1991 c 332: See notes following RCW 18.130.010.

70.180.020 Health professional temporary substitute resource pool. The department shall establish or contract for a health professional temporary substitute resource pool. The purpose of the pool is to provide short-term physician, physician assistant, pharmacist, and advanced registered nurse practitioner personnel to rural communities where these health care providers:

(1) Are unavailable due to provider shortages;

(2) Need time off from practice to attend continuing education and other training programs; and

(3) Need time off from practice to attend to personal matters or recover from illness.

The health professional temporary substitute resource pool is intended to provide short-term assistance and should complement active health provider recruitment efforts by rural communities where shortages exist. [1994 c 103 § 1; 1990 c 271 § 2.]

70.180.030 Registry of health care professionals available to rural communities—Conditions of participation. (1) The department, in cooperation with the University of Washington school of medicine, the state's registered nursing programs, the state's pharmacy programs, and other appropriate public and private agencies and associations, shall develop and keep current a register of physicians, physician assistants, pharmacists, and advanced registered nurse practitioners who are available to practice on a short-term basis in rural communities of the state. The department shall list only individuals who have a valid license to practice. The register shall be compiled and made available to all rural hospitals, public health departments and districts, rural pharmacies, and other appropriate public and private agencies and associations.

(2) Eligible health care professionals are those licensed under chapters 18.57, 18.57A, 18.64, 18.71, and 18.71A RCW and advanced registered nurse practitioners licensed under chapter 18.79 RCW.

(3) Participating sites may:

(a) Receive reimbursement for substitute provider travel to and from the rural community and for lodging at a rate determined under RCW 43.03.050 and 43.03.060; and

(b) Receive reimbursement for the cost of malpractice insurance if the services provided are not covered by the substitute provider's or local provider's existing medical malpractice insurance. Reimbursement for malpractice insurance shall only be made available to sites that incur additional costs for substitute provider coverage.

(4) The department may require rural communities to participate in health professional recruitment programs as a condition for providing a temporary substitute health care professional if the community does not have adequate permanent health care personnel. To the extent deemed appropriate

and subject to funding, the department may also require communities to participate in other programs or projects, such as the rural health system project authorized in chapter 70.175 RCW, that are designed to assist communities to reorganize the delivery of rural health care services.

(5) A participating site may receive reimbursement for substitute provider assistance as provided for in subsection (3) of this section for up to ninety days during any twelve-month period. The department may modify or waive this limitation should it determine that the health and safety of the community warrants a waiver or modification.

(6) Participating sites shall:

(a) Be responsible for all salary expenses for the temporary substitute provider.

(b) Provide the temporary substitute provider with referral and back-up coverage information. [1994 sp.s. c 9 § 746; 1994 c 103 § 2; 1990 c 271 § 3.]

Reviser's note: This section was amended by 1994 c 103 § 2 and by 1994 sp.s. c 9 § 746, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

70.180.040 Request procedure—Acceptance of gifts.

(1) Requests for a temporary substitute health care professional may be made to the department by the certified health plan, local rural hospital, public health department or district, community health clinic, local practicing physician, physician assistant, pharmacist, or advanced registered nurse practitioner, or local city or county government.

(2) The department may provide directly or contract for services to:

(a) Establish a manner and form for receiving requests;

(b) Minimize paperwork and compliance requirements for participant health care professionals and entities requesting assistance; and

(c) Respond promptly to all requests for assistance.

(3) The department may apply for, receive, and accept gifts and other payments, including property and services, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts to operate the pool. The department shall make available upon request to the appropriate legislative committees information concerning the source, amount, and use of such gifts or payments. [1994 c 103 § 3; 1990 c 271 § 4.]

70.180.110 Rural training opportunities—Plan development. (1) The department, in consultation with at least the higher education coordinating board, the state board for community and technical colleges, the superintendent of public instruction, and state-supported education programs in medicine, pharmacy, and nursing, shall develop a plan for increasing rural training opportunities for students in medicine, pharmacy, and nursing. The plan shall provide for direct exposure to rural health professional practice conditions for students planning careers in medicine, pharmacy, and nursing.

(2) The department and the medical, pharmacy, and nurse education programs shall:

(a) Inventory existing rural-based clinical experience programs, including internships, clerkships, residencies, and other training opportunities available to students pursuing degrees in nursing, pharmacy, and medicine;

(b) Identify where training opportunities do not currently exist and are needed;

(c) Develop recommendations for improving the availability of rural training opportunities;

(d) Develop recommendations on establishing agreements between education programs to assure that all students in medical, pharmacist, and nurse education programs in the state have access to rural training opportunities; and

(e) Review private and public funding sources to finance rural-based training opportunities. [1998 c 245 § 120; 1990 c 271 § 15.]

70.180.120 Midwifery—Statewide plan. The department, in consultation with training programs that lead to licensure in midwifery and certification as a certified nurse midwife, and other appropriate private and public groups, shall develop a statewide plan to address access to midwifery services.

The plan shall include at least the following: (1) Identification of maternity service shortage areas in the state where midwives could reduce the shortage of services; (2) an inventory of current training programs and preceptorship activities available to train licensed and certified nurse midwives; (3) identification of gaps in the availability of training due to such factors as geographic or economic conditions that prevent individuals from seeking training; (4) identification of other barriers to utilizing midwives; (5) identification of strategies to train future midwives such as developing training programs at community colleges and universities, using innovative telecommunications for training in rural areas, and establishing preceptorship programs accessible to prospective midwives in shortage areas; (6) development of recruitment strategies; and (7) estimates of expected costs associated in recruitment and training.

The plan shall identify the most expeditious and cost-efficient manner to recruit and train midwives to meet the current shortages. Plan development and implementation shall be coordinated with other state policy efforts directed toward, but not limited to, maternity care access, rural health care system organization, and provider recruitment for shortage and medically underserved areas of the state. [1998 c 245 § 121; 1990 c 271 § 16.]

70.180.130 Expenditures, funding. Any additional expenditures incurred by the University of Washington from provisions of chapter 271, Laws of 1990 shall be funded from existing financial resources. [1990 c 271 § 28.]

Chapter 70.185 RCW

RURAL AND UNDERSERVED AREAS— HEALTH CARE PROFESSIONAL RECRUITMENT AND RETENTION

Sections

70.185.010 Definitions.

70.185.020 Statewide recruitment and retention clearinghouse.

70.185.030 Community-based recruitment and retention projects—Duties of department.

70.185.040 Rules.

70.185.050 Secretary's powers and duties.

70.185.060 Duties and responsibilities of participating communities.

70.185.070 Cooperation of state agencies.

70.185.080 Participants authorized to contract—Penalty—Secretary and state exempt from liability.

70.185.090 Community contracted student educational positions.

70.185.100 Contracts with area health education centers.

70.185.900 Application to scope of practice—Captions not law—1991 c 332.

Rural public hospital districts: RCW 70.44.450.

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

(1) "Department" means the department of health.

(2) "Health care professional recruitment and retention strategic plan" means a plan developed by the participant and includes identification of health care personnel needs of the community, how these professionals will be recruited and retained in the community following recruitment.

(3) "Institutions of higher education" means educational institutions as defined in RCW 28B.10.016.

(4) "Local administrator" means an individual or organization representing the participant who may enter into legal agreements on behalf of the participant.

(5) "Participant" means communities, counties, and regions that serve as a health care catchment area where the project site is located.

(6) "Project" means the community-based retention and recruitment project.

(7) "Project site" means a site selected to participate in the project.

(8) "Secretary" means the secretary of health. [1991 c 332 § 7.]

70.185.020 Statewide recruitment and retention clearinghouse. The department, in consultation with appropriate private and public entities, shall establish a health professional recruitment and retention clearinghouse. The clearinghouse shall:

(1) Inventory and classify the current public and private health professional recruitment and retention efforts;

(2) Identify recruitment and retention program models having the greatest success rates;

(3) Identify recruitment and retention program gaps;

(4) Work with existing recruitment and retention programs to better coordinate statewide activities and to make such services more widely known and broadly available;

(5) Provide general information to communities, health care facilities, and others about existing available programs;

(6) Work in cooperation with private and public entities to develop new recruitment and retention programs;

(7) Identify needed recruitment and retention programing for state institutions, county public health departments and districts, county human service agencies, and other entities serving substantial numbers of public pay and charity care patients, and may provide to these entities when they have been selected as participants necessary recruitment and retention assistance including:

(a) Assistance in establishing or enhancing recruitment of health care professionals;

(b) Recruitment on behalf of sites unable to establish their own recruitment program; and

(c) Assistance with retention activities when practitioners of the health professional loan repayment and scholarship program authorized by *chapter 18.150 RCW are present in the practice setting. [1991 c 332 § 8.]

*Reviser's note: Chapter 18.150 RCW was recodified as chapter 28B.115 RCW by 1991 c 332 § 36.

70.185.030 Community-based recruitment and retention projects—Duties of department. (1) The department may, subject to funding, establish community-based recruitment and retention project sites to provide financial and technical assistance to participating communities. The goal of the project is to help assure the availability of health care providers in rural and underserved urban areas of Washington state.

(2) Administrative costs necessary to implement this project shall be kept at a minimum to insure the maximum availability of funds for participants.

(3) The secretary may contract with third parties for services necessary to carry out activities to implement this chapter where this will promote economy, avoid duplication of effort, and make the best use of available expertise.

(4) The secretary may apply for, receive, and accept gifts and other payments, including property and service, from any governmental or other public or private entity or person, and may make arrangements as to the use of these receipts, including the undertaking of special studies and other projects related to the delivery of health care in rural areas.

(5) In designing and implementing the project the secretary shall coordinate and avoid duplication with similar federal programs and with the Washington rural health system project as authorized under chapter 70.175 RCW to consolidate administrative duties and reduce costs. [1993 c 492 § 273; 1991 c 332 § 9.]

University of Washington primary care physician shortage plan development—1993 c 492: "(1) The University of Washington shall prepare a primary care shortage plan that accomplishes the following:

(a) Identifies specific activities that the school of medicine shall pursue to increase the number of Washington residents serving as primary care physicians in rural and medically underserved areas of the state, including establishing a goal that assures that no less than fifty percent of medical school graduates who are Washington state residents at the time of matriculation will enter into primary care residencies, to the extent possible, in Washington state by the year 2000;

(b) Assures that the school of medicine shall establish among its highest training priorities the distribution of its primary care physician graduates from the school and associated postgraduate residency programs into rural and medically underserved areas;

(c) Establishes the goal of assuring that the annual number of graduates from the family practice residency network entering rural or medically underserved practice shall be increased by forty percent over a baseline period from 1988 through 1990 by 1995;

(d) Establishes a further goal to make operational at least two additional family practice residency programs within Washington state in geographic areas identified by the plan as underserved in family practice by 1997. The geographic areas identified by the plan as being underserved by family practice physicians shall be consistent with any such similar designations as may be made in the health personnel research plan as authorized under chapter 28B.125 RCW;

(e) Establishes, with the cooperation of existing community and migrant health clinics in rural or medically underserved areas of the state, three family practice residency training tracks. Furthermore, the primary care shortage plan shall provide that one of these training tracks shall be a joint American osteopathic association and American medical association approved training site coordinated with an accredited college of osteopathic

(2004 Ed.)

medicine with extensive experience in training primary care physicians for the western United States. Such a proposed joint accredited training track will have at least fifty percent of its residency positions in osteopathic medicine; and

(f) Implements the plan, with the exception of the expansion of the family practice residency network, within current biennial appropriations for the University of Washington school of medicine.

(2) The plan shall be submitted to the appropriate committees of the legislature no later than December 1, 1993." [1993 c 492 § 279.]

Finding—1993 c 492: See note following RCW 28B.115.080.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.185.040 Rules. The department shall adopt rules consistent with this chapter to carry out the purpose of this chapter. All rules shall be adopted in accordance with chapter 34.05 RCW. All rules and procedures adopted by the department shall minimize paperwork and compliance requirements for participants and should not be complex in nature so as to serve as a barrier or disincentive for prospective participants applying for the project. [1991 c 332 § 10.]

70.185.050 Secretary's powers and duties. The secretary shall have the following powers and duties:

(1) To design the project application and selection process, including a program to advertise the project to rural communities and encourage prospective applicants to apply. Subject to funding, project sites shall be selected that are eligible to receive funding. Funding shall be used to hire consultants and perform other activities necessary to meet participant requirements under this chapter. The secretary shall require at least fifty percent matching funds or in-kind contributions from participants. In considering selection of participants eligible for seed grant funding, the secretary should consider project sites where (a) existing access to health care is severely inadequate, (b) recruitment and retention problems have been chronic, (c) the community is in need of primary care practitioners, or (d) the community has unmet health care needs for specific target populations;

(2) To design acceptable health care professional recruitment and retention strategic plans, and to serve as a general resource to participants in the planning, administration, and evaluation of project sites;

(3) To assess and approve strategic plans developed by participants, including an assessment of the technical and financial feasibility of implementing the plan and whether adequate local support for the plan is demonstrated;

(4) To identify existing private and public resources that may serve as eligible consultants, identify technical assistance resources for communities in the project, create a register of public and private technical resource services available, and provide the register to participants. The secretary shall screen consultants to determine their qualifications prior to including them on the register;

(5) To work with other state agencies, institutions of higher education, and other public and private organizations to coordinate technical assistance services for participants;

(6) To administer available funds for community use while participating in the project and establish procedures to

assure accountability in the use of seed grant funds by participants;

(7) To define data and other minimum requirements for adequate evaluation of projects and to develop and implement an overall monitoring and evaluation mechanism for the projects;

(8) To act as facilitator for multiple applicants and entrants to the project;

(9) To report to the appropriate legislative committees and others from time to time on the progress of the projects including the identification of statutory and regulatory barriers to successful completion of rural health care delivery goals and an ongoing evaluation of the project. [1991 c 332 § 11.]

70.185.060 Duties and responsibilities of participating communities. The duties and responsibilities of participating communities shall include:

(1) To involve major health care providers, businesses, public officials, and other community leaders in project design, administration, and oversight;

(2) To identify an individual or organization to serve as the local administrator of the project. The secretary may require the local administrator to maintain acceptable accountability of seed grant funding;

(3) To coordinate and avoid duplication of public health and other health care services;

(4) To assess and analyze community health care professional needs;

(5) To write a health care professional recruitment and retention strategic plan;

(6) To screen and contract with consultants for technical assistance if the project site was selected to receive funding and assistance is needed;

(7) To monitor and evaluate the project in an ongoing manner;

(8) To provide data and comply with other requirements of the administrator that are intended to evaluate the effectiveness of the projects;

(9) To assure that specific populations with unmet health care needs have access to services. [1991 c 332 § 12.]

70.185.070 Cooperation of state agencies. (1) The secretary may call upon other agencies of the state to provide available information to assist the secretary in meeting the responsibilities under this chapter. This information shall be supplied as promptly as circumstances permit.

(2) The secretary may call upon other state agencies including institutions of higher education as authorized under Titles 28A and 28B RCW to identify and coordinate the delivery of technical assistance services to participants in meeting the responsibilities of this chapter. The state agencies, vocational-technical institutions, and institutions of higher education shall cooperate and provide technical assistance to the secretary to the extent that current funding for these entities permits. [1991 c 332 § 13.]

70.185.080 Participants authorized to contract—Penalty—Secretary and state exempt from liability. (1) Participants are authorized to use funding granted to them by

[Title 70 RCW—page 434]

the secretary for the purpose of contracting for technical assistance services. Participants shall use only consultants identified by the secretary for consulting services unless the participant can show that an alternative consultant is qualified to provide technical assistance and is approved by the secretary. Adequate records shall be kept by the participant showing project site expenditures from grant moneys. Inappropriate use of grant funding is a gross misdemeanor and shall incur the penalties under chapter 9A.20 RCW.

(2) In providing a list of qualified consultants the secretary and the state shall not be held responsible for assuring qualifications of consultants and shall be held harmless for the actions of consultants. Furthermore, the secretary and the state shall not be held liable for the failure of participants to meet contractual obligations established in connection with project participation. [1991 c 332 § 14.]

70.185.090 Community contracted student educational positions. (1) The department may develop a mechanism for underserved rural or urban communities to contract with education and training programs for student positions above the full time equivalent lids. The goal of this program is to provide additional capacity, educating students who will practice in underserved communities.

(2) Eligible education and training programs are those programs approved by the department that lead to eligibility for a credential as a credentialed health care professional. Eligible professions are those licensed under chapters 18.36A, 18.57, 18.57A, 18.71, and 18.71A RCW and advanced registered nurse practitioners and certified nurse midwives licensed under *chapter 18.88 RCW, and may include other providers identified as needed in the health personnel resource plan.

(3) Students participating in the community contracted educational positions shall meet all applicable educational program requirements and provide assurances, acceptable to the community, that they will practice in the sponsoring community following completion of education and necessary licensure.

(4) Participants in the program incur an obligation to repay any contracted funds with interest set by state law, unless they serve at least three years in the sponsoring community.

(5) The department may provide funds to communities for use in contracting. [1993 c 492 § 274.]

***Reviser's note:** Chapter 18.88 RCW was repealed by 1994 sp.s. c 9 § 433, effective July 1, 1994.

Finding—1993 c 492: See note following RCW 28B.115.080.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.185.100 Contracts with area health education centers. The secretary may establish and contract with area health education centers in the eastern and western parts of the state. Consistent with the recruitment and retention objectives of this chapter, the centers shall provide or facilitate the provision of health professional educational and continuing education programs that strengthen the delivery of primary health care services in rural and medically underserved urban

(2004 Ed.)

areas of the state. The center shall assist in the development and operation of health personnel recruitment and retention programs that are consistent with activities authorized under this chapter. The centers shall further provide technical expertise in the development of well managed health care delivery systems in rural Washington consistent with the goals and objectives of chapter 492, Laws of 1993. [1993 c 492 § 275.]

Finding—1993 c 492: See note following RCW 28B.115.080.

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

70.185.900 Application to scope of practice—Captions not law—1991 c 332. See notes following RCW 18.130.010.

Chapter 70.190 RCW FAMILY POLICY COUNCIL

Sections

| | |
|------------|--|
| 70.190.005 | Purpose. |
| 70.190.010 | Definitions. |
| 70.190.020 | Consolidate efforts of existing entities. |
| 70.190.030 | Proposals to facilitate services at the community level. |
| 70.190.040 | Finding—Grants to improve readiness to learn. |
| 70.190.050 | Community networks—Outcome evaluation. |
| 70.190.060 | Community networks—Legislative intent—Membership—Open meetings. |
| 70.190.065 | Member's authorization of expenditures—Limitation. |
| 70.190.070 | Community networks—Duties. |
| 70.190.075 | Lead fiscal agent. |
| 70.190.080 | Community networks—Programs and plans. |
| 70.190.085 | Community networks—Sexual abstinence and activity campaign. |
| 70.190.090 | Community networks—Planning grants and contracts—Distribution of funds—Reports. |
| 70.190.100 | Duties of council. |
| 70.190.110 | Program review. |
| 70.190.120 | Interagency agreement. |
| 70.190.130 | Comprehensive plan—Approval process—Network expenditures—Penalty for noncompliance with chapter. |
| 70.190.150 | Federal restrictions on funds transfers, waivers. |
| 70.190.160 | Community networks—Implementation in federal and state plans. |
| 70.190.170 | Transfer of funds and programs to state agency. |
| 70.190.180 | Community network—Grants for use of school facilities. |
| 70.190.190 | Network members immune from civil liability—Network assets not subject to attachment or execution. |
| 70.190.910 | Severability—1992 c 198. |
| 70.190.920 | Effective date—1992 c 198. |

70.190.005 Purpose. The legislature finds that a primary goal of public involvement in the lives of children has been to strengthen the family unit.

However, the legislature recognizes that traditional two-parent families with one parent routinely at home are now in the minority. In addition, extended family and natural community supports have eroded drastically. The legislature recognizes that public policy assumptions must be altered to account for this new social reality. Public effort must be redirected to expand, support, strengthen, and help reconstruct family and community networks to assist in meeting the needs of children.

The legislature finds that a broad variety of services for children and families has been independently designed over the years and that the coordination and cost-effectiveness of

these services will be enhanced through the adoption of an approach that allows communities to prioritize and coordinate services to meet their local needs. The legislature further finds that the most successful programs for reaching and working with at-risk families and children treat individuals' problems in the context of the family, offer a broad spectrum of services, are flexible in the use of program resources, and use staff who are trained in crossing traditional program categories in order to broker services necessary to fully meet a family's needs.

The legislature further finds that eligibility criteria, expenditure restrictions, and reporting requirements of state and federal categorical programs often create barriers toward the effective use of resources for addressing the multiple problems of at-risk families and children.

The purposes of this chapter are (1) to modify public policy and programs to empower communities to support and respond to the needs of individual families and children and (2) to improve the responsiveness of services for children and families at risk by facilitating greater coordination and flexibility in the use of funds by state and local service agencies. [1994 sp.s. c 7 § 301; 1992 c 198 § 1.]

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

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

(1) "Administrative costs" means the costs associated with procurement; payroll processing; personnel functions; management; maintenance and operation of space and property; data processing and computer services; accounting; budgeting; auditing; indirect costs; and organizational planning, consultation, coordination, and training.

(2) "Assessment" has the same meaning as provided in RCW 43.70.010.

(3) "At-risk" children are children who engage in or are victims of at-risk behaviors.

(4) "At-risk behaviors" means violent delinquent acts, teen substance abuse, teen pregnancy and male parentage, teen suicide attempts, dropping out of school, child abuse or neglect, and domestic violence.

(5) "Community public health and safety networks" or "networks" means the organizations authorized under RCW 70.190.060.

(6) "Comprehensive plan" means a two-year plan that examines available resources and unmet needs for a county or multicounty area, barriers that limit the effective use of resources, and a plan to address these issues that is broadly supported by local residents.

(7) "Participating state agencies" means the office of the superintendent of public instruction, the department of social and health services, the department of health, the employment security department, the department of community, trade, and economic development, and such other departments as may be specifically designated by the governor.

(8) "Family policy council" or "council" means the superintendent of public instruction, the secretary of social and health services, the secretary of health, the commissioner of the employment security department, and the director of the department of community, trade, and economic develop-

ment or their designees, one legislator from each caucus of the senate and house of representatives, and one representative of the governor.

(9) "Fiduciary interest" means (a) the right to compensation from a health, educational, social service, or justice system organization that receives public funds, or (b) budgetary or policy-making authority for an organization listed in (a) of this subsection. A person who acts solely in an advisory capacity and receives no compensation from a health, educational, social service, or justice system organization, and who has no budgetary or policy-making authority is deemed to have no fiduciary interest in the organization.

(10) "Outcome" or "outcome based" means defined and measurable outcomes used to evaluate progress in reducing the rate of at-risk children and youth through reducing risk factors and increasing protective factors.

(11) "Matching funds" means an amount no less than twenty-five percent of the amount budgeted for a network. The network's matching funds may be in-kind goods and services. Funding sources allowable for match include appropriate federal or local levy funds, private charitable funding, and other charitable giving. Basic education funds shall not be used as a match. State general funds shall not be used as a match for violence reduction and drug enforcement account funds created under RCW 69.50.520.

(12) "Policy development" has the same meaning as provided in RCW 43.70.010.

(13) "Protective factors" means those factors determined by the department of health to be empirically associated with behaviors that contribute to socially acceptable and healthy nonviolent behaviors. Protective factors include promulgation, identification, and acceptance of community norms regarding appropriate behaviors in the area of delinquency, early sexual activity, alcohol and substance abuse, educational opportunities, employment opportunities, and absence of crime.

(14) "Risk factors" means those factors determined by the department of health to be empirically associated with at-risk behaviors that contribute to violence. [1996 c 132 § 2; 1995 c 399 § 200; 1992 c 198 § 3.]

Intent—Construction—1996 c 132: "It is the intent of this act only to make minimal clarifying, technical, and administrative revisions to the laws concerning community public health and safety networks and to the related agencies responsible for implementation of the networks. This act is not intended to change the scope of the duties or responsibilities, nor to undermine the underlying policies, set forth in chapter 7, Laws of 1994 sp. sess." [1996 c 132 § 1.]

Severability—1996 c 132: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1996 c 132 § 10.]

70.190.020 Consolidate efforts of existing entities. To the extent that any power or duty of the council may duplicate efforts of existing councils, commissions, advisory committees, or other entities, the governor is authorized to take necessary actions to eliminate such duplication. This shall include authority to consolidate similar councils or activities in a manner consistent with the goals of this chapter. [1994 sp.s. c 7 § 315; 1992 c 198 § 4.]

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

70.190.030 Proposals to facilitate services at the community level. The council shall annually solicit from community networks proposals to facilitate greater flexibility, coordination, and responsiveness of services at the community level. The council shall consider such proposals only if:

(1) A comprehensive plan has been prepared by the community networks;

(2) The community network has identified and agreed to contribute matching funds as specified in RCW 70.190.010;

(3) An interagency agreement has been prepared by the council and the participating local service and support agencies that governs the use of funds, specifies the relationship of the project to the principles listed in RCW 74.14A.025, and identifies specific outcomes and indicators; and

(4) The community network has designed into its comprehensive plan standards for accountability. Accountability standards include, but are not limited to, the public hearing process eliciting public comment about the appropriateness of the proposed comprehensive plan. The community network must submit reports to the council outlining the public response regarding the appropriateness and effectiveness of the comprehensive plan. [1994 sp.s. c 7 § 316; 1992 c 198 § 5.]

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

70.190.040 Finding—Grants to improve readiness to learn. (1) The legislature finds that helping children to arrive at school ready to learn is an important part of improving student learning.

(2) To the extent funds are appropriated, the family policy council shall award grants to community-based consortiums that submit comprehensive plans that include strategies to improve readiness to learn. [1993 c 336 § 901.]

Findings—Intent—Part headings not law—1993 c 336: See notes following RCW 28A.150.210.

Findings—1993 c 336: See note following RCW 28A.150.210.

70.190.050 Community networks—Outcome evaluation. (1) The Washington state institute for public policy shall conduct or contract for monitoring and tracking of the implementation of chapter 7, Laws of 1994 sp. sess. to determine whether these efforts result in a measurable reduction of violence. The institute shall also conduct or contract for an evaluation of the effectiveness of the community public health and safety networks in reducing the rate of at-risk youth through reducing risk factors and increasing protective factors. The evaluation plan shall result in statistically valid evaluation at both statewide and community levels.

(2) Starting five years after the initial grant to a community network, if the community network fails to meet the outcome standards and goals in any two consecutive years, the institute shall make recommendations to the legislature concerning whether the funds received by that community network should revert back to the originating agency. In making this determination, the institute shall consider the adequacy of the level of intervention relative to the risk factors in the community and any external events having a significant impact on risk factors or outcomes.

(3) The outcomes required under this chapter and social development standards and measures established by the

department of health under RCW 43.70.555 shall be used in conducting the outcome evaluation of the community networks. [1998 c 245 § 122; 1994 sp.s. c 7 § 207.]

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

70.190.060 Community networks—Legislative intent—Membership—Open meetings. (1) The legislature authorizes community public health and safety networks to reconnect parents and other citizens with children, youth, families, and community institutions which support health and safety. The networks have only those powers and duties expressly authorized under this chapter. The networks should empower parents and other citizens by being a means of expressing their attitudes, spirit, and perspectives regarding safe and healthy family and community life. The legislature intends that parent and other citizen perspectives exercise a controlling influence over policy and program operations of professional organizations concerned with children and family issues within networks in a manner consistent with the Constitution and state law. It is not the intent of the legislature that health, social service, or educational professionals dominate community public health and safety network processes or programs, but rather that these professionals use their skills to lend support to parents and other citizens in expressing their values as parents and other citizens identify community needs and establish community priorities. To this end, the legislature intends full participation of parents and other citizens in community public health and safety networks. The intent is that local community values are reflected in the operations of the network.

(2) A group of persons described in subsection (3) of this section may apply to be a community public health and safety network.

(3) Each community public health and safety network shall be composed of twenty-three people, thirteen of whom shall be citizens who live within the network boundary with no fiduciary interest. In selecting these members, first priority shall be given to members of community mobilization advisory boards, city or county children's services commissions, human services advisory boards, or other such organizations. The thirteen persons shall be selected as follows: Three by chambers of commerce, three by school board members, three by county legislative authorities, three by city legislative authorities, and one high school student, selected by student organizations. The remaining ten members shall live or work within the network boundary and shall include local representation selected by the following groups and entities: Cities; counties; federally recognized Indian tribes; parks and recreation programs; law enforcement agencies; state children's service workers; employment assistance workers; private social service providers, broad-based non-secular organizations, or health service providers; and public education.

(4) Each of the twenty-three people who are members of each community public health and safety network must sign an annual declaration under penalty of perjury or a notarized statement that clearly, in plain and understandable language, states whether or not he or she has a fiduciary interest. If a member has a fiduciary interest, the nature of that interest

must be made clear, in plain understandable language, on the signed statement.

(5) Members of the network shall serve terms of three years.

The terms of the initial members of each network shall be as follows: (a) One-third shall serve for one year; (b) one-third shall serve for two years; and (c) one-third shall serve for three years. Initial members may agree which shall serve fewer than three years or the decision may be made by lot. Any vacancy occurring during the term may be filled by the chair for the balance of the unexpired term.

(6) Not less than sixty days before the expiration of a network member's term, the chair shall submit the name of a nominee to the network for its approval. The network shall comply with subsection (3) of this section.

(7) Networks are subject to the open public meetings act under chapter 42.30 RCW and the public records provisions of RCW 42.17.270 through 42.17.310. [1998 c 314 § 12; 1996 c 132 § 3; 1994 sp.s. c 7 § 303.]

Application—1996 c 132 § 3: "The amendments to RCW 70.190.060 in 1996 c 132 § 3 shall apply prospectively only and are not intended to affect the composition of any community public health and safety network's membership that has been approved by the family policy council prior to June 6, 1996." [1996 c 132 § 11.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

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

70.190.065 Member's authorization of expenditures—Limitation. No network member may vote to authorize, or attempt to influence the authorization of, any expenditure in which the member's immediate family has a fiduciary interest. For the purpose of this section "immediate family" means a spouse, parent, grandparent, adult child, brother, or sister. [1996 c 132 § 5.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

70.190.070 Community networks—Duties. The community public health and safety networks shall:

(1) Review state and local public health data and analysis relating to risk factors, protective factors, and at-risk children and youth;

(2) Prioritize the risk factors and protective factors to reduce the likelihood of their children and youth being at risk. The priorities shall be based upon public health data and assessment and policy development standards provided by the department of health under RCW 43.70.555;

(3) Develop long-term comprehensive plans to reduce the rate of at-risk children and youth; set definitive, measurable goals, based upon the department of health standards; and project their desired outcomes;

(4) Distribute funds to local programs that reflect the locally established priorities and as provided in *RCW 70.190.140;

(5) Comply with outcome-based standards;

(6) Cooperate with the department of health and local boards of health to provide data and determine outcomes; and

(7) Coordinate its efforts with anti-drug use efforts and organizations and maintain a high priority for combatting drug use by at-risk youth. [1994 sp.s. c 7 § 304.]

*Reviser's note: RCW 70.190.140 expired June 30, 1995.

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

70.190.075 Lead fiscal agent. (1) Each network shall contract with a public entity as its lead fiscal agent. The contract shall grant the agent authority to perform fiscal, accounting, contract administration, legal, and other administrative duties, including the provision of liability insurance. Any contract under this subsection shall be submitted to the council by the network for approval prior to its execution. The council shall review the contract to determine whether the administrative costs will be held to no more than ten percent.

(2) The lead agent shall maintain a system of accounting for network funds consistent with the budgeting, accounting, and reporting systems and standards adopted or approved by the state auditor.

(3) The lead agent may contract with another public or private entity to perform duties other than fiscal or accounting duties. [1996 c 132 § 4.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

70.190.080 Community networks—Programs and plans. (1) The community network's plan may include a program to provide postsecondary scholarships to at-risk students who: (a) Are community role models under criteria established by the community network; (b) successfully complete high school; and (c) maintain at least a 2.5 grade point average throughout high school. Funding for the scholarships may include public and private sources.

(2) The community network's plan may also include funding of community-based home visitor programs which are designed to reduce the incidence of child abuse and neglect within the network. Parents shall sign a voluntary authorization for services, which may be withdrawn at any time. The program may provide parents with education and support either in parents' homes or in other locations comfortable for parents, beginning with the birth of their first baby. The program may make the following services available to the families:

(a) Visits for all expectant or new parents, either at the parent's home or another location with which the parent is comfortable;

(b) Screening before or soon after the birth of a child to assess the family's strengths and goals and define areas of concern in consultation with the family;

(c) Parenting education and skills development;

(d) Parenting and family support information and referral;

(e) Parent support groups; and

(f) Service coordination for individual families, and assistance with accessing services, provided in a manner that ensures that individual families have only one individual or agency to which they look for service coordination. Where appropriate for a family, service coordination may be conducted through interdisciplinary or interagency teams.

These programs are intended to be voluntary for the parents involved.

(3) In developing long-term comprehensive plans to reduce the rate of at-risk children and youth, the community networks shall consider increasing employment and job training opportunities in recognition that they constitute an effective network strategy and strong protective factor. The networks shall consider and may include funding of:

(a) At-risk youth job placement and training programs. The programs shall:

(i) Identify and recruit at-risk youth for local job opportunities;

(ii) Provide skills and needs assessments for each youth recruited;

(iii) Provide career and occupational counseling to each youth recruited;

(iv) Identify businesses willing to provide employment and training opportunities for at-risk youth;

(v) Match each youth recruited with a business that meets his or her skills and training needs;

(vi) Provide employment and training opportunities that prepare the individual for demand occupations; and

(vii) Include, to the extent possible, collaboration of business, labor, education and training, community organizations, and local government;

(b) Employment assistance, including job development, school-to-work placement, employment readiness training, basic skills, apprenticeships, job mentoring, and private sector and community service employment;

(c) Education assistance, including tutoring, mentoring, interactions with role models, entrepreneurial education and projects, violence prevention training, safe school strategies, and employment reentry assistance services.

(4) The community network may include funding of:

(a) Peer-to-peer, group, and individual counseling, including crisis intervention, for at-risk youth and their parents;

(b) Youth coalitions that provide opportunities to develop leadership skills and gain appropriate respect, recognition, and rewards for their positive contribution to their community;

(c) Technical assistance to applicants to increase their organizational capacity and to improve the likelihood of a successful application; and

(d) Technical assistance and training resources to successful applicants. [1996 c 132 § 6; 1994 sp.s. c 7 § 305.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

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

70.190.085 Community networks—Sexual abstinence and activity campaign. The community network's plan may include funding for a student designed media and community campaign promoting sexual abstinence and addressing the importance of delaying sexual activity and pregnancy or male parenting until individuals are ready to nurture and support their children. Under the campaign, which shall be substantially designed and produced by students, the same messages shall be distributed in schools, through the media, and in the community where the campaign is targeted. The campaign shall require local private sector matching funds equal to state funds. Local private sec-

tor funds may include in-kind contributions of technical or other assistance from consultants or firms involved in public relations, advertising, broadcasting, and graphics or video production or other related fields. The campaign shall be evaluated using the outcomes required of community networks under this chapter, in particular reductions in the number or rate of teen pregnancies and teen male parentage over a three to five year period. [1994 c 299 § 5.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

70.190.090 Community networks—Planning grants and contracts—Distribution of funds—Reports. (1) A network shall, upon application to the council, be eligible to receive planning grants and technical assistance from the council. However, during the 1999-01 fiscal biennium, a network that has not finalized its membership shall be eligible to receive such grants and assistance. Planning grants may be funded through available federal funds for family preservation services. After receiving the planning grant the network has up to one year to submit the long-term comprehensive plan.

(2) The council shall enter into biennial contracts with networks as part of the grant process. The contracts shall be consistent with available resources, and shall be distributed in accordance with the distribution formula developed pursuant to RCW 43.41.195, subject to the applicable matching fund requirement.

(3) No later than February 1 of each odd-numbered year following the initial contract between the council and a network, the council shall request from the network its plan for the upcoming biennial contract period.

(4) The council shall notify the networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(5) The networks shall, by contract, distribute funds (a) appropriated for plan implementation by the legislature, and (b) obtained from nonstate or federal sources. In distributing funds, the networks shall ensure that administrative costs are held to a maximum of ten percent. However, during the 1999-01 fiscal biennium, administrative costs shall be held to a maximum of ten percent or twenty thousand dollars, whichever is greater, exclusive of costs associated with procurement, payroll processing, personnel functions, management, maintenance and operation of space and property, data processing and computer services, indirect costs, and organizational planning, consultation, coordination, and training.

(6) A network shall not provide services or operate programs.

(7) A network shall file a report with the council by May 1 of each year that includes but is not limited to the following information: Detailed expenditures, programs under way, progress on contracted services and programs, and successes and problems in achieving the outcomes required by RCW 70.190.130(1)(h) related to reducing the rate of state-funded out-of-home placements and the other three at-risk behaviors covered by the comprehensive plan and approved by the council. [1999 c 309 § 918; 1996 c 132 § 7; 1994 sp.s. c 7 § 306.]

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

(2004 Ed.)

Effective dates—1996 c 132 §§ 7, 8: "(1) Section 7 of this act shall take effect July 1, 1996.

(2) Section 8 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 22, 1996]." [1996 c 132 § 12.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

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

70.190.100 Duties of council. The family policy council shall:

(1) Establish network boundaries no later than July 1, 1994. There is a presumption that no county may be divided between two or more community networks and no network shall have fewer than forty thousand population. When approving multicounty networks, considering dividing a county between networks, or creating a network with a population of less than forty thousand, the council must consider: (a) Common economic, geographic, and social interests; (b) historical and existing shared governance; and (c) the size and location of population centers. Individuals and groups within any area shall be given ample opportunity to propose network boundaries in a manner designed to assure full consideration of their expressed wishes;

(2) Develop a technical assistance and training program to assist communities in creating and developing community networks and comprehensive plans;

(3) Approve the structure, purpose, goals, plan, and performance measurements of each community network;

(4) Identify all prevention and early intervention programs and funds, including all programs funded under RCW 69.50.520, in addition to the programs set forth in RCW 70.190.110, which could be transferred, in all or part, to the community networks, and report their findings and recommendations to the governor and the legislature regarding any appropriate program transfers by January 1 of each year;

(5) Reward community networks that show exceptional success as provided in RCW 43.41.195;

(6) Seek every opportunity to maximize federal and other funding that is consistent with the plans approved by the council for the purpose and goals of this chapter;

(7) Review the state-funded out-of-home placement rate before the end of each contract to determine whether the region has sufficiently reduced the rate. If the council determines that there has not been a sufficient reduction in the rate, it may reduce the immediately succeeding grant to the network;

(8)(a) The council shall monitor the implementation of programs contracted by participating state agencies by reviewing periodic reports on the extent to which services were delivered to intended populations, the quality of services, and the extent to which service outcomes were achieved at the conclusion of service interventions. This monitoring shall include provision for periodic feedback to community networks;

(b) The legislature intends that this monitoring be used by the Washington state institute for public policy, together with public health data on at-risk behaviors and risk and protective factors, to produce an external evaluation of the effectiveness of the networks and their programs. For this reason,

and to conserve public funds, the council shall not conduct or contract for the conduct of control group studies, quasi-experimental design studies, or other analysis efforts to attempt to determine the impact of network programs on at-risk behaviors or risk and protective factors; and

(9) Review the implementation of chapter 7, Laws of 1994 sp. sess. The report shall use measurable performance standards to evaluate the implementation. [1998 c 245 § 123; 1994 sp.s. c 7 § 307.]

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

70.190.110 Program review. (1) The council, and each network, shall biennially review all state and federal funded programs serving individuals, families, or communities to determine whether a network may be better able to integrate and coordinate these services within the community.

(2) The council, and each network, shall specifically review the feasibility and desirability of decategorizing and granting, all or part of, the following program funds to the networks:

- (a) Consolidated juvenile services;
- (b) Family preservation and support services;
- (c) Readiness to learn;
- (d) Community mobilization;
- (e) Violence prevention;
- (f) Community-police partnership;
- (g) Child care;
- (h) Early intervention and educational services, including but not limited to, birth to three, birth to six, early childhood education and assistance, and headstart;
- (i) Crisis residential care;
- (j) Victims' assistance;
- (k) Foster care;
- (l) Adoption support;
- (m) Continuum of care; and
- (n) Drug and alcohol abuse prevention and early intervention in schools.

(3) In determining the desirability of decategorizing these programs the report shall analyze whether:

- (a) The program is an integral part of the comprehensive plan without decategorization;
- (b) The program is already adequately integrated and coordinated with other programs that are, or will be, funded by the network;
- (c) The network could develop the capacity to provide the program's services;
- (d) The program goals might receive greater community support and reinforcement through the network;
- (e) The program presently ensures that adequate follow-up efforts are utilized, and whether the network could improve on those efforts through decategorization of the funds;
- (f) The decategorization would benefit the community; and
- (g) The decategorization would assist the network in achieving its goals.

(4) If the council or a network determines that a program should not be decategorized, the council or network shall make recommendations regarding programmatic changes that are necessary to improve the coordination and integra-

tion of services and programs, regardless of the funding source for those programs. [1998 c 245 § 124; 1994 sp.s. c 7 § 308.]

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

Office of financial management, recommended legislation: RCW 43.41.190.

70.190.120 Interagency agreement. (1) The participating state agencies shall execute an interagency agreement to ensure the coordination of their local program efforts regarding children. This agreement shall recognize and give specific planning, coordination, and program administration responsibilities to community networks, after the approval under RCW 70.190.130 of their comprehensive plans. The community networks shall encourage the development of integrated, regionally based children, youth, and family activities and services with adequate local flexibility to accomplish the purposes stated in section 101, chapter 7, Laws of 1994 sp. sess. and RCW 74.14A.020.

(2) The community networks shall exercise the planning, coordinating, and program administration functions specified by the state interagency agreement in addition to other activities required by law, and shall participate in the planning process required by chapter 71.36 RCW.

(3) Any state or federal funds identified for contracts with community networks shall be transferred with no reductions. [1994 sp.s. c 7 § 309.]

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

70.190.130 Comprehensive plan—Approval process—Network expenditures—Penalty for noncompliance with chapter. (1) The council shall only disburse funds to a network after a comprehensive plan has been prepared by the network and approved by the council. In approving the plan the council shall consider whether the network:

- (a) Promoted input from the widest practical range of agencies and affected parties, including public hearings;
- (b) Reviewed the indicators of violence data compiled by the local public health departments and incorporated a response to those indicators in the plan;
- (c) Obtained a declaration by the largest health department within the network boundary, indicating whether the plan meets minimum standards for assessment and policy development relating to social development according to RCW 43.70.555;
- (d) Included a specific mechanism of data collection and transmission based on the rules established under RCW 43.70.555;
- (e) Considered all relevant causes of violence in its community and did not isolate only one or a few of the elements to the exclusion of others and demonstrated evidence of building community capacity through effective neighborhood and community development;
- (f) Considered youth employment and job training programs outlined in this chapter as a strategy to reduce the rate of at-risk children and youth;
- (g) Integrated local programs that met the network's priorities and were deemed successful by the network;
- (h) Committed to make measurable reductions in the rate of at-risk children and youth by reducing the rate of state-

funded out-of-home placements and make reductions in at least three of the following rates of youth: Violent criminal acts, substance abuse, pregnancy and male parentage, suicide attempts, dropping out of school, child abuse or neglect, and domestic violence; and

(i) Held a public hearing on its proposed comprehensive plan and submitted to the council all of the written comments received at the hearing and a copy of the minutes taken at the hearing.

(2) The council may establish a maximum amount to be expended by a network for purposes of planning and administrative duties, that shall not, in total, exceed ten percent of funds available to a network. The council shall make recommendations to the legislature regarding the specific maximum amounts that can be spent by a network or group of networks on planning and administrative duties. The recommendation may provide differing percentages, considering the size of the budgets of each network and giving consideration to whether there should be a higher percentage for administrative and planning purposes in budgets for smaller networks and a smaller percentage of the budgets for administration and planning purposes in larger networks.

(3) The council may determine that a network is not in compliance with this chapter if it fails to comply with statutory requirements. Upon a determination of noncompliance, the council may suspend or revoke a network's status or contract and specify a process and deadline for the network's compliance. [1998 c 314 § 13; 1996 c 132 § 8; 1994 sp.s. c 7 § 310.]

Effective dates—1996 c 132 §§ 7, 8: See note following RCW 70.190.090.

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

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

Office of financial management, fund distribution formula: RCW 43.41.195.

70.190.150 Federal restrictions on funds transfers, waivers. If there exist any federal restrictions against the transfer of funds, for the programs enumerated in RCW 70.190.110, to the community networks, the council shall assist the governor in immediately applying to the federal government for waivers of the federal restrictions. The council shall also assist the governor in coordinating efforts to make any changes in federal law necessary to meet the purpose and intent of chapter 7, Laws of 1994 sp. sess. [1994 sp.s. c 7 § 312.]

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

70.190.160 Community networks—Implementation in federal and state plans. The implementation of community networks shall be included in all federal and state plans affecting the state's children, youth, and families. The plans shall be consistent with the intent and requirements of this chapter. [1994 sp.s. c 7 § 314.]

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

70.190.170 Transfer of funds and programs to state agency. If a community network is unable or unwilling to (2004 Ed.)

assume powers and duties authorized under this chapter by June 30, 1998, or the Washington state institute for public policy makes a recommendation under RCW 70.190.050, the governor may transfer all funds and programs available to a community network to a single state agency whose statutory purpose, mission, goals, and operating philosophy most closely supports the principles and purposes of section 101, chapter 7, Laws of 1994 sp. sess. and RCW 74.14A.020, for the purpose of integrating the programs and services. [1994 sp.s. c 7 § 320.]

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

70.190.180 Community network—Grants for use of school facilities. A community public health and safety network, based on rules adopted by the department of health, may include in its comprehensive community plans procedures for providing matching grants to school districts to support expanded use of school facilities for after-hours recreational opportunities and day care as authorized under chapter 28A.215 RCW and RCW 28A.620.010. [1994 sp.s. c 7 § 604.]

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

70.190.190 Network members immune from civil liability—Network assets not subject to attachment or execution. (1) The network members are immune from all civil liability arising from their actions done in their decision-making capacity as a network member, except for their intentional tortious acts or acts of official misconduct.

(2) The assets of a network are not subject to attachment or execution in satisfaction of a judgment for the tortious acts or official misconduct of any network member or for the acts of any agency or program to which it provides funds. [1996 c 132 § 9.]

Intent—Construction—Severability—1996 c 132: See notes following RCW 70.190.010.

70.190.910 Severability—1992 c 198. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 198 § 20.]

70.190.920 Effective date—1992 c 198. Sections 1 through 13 of this act shall take effect July 1, 1992. [1992 c 198 § 21.]

Chapter 70.195 RCW

EARLY INTERVENTION SERVICES—BIRTH TO SIX

Sections

| | |
|------------|---|
| 70.195.005 | Findings. |
| 70.195.010 | Birth-to-six interagency coordinating council—Early intervention services—Conditions and limitations. |
| 70.195.020 | Birth-to-six interagency coordinating council—Coordination with counties and communities. |
| 70.195.030 | Early intervention services—Interagency agreements. |
| 70.195.900 | Severability—1992 c 198. |

70.195.005 Findings. The legislature finds that there is an urgent and substantial need to:

(1) Enhance the development of infants and toddlers with disabilities in the state of Washington in order to minimize developmental delay and maximize individual potential and enhance the capability of families to meet the needs of their infants and toddlers with disabilities and maintain family integrity;

(2) Coordinate and enhance the state's existing early intervention services to ensure a statewide, community-based, coordinated, interagency program of early intervention services for infants and toddlers with disabilities and their families; and

(3) Facilitate the coordination of payment for early intervention services from federal, state, local, and private sources including public and private insurance coverage. [1992 c 198 § 14.]

70.195.010 Birth-to-six interagency coordinating council—Early intervention services—Conditions and limitations. For the purposes of implementing this chapter, the governor shall appoint a state birth-to-six interagency coordinating council and ensure that state agencies involved in the provision of, or payment for, early intervention services to infants and toddlers with disabilities and their families shall coordinate and collaborate in the planning and delivery of such services.

No state or local agency currently providing early intervention services to infants and toddlers with disabilities may use funds appropriated for early intervention services for infants and toddlers with disabilities to supplant funds from other sources.

All state and local agencies shall ensure that the implementation of this chapter will not cause any interruption in existing early intervention services for infants and toddlers with disabilities.

Nothing in this chapter shall be construed to permit the restriction or reduction of eligibility under Title V of the Social Security Act, P.L. 90-248, relating to maternal and child health or Title XIX of the Social Security Act, P.L. 89-97, relating to medicaid for infants and toddlers with disabilities. [1998 c 245 § 125; 1992 c 198 § 15.]

70.195.020 Birth-to-six interagency coordinating council—Coordination with counties and communities. The state birth-to-six interagency coordinating council shall identify and work with county early childhood interagency coordinating councils to coordinate and enhance existing early intervention services and assist each community to meet the needs of infants and toddlers with disabilities and their families. [1992 c 198 § 17.]

70.195.030 Early intervention services—Interagency agreements. State agencies providing or paying for early intervention services shall enter into formal interagency agreements with each other and where appropriate, with school districts, counties, and other providers, to define their relationships and financial and service responsibilities. Local agencies or entities, including local school districts, counties, and service providers receiving public money for providing or paying for early intervention services shall enter into for-

mal interagency agreements with each other that define their relationships and financial responsibilities to provide services within each county. In establishing priorities, school districts, counties, and other service providers shall give due regard to the needs of children birth to three years of age and shall ensure that they continue to participate in providing services and collaborate with each other. The interagency agreements shall include procedures for resolving disputes, provisions for establishing maintenance requirements, and all additional components necessary to ensure collaboration and coordination. [1992 c 198 § 16.]

70.195.900 Severability—1992 c 198. See RCW 70.190.910.

Chapter 70.198 RCW

EARLY INTERVENTION SERVICES— HEARING LOSS

Sections

- 70.198.010 Findings.
- 70.198.020 Advisory council—Membership.
- 70.198.030 Development of early intervention service standards.
- 70.198.040 Hearing loss pamphlet.

70.198.010 Findings. (1) The legislature finds that children who are deaf or hard of hearing and their families have unique needs specific to the hearing loss. These unique needs reflect the challenges children with hearing loss and their families encounter related to their lack of full access to auditory communication.

(2) The legislature further finds that early detection of hearing loss in a child and early intervention and treatment have been demonstrated to be highly effective in facilitating a child's healthy development in a manner consistent with the child's age and cognitive ability.

(3) These combined factors support the need for early intervention services providers with specialized training and expertise, spanning the spectrum of available approaches and educational options, who can address the unique characteristics and needs of each child who is deaf or hard of hearing and that child's family. [2004 c 47 § 1.]

70.198.020 Advisory council—Membership. (1) There is established an advisory council in the department of social and health services for the purpose of advancing the development of a comprehensive and effective statewide system to provide prompt and effective early interventions for children in the state who are deaf or hard of hearing and their families.

(2) Members of the advisory council shall have training, experience, or interest in hearing loss in children. Membership shall include, but not be limited to, the following: Pediatricians; audiologists; teachers of the deaf and hard of hearing; parents of children who are deaf or hard of hearing; a representative from the Washington state school for the deaf; and representatives of the infant toddler early intervention program in the department of social and health services, the department of health, and the office of the superintendent of public instruction. [2004 c 47 § 2.]

70.198.030 Development of early intervention service standards. (1) The advisory council shall develop statewide standards for early intervention services and early intervention services providers specifically related to children who are deaf or hard of hearing.

(2) The advisory council shall develop these standards by January 1, 2005. [2004 c 47 § 3.]

70.198.040 Hearing loss pamphlet. (1) The advisory council shall create a pamphlet to be provided to the parents of a child in the state who is diagnosed with hearing loss by their child's pediatrician or audiologist, as appropriate, upon diagnosis of hearing loss. The pamphlet shall contain, at minimum, information on the following: The variety of interventions and treatments available for children who are deaf or hard of hearing; and resources for parent support, counseling, financing, and education related to hearing loss in children.

(2) The pamphlet shall be available for distribution by July 1, 2005. [2004 c 47 § 4.]

**Chapter 70.200 RCW
DONATIONS FOR CHILDREN**

Sections

- 70.200.010 Definitions.
- 70.200.020 Immunity from liability.
- 70.200.030 Construction—Liability, penalty.
- 70.200.900 Severability—1994 c 25.

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

(1) "Distributing organization" means a charitable non-profit organization under 26 U.S.C. Sec. 501(c) of the federal internal revenue code, or a public health agency acting on behalf of or in conjunction with a charitable nonprofit organization, which distributes children's items to needy persons free of charge and includes any nonprofit organization that distributes children's items free of charge to other nonprofit organizations or the public. A public health agency shall not otherwise be considered a distributing organization for purposes of this chapter when it is carrying out other functions and responsibilities under Title 70 RCW.

(2) "Donor" means a person, corporation, association, or other organization that donates children's items to a distributing organization or a person, corporation, association, or other organization that repairs or updates such donated items to current standards. Donor also includes any person, corporation, association, or other organization which donates any space in which storage or distribution of children's items takes place.

(3) "Children's items" include, but are not limited to, clothes, diapers, food, baby formula, cribs, playpens, car seat restraints, toys, high chairs, and books. [1997 c 40 § 1; 1994 c 25 § 1.]

70.200.020 Immunity from liability. Donors and distributing organizations are not liable for civil damages or criminal penalties resulting from the nature, age, condition, or packaging of the donated children's items unless a donor or

(2004 Ed.)

distributing organization acts with gross negligence or intentional misconduct. [1994 c 25 § 2.]

70.200.030 Construction—Liability, penalty. Nothing in this chapter may be construed to create any liability of, or penalty against a donor or distributing organization except as provided in RCW 70.200.020. [1994 c 25 § 3.]

70.200.900 Severability—1994 c 25. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1994 c 25 § 4.]

Chapter 70.210 RCW

INVESTING IN INNOVATION GRANTS PROGRAM

Sections

- 70.210.010 Intent.
- 70.210.020 Definitions.
- 70.210.030 Assessments.
- 70.210.040 Grant award criteria.
- 70.210.050 Peer review committee—Support of research commercialization opportunities—Grant awards, priority, eligibility.
- 70.210.060 Performance benchmarks, review, report.
- 70.210.070 Administration.

70.210.010 Intent. It is the intent of the legislature to promote growth in the technology sectors of our state's economy and to particularly focus support on the creation and commercialization of intellectual property in the technology, energy, and telecommunications industries. [2003 c 403 § 1.]

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

(1) "Center" means the Washington technology center established under RCW 28B.20.283 through 28B.20.295.

(2) "Board" means the board of directors for the center. [2003 c 403 § 2.]

70.210.030 Assessments. (1) The investing in innovation grants program is established.

(2) The center shall periodically make strategic assessments of the types of state investments in research and technology in this state that would likely create jobs and business opportunities and produce the most beneficial long-term improvements to the lives and health of the citizens of the state. The assessments shall be available to the public and shall be used to guide decisions on awarding grants under this chapter. [2003 c 403 § 4.]

70.210.040 Grant award criteria. The board shall:

(1) Develop criteria for the awarding of grants to qualifying universities, institutions, businesses, or individuals;

(2) Make decisions regarding distribution of grant funds and make grant awards; and

(3) In making grant awards, seek to provide a balance between research grant awards and commercialization grant awards. [2003 c 403 § 5.]

70.210.050 Peer review committee—Support of research commercialization opportunities—Grant awards, priority, eligibility. (1) The board may accept grant proposals and establish a competitive process for the awarding of grants.

(2) The board shall establish a peer review committee to include board members, scientists, engineers, and individuals with specific recognized expertise. The peer review committee shall provide to the board an independent peer review of all proposals determined to be competitive for a grant award that are submitted to the board.

(3) In the awarding of grants, priority shall be given to proposals that leverage additional private and public funding resources.

(4) Up to fifty percent of available funds from the *investing in innovation account may be used to support commercialization opportunities for research in Washington state through an organization with commercialization expertise such as the Spokane intercollegiate research and technology institute.

(5) The center may not be a direct recipient of grant awards under chapter 403, Laws of 2003. [2003 c 403 § 6.]

***Reviser's note:** The section creating the investing in innovation account, 2003 c 403 § 3, was vetoed by the governor.

70.210.060 Performance benchmarks, review, report. The board shall establish performance benchmarks against which the program will be evaluated. The grants program shall be reviewed periodically by the board. The board shall report annually to the appropriate standing committees of the legislature on grants awarded and as appropriate on program reviews conducted by the board. [2003 c 403 § 7.]

70.210.070 Administration. (1) The center shall administer the investing in innovation grants program.

(2) Not more than one percent of the available funds from the *investing in innovation account may be used for administrative costs of the program. [2003 c 403 § 8.]

***Reviser's note:** The section creating the investing in innovation account, 2003 c 403 § 3, was vetoed by the governor.

Title 71

MENTAL ILLNESS

Chapters

- 71.02** Mental illness—Reimbursement of costs for treatment.
- 71.05** Mental illness.
- 71.06** Sexual psychopaths.
- 71.09** Sexually violent predators.
- 71.12** Private establishments.
- 71.20** Local funds for community services.
- 71.24** Community mental health services act.
- 71.28** Mental health and developmental disabilities services—Interstate contracts.
- 71.32** Mental health advance directives.
- 71.34** Mental health services for minors.
- 71.36** Coordination of children's mental health services.
- 71.98** Construction.

Alcoholism, intoxication, and drug addiction treatment: Chapters 70.96 and 70.96A RCW.

Children's center for research and training in mental retardation: RCW 28B.20.410 through 28B.20.414.

County hospitals: Chapter 36.62 RCW.

Harrison Memorial Hospital: RCW 72.29.010.

Interstate compact on mental health: Chapter 72.27 RCW.

Jurisdiction over Indians concerning mental illness: Chapter 37.12 RCW.

Mental health: Chapter 72.06 RCW.

Nonresident mentally ill, sexual psychopaths, and psychopathic delinquents: Chapter 72.25 RCW.

State hospitals for mentally ill: Chapter 72.23 RCW.

Chapter 71.02 RCW

MENTAL ILLNESS—REIMBURSEMENT OF COSTS FOR TREATMENT

Sections

- 71.02.490 Authority over patient—Federal agencies, private establishments.
- 71.02.900 Construction and purpose—1959 c 25.
- Commitment to veterans' administration or other federal agency: RCW 73.36.165.*
- Criminally insane—Procedures, rights, and responsibilities: Chapter 10.77 RCW.*
- Guardianship of estate or person: Chapters 11.88 and 11.92 RCW.*
- Mental illness: Chapter 71.05 RCW.*
- State hospitals for mentally ill: Chapter 72.23 RCW.*
- Voluntary patients: RCW 72.23.080 through 72.23.120.*

71.02.490 Authority over patient—Federal agencies, private establishments. The United States veterans' administration, or other United States government agency, or the chief officer of a private facility shall have the same powers as are conferred upon the superintendent of a state hospital with reference to retention, transfer, parole, or discharge of mentally ill persons ordered hospitalized in their facilities. [1959 c 25 § 71.02.490. Prior: 1951 c 139 § 26.]

(2004 Ed.)

Commitment to veterans' administration or other federal agency: RCW 73.36.165.

71.02.900 Construction and purpose—1959 c 25. The provisions of this chapter shall be liberally construed so that persons who are in need of care and treatment for mental illness shall receive humane care and treatment and be restored to normal mental condition as rapidly as possible with an avoidance of loss of civil rights where not necessary, and with as little formality as possible, still preserving all rights and all privileges of the person as guaranteed by the Constitution. [1959 c 25 § 71.02.900. Prior: 1951 c 139 § 1; 1949 c 198 § 1; Rem. Supp. 1949 § 6953-1.]

Chapter 71.05 RCW

MENTAL ILLNESS

Sections

- 71.05.010 Legislative intent.
- 71.05.012 Legislative intent and finding.
- 71.05.020 Definitions.
- 71.05.025 Integration with chapter 71.24 RCW—Regional support networks.
- 71.05.030 Commitment laws applicable.
- 71.05.035 Findings—Developmentally disabled.
- 71.05.040 Detention or judicial commitment of persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia.
- 71.05.050 Voluntary application for mental health services—Rights—Review of condition and status—Detention—Person refusing voluntary admission, temporary detention.
- 71.05.060 Rights of persons complained against.
- 71.05.070 Prayer treatment.
- 71.05.090 Choice of physicians.
- 71.05.100 Financial responsibility.
- 71.05.110 Compensation of appointed counsel.
- 71.05.120 Exemptions from liability.
- 71.05.130 Duties of prosecuting attorney and attorney general.
- 71.05.132 Court-ordered treatment—Required notifications.
- 71.05.135 Mental health commissioners—Appointment.
- 71.05.137 Mental health commissioners—Authority.
- 71.05.140 Records maintained.
- 71.05.145 Dangerous mentally ill offenders—Less restrictive alternative.
- 71.05.150 Detention of mentally disordered persons for evaluation and treatment—Procedure.
- 71.05.155 Request to mental health professional by law enforcement agency for investigation under RCW 71.05.150—Advisory report of results.
- 71.05.157 Evaluation by county designated mental health professional—When required—Required notifications.
- 71.05.160 Petition for initial detention.
- 71.05.170 Acceptance of petition—Notice—Duty of state hospital.
- 71.05.180 Detention period for evaluation and treatment.
- 71.05.190 Persons not admitted—Transportation—Detention of arrested person pending return to custody.
- 71.05.200 Notice and statement of rights—Probable cause hearing.
- 71.05.210 Evaluation—Treatment and care—Release or other disposition.
- 71.05.212 Evaluation—Consideration of information and records.
- 71.05.214 Protocols—Development—Submission to governor and legislature.
- 71.05.215 Right to refuse antipsychotic medicine—Rules.
- 71.05.220 Property of committed person.
- 71.05.230 Procedures for additional treatment.
- 71.05.232 Discharge reviews—Consultations, notifications required.
- 71.05.235 Examination, evaluation of criminal defendant—Hearing.

[Title 71 RCW—page 1]

- 71.05.237 Judicial proceedings—Court to enter findings when recommendations of professional person not followed.
- 71.05.240 Petition for involuntary treatment or alternative treatment—Probable cause hearing.
- 71.05.245 Determination of likelihood of serious harm—Use of recent history evidence.
- 71.05.250 Probable cause hearing—Detained person's rights—Waiver of privilege—Limitation—Records as evidence.
- 71.05.260 Release from involuntary intensive treatment—Exception.
- 71.05.270 Temporary release.
- 71.05.280 Additional confinement—Grounds.
- 71.05.285 Additional confinement—Prior history evidence.
- 71.05.290 Petition for additional confinement—Affidavit.
- 71.05.300 Filing of petition—Appearance—Notice—Advice as to rights—Appointment of representative.
- 71.05.310 Time for hearing—Due process—Jury trial—Continuation of treatment.
- 71.05.320 Remand for additional treatment—Duration—Developmentally disabled—Grounds—Hearing.
- 71.05.325 Release—Authorized leave—Notice to prosecuting attorney.
- 71.05.330 Early release—Notice to court and prosecuting attorney—Petition for hearing.
- 71.05.335 Modification of order for inpatient treatment—Intervention by prosecuting attorney.
- 71.05.340 Outpatient treatment or care—Conditional release—Procedures for revocation.
- 71.05.350 Assistance to released persons.
- 71.05.360 Rights of involuntarily detained persons.
- 71.05.370 Rights—Posting of list.
- 71.05.380 Rights of voluntarily committed persons.
- 71.05.390 Confidential information and records—Disclosure.
- 71.05.395 Application of uniform health care information act, chapter 70.02 RCW.
- 71.05.400 Release of information to patient's next of kin, attorney, guardian, conservator—Notification of patient's death.
- 71.05.410 Notice of disappearance of patient.
- 71.05.420 Records of disclosure.
- 71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions.
- 71.05.427 Persons committed following dismissal of sex offense—Release of information authorized.
- 71.05.430 Statistical data.
- 71.05.440 Action for unauthorized release of confidential information—Liquidated damages—Treble damages—Injunction.
- 71.05.445 Mental health services information—Release to department of corrections—Initial assessment inquiry—Required notifications—Rules.
- 71.05.450 Competency—Effect—Statement of Washington law.
- 71.05.460 Right to counsel.
- 71.05.470 Right to examination.
- 71.05.480 Petitioning for release—Writ of habeas corpus.
- 71.05.490 Rights of persons committed before January 1, 1974.
- 71.05.500 Liability of applicant.
- 71.05.510 Damages for excessive detention.
- 71.05.520 Protection of rights—Staff.
- 71.05.525 Transfer of person committed to juvenile correction institution to institution or facility for mentally ill juveniles.
- 71.05.530 Facilities part of comprehensive mental health program.
- 71.05.550 Recognition of county financial necessities.
- 71.05.560 Adoption of rules.
- 71.05.5601 Rule making—Medicaid—Secretary of corrections—Secretary of social and health services.
- 71.05.5602 Rule making—Chapter 214, Laws of 1999—Secretary of corrections—Secretary of social and health services.
- 71.05.570 Rules of court.
- 71.05.575 Less restrictive alternative treatment—Consideration by court.
- 71.05.610 Treatment records—Definitions.
- 71.05.620 Treatment records—Informed consent for disclosure of information—Court files and records.
- 71.05.630 Treatment records—Confidential—Release.
- 71.05.640 Treatment records—Access procedures.
- 71.05.650 Treatment records—Notation of and access to released data.
- 71.05.660 Treatment records—Privileged communications unaffected.
- 71.05.670 Treatment records—Violations—Civil action.
- 71.05.680 Treatment records—Access under false pretenses, penalty.
- 71.05.690 Treatment records—Rules.
- 71.05.900 Severability—1973 1st ex.s. c 142.
- 71.05.910 Construction—1973 1st ex.s. c 142.
- 71.05.920 Section headings not part of the law.
- 71.05.930 Effective date—1973 1st ex.s. c 142.
- 71.05.940 Equal application of 1989 c 420—Evaluation for developmental disability.

Rules of court: *Cf. Superior Court Mental Proceedings Rules (MPR).*

Reviser's note: The department of social and health services filed an emergency order, WSR 89-20-030, effective October 1, 1989, establishing rules for the recognition and certification of regional support networks. A final order was filed on January 24, 1990, effective January 25, 1990.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Minors—Mental health services, commitment: Chapter 71.34 RCW.

Regional support networks: RCW 71.24.310.

71.05.010 Legislative intent. The provisions of this chapter are intended by the legislature:

(1) To prevent inappropriate, indefinite commitment of mentally disordered persons and to eliminate legal disabilities that arise from such commitment;

(2) To provide prompt evaluation and timely and appropriate treatment of persons with serious mental disorders;

(3) To safeguard individual rights;

(4) To provide continuity of care for persons with serious mental disorders;

(5) To encourage the full use of all existing agencies, professional personnel, and public funds to prevent duplication of services and unnecessary expenditures;

(6) To encourage, whenever appropriate, that services be provided within the community;

(7) To protect the public safety. [1998 c 297 § 2; 1997 c 112 § 2; 1989 c 120 § 1; 1973 1st ex.s. c 142 § 6.]

Effective dates—1998 c 297: "This act takes effect July 1, 1998, except for sections 18, 35, 38, and 39 of this act, which take effect March 1, 1999." [1998 c 297 § 53.]

Severability—1998 c 297: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1998 c 297 § 58.]

Intent—1998 c 297: "It is the intent of the legislature to: (1) Clarify that it is the nature of a person's current conduct, current mental condition, history, and likelihood of committing future acts that pose a threat to public safety or himself or herself, rather than simple categorization of offenses, that should determine treatment procedures and level; (2) improve and clarify the sharing of information between the mental health and criminal justice systems; and (3) provide additional opportunities for mental health treatment for persons whose conduct threatens himself or herself or threatens public safety and has led to contact with the criminal justice system.

The legislature recognizes that a person can be incompetent to stand trial, but may not be gravely disabled or may not present a likelihood of serious harm. The legislature does not intend to create a presumption that a person who is found incompetent to stand trial is gravely disabled or presents a likelihood of serious harm requiring civil commitment." [1998 c 297 § 1.]

71.05.012 Legislative intent and finding. It is the intent of the legislature to enhance continuity of care for persons with serious mental disorders that can be controlled or stabilized in a less restrictive alternative commitment. Within the guidelines stated in *In Re LaBelle* 107 Wn. 2d 196 (1986), the legislature intends to encourage appropriate interventions at a point when there is the best opportunity to restore the person to or maintain satisfactory functioning.

For persons with a prior history or pattern of repeated hospitalizations or law enforcement interventions due to decompensation, the consideration of prior mental history is particularly relevant in determining whether the person would receive, if released, such care as is essential for his or her health or safety.

Therefore, the legislature finds that for persons who are currently under a commitment order, a prior history of dec-

ompenation leading to repeated hospitalizations or law enforcement interventions should be given great weight in determining whether a new less restrictive alternative commitment should be ordered. [1997 c 112 § 1.]

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

(1) "Admission" or "admit" means a decision by a physician that a person should be examined or treated as a patient in a hospital;

(2) "Antipsychotic medications" means that class of drugs primarily used to treat serious manifestations of mental illness associated with thought disorders, which includes, but is not limited to atypical antipsychotic medications;

(3) "Attending staff" means any person on the staff of a public or private agency having responsibility for the care and treatment of a patient;

(4) "Commitment" means the determination by a court that a person should be detained for a period of either evaluation or treatment, or both, in an inpatient or a less restrictive setting;

(5) "Conditional release" means a revocable modification of a commitment, which may be revoked upon violation of any of its terms;

(6) "County designated mental health professional" means a mental health professional appointed by the county to perform the duties specified in this chapter;

(7) "Custody" means involuntary detention under the provisions of this chapter or chapter 10.77 RCW, uninterrupted by any period of unconditional release from commitment from a facility providing involuntary care and treatment;

(8) "Department" means the department of social and health services;

(9) "Detention" or "detain" means the lawful confinement of a person, under the provisions of this chapter;

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

(11) "Developmental disability" means that condition defined in RCW 71A.10.020(3);

(12) "Discharge" means the termination of hospital medical authority. The commitment may remain in place, be terminated, or be amended by court order;

(13) "Evaluation and treatment facility" means any facility which can provide directly, or by direct arrangement with other public or private agencies, emergency evaluation and treatment, outpatient care, and timely and appropriate inpatient care to persons suffering from a mental disorder, and which is certified as such by the department. A physically separate and separately operated portion of a state hospital may be designated as an evaluation and treatment facility. A facility which is part of, or operated by, the department or any federal agency will not require certification. No correctional institution or facility, or jail, shall be an evaluation and treatment facility within the meaning of this chapter;

(14) "Gravely disabled" means a condition in which a person, as a result of a mental disorder: (a) Is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety; or (b) manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety;

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

(16) "History of one or more violent acts" refers to the period of time ten years prior to the filing of a petition under this chapter, excluding any time spent, but not any violent acts committed, in a mental health facility or in confinement as a result of a criminal conviction;

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

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

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

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

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

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

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

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

(18) "Judicial commitment" means a commitment by a court pursuant to the provisions of this chapter;

(19) "Likelihood of serious harm" means:

(a) A substantial risk that: (i) Physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (ii) physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (iii) physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior which has caused substantial loss or damage to the property of others; or

(b) The individual has threatened the physical safety of another and has a history of one or more violent acts;

(20) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions;

(21) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(22) "Peace officer" means a law enforcement official of a public agency or governmental unit, and includes persons specifically given peace officer powers by any state law, local ordinance, or judicial order of appointment;

(23) "Private agency" means any person, partnership, corporation, or association that is not a public agency, whether or not financed in whole or in part by public funds, which constitutes an evaluation and treatment facility or private institution, hospital, or sanitarium, which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;

(24) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of this chapter;

(25) "Psychiatrist" means a person having a license as a physician and surgeon in this state who has in addition completed three years of graduate training in psychiatry in a program approved by the American medical association or the American osteopathic association and is certified or eligible to be certified by the American board of psychiatry and neurology;

(26) "Psychologist" means a person who has been licensed as a psychologist pursuant to chapter 18.83 RCW;

(27) "Public agency" means any evaluation and treatment facility or institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill;[,] if the agency is operated directly by, federal, state, county, or municipal government, or a combination of such governments;

(28) "Release" means legal termination of the commitment under the provisions of this chapter;

(29) "Resource management services" has the meaning given in chapter 71.24 RCW;

(30) "Secretary" means the secretary of the department of social and health services, or his or her designee;

(31) "Social worker" means a person with a master's or further advanced degree from an accredited school of social work or a degree deemed equivalent under rules adopted by the secretary;

(32) "Violent act" means behavior that resulted in homicide, attempted suicide, nonfatal injuries, or substantial damage to property. [2000 c 94 § 1; 1999 c 13 § 5; 1998 c 297 § 3; 1997 c 112 § 3. Prior: 1989 c 420 § 13; 1989 c 205 § 8; 1989 c 120 § 2; 1979 ex.s. c 215 § 5; 1973 1st ex.s. c 142 § 7.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

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

71.05.025 Integration with chapter 71.24 RCW—Regional support networks. The legislature intends that the procedures and services authorized in this chapter be integrated with those in chapter 71.24 RCW to the maximum extent necessary to assure a continuum of care to persons

who are mentally ill or who have mental disorders, as defined in either or both this chapter and chapter 71.24 RCW. To this end, regional support networks established in accordance with chapter 71.24 RCW shall institute procedures which require timely consultation with resource management services by county-designated mental health professionals and evaluation and treatment facilities to assure that determinations to admit, detain, commit, treat, discharge, or release persons with mental disorders under this chapter are made only after appropriate information regarding such person's treatment history and current treatment plan has been sought from resource management services. [2000 c 94 § 2; 1989 c 205 § 9.]

Evaluation of transition to regional systems—1989 c 205: See note following RCW 71.24.015.

71.05.030 Commitment laws applicable. Persons suffering from a mental disorder may not be involuntarily committed for treatment of such disorder except pursuant to provisions of this chapter, chapter 10.77 RCW, chapter 71.06 RCW, chapter 71.34 RCW, transfer pursuant to RCW 72.68.031 through 72.68.037, or pursuant to court ordered evaluation and treatment not to exceed ninety days pending a criminal trial or sentencing. [1998 c 297 § 4; 1985 c 354 § 31; 1983 c 3 § 179; 1974 ex.s. c 145 § 4; 1973 2nd ex.s. c 24 § 2; 1973 1st ex.s. c 142 § 8.]

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

Severability—Effective date—1985 c 354: See RCW 71.34.900 and 71.34.901.

71.05.035 Findings—Developmentally disabled. The legislature finds that among those persons who endanger the safety of others by committing crimes are a small number of persons with developmental disabilities. While their conduct is not typical of the vast majority of persons with developmental disabilities who are responsible citizens, for their own welfare and for the safety of others the state may need to exercise control over those few dangerous individuals who are developmentally disabled, have been charged with crimes that involve a threat to public safety or security, and have been found either incompetent to stand trial or not guilty by reason of insanity.

The legislature finds, however, that the use of civil commitment procedures under chapter 71.05 RCW to effect state control over dangerous developmentally disabled persons has resulted in their commitment to institutions for the mentally ill. The legislature finds that existing programs in mental institutions may be inappropriate for persons who are developmentally disabled because the services provided in mental institutions are oriented to persons with mental illness, a condition not necessarily associated with developmental disabilities.

Therefore, the legislature believes that, where appropriate, and subject to available funds, persons with developmental disabilities who have been charged with crimes that involve a threat to public safety or security and have been found incompetent to stand trial or not guilty by reason of insanity should receive state services addressing their needs, that such services must be provided in conformance with an individual habilitation plan, and that their initial treatment

should be separate and discrete from treatment for persons involved in any other treatment or habilitation program in a manner consistent with the needs of public safety. [1998 c 297 § 5; 1989 c 420 § 2.]

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

71.05.040 Detention or judicial commitment of persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia. Persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia shall not be detained for evaluation and treatment or judicially committed solely by reason of that condition unless such condition causes a person to be gravely disabled or as a result of a mental disorder such condition exists that constitutes a likelihood of serious harm: Provided however, That persons who are developmentally disabled, impaired by chronic alcoholism or drug abuse, or suffering from dementia and who otherwise meet the criteria for detention or judicial commitment are not ineligible for detention or commitment based on this condition alone. [2004 c 166 § 2; 1997 c 112 § 4; 1987 c 439 § 1; 1977 ex.s. c 80 § 41; 1975 1st ex.s. c 199 § 1; 1974 ex.s. c 145 § 5; 1973 1st ex.s. c 142 § 9.]

Severability—2004 c 166: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 166 § 23.]

Effective dates—2004 c 166: "This act takes effect July 1, 2004, except for sections 6, 20, and 22 of this act, which are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [March 26, 2004]." [2004 c 166 § 24.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

71.05.050 Voluntary application for mental health services—Rights—Review of condition and status—Detention—Person refusing voluntary admission, temporary detention. Nothing in this chapter shall be construed to limit the right of any person to apply voluntarily to any public or private agency or practitioner for treatment of a mental disorder, either by direct application or by referral. Any person voluntarily admitted for inpatient treatment to any public or private agency shall be released immediately upon his or her request. Any person voluntarily admitted for inpatient treatment to any public or private agency shall orally be advised of the right to immediate discharge, and further advised of such rights in writing as are secured to them pursuant to this chapter and their rights of access to attorneys, courts, and other legal redress. Their condition and status shall be reviewed at least once each one hundred eighty days for evaluation as to the need for further treatment or possible discharge, at which time they shall again be advised of their right to discharge upon request: PROVIDED HOWEVER, That if the professional staff of any public or private agency or hospital regards a person voluntarily admitted who requests discharge as presenting, as a result of a mental disorder, an imminent likelihood of serious harm, or is gravely disabled, they may detain such person for sufficient time to notify the county designated mental health professional of such person's condition to enable the county designated men-

(2004 Ed.)

tal health professional to authorize such person being further held in custody or transported to an evaluation and treatment center pursuant to the provisions of this chapter, which shall in ordinary circumstances be no later than the next judicial day: PROVIDED FURTHER, That if a person is brought to the emergency room of a public or private agency or hospital for observation or treatment, the person refuses voluntary admission, and the professional staff of the public or private agency or hospital regard such person as presenting as a result of a mental disorder an imminent likelihood of serious harm, or as presenting an imminent danger because of grave disability, they may detain such person for sufficient time to notify the county designated mental health professional of such person's condition to enable the county designated mental health professional to authorize such person being further held in custody or transported to an evaluation treatment center pursuant to the conditions in this chapter, but which time shall be no more than six hours from the time the professional staff determine that an evaluation by the county designated mental health professional is necessary. [2000 c 94 § 3; 1998 c 297 § 6; 1997 c 112 § 5; 1979 ex.s. c 215 § 6; 1975 1st ex.s. c 199 § 2; 1974 ex.s. c 145 § 6; 1973 1st ex.s. c 142 § 10.]

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

71.05.060 Rights of persons complained against. A person subject to confinement resulting from any petition or proceeding pursuant to the provisions of this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter. [1973 1st ex.s. c 142 § 11.]

71.05.070 Prayer treatment. The provisions of this chapter shall not be construed to deny to any person treatment by spiritual means through prayer in accordance with the tenets and practices of a church or religious denomination. [1973 1st ex.s. c 142 § 12.]

71.05.090 Choice of physicians. Persons receiving evaluation or treatment under this chapter shall be given a reasonable choice of an available physician or other professional person qualified to provide such services. [1973 2nd ex.s. c 24 § 3; 1973 1st ex.s. c 142 § 14.]

71.05.100 Financial responsibility. In addition to the responsibility provided for by RCW 43.20B.330, any person, or his or her estate, or his or her spouse, or the parents of a minor person who is involuntarily detained pursuant to this chapter for the purpose of treatment and evaluation outside of a facility maintained and operated by the department shall be responsible for the cost of such care and treatment. In the event that an individual is unable to pay for such treatment or in the event payment would result in a substantial hardship upon the individual or his or her family, then the county of residence of such person shall be responsible for such costs. If it is not possible to determine the county of residence of the person, the cost shall be borne by the county where the person was originally detained. The department shall, pursuant to chapter 34.05 RCW, adopt standards as to (1) inability to pay in whole or in part, (2) a definition of substantial hardship,

[Title 71 RCW—page 5]

and (3) appropriate payment schedules. Such standards shall be applicable to all county mental health administrative boards. Financial responsibility with respect to department services and facilities shall continue to be as provided in RCW 43.20B.320 through 43.20B.360 and 43.20B.370. [1997 c 112 § 6; 1987 c 75 § 18; 1973 2nd ex.s. c 24 § 4; 1973 1st ex.s. c 142 § 15.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

71.05.110 Compensation of appointed counsel. Attorneys appointed for persons pursuant to this chapter shall be compensated for their services as follows: (1) The person for whom an attorney is appointed shall, if he or she is financially able pursuant to standards as to financial capability and indigency set by the superior court of the county in which the proceeding is held, bear the costs of such legal services; (2) if such person is indigent pursuant to such standards, the costs of such services shall be borne by the county in which the proceeding is held, subject however to the responsibility for costs provided in RCW 71.05.320(2). [1997 c 112 § 7; 1973 1st ex.s. c 142 § 16.]

71.05.120 Exemptions from liability. (1) No officer of a public or private agency, nor the superintendent, professional person in charge, his or her professional designee, or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person pursuant to this chapter, nor any county designated mental health professional, nor the state, a unit of local government, or an evaluation and treatment facility shall be civilly or criminally liable for performing duties pursuant to this chapter with regard to the decision of whether to admit, discharge, release, administer antipsychotic medications, or detain a person for evaluation and treatment: **PROVIDED**, That such duties were performed in good faith and without gross negligence.

(2) This section does not relieve a person from giving the required notices under RCW 71.05.330(2) or 71.05.340(1)(b), or the duty to warn or to take reasonable precautions to provide protection from violent behavior where the patient has communicated an actual threat of physical violence against a reasonably identifiable victim or victims. The duty to warn or to take reasonable precautions to provide protection from violent behavior is discharged if reasonable efforts are made to communicate the threat to the victim or victims and to law enforcement personnel. [2000 c 94 § 4; 1991 c 105 § 2; 1989 c 120 § 3; 1987 c 212 § 301; 1979 ex.s. c 215 § 7; 1974 ex.s. c 145 § 7; 1973 2nd ex.s. c 24 § 5; 1973 1st ex.s. c 142 § 17.]

Severability—1991 c 105: See note following RCW 71.05.215.

71.05.130 Duties of prosecuting attorney and attorney general. In any judicial proceeding for involuntary commitment or detention, or in any proceeding challenging such commitment or detention, the prosecuting attorney for the county in which the proceeding was initiated shall represent the individuals or agencies petitioning for commitment or detention and shall defend all challenges to such commitment

or detention: **PROVIDED**, That the attorney general shall represent and provide legal services and advice to state hospitals or institutions with regard to all provisions of and proceedings under this chapter except in proceedings initiated by such hospitals and institutions seeking fourteen day detention. [1998 c 297 § 7; 1991 c 105 § 3; 1989 c 120 § 4; 1979 ex.s. c 215 § 8; 1973 1st ex.s. c 142 § 18.]

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

Severability—1991 c 105: See note following RCW 71.05.215.

71.05.132 Court-ordered treatment—Required notifications. When any court orders a person to receive treatment under this chapter, the order shall include a statement that if the person is, or becomes, subject to supervision by the department of corrections, the person must notify the treatment provider and the person's mental health treatment information must be shared with the department of corrections for the duration of the offender's incarceration and supervision, under RCW 71.05.445. Upon a petition by a person who does not have a history of one or more violent acts, the court may, for good cause, find that public safety would not be enhanced by the sharing of this person's information. [2004 c 166 § 12.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

71.05.135 Mental health commissioners—Appointment. In each county the superior court may appoint the following persons to assist the superior court in disposing of its business: **PROVIDED**, That such positions may not be created without prior consent of the county legislative authority:

(1) One or more attorneys to act as mental health commissioners; and

(2) Such investigators, stenographers, and clerks as the court shall find necessary to carry on the work of the mental health commissioners.

The appointments provided for in this section shall be made by a majority vote of the judges of the superior court of the county and may be in addition to all other appointments of commissioners and other judicial attaches otherwise authorized by law. Mental health commissioners and investigators shall serve at the pleasure of the judges appointing them and shall receive such compensation as the county legislative authority shall determine. The appointments may be full or part-time positions. A person appointed as a mental health commissioner may also be appointed to any other commissioner position authorized by law. [1993 c 15 § 2; 1991 c 363 § 146; 1989 c 174 § 1.]

Effective date—1993 c 15: See note following RCW 26.12.050.

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

Severability—1989 c 174: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 174 § 4.]

71.05.137 Mental health commissioners—Authority. The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed

pursuant to RCW 71.05.135, to perform any or all of the following duties:

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [1989 c 174 § 2.]

Severability—1989 c 174: See note following RCW 71.05.135.

71.05.140 Records maintained. A record of all applications, petitions, and proceedings under this chapter shall be maintained by the county clerk in which the application, petition, or proceeding was initiated. [1973 1st ex.s. c 142 § 19.]

71.05.145 Dangerous mentally ill offenders—Less restrictive alternative. The legislature intends that, when evaluating a person who is identified under RCW 72.09.370(7), the professional person at the evaluation and treatment facility shall, when appropriate after consideration of the person's mental condition and relevant public safety concerns, file a petition for a ninety-day less restrictive alternative in lieu of a petition for a fourteen-day commitment. [1999 c 214 § 4.]

Intent—Effective date—1999 c 214: See notes following RCW 72.09.370.

71.05.150 Detention of mentally disordered persons for evaluation and treatment—Procedure. (1)(a) When a county designated mental health professional receives information alleging that a person, as a result of a mental disorder: (i) Presents a likelihood of serious harm; or (ii) is gravely disabled; the county designated mental health professional may, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of any person providing information to initiate detention, if satisfied that the allegations are true and that the person will not voluntarily seek appropriate treatment, file a petition for initial detention. Before filing the petition, the county designated mental health professional must personally interview the person, unless the person refuses an interview, and determine whether the person will voluntarily receive appropriate evaluation and treatment at an evaluation and treatment facility.

(b) Whenever it appears, by petition for initial detention, to the satisfaction of a judge of the superior court that a person presents, as a result of a mental disorder, a likelihood of serious harm, or is gravely disabled, and that the person has refused or failed to accept appropriate evaluation and treat-

ment voluntarily, the judge may issue an order requiring the person to appear within twenty-four hours after service of the order at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period. The order shall state the address of the evaluation and treatment facility to which the person is to report and whether the required seventy-two hour evaluation and treatment services may be delivered on an outpatient or inpatient basis and that if the person named in the order fails to appear at the evaluation and treatment facility at or before the date and time stated in the order, such person may be involuntarily taken into custody for evaluation and treatment. The order shall also designate retained counsel or, if counsel is appointed from a list provided by the court, the name, business address, and telephone number of the attorney appointed to represent the person.

(c) The county designated mental health professional shall then serve or cause to be served on such person, his or her guardian, and conservator, if any, a copy of the order to appear together with a notice of rights and a petition for initial detention. After service on such person the county designated mental health professional shall file the return of service in court and provide copies of all papers in the court file to the evaluation and treatment facility and the designated attorney. The county designated mental health professional shall notify the court and the prosecuting attorney that a probable cause hearing will be held within seventy-two hours of the date and time of outpatient evaluation or admission to the evaluation and treatment facility. The person shall be permitted to remain in his or her home or other place of his or her choosing prior to the time of evaluation and shall be permitted to be accompanied by one or more of his or her relatives, friends, an attorney, a personal physician, or other professional or religious advisor to the place of evaluation. An attorney accompanying the person to the place of evaluation shall be permitted to be present during the admission evaluation. Any other individual accompanying the person may be present during the admission evaluation. The facility may exclude the individual if his or her presence would present a safety risk, delay the proceedings, or otherwise interfere with the evaluation.

(d) If the person ordered to appear does appear on or before the date and time specified, the evaluation and treatment facility may admit such person as required by RCW 71.05.170 or may provide treatment on an outpatient basis. If the person ordered to appear fails to appear on or before the date and time specified, the evaluation and treatment facility shall immediately notify the county designated mental health professional who may notify a peace officer to take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility. Should the county designated mental health professional notify a peace officer authorizing him or her to take a person into custody under the provisions of this subsection, he or she shall file with the court a copy of such authorization and a notice of detention. At the time such person is taken into custody there shall commence to be served on such person, his or her guardian, and conservator, if any, a copy of the original order together with a notice of detention, a notice of rights, and a petition for initial detention.

(2) When a county designated mental health professional receives information alleging that a person, as the result of a mental disorder, presents an imminent likelihood of serious harm, or is in imminent danger because of being gravely disabled, after investigation and evaluation of the specific facts alleged and of the reliability and credibility of the person or persons providing the information if any, the county designated mental health professional may take such person, or cause by oral or written order such person to be taken into emergency custody in an evaluation and treatment facility for not more than seventy-two hours as described in RCW 71.05.180.

(3) A peace officer may take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility pursuant to subsection (1)(d) of this section.

(4) A peace officer may, without prior notice of the proceedings provided for in subsection (1) of this section, take or cause such person to be taken into custody and immediately delivered to an evaluation and treatment facility or the emergency department of a local hospital:

(a) Only pursuant to subsections (1)(d) and (2) of this section; or

(b) When he or she has reasonable cause to believe that such person is suffering from a mental disorder and presents an imminent likelihood of serious harm or is in imminent danger because of being gravely disabled.

(5) Persons delivered to evaluation and treatment facilities by peace officers pursuant to subsection (4)(b) of this section may be held by the facility for a period of up to twelve hours: PROVIDED, That they are examined by a mental health professional within three hours of their arrival. Within twelve hours of their arrival, the county designated mental health professional must file a supplemental petition for detention, and commence service on the designated attorney for the detained person. [1998 c 297 § 8; 1997 c 112 § 8; 1984 c 233 § 1; 1979 ex.s. c 215 § 9; 1975 1st ex.s. c 199 § 3; 1974 ex.s. c 145 § 8; 1973 1st ex.s. c 142 § 20.]

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

71.05.155 Request to mental health professional by law enforcement agency for investigation under RCW 71.05.150—Advisory report of results. When a mental health professional is requested by a representative of a law enforcement agency, including a police officer, sheriff, a municipal attorney, or prosecuting attorney to undertake an investigation under RCW 71.05.150, the mental health professional shall, if requested to do so, advise the representative in writing of the results of the investigation including a statement of reasons for the decision to detain or release the person investigated. Such written report shall be submitted within seventy-two hours of the completion of the investigation or the request from the law enforcement representative, whichever occurs later. [1997 c 112 § 9; 1979 ex.s. c 215 § 10.]

71.05.157 Evaluation by county designated mental health professional—When required—Required notifications. (1) When a county designated mental health professional is notified by a jail that a defendant or offender who

was subject to a discharge review under RCW 71.05.232 is to be released to the community, the county designated mental health professional shall evaluate the person within seventy-two hours of release.

(2) When an offender is under court-ordered treatment in the community and the supervision of the department of corrections, and the treatment provider becomes aware that the person is in violation of the terms of the court order, the treatment provider shall notify the county designated mental health professional of the violation and request an evaluation for purposes of revocation of the less restrictive alternative.

(3) When a county designated mental health professional becomes aware that an offender who is under court-ordered treatment in the community and the supervision of the department of corrections is in violation of a treatment order or a condition of supervision, or the county designated mental health professional detains a person under this chapter, the county designated mental health professional shall notify the person's treatment provider and the department of corrections.

(4) When an offender who is confined in a state correctional facility or is under supervision of the department of corrections in the community is subject to a petition for involuntary treatment under this chapter, the petitioner shall notify the department of corrections and the department of corrections shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department of corrections classified the offender as a high risk or high needs offender.

(5) Nothing in this section creates a duty on any treatment provider or county designated mental health professional to provide offender supervision. [2004 c 166 § 16.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

71.05.160 Petition for initial detention. Any facility receiving a person pursuant to RCW 71.05.150 shall require a petition for initial detention stating the circumstances under which the person's condition was made known and stating that such officer or person has evidence, as a result of his or her personal observation or investigation, that the actions of the person for which application is made constitute a likelihood of serious harm, or that he or she is gravely disabled, and stating the specific facts known to him or her as a result of his or her personal observation or investigation, upon which he or she bases the belief that such person should be detained for the purposes and under the authority of this chapter.

If a person is involuntarily placed in an evaluation and treatment facility pursuant to RCW 71.05.150, on the next judicial day following the initial detention, the county designated mental health professional shall file with the court and serve the designated attorney of the detained person the petition or supplemental petition for initial detention, proof of service of notice, and a copy of a notice of emergency detention. [1998 c 297 § 9; 1997 c 112 § 10; 1974 ex.s. c 145 § 9; 1973 1st ex.s. c 142 § 21.]

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

71.05.170 Acceptance of petition—Notice—Duty of state hospital. Whenever the county designated mental health professional petitions for detention of a person whose actions constitute a likelihood of serious harm, or who is gravely disabled, the facility providing seventy-two hour evaluation and treatment must immediately accept on a provisional basis the petition and the person. The facility shall then evaluate the person's condition and admit, detain, transfer, or discharge such person in accordance with RCW 71.05.210. The facility shall notify in writing the court and the county designated mental health professional of the date and time of the initial detention of each person involuntarily detained in order that a probable cause hearing shall be held no later than seventy-two hours after detention.

The duty of a state hospital to accept persons for evaluation and treatment under this section shall be limited by chapter 71.24 RCW. [2000 c 94 § 5; 1998 c 297 § 10; 1997 c 112 § 11; 1989 c 205 § 10; 1974 ex.s. c 145 § 10; 1973 1st ex.s. c 142 § 22.]

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

71.05.180 Detention period for evaluation and treatment. If the evaluation and treatment facility admits the person, it may detain him or her for evaluation and treatment for a period not to exceed seventy-two hours from the time of acceptance as set forth in RCW 71.05.170. The computation of such seventy-two hour period shall exclude Saturdays, Sundays and holidays. [1997 c 112 § 12; 1979 ex.s. c 215 § 11; 1974 ex.s. c 145 § 11; 1973 1st ex.s. c 142 § 23.]

71.05.190 Persons not admitted—Transportation—Detention of arrested person pending return to custody. If the person is not approved for admission by a facility providing seventy-two hour evaluation and treatment, and the individual has not been arrested, the facility shall furnish transportation, if not otherwise available, for the person to his or her place of residence or other appropriate place. If the individual has been arrested, the evaluation and treatment facility shall detain the individual for not more than eight hours at the request of the peace officer in order to enable a peace officer to return to the facility and take the individual back into custody. [1997 c 112 § 13; 1979 ex.s. c 215 § 12; 1974 ex.s. c 145 § 12; 1973 1st ex.s. c 142 § 24.]

71.05.200 Notice and statement of rights—Probable cause hearing. (1) Whenever any person is detained for evaluation and treatment pursuant to this chapter, both the person and, if possible, a responsible member of his or her immediate family, guardian, or conservator, if any, shall be advised as soon as possible in writing or orally, by the officer or person taking him or her into custody or by personnel of the evaluation and treatment facility where the person is detained that unless the person is released or voluntarily admits himself or herself for treatment within seventy-two hours of the initial detention:

(a) That a judicial hearing in a superior court, either by a judge or court commissioner thereof, shall be held not more than seventy-two hours after the initial detention to determine whether there is probable cause to detain the person after the seventy-two hours have expired for up to an additional four-

teen days without further automatic hearing for the reason that the person is a mentally ill person whose mental disorder presents a likelihood of serious harm or that the person is gravely disabled;

(b) That the person has a right to communicate immediately with an attorney; has a right to have an attorney appointed to represent him or her before and at the probable cause hearing if he or she is indigent; and has the right to be told the name and address of the attorney the mental health professional has designated pursuant to this chapter;

(c) That the person has the right to remain silent and that any statement he or she makes may be used against him or her;

(d) That the person has the right to present evidence and to cross-examine witnesses who testify against him or her at the probable cause hearing; and

(e) That the person has the right to refuse psychiatric medications, including antipsychotic medication beginning twenty-four hours prior to the probable cause hearing.

(2) When proceedings are initiated under RCW 71.05.150 (2), (3), or (4)(b), no later than twelve hours after such person is admitted to the evaluation and treatment facility the personnel of the evaluation and treatment facility or the county designated mental health professional shall serve on such person a copy of the petition for initial detention and the name, business address, and phone number of the designated attorney and shall forthwith commence service of a copy of the petition for initial detention on the designated attorney.

(3) The judicial hearing described in subsection (1) of this section is hereby authorized, and shall be held according to the provisions of subsection (1) of this section and rules promulgated by the supreme court. [1998 c 297 § 11; 1997 c 112 § 14; 1989 c 120 § 5; 1974 ex.s. c 145 § 13; 1973 1st ex.s. c 142 § 25.]

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

71.05.210 Evaluation—Treatment and care—Release or other disposition. Each person involuntarily detained and accepted or admitted at an evaluation and treatment facility shall, within twenty-four hours of his or her admission or acceptance at the facility, be examined and evaluated by a licensed physician who may be assisted by a physician assistant according to chapter 18.71A RCW or an advanced registered nurse practitioner according to chapter 18.79 RCW and a mental health professional, and shall receive such treatment and care as his or her condition requires including treatment on an outpatient basis for the period that he or she is detained, except that, beginning twenty-four hours prior to a trial or hearing pursuant to RCW 71.05.215, 71.05.240, 71.05.310, 71.05.320, 71.05.340, or 71.05.370, the individual may refuse psychiatric medications, but may not refuse: (1) Any other medication previously prescribed by a person licensed under Title 18 RCW; or (2) emergency lifesaving treatment, and the individual shall be informed at an appropriate time of his or her right of such refusal. The person shall be detained up to seventy-two hours, if, in the opinion of the professional person in charge of the facility, or his or her professional designee, the person presents a likelihood of serious harm, or is gravely disabled.

A person who has been detained for seventy-two hours shall no later than the end of such period be released, unless referred for further care on a voluntary basis, or detained pursuant to court order for further treatment as provided in this chapter.

If, after examination and evaluation, the licensed physician and mental health professional determine that the initial needs of the person would be better served by placement in a chemical dependency treatment facility, then the person shall be referred to an approved treatment program defined under RCW 70.96A.020.

An evaluation and treatment center admitting or accepting any person pursuant to this chapter whose physical condition reveals the need for hospitalization shall assure that such person is transferred to an appropriate hospital for evaluation or admission for treatment. Notice of such fact shall be given to the court, the designated attorney, and the county designated mental health professional and the court shall order such continuance in proceedings under this chapter as may be necessary, but in no event may this continuance be more than fourteen days. [2000 c 94 § 6; 1998 c 297 § 12; 1997 c 112 § 15; 1994 sp.s. c 9 § 747. Prior: 1991 c 364 § 11; 1991 c 105 § 4; 1989 c 120 § 6; 1987 c 439 § 2; 1975 1st ex.s. c 199 § 4; 1974 ex.s. c 145 § 14; 1973 1st ex.s. c 142 § 26.]

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

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

Severability—1991 c 105: See note following RCW 71.05.215.

71.05.212 Evaluation—Consideration of information and records. Whenever a county designated mental health professional or professional person is conducting an evaluation under this chapter, consideration shall include all reasonably available information and records regarding: (1) Prior recommendations for evaluation of the need for civil commitments when the recommendation is made pursuant to an evaluation conducted under chapter 10.77 RCW; (2) history of one or more violent acts; (3) prior determinations of incompetency or insanity under chapter 10.77 RCW; and (4) prior commitments under this chapter.

In addition, when conducting an evaluation for offenders identified under RCW 72.09.370, the county designated mental health professional or professional person shall consider an offender's history of judicially required or administratively ordered antipsychotic medication while in confinement. [1999 c 214 § 5; 1998 c 297 § 19.]

Intent—Effective date—1999 c 214: See notes following RCW 72.09.370.

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

71.05.214 Protocols—Development—Submission to governor and legislature. The department shall develop statewide protocols to be utilized by professional persons and county designated mental health professionals in administration of this chapter and chapter 10.77 RCW. The protocols shall be updated at least every three years. The protocols shall provide uniform development and application of criteria in

evaluation and commitment recommendations, of persons who have, or are alleged to have, mental disorders and are subject to this chapter.

The initial protocols shall be developed not later than September 1, 1999. The department shall develop and update the protocols in consultation with representatives of county designated mental health professionals, local government, law enforcement, county and city prosecutors, public defenders, and groups concerned with mental illness. The protocols shall be submitted to the governor and legislature upon adoption by the department. [1998 c 297 § 26.]

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

71.05.215 Right to refuse antipsychotic medicine—Rules. (1) A person found to be gravely disabled or presents a likelihood of serious harm as a result of a mental disorder has a right to refuse antipsychotic medication unless it is determined that the failure to medicate may result in a likelihood of serious harm or substantial deterioration or substantially prolong the length of involuntary commitment and there is no less intrusive course of treatment than medication in the best interest of that person.

(2) The department shall adopt rules to carry out the purposes of this chapter. These rules shall include:

(a) An attempt to obtain the informed consent of the person prior to administration of antipsychotic medication.

(b) For short-term treatment up to thirty days, the right to refuse antipsychotic medications unless there is an additional concurring medical opinion approving medication.

(c) For continued treatment beyond thirty days through the hearing on any petition filed under RCW 71.05.370(7), the right to periodic review of the decision to medicate by the medical director or designee.

(d) Administration of antipsychotic medication in an emergency and review of this decision within twenty-four hours. An emergency exists if the person presents an imminent likelihood of serious harm, and medically acceptable alternatives to administration of antipsychotic medications are not available or are unlikely to be successful; and in the opinion of the physician, the person's condition constitutes an emergency requiring the treatment be instituted prior to obtaining a second medical opinion.

(e) Documentation in the medical record of the physician's attempt to obtain informed consent and the reasons why antipsychotic medication is being administered over the person's objection or lack of consent. [1997 c 112 § 16; 1991 c 105 § 1.]

Severability—1991 c 105: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 105 § 6.]

71.05.220 Property of committed person. At the time a person is involuntarily admitted to an evaluation and treatment facility, the professional person in charge or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the person detained. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to lim-

itations, if any, specifically imposed by the detained person. For purposes of this section, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without the consent of the patient or order of the court. [1997 c 112 § 17; 1973 1st ex.s. c 142 § 27.]

71.05.230 Procedures for additional treatment. A person detained for seventy-two hour evaluation and treatment may be detained for not more than fourteen additional days of involuntary intensive treatment or ninety additional days of a less restrictive alternative to involuntary intensive treatment if the following conditions are met:

(1) The professional staff of the agency or facility providing evaluation services has analyzed the person's condition and finds that the condition is caused by mental disorder and either results in a likelihood of serious harm, or results in the detained person being gravely disabled and are prepared to testify those conditions are met; and

(2) The person has been advised of the need for voluntary treatment and the professional staff of the facility has evidence that he or she has not in good faith volunteered; and

(3) The facility providing intensive treatment is certified to provide such treatment by the department; and

(4) The professional staff of the agency or facility or the county designated mental health professional has filed a petition for fourteen day involuntary detention or a ninety day less restrictive alternative with the court. The petition must be signed either by two physicians or by one physician and a mental health professional who have examined the person. If involuntary detention is sought the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and that there are no less restrictive alternatives to detention in the best interest of such person or others. The petition shall state specifically that less restrictive alternative treatment was considered and specify why treatment less restrictive than detention is not appropriate. If an involuntary less restrictive alternative is sought, the petition shall state facts that support the finding that such person, as a result of mental disorder, presents a likelihood of serious harm, or is gravely disabled and shall set forth the less restrictive alternative proposed by the facility; and

(5) A copy of the petition has been served on the detained person, his or her attorney and his or her guardian or conservator, if any, prior to the probable cause hearing; and

(6) The court at the time the petition was filed and before the probable cause hearing has appointed counsel to represent such person if no other counsel has appeared; and

(7) The court has ordered a fourteen day involuntary intensive treatment or a ninety day less restrictive alternative treatment after a probable cause hearing has been held pursuant to RCW 71.05.240; and

(8) At the conclusion of the initial commitment period, the professional staff of the agency or facility or the county designated mental health professional may petition for an additional period of either ninety days of less restrictive alternative treatment or ninety days of involuntary intensive treatment as provided in RCW 71.05.290; and

(9) If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated has agreed to assume such responsibility. [1998 c 297 § 13; 1997 c 112 § 18; 1987 c 439 § 3; 1975 1st ex.s. c 199 § 5; 1974 ex.s. c 145 § 15; 1973 1st ex.s. c 142 § 28.]

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

71.05.232 Discharge reviews—Consultations, notifications required. (1) When a state hospital admits a person for evaluation or treatment under this chapter who has a history of one or more violent acts and:

(a) Has been transferred from a correctional facility; or

(b) Is or has been under the authority of the department of corrections or the indeterminate sentence review board, the state hospital shall consult with the appropriate corrections and chemical dependency personnel and the appropriate forensic staff at the state hospital to conduct a discharge review to determine whether the person presents a likelihood of serious harm and whether the person is appropriate for release to a less restrictive alternative.

(2) When a state hospital returns a person who was reviewed under subsection (1) of this section to a correctional facility, the hospital shall notify the correctional facility that the person was subject to a discharge review pursuant to this section. [2004 c 166 § 18.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

71.05.235 Examination, evaluation of criminal defendant—Hearing. (1) If an individual is referred to a county designated mental health professional under RCW 10.77.090(1)(d)(iii)(A), the county designated mental health professional shall examine the individual within forty-eight hours. If the county designated mental health professional determines it is not appropriate to detain the individual or petition for a ninety-day less restrictive alternative under RCW 71.05.230(4), that decision shall be immediately presented to the superior court for hearing. The court shall hold a hearing to consider the decision of the county designated mental health professional not later than the next judicial day. At the hearing the superior court shall review the determination of the county designated mental health professional and determine whether an order should be entered requiring the person to be evaluated at an evaluation and treatment facility. No person referred to an evaluation and treatment facility may be held at the facility longer than seventy-two hours.

(2) If an individual is placed in an evaluation and treatment facility under RCW 10.77.090(1)(d)(iii)(B), a professional person shall evaluate the individual for purposes of determining whether to file a ninety-day inpatient or outpatient petition under chapter 71.05 RCW. Before expiration of the seventy-two hour evaluation period authorized under RCW 10.77.090(1)(d)(iii)(B), the professional person shall file a petition or, if the recommendation of the professional person is to release the individual, present his or her recommendation to the superior court of the county in which the criminal charge was dismissed. The superior court shall review the recommendation not later than forty-eight hours, excluding Saturdays, Sundays, and holidays, after the recom-

mentation is presented. If the court rejects the recommendation to unconditionally release the individual, the court may order the individual detained at a designated evaluation and treatment facility for not more than a seventy-two hour evaluation and treatment period and direct the individual to appear at a surety hearing before that court within seventy-two hours, or the court may release the individual but direct the individual to appear at a surety hearing set before that court within eleven days, at which time the prosecutor may file a petition under this chapter for ninety-day inpatient or outpatient treatment. If a petition is filed by the prosecutor, the court may order that the person named in the petition be detained at the evaluation and treatment facility that performed the evaluation under this subsection or order the respondent to be in outpatient treatment. If a petition is filed but the individual fails to appear in court for the surety hearing, the court shall order that a mental health professional or peace officer shall take such person or cause such person to be taken into custody and placed in an evaluation and treatment facility to be brought before the court the next judicial day after detention. Upon the individual's first appearance in court after a petition has been filed, proceedings under RCW 71.05.310 and 71.05.320 shall commence. For an individual subject to this subsection, the prosecutor or professional person may directly file a petition for ninety-day inpatient or outpatient treatment and no petition for initial detention or fourteen-day detention is required before such a petition may be filed.

The court shall conduct the hearing on the petition filed under this subsection within five judicial days of the date the petition is filed. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the date of the filing of the petition. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.250.

During the proceeding the person named in the petition shall continue to be detained and treated until released by order of the court. If no order has been made within thirty days after the filing of the petition, not including any extensions of time requested by the detained person or his or her attorney, the detained person shall be released.

(3) If a county designated mental health professional or the professional person and prosecuting attorney for the county in which the criminal charge was dismissed or attorney general, as appropriate, stipulate that the individual does not present a likelihood of serious harm or is not gravely disabled, the hearing under this section is not required and the individual, if in custody, shall be released.

(4) The individual shall have the rights specified in RCW 71.05.250. [2000 c 74 § 6; 1999 c 11 § 1; 1998 c 297 § 18.]

Severability—2000 c 74: See note following RCW 10.77.060.

Effective date—1999 c 11: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect March 1, 1999,

or upon approval by the governor, whichever occurs later [April 15, 1999]." [1999 c 11 § 2.]

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

71.05.237 Judicial proceedings—Court to enter findings when recommendations of professional person not followed. In any judicial proceeding in which a professional person has made a recommendation regarding whether an individual should be committed for treatment under this chapter, and the court does not follow the recommendation, the court shall enter findings that state with particularity its reasoning, including a finding whether the state met its burden of proof in showing whether the person presents a likelihood of serious harm. [1998 c 297 § 25.]

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

71.05.240 Petition for involuntary treatment or alternative treatment—Probable cause hearing. If a petition is filed for fourteen day involuntary treatment or ninety days of less restrictive alternative treatment, the court shall hold a probable cause hearing within seventy-two hours of the initial detention of such person as determined in RCW 71.05.180. If requested by the detained person or his or her attorney, the hearing may be postponed for a period not to exceed forty-eight hours. The hearing may also be continued subject to the conditions set forth in RCW 71.05.210 or subject to the petitioner's showing of good cause for a period not to exceed twenty-four hours.

At the conclusion of the probable cause hearing, if the court finds by a preponderance of the evidence that such person, as the result of mental disorder, presents a likelihood of serious harm, or is gravely disabled, and, after considering less restrictive alternatives to involuntary detention and treatment, finds that no such alternatives are in the best interests of such person or others, the court shall order that such person be detained for involuntary treatment not to exceed fourteen days in a facility certified to provide treatment by the department. If the court finds that such person, as the result of a mental disorder, presents a likelihood of serious harm, or is gravely disabled, but that treatment in a less restrictive setting than detention is in the best interest of such person or others, the court shall order an appropriate less restrictive course of treatment for not to exceed ninety days.

The court shall specifically state to such person and give such person notice in writing that if involuntary treatment beyond the fourteen day period or beyond the ninety days of less restrictive treatment is to be sought, such person will have the right to a full hearing or jury trial as required by RCW 71.05.310. The court shall also provide written notice that the person is barred from the possession of firearms. [1997 c 112 § 19; 1992 c 168 § 3; 1987 c 439 § 5; 1979 ex.s. c 215 § 13; 1974 ex.s. c 145 § 16; 1973 1st ex.s. c 142 § 29.]

Severability—1992 c 168: See note following RCW 9.41.070.

71.05.245 Determination of likelihood of serious harm—Use of recent history evidence. In making a determination of whether there is a likelihood of serious harm in a hearing conducted under RCW 71.05.240 or 71.05.320, the court shall give great weight to any evidence before the court

regarding whether the person has: (1) A recent history of one or more violent acts; or (2) a recent history of one or more commitments under this chapter or its equivalent provisions under the laws of another state which were based on a likelihood of serious harm. The existence of prior violent acts or commitments under this chapter or its equivalent shall not be the sole basis for determining whether a person presents a likelihood of serious harm.

For the purposes of this section "recent" refers to the period of time not exceeding three years prior to the current hearing. [1999 c 13 § 6; 1998 c 297 § 14.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

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

71.05.250 Probable cause hearing—Detained person's rights—Waiver of privilege—Limitation—Records as evidence. At the probable cause hearing the detained person shall have the following rights in addition to the rights previously specified:

- (1) To present evidence on his or her behalf;
- (2) To cross-examine witnesses who testify against him or her;
- (3) To be proceeded against by the rules of evidence;
- (4) To remain silent;
- (5) To view and copy all petitions and reports in the court file.

The physician-patient privilege or the psychologist-client privilege shall be deemed waived in proceedings under this chapter relating to the administration of antipsychotic medications. As to other proceedings under this chapter, the privileges shall be waived when a court of competent jurisdiction in its discretion determines that such waiver is necessary to protect either the detained person or the public.

The waiver of a privilege under this section is limited to records or testimony relevant to evaluation of the detained person for purposes of a proceeding under this chapter. Upon motion by the detained person or on its own motion, the court shall examine a record or testimony sought by a petitioner to determine whether it is within the scope of the waiver.

The record maker shall not be required to testify in order to introduce medical or psychological records of the detained person so long as the requirements of RCW 5.45.020 are met except that portions of the record which contains opinions as to the detained person's mental state must be deleted from such records unless the person making such conclusions is available for cross-examination. [1989 c 120 § 7; 1987 c 439 § 6; 1974 ex.s. c 145 § 17; 1973 1st ex.s. c 142 § 30.]

71.05.260 Release from involuntary intensive treatment—Exception. (1) Involuntary intensive treatment ordered at the time of the probable cause hearing shall be for no more than fourteen days, and shall terminate sooner when, in the opinion of the professional person in charge of the facility or his or her professional designee, (a) the person no longer constitutes a likelihood of serious harm, or (b) no longer is gravely disabled, or (c) is prepared to accept voluntary treatment upon referral, or (d) is to remain in the facility providing intensive treatment on a voluntary basis.

(2004 Ed.)

(2) A person who has been detained for fourteen days of intensive treatment shall be released at the end of the fourteen days unless one of the following applies: (a) Such person agrees to receive further treatment on a voluntary basis; or (b) such person is a patient to whom RCW 71.05.280 is applicable. [1997 c 112 § 20; 1987 c 439 § 7; 1974 ex.s. c 145 § 18; 1973 1st ex.s. c 142 § 31.]

71.05.270 Temporary release. Nothing in this chapter shall prohibit the professional person in charge of a treatment facility, or his or her professional designee, from permitting a person detained for intensive treatment to leave the facility for prescribed periods during the term of the person's detention, under such conditions as may be appropriate. [1997 c 112 § 21; 1973 1st ex.s. c 142 § 32.]

71.05.280 Additional confinement—Grounds. At the expiration of the fourteen-day period of intensive treatment, a person may be confined for further treatment pursuant to RCW 71.05.320 if:

(1) Such person after having been taken into custody for evaluation and treatment has threatened, attempted, or inflicted: (a) Physical harm upon the person of another or himself or herself, or substantial damage upon the property of another, and (b) as a result of mental disorder presents a likelihood of serious harm; or

(2) Such person was taken into custody as a result of conduct in which he or she attempted or inflicted physical harm upon the person of another or himself or herself, or substantial damage upon the property of others, and continues to present, as a result of mental disorder, a likelihood of serious harm; or

(3) Such person has been determined to be incompetent and criminal charges have been dismissed pursuant to RCW 10.77.090 (4), and has committed acts constituting a felony, and as a result of a mental disorder, presents a substantial likelihood of repeating similar acts. In any proceeding pursuant to this subsection it shall not be necessary to show intent, willfulness, or state of mind as an element of the crime; or

(4) Such person is gravely disabled. [1998 c 297 § 15; 1997 c 112 § 22; 1986 c 67 § 3; 1979 ex.s. c 215 § 14; 1974 ex.s. c 145 § 19; 1973 1st ex.s. c 142 § 33.]

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

71.05.285 Additional confinement—Prior history evidence. In determining whether an inpatient or less restrictive alternative commitment under the process provided in RCW 71.05.280 and 71.05.320(2) is appropriate, great weight shall be given to evidence of a prior history or pattern of decompensation and discontinuation of treatment resulting in: (1) Repeated hospitalizations; or (2) repeated peace officer interventions resulting in juvenile offenses, criminal charges, diversion programs, or jail admissions. Such evidence may be used to provide a factual basis for concluding that the individual would not receive, if released, such care as is essential for his or her health or safety. [2001 c 12 § 1; 1997 c 112 § 23.]

71.05.290 Petition for additional confinement—Affidavit. (1) At any time during a person's fourteen day intensive treatment period, the professional person in charge of a treatment facility or his or her professional designee or the county designated mental health professional may petition the superior court for an order requiring such person to undergo an additional period of treatment. Such petition must be based on one or more of the grounds set forth in RCW 71.05.280.

(2) The petition shall summarize the facts which support the need for further confinement and shall be supported by affidavits signed by two examining physicians, or by one examining physician and examining mental health professional. The affidavits shall describe in detail the behavior of the detained person which supports the petition and shall explain what, if any, less restrictive treatments which are alternatives to detention are available to such person, and shall state the willingness of the affiant to testify to such facts in subsequent judicial proceedings under this chapter.

(3) If a person has been determined to be incompetent pursuant to RCW 10.77.090(4), then the professional person in charge of the treatment facility or his or her professional designee or the county designated mental health professional may directly file a petition for one hundred eighty day treatment under RCW 71.05.280(3). No petition for initial detention or fourteen day detention is required before such a petition may be filed. [1998 c 297 § 16; 1997 c 112 § 24; 1986 c 67 § 4; 1975 1st ex.s. c 199 § 6; 1974 ex.s. c 145 § 20; 1973 1st ex.s. c 142 § 34.]

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

71.05.300 Filing of petition—Appearance—Notice—Advice as to rights—Appointment of representative. The petition for ninety day treatment shall be filed with the clerk of the superior court at least three days before expiration of the fourteen-day period of intensive treatment. At the time of filing such petition, the clerk shall set a time for the person to come before the court on the next judicial day after the day of filing unless such appearance is waived by the person's attorney, and the clerk shall notify the county designated mental health professional. The county designated mental health professional shall immediately notify the person detained, his or her attorney, if any, and his or her guardian or conservator, if any, and the prosecuting attorney, and provide a copy of the petition to such persons as soon as possible.

At the time set for appearance the detained person shall be brought before the court, unless such appearance has been waived and the court shall advise him or her of his or her right to be represented by an attorney and of his or her right to a jury trial. If the detained person is not represented by an attorney, or is indigent or is unwilling to retain an attorney, the court shall immediately appoint an attorney to represent him or her. The court shall, if requested, appoint a reasonably available licensed physician, psychologist, or psychiatrist, designated by the detained person to examine and testify on behalf of the detained person.

The court may, if requested, also appoint a professional person as defined in RCW 71.05.020 to seek less restrictive alternative courses of treatment and to testify on behalf of the detained person. In the case of a developmentally disabled

person who has been determined to be incompetent pursuant to RCW 10.77.090(4), then the appointed professional person under this section shall be a developmental disabilities professional.

The court shall also set a date for a full hearing on the petition as provided in RCW 71.05.310. [1998 c 297 § 17; 1997 c 112 § 25; 1989 c 420 § 14; 1987 c 439 § 8; 1975 1st ex.s. c 199 § 7; 1974 ex.s. c 145 § 21; 1973 1st ex.s. c 142 § 35.]

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

71.05.310 Time for hearing—Due process—Jury trial—Continuation of treatment. The court shall conduct a hearing on the petition for ninety day treatment within five judicial days of the first court appearance after the probable cause hearing. The court may continue the hearing upon the written request of the person named in the petition or the person's attorney, for good cause shown, which continuance shall not exceed five additional judicial days. If the person named in the petition requests a jury trial, the trial shall commence within ten judicial days of the first court appearance after the probable cause hearing. The burden of proof shall be by clear, cogent, and convincing evidence and shall be upon the petitioner. The person shall be present at such proceeding, which shall in all respects accord with the constitutional guarantees of due process of law and the rules of evidence pursuant to RCW 71.05.250.

During the proceeding, the person named in the petition shall continue to be treated until released by order of the superior court. If no order has been made within thirty days after the filing of the petition, not including extensions of time requested by the detained person or his or her attorney, the detained person shall be released. [1987 c 439 § 9; 1975 1st ex.s. c 199 § 8; 1974 ex.s. c 145 § 22; 1973 1st ex.s. c 142 § 36.]

71.05.320 Remand for additional treatment—Duration—Developmentally disabled—Grounds—Hearing.

(1) If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven and that the best interests of the person or others will not be served by a less restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department for a further period of intensive treatment not to exceed ninety days from the date of judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment in a facility certified for one hundred eighty day treatment by the department. If the committed person is developmentally disabled and has been determined incompetent pursuant to RCW 10.77.090(4), and the best interests of the person or others will not be served by a less-restrictive treatment which is an alternative to detention, the court shall remand him or her to the custody of the department or to a facility certified for one hundred eighty-day treatment by the department. When appropriate and subject to available funds, treatment and training of such persons must be provided in a program specifically reserved for the treatment and training

of developmentally disabled persons. A person so committed shall receive habilitation services pursuant to an individualized service plan specifically developed to treat the behavior which was the subject of the criminal proceedings. The treatment program shall be administered by developmental disabilities professionals and others trained specifically in the needs of developmentally disabled persons. The department may limit admissions to this specialized program in order to ensure that expenditures for services do not exceed amounts appropriated by the legislature and allocated by the department for such services. The department may establish admission priorities in the event that the number of eligible persons exceeds the limits set by the department. An order for treatment less restrictive than involuntary detention may include conditions, and if such conditions are not adhered to, the designated mental health professional or developmental disabilities professional may order the person apprehended under the terms and conditions of RCW 71.05.340.

If the court or jury finds that grounds set forth in RCW 71.05.280 have been proven, but finds that treatment less restrictive than detention will be in the best interest of the person or others, then the court shall remand him or her to the custody of the department or to a facility certified for ninety day treatment by the department or to a less restrictive alternative for a further period of less restrictive treatment not to exceed ninety days from the date of judgment: PROVIDED, That if the grounds set forth in RCW 71.05.280(3) are the basis of commitment, then the period of treatment may be up to but not exceed one hundred eighty days from the date of judgment.

(2) The person shall be released from involuntary treatment at the expiration of the period of commitment imposed under subsection (1) of this section unless the superintendent or professional person in charge of the facility in which he or she is confined, or in the event of a less restrictive alternative, the designated mental health professional or developmental disabilities professional, files a new petition for involuntary treatment on the grounds that the committed person;

(a) During the current period of court ordered treatment: (i) Has threatened, attempted, or inflicted physical harm upon the person of another, or substantial damage upon the property of another, and (ii) as a result of mental disorder or developmental disability presents a likelihood of serious harm; or

(b) Was taken into custody as a result of conduct in which he or she attempted or inflicted serious physical harm upon the person of another, and continues to present, as a result of mental disorder or developmental disability a likelihood of serious harm; or

(c) Is in custody pursuant to RCW 71.05.280(3) and as a result of mental disorder or developmental disability presents a substantial likelihood of repeating similar acts considering the charged criminal behavior, life history, progress in treatment, and the public safety; or

(d) Continues to be gravely disabled.

If the conduct required to be proven in (b) and (c) of this subsection was found by a judge or jury in a prior trial under this chapter, it shall not be necessary to reprove that element. Such new petition for involuntary treatment shall be filed and heard in the superior court of the county of the facility which is filing the new petition for involuntary treatment unless

(2004 Ed.)

good cause is shown for a change of venue. The cost of the proceedings shall be borne by the state.

The hearing shall be held as provided in RCW 71.05.310, and if the court or jury finds that the grounds for additional confinement as set forth in this subsection are present, the court may order the committed person returned for an additional period of treatment not to exceed one hundred eighty days from the date of judgment. At the end of the one hundred eighty day period of commitment, the committed person shall be released unless a petition for another one hundred eighty day period of continued treatment is filed and heard in the same manner as provided in this subsection. Successive one hundred eighty day commitments are permissible on the same grounds and pursuant to the same procedures as the original one hundred eighty day commitment.

(3) No person committed as provided in this section may be detained unless a valid order of commitment is in effect. No order of commitment can exceed one hundred eighty days in length. [1999 c 13 § 7; 1997 c 112 § 26; 1989 c 420 § 15; 1986 c 67 § 5; 1979 ex.s. c 215 § 15; 1975 1st ex.s. c 199 § 9; 1974 ex.s. c 145 § 23; 1973 1st ex.s. c 142 § 37.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

71.05.325 Release—Authorized leave—Notice to prosecuting attorney. (1) Before a person committed under grounds set forth in RCW 71.05.280(3) is released because a new petition for involuntary treatment has not been filed under RCW 71.05.320(2), the superintendent, professional person, or designated mental health professional responsible for the decision whether to file a new petition shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision not to file a new petition for involuntary treatment. Notice shall be provided at least forty-five days before the period of commitment expires.

(2)(a) Before a person committed under grounds set forth in RCW 71.05.280(3) is permitted temporarily to leave a treatment facility pursuant to RCW 71.05.270 for any period of time without constant accompaniment by facility staff, the superintendent, professional person in charge of a treatment facility, or his or her professional designee shall in writing notify the prosecuting attorney of any county of the person's destination and the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed. The notice shall be provided at least forty-five days before the anticipated leave and shall describe the conditions under which the leave is to occur.

(b) The provisions of RCW 71.05.330(2) apply to proposed leaves, and either or both prosecuting attorneys receiving notice under this subsection may petition the court under RCW 71.05.330(2).

(3) Nothing in this section shall be construed to authorize detention of a person unless a valid order of commitment is in effect.

(4) The existence of the notice requirements in this section will not require any extension of the leave date in the event the leave plan changes after notification.

(5) The notice requirements contained in this section shall not apply to emergency medical transfers.

(6) The notice provisions of this section are in addition to those provided in RCW 71.05.425. [2000 c 94 § 7; 1994 c 129 § 8; 1990 c 3 § 111; 1989 c 401 § 1; 1986 c 67 § 2.]

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

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

71.05.330 Early release—Notice to court and prosecuting attorney—Petition for hearing. (1) Nothing in this chapter shall prohibit the superintendent or professional person in charge of the hospital or facility in which the person is being involuntarily treated from releasing him or her prior to the expiration of the commitment period when, in the opinion of the superintendent or professional person in charge, the person being involuntarily treated no longer presents a likelihood of serious harm.

Whenever the superintendent or professional person in charge of a hospital or facility providing involuntary treatment pursuant to this chapter releases a person prior to the expiration of the period of commitment, the superintendent or professional person in charge shall in writing notify the court which committed the person for treatment.

(2) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is released under this section, the superintendent or professional person in charge shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the release date. Notice shall be provided at least thirty days before the release date. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county in which the person is being involuntarily treated for a hearing to determine whether the person is to be released. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and the guardian or conservator of the committed person. The court shall conduct a hearing on the petition within ten days of filing the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the release, it may do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the committed person shall be released or shall be returned for involuntary treatment subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter. [1998 c 297 § 20; 1997 c 112 § 27; 1986 c 67 § 1; 1973 1st ex.s. c 142 § 38.]

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

71.05.335 Modification of order for inpatient treatment—Intervention by prosecuting attorney. In any proceeding under this chapter to modify a commitment order of a person committed to inpatient treatment under grounds set

forth in RCW 71.05.280(3) or 71.05.320(2)(c) in which the requested relief includes treatment less restrictive than detention, the prosecuting attorney shall be entitled to intervene. The party initiating the motion to modify the commitment order shall serve the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed with written notice and copies of the initiating papers. [1986 c 67 § 7.]

71.05.340 Outpatient treatment or care—Conditional release—Procedures for revocation. (1)(a) When, in the opinion of the superintendent or the professional person in charge of the hospital or facility providing involuntary treatment, the committed person can be appropriately served by outpatient treatment prior to or at the expiration of the period of commitment, then such outpatient care may be required as a term of conditional release for a period which, when added to the inpatient treatment period, shall not exceed the period of commitment. If the hospital or facility designated to provide outpatient treatment is other than the facility providing involuntary treatment, the outpatient facility so designated must agree in writing to assume such responsibility. A copy of the terms of conditional release shall be given to the patient, the county designated mental health professional in the county in which the patient is to receive outpatient treatment, and to the court of original commitment.

(b) Before a person committed under grounds set forth in RCW 71.05.280(3) or 71.05.320(2)(c) is conditionally released under (a) of this subsection, the superintendent or professional person in charge of the hospital or facility providing involuntary treatment shall in writing notify the prosecuting attorney of the county in which the criminal charges against the committed person were dismissed, of the decision to conditionally release the person. Notice and a copy of the terms of conditional release shall be provided at least thirty days before the person is released from inpatient care. Within twenty days after receiving notice, the prosecuting attorney may petition the court in the county that issued the commitment order to hold a hearing to determine whether the person may be conditionally released and the terms of the conditional release. The prosecuting attorney shall provide a copy of the petition to the superintendent or professional person in charge of the hospital or facility providing involuntary treatment, the attorney, if any, and guardian or conservator of the committed person, and the court of original commitment. If the county in which the committed person is to receive outpatient treatment is the same county in which the criminal charges against the committed person were dismissed, then the court shall, upon the motion of the prosecuting attorney, transfer the proceeding to the court in that county. The court shall conduct a hearing on the petition within ten days of the filing of the petition. The committed person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as set forth in this subsection and except that there shall be no right to jury trial. The issue to be determined at the hearing is whether or not the person may be conditionally released without substantial danger to other persons, or substantial likelihood of committing criminal acts jeopardizing public safety or security. If the court disapproves of the conditional release, it may

do so only on the basis of substantial evidence. Pursuant to the determination of the court upon the hearing, the conditional release of the person shall be approved by the court on the same or modified conditions or the person shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed, or otherwise in accordance with the provisions of this chapter.

(2) The hospital or facility designated to provide outpatient care or the secretary may modify the conditions for continued release when such modification is in the best interest of the person. Notification of such changes shall be sent to all persons receiving a copy of the original conditions.

(3)(a) If the hospital or facility designated to provide outpatient care, the county designated mental health professional, or the secretary determines that:

(i) A conditionally released person is failing to adhere to the terms and conditions of his or her release;

(ii) Substantial deterioration in a conditionally released person's functioning has occurred;

(iii) There is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or

(iv) The person poses a likelihood of serious harm.

Upon notification by the hospital or facility designated to provide outpatient care, or on his or her own motion, the county designated mental health professional or the secretary may order that the conditionally released person be apprehended and taken into custody and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(b) The hospital or facility designated to provide outpatient treatment shall notify the secretary or county designated mental health professional when a conditionally released person fails to adhere to terms and conditions of his or her conditional release or experiences substantial deterioration in his or her condition and, as a result, presents an increased likelihood of serious harm. The county designated mental health professional or secretary shall order the person apprehended and temporarily detained in an evaluation and treatment facility in or near the county in which he or she is receiving outpatient treatment.

(c) A person detained under this subsection (3) shall be held until such time, not exceeding five days, as a hearing can be scheduled to determine whether or not the person should be returned to the hospital or facility from which he or she had been conditionally released. The county designated mental health professional or the secretary may modify or rescind such order at any time prior to commencement of the court hearing.

(d) The court that originally ordered commitment shall be notified within two judicial days of a person's detention under the provisions of this section, and the county designated mental health professional or the secretary shall file his or her petition and order of apprehension and detention with the court and serve them upon the person detained. His or her attorney, if any, and his or her guardian or conservator, if any, shall receive a copy of such papers as soon as possible. Such person shall have the same rights with respect to notice, hearing, and counsel as for an involuntary treatment proceeding, except as specifically set forth in this section and except that

there shall be no right to jury trial. The issues to be determined shall be: (i) Whether the conditionally released person did or did not adhere to the terms and conditions of his or her conditional release; (ii) that substantial deterioration in the person's functioning has occurred; (iii) there is evidence of substantial decompensation with a reasonable probability that the decompensation can be reversed by further inpatient treatment; or (iv) there is a likelihood of serious harm; and, if any of the conditions listed in this subsection (3)(d) have occurred, whether the terms of conditional release should be modified or the person should be returned to the facility.

(e) Pursuant to the determination of the court upon such hearing, the conditionally released person shall either continue to be conditionally released on the same or modified conditions or shall be returned for involuntary treatment on an inpatient basis subject to release at the end of the period for which he or she was committed for involuntary treatment, or otherwise in accordance with the provisions of this chapter. Such hearing may be waived by the person and his or her counsel and his or her guardian or conservator, if any, but shall not be waivable unless all such persons agree to waive, and upon such waiver the person may be returned for involuntary treatment or continued on conditional release on the same or modified conditions.

(4) The proceedings set forth in subsection (3) of this section may be initiated by the county designated mental health professional or the secretary on the same basis set forth therein without requiring or ordering the apprehension and detention of the conditionally released person, in which case the court hearing shall take place in not less than five days from the date of service of the petition upon the conditionally released person.

Upon expiration of the period of commitment, or when the person is released from outpatient care, notice in writing to the court which committed the person for treatment shall be provided.

(5) The grounds and procedures for revocation of less restrictive alternative treatment shall be the same as those set forth in this section for conditional releases.

(6) In the event of a revocation of a conditional release, the subsequent treatment period may be for no longer than the actual period authorized in the original court order. [2000 c 94 § 8; 1998 c 297 § 21; 1997 c 112 § 28; 1987 c 439 § 10; 1986 c 67 § 6; 1979 ex.s. c 215 § 16; 1974 ex.s. c 145 § 24; 1973 1st ex.s. c 142 § 39.]

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

71.05.350 Assistance to released persons. No indigent patient shall be conditionally released or discharged from involuntary treatment without suitable clothing, and the superintendent of a state hospital shall furnish the same, together with such sum of money as he or she deems necessary for the immediate welfare of the patient. Such sum of money shall be the same as the amount required by RCW 72.02.100 to be provided to persons in need being released from correctional institutions. As funds are available, the secretary may provide payment to indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt

rules and regulations to do so. [1997 c 112 § 29; 1973 1st ex.s. c 142 § 40.]

71.05.360 Rights of involuntarily detained persons.

(1) Every person involuntarily detained or committed under the provisions of this chapter shall be entitled to all the rights set forth in this chapter and shall retain all rights not denied him or her under this chapter.

(2) Each person involuntarily detained or committed pursuant to this chapter shall have the right to adequate care and individualized treatment. [1997 c 112 § 30; 1974 ex.s. c 145 § 25; 1973 1st ex.s. c 142 § 41.]

71.05.370 Rights—Posting of list. Insofar as danger to the individual or others is not created, each person involuntarily detained, treated in a less restrictive alternative course of treatment, or committed for treatment and evaluation pursuant to this chapter shall have, in addition to other rights not specifically withheld by law, the following rights, a list of which shall be prominently posted in all facilities, institutions, and hospitals providing such services:

(1) To wear his or her own clothes and to keep and use his or her own personal possessions, except when deprivation of same is essential to protect the safety of the resident or other persons;

(2) To keep and be allowed to spend a reasonable sum of his or her own money for canteen expenses and small purchases;

(3) To have access to individual storage space for his or her private use;

(4) To have visitors at reasonable times;

(5) To have reasonable access to a telephone, both to make and receive confidential calls;

(6) To have ready access to letter writing materials, including stamps, and to send and receive uncensored correspondence through the mails;

(7) Not to consent to the administration of antipsychotic medications beyond the hearing conducted pursuant to RCW 71.05.320(2) or the performance of electroconvulsant therapy or surgery, except emergency life-saving surgery, unless ordered by a court of competent jurisdiction pursuant to the following standards and procedures:

(a) The administration of antipsychotic medication or electroconvulsant therapy shall not be ordered unless the petitioning party proves by clear, cogent, and convincing evidence that there exists a compelling state interest that justifies overriding the patient's lack of consent to the administration of antipsychotic medications or electroconvulsant therapy, that the proposed treatment is necessary and effective, and that medically acceptable alternative forms of treatment are not available, have not been successful, or are not likely to be effective.

(b) The court shall make specific findings of fact concerning: (i) The existence of one or more compelling state interests; (ii) the necessity and effectiveness of the treatment; and (iii) the person's desires regarding the proposed treatment. If the patient is unable to make a rational and informed decision about consenting to or refusing the proposed treatment, the court shall make a substituted judgment for the

patient as if he or she were competent to make such a determination.

(c) The person shall be present at any hearing on a request to administer antipsychotic medication or electroconvulsant therapy filed pursuant to this subsection. The person has the right: (i) To be represented by an attorney; (ii) to present evidence; (iii) to cross-examine witnesses; (iv) to have the rules of evidence enforced; (v) to remain silent; (vi) to view and copy all petitions and reports in the court file; and (vii) to be given reasonable notice and an opportunity to prepare for the hearing. The court may appoint a psychiatrist, psychologist within their scope of practice, or physician to examine and testify on behalf of such person. The court shall appoint a psychiatrist, psychologist within their scope of practice, or physician designated by such person or the person's counsel to testify on behalf of the person in cases where an order for electroconvulsant therapy is sought.

(d) An order for the administration of antipsychotic medications entered following a hearing conducted pursuant to this section shall be effective for the period of the current involuntary treatment order, and any interim period during which the person is awaiting trial or hearing on a new petition for involuntary treatment or involuntary medication.

(e) Any person detained pursuant to RCW 71.05.320(2), who subsequently refuses antipsychotic medication, shall be entitled to the procedures set forth in RCW 71.05.370(7).

(f) Antipsychotic medication may be administered to a nonconsenting person detained or committed pursuant to this chapter without a court order pursuant to RCW 71.05.215(2) or under the following circumstances:

(i) A person presents an imminent likelihood of serious harm;

(ii) Medically acceptable alternatives to administration of antipsychotic medications are not available, have not been successful, or are not likely to be effective; and

(iii) In the opinion of the physician with responsibility for treatment of the person, or his or her designee, the person's condition constitutes an emergency requiring the treatment be instituted before a judicial hearing as authorized pursuant to this section can be held.

If antipsychotic medications are administered over a person's lack of consent pursuant to this subsection, a petition for an order authorizing the administration of antipsychotic medications shall be filed on the next judicial day. The hearing shall be held within two judicial days. If deemed necessary by the physician with responsibility for the treatment of the person, administration of antipsychotic medications may continue until the hearing is held;

(8) To dispose of property and sign contracts unless such person has been adjudicated an incompetent in a court proceeding directed to that particular issue;

(9) Not to have psychosurgery performed on him or her under any circumstances. [1997 c 112 § 31; 1991 c 105 § 5; 1989 c 120 § 8; 1974 ex.s. c 145 § 26; 1973 1st ex.s. c 142 § 42.]

Severability—1991 c 105: See note following RCW 71.05.215.

71.05.380 Rights of voluntarily committed persons.

All persons voluntarily entering or remaining in any facility, institution, or hospital providing evaluation and treatment for

mental disorder shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and 71.05.370. [1973 1st ex.s. c 142 § 43.]

71.05.390 Confidential information and records—

Disclosure. Except as provided in this section, the fact of admission and all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services at public or private agencies shall be confidential.

Information and records may be disclosed only:

(1) In communications between qualified professional persons to meet the requirements of this chapter, in the provision of services or appropriate referrals, or in the course of guardianship proceedings. The consent of the patient, or his or her guardian, shall be obtained before information or records may be disclosed by a professional person employed by a facility unless provided to a professional person:

- (a) Employed by the facility;
- (b) Who has medical responsibility for the patient's care;
- (c) Who is a county designated mental health professional;
- (d) Who is providing services under chapter 71.24 RCW;
- (e) Who is employed by a state or local correctional facility where the person is confined or supervised; or
- (f) Who is providing evaluation, treatment, or follow-up services under chapter 10.77 RCW.

(2) When the communications regard the special needs of a patient and the necessary circumstances giving rise to such needs and the disclosure is made by a facility providing outpatient services to the operator of a care facility in which the patient resides.

(3) When the person receiving services, or his or her guardian, designates persons to whom information or records may be released, or if the person is a minor, when his or her parents make such designation.

(4) To the extent necessary for a recipient to make a claim, or for a claim to be made on behalf of a recipient for aid, insurance, or medical assistance to which he or she may be entitled.

(5) For either program evaluation or research, or both: PROVIDED, That the secretary adopts rules for the conduct of the evaluation or research, or both. Such rules shall include, but need not be limited to, the requirement that all evaluators and researchers must sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding persons who have received services such that the person who received such services is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under the provisions of state law.

/s/ "

(6)(a) To the courts as necessary to the administration of this chapter or to a court ordering an evaluation or treatment under chapter 10.77 RCW solely for the purpose of preventing the entry of any evaluation or treatment order that is inconsistent with any order entered under this chapter.

(b) To a court or its designee in which a motion under chapter 10.77 RCW has been made for involuntary medication of a defendant for the purpose of competency restoration.

(c) Disclosure under this subsection is mandatory for the purpose of the health insurance portability and accountability act.

(7) To law enforcement officers, public health officers, or personnel of the department of corrections or the indeterminate sentence review board for persons who are the subject of the records and who are committed to the custody or supervision of the department of corrections or indeterminate sentence review board which information or records are necessary to carry out the responsibilities of their office. Except for dissemination of information released pursuant to RCW 71.05.425 and 4.24.550, regarding persons committed under this chapter under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, the extent of information that may be released is limited as follows:

(a) Only the fact, place, and date of involuntary commitment, the fact and date of discharge or release, and the last known address shall be disclosed upon request;

(b) The law enforcement and public health officers or personnel of the department of corrections or indeterminate sentence review board shall be obligated to keep such information confidential in accordance with this chapter;

(c) Additional information shall be disclosed only after giving notice to said person and his or her counsel and upon a showing of clear, cogent, and convincing evidence that such information is necessary and that appropriate safeguards for strict confidentiality are and will be maintained. However, in the event the said person has escaped from custody, said notice prior to disclosure is not necessary and that the facility from which the person escaped shall include an evaluation as to whether the person is of danger to persons or property and has a propensity toward violence;

(d) Information and records shall be disclosed to the department of corrections pursuant to and in compliance with the provisions of RCW 71.05.445 for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community; and

(e) Disclosure under this subsection is mandatory for the purposes of the health insurance portability and accountability act.

(8) To the attorney of the detained person.

(9) To the prosecuting attorney as necessary to carry out the responsibilities of the office under RCW 71.05.330(2) and 71.05.340(1)(b) and 71.05.335. The prosecutor shall be provided access to records regarding the committed person's treatment and prognosis, medication, behavior problems, and other records relevant to the issue of whether treatment less restrictive than inpatient treatment is in the best interest of the committed person or others. Information shall be disclosed

only after giving notice to the committed person and the person's counsel.

(10) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of commitment, admission, discharge, or release, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence.

(11) To appropriate corrections and law enforcement agencies all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence.

(12) To the persons designated in RCW 71.05.425 for the purposes described in that section.

(13) Civil liability and immunity for the release of information about a particular person who is committed to the department under RCW 71.05.280(3) and 71.05.320(2)(c) after dismissal of a sex offense as defined in RCW 9.94A.030, is governed by RCW 4.24.550.

(14) To a patient's next of kin, guardian, or conservator, if any, in the event of death, as provided in RCW 71.05.400.

(15) To the department of health for the purposes of determining compliance with state or federal licensure, certification, or registration rules or laws. However, the information and records obtained under this subsection are exempt from public inspection and copying pursuant to chapter 42.17 RCW.

(16) To mark headstones or otherwise memorialize patients interred at state hospital cemeteries. The department of social and health services shall make available the name, date of birth, and date of death of patients buried in state hospital cemeteries fifty years after the death of a patient.

The fact of admission, as well as all records, files, evidence, findings, or orders made, prepared, collected, or maintained pursuant to this chapter shall not be admissible as evidence in any legal proceeding outside this chapter without the written consent of the person who was the subject of the proceeding except in a subsequent criminal prosecution of a person committed pursuant to RCW 71.05.280(3) or 71.05.320(2)(c) on charges that were dismissed pursuant to chapter 10.77 RCW due to incompetency to stand trial or in a civil commitment proceeding pursuant to chapter 71.09 RCW. The records and files maintained in any court proceeding pursuant to this chapter shall be confidential and available subsequent to such proceedings only to the person who was the subject of the proceeding or his or her attorney. In addition, the court may order the subsequent release or use of such records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality are and will be maintained. [2004 c 166 § 6; 2004 c 157 §

5; 2004 c 33 § 2. Prior: 2000 c 94 § 9; 2000 c 75 § 6; 2000 c 74 § 7; 1999 c 12 § 1; 1998 c 297 § 22; 1993 c 448 § 6; 1990 c 3 § 112; 1986 c 67 § 8; 1985 c 207 § 1; 1983 c 196 § 4; 1979 ex.s. c 215 § 17; 1975 1st ex.s. c 199 § 10; 1974 ex.s. c 145 § 27; 1973 1st ex.s. c 142 § 44.]

Reviser's note: This section was amended by 2004 c 33 § 2, 2004 c 157 § 5, and by 2004 c 166 § 6, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Findings—Intent—Severability—Effective date—2004 c 157: See notes following RCW 10.77.010.

Finding—Intent—2004 c 33: "The legislature finds that social stigmas surrounding mental illness have prevented patients buried in the state hospital cemeteries from being properly memorialized. From 1887 to 1953, the state buried many of the patients who died while in residence at the three state hospitals on hospital grounds. In order to honor these patients, the legislature intends that the state be allowed to release records necessary to appropriately mark their resting place." [2004 c 33 § 1.]

Intent—2000 c 75: See note following RCW 71.05.445.

Severability—2000 c 74: See note following RCW 10.77.060.

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

Effective date—1993 c 448: See note following RCW 70.02.010.

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

71.05.395 Application of uniform health care information act, chapter 70.02 RCW. Except as otherwise provided in this chapter, the uniform health care information act, chapter 70.02 RCW, applies to all records and information compiled, obtained, or maintained in the course of providing services. [1993 c 448 § 8.]

Effective date—1993 c 448: See note following RCW 70.02.010.

71.05.400 Release of information to patient's next of kin, attorney, guardian, conservator—Notification of patient's death. (1) A public or private agency shall release to a patient's next of kin, attorney, guardian, or conservator, if any,

(a) The information that the person is presently a patient in the facility or that the person is seriously physically ill;

(b) A statement evaluating the mental and physical condition of the patient, and a statement of the probable duration of the patient's confinement, if such information is requested by the next of kin, attorney, guardian, or conservator; and such other information requested by the next of kin or attorney as may be necessary to decide whether or not proceedings should be instituted to appoint a guardian or conservator.

(2) Upon the death of a patient, his or her next of kin, guardian, or conservator, if any, shall be notified.

Next of kin who are of legal age and competent shall be notified under this section in the following order: Spouse, parents, children, brothers and sisters, and other relatives according to the degree of relation. Access to all records and information compiled, obtained, or maintained in the course of providing services to a deceased patient shall be governed by RCW 70.02.140. [1993 c 448 § 7; 1974 ex.s. c 115 § 1; 1973 2nd ex.s. c 24 § 6; 1973 1st ex.s. c 142 § 45.]

Effective date—1993 c 448: See note following RCW 70.02.010.

71.05.410 Notice of disappearance of patient. When a patient would otherwise be subject to the provisions of RCW 71.05.390 and disclosure is necessary for the protection of the patient or others due to his or her unauthorized disappearance from the facility, and his or her whereabouts is unknown, notice of such disappearance, along with relevant information, may be made to relatives and governmental law enforcement agencies designated by the physician in charge of the patient or the professional person in charge of the facility, or his or her professional designee. [1997 c 112 § 32; 1973 2nd ex.s. c 24 § 7; 1973 1st ex.s. c 142 § 46.]

71.05.420 Records of disclosure. Except as provided in RCW 71.05.425, when any disclosure of information or records is made as authorized by RCW 71.05.390 through 71.05.410, the physician in charge of the patient or the professional person in charge of the facility shall promptly cause to be entered into the patient's medical record the date and circumstances under which said disclosure was made, the names and relationships to the patient, if any, of the persons or agencies to whom such disclosure was made, and the information disclosed. [1990 c 3 § 113; 1973 1st ex.s. c 142 § 47.]

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

71.05.425 Persons committed following dismissal of sex, violent, or felony harassment offense—Notification of conditional release, final release, leave, transfer, or escape—To whom given—Definitions. (1)(a) Except as provided in subsection (2) of this section, at the earliest possible date, and in no event later than thirty days before conditional release, final release, authorized leave under RCW 71.05.325(2), or transfer to a facility other than a state mental hospital, the superintendent shall send written notice of conditional release, release, authorized leave, or transfer of a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) to the following:

(i) The chief of police of the city, if any, in which the person will reside; and

(ii) The sheriff of the county in which the person will reside.

(b) The same notice as required by (a) of this subsection shall be sent to the following, if such notice has been requested in writing about a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4):

(i) The victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(2)(c) or the victim's next of kin if the crime was a homicide;

(ii) Any witnesses who testified against the person in any court proceedings; and

(iii) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the

(2004 Ed.)

notice, and the notice are confidential and shall not be available to the person committed under this chapter.

(c) The thirty-day notice requirements contained in this subsection shall not apply to emergency medical transfers.

(d) The existence of the notice requirements in this subsection will not require any extension of the release date in the event the release plan changes after notification.

(2) If a person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex, violent, or felony harassment offense pursuant to RCW 10.77.090(4) escapes, the superintendent shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the person resided immediately before the person's arrest. If previously requested, the superintendent shall also notify the witnesses and the victim of the sex, violent, or felony harassment offense that was dismissed pursuant to RCW 10.77.090(4) preceding commitment under RCW 71.05.280(3) or 71.05.320(2) or the victim's next of kin if the crime was a homicide. In addition, the secretary shall also notify appropriate parties pursuant to RCW 71.05.410. If the person is recaptured, the superintendent shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(3) If the victim, the victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parent or legal guardian of the child.

(4) The superintendent shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(5) For purposes of this section the following terms have the following meanings:

(a) "Violent offense" means a violent offense under RCW 9.94A.030;

(b) "Sex offense" means a sex offense under RCW 9.94A.030;

(c) "Next of kin" means a person's spouse, parents, siblings, and children;

(d) "Felony harassment offense" means a crime of harassment as defined in RCW 9A.46.060 that is a felony. [2000 c 94 § 10; 1999 c 13 § 8; 1994 c 129 § 9; 1992 c 186 § 9; 1990 c 3 § 109.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Findings—Intent—1994 c 129: See note following RCW 4.24.550.

Severability—1992 c 186: See note following RCW 9A.46.110.

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

71.05.427 Persons committed following dismissal of sex offense—Release of information authorized. In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific person committed under RCW 71.05.280(3) or 71.05.320(2)(c) following dismissal of a sex offense as defined in RCW 9.94A.030. [1990 c 3 § 110.]

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

71.05.430 Statistical data. Nothing in this chapter shall be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary of the department of social and health services. [1973 1st ex.s. c 142 § 48.]

71.05.440 Action for unauthorized release of confidential information—Liquidated damages—Treble damages—Injunction. Except as provided in RCW 4.24.550, any person may bring an action against an individual who has willfully released confidential information or records concerning him or her in violation of the provisions of this chapter, for the greater of the following amounts:

(1) One thousand dollars; or

(2) Three times the amount of actual damages sustained, if any. It shall not be a prerequisite to recovery under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general, damages.

Any person may bring an action to enjoin the release of confidential information or records concerning him or her or his or her ward, in violation of the provisions of this chapter, and may in the same action seek damages as provided in this section.

The court may award to the plaintiff, should he or she prevail in an action authorized by this section, reasonable attorney fees in addition to those otherwise provided by law. [1990 c 3 § 114; 1974 ex.s. c 145 § 28; 1973 1st ex.s. c 142 § 49.]

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

71.05.445 Mental health services information—Release to department of corrections—Initial assessment inquiry—Required notifications—Rules. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.34 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.05.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.05.020, community mental health service delivery systems, or community mental health programs as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2)(a) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of

their office. The information must be provided only for the purposes of completing presentence investigations or risk assessment reports, supervision of an incarcerated offender or offender under supervision in the community, planning for and provision of supervision of an offender, or assessment of an offender's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(b) If an offender subject to chapter 9.94A or 9.95 RCW has failed to report for department of corrections supervision or in the event of an emergent situation that poses a significant risk to the public or the offender, information related to mental health services delivered to the offender and, if known, information regarding where the offender is likely to be found shall be released by the mental health services provider to the department of corrections upon request. The initial request may be written or oral. All oral requests must be subsequently confirmed in writing. Information released in response to an oral request is limited to a statement as to whether the offender is or is not being treated by the mental health services provider and the address or information about the location or whereabouts of the offender. Information released in response to a written request may include information identified by rule as provided in subsections (4) and (5) of this section. For purposes of this subsection a written request includes requests made by e-mail or facsimile so long as the requesting person at the department of corrections is clearly identified. The request must specify the information being requested. Disclosure of the information requested does not require the consent of the subject of the records unless the offender has received relief from disclosure under RCW 9.94A.562, 70.96A.155, or 71.05.132.

(3)(a) When a mental health service provider conducts its initial assessment for a person receiving court-ordered treatment, the service provider shall inquire and shall be told by the offender whether he or she is subject to supervision by the department of corrections.

(b) When a person receiving court-ordered treatment or treatment ordered by the department of corrections discloses to his or her mental health service provider that he or she is subject to supervision by the department of corrections, the mental health services provider shall notify the department of corrections that he or she is treating the offender and shall notify the offender that his or her community corrections officer will be notified of the treatment, provided that if the offender has received relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132 and the offender has provided the mental health services provider with a copy of the order granting relief from disclosure pursuant to RCW 9.94A.562, 70.96A.155, or 71.05.132, the mental health services provider is not required to notify the department of corrections that the mental health services provider is treating the offender. The notification may be written or oral and shall not require the consent of the offender. If an oral notification is made, it must be confirmed by a written notification. For purposes of this section, a written notification includes notification by e-mail or facsimile, so long as the notifying mental health service provider is clearly identified.

(4) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections

to carry out its duties, including those records and reports identified in subsection (2) of this section.

(5) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(6) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in chapter 71.05 RCW, except as provided in RCW 72.09.585.

(7) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section except under RCW 71.05.670 and 71.05.440.

(8) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(9) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW.

(10) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments. [2004 c 166 § 4; 2002 c 39 § 2; 2000 c 75 § 3.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Intent—2000 c 75: "It is the intent of the legislature to enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A RCW by authorizing access to, and release or disclosure of, necessary information related to mental health services. This includes accessing and releasing or disclosing information of persons who received mental health services as a minor. The legislature does not intend this act to readdress access to information and records regarding continuity of care.

The legislature recognizes that persons with mental illness have a right to the confidentiality of information related to mental health services, including the fact of their receiving such services, unless there is a state interest that supersedes this right. It is the intent of the legislature to balance that right of the individual with the state interest to enhance public safety." [2000 c 75 § 1.]

(2004 Ed.)

71.05.450 Competency—Effect—Statement of Washington law. Competency shall not be determined or withdrawn by operation of, or under the provisions of this chapter. Except as chapter 9.41 RCW may limit the right of a person to purchase or possess a firearm or to qualify for a concealed pistol license, no person shall be presumed incompetent or lose any civil rights as a consequence of receiving evaluation or treatment for mental disorder, either voluntarily or involuntarily, or certification or commitment pursuant to this chapter or any prior laws of this state dealing with mental illness. Any person who leaves a public or private agency following evaluation or treatment for mental disorder shall be given a written statement setting forth the substance of this section. [1994 sp.s. c 7 § 440; 1973 1st ex.s. c 142 § 50.]

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

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

71.05.460 Right to counsel. Every person involuntarily detained shall immediately be informed of his or her right to a hearing to review the legality of his or her detention and of his or her right to counsel, by the professional person in charge of the facility providing evaluation and treatment, or his or her designee, and, when appropriate, by the court. If the person so elects, the court shall immediately appoint an attorney to assist him or her. [1997 c 112 § 33; 1973 1st ex.s. c 142 § 51.]

71.05.470 Right to examination. A person challenging his or her detention or his or her attorney, shall have the right to designate and have the court appoint a reasonably available independent physician or licensed mental health professional to examine the person detained, the results of which examination may be used in the proceeding. The person shall, if he or she is financially able, bear the cost of such expert information, otherwise such expert examination shall be at public expense. [1997 c 112 § 34; 1973 1st ex.s. c 142 § 52.]

71.05.480 Petitioning for release—Writ of habeas corpus. Nothing contained in this chapter shall prohibit the patient from petitioning by writ of habeas corpus for release. [1974 ex.s. c 145 § 29; 1973 1st ex.s. c 142 § 53.]

71.05.490 Rights of persons committed before January 1, 1974. Nothing in this chapter shall prohibit a person committed on or prior to January 1, 1974, from exercising a right available to him or her at or prior to January 1, 1974, for obtaining release from confinement. [1997 c 112 § 35; 1973 1st ex.s. c 142 § 54.]

71.05.500 Liability of applicant. Any person making or filing an application alleging that a person should be involuntarily detained, certified, committed, treated, or evaluated pursuant to this chapter shall not be rendered civilly or criminally liable where the making and filing of such application was in good faith. [1973 1st ex.s. c 142 § 55.]

71.05.510 Damages for excessive detention. Any individual who knowingly, wilfully or through gross negligence

violates the provisions of this chapter by detaining a person for more than the allowable number of days shall be liable to the person detained in civil damages. It shall not be a prerequisite to an action under this section that the plaintiff shall have suffered or be threatened with special, as contrasted with general damages. [1974 ex.s. c 145 § 30; 1973 1st ex.s. c 142 § 56.]

71.05.520 Protection of rights—Staff. The department of social and health services shall have the responsibility to determine whether all rights of individuals recognized and guaranteed by the provisions of this chapter and the Constitutions of the state of Washington and the United States are in fact protected and effectively secured. To this end, the department shall assign appropriate staff who shall from time to time as may be necessary have authority to examine records, inspect facilities, attend proceedings, and do whatever is necessary to monitor, evaluate, and assure adherence to such rights. Such persons shall also recommend such additional safeguards or procedures as may be appropriate to secure individual rights set forth in this chapter and as guaranteed by the state and federal Constitutions. [1973 1st ex.s. c 142 § 57.]

71.05.525 Transfer of person committed to juvenile correction institution to institution or facility for mentally ill juveniles. When, in the judgment of the department, the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that such a person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of mentally ill juveniles the secretary, or his or her designee, is authorized to order and effect such move or transfer: PROVIDED, HOWEVER, That the secretary shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined in such institution or facility for the care of mentally ill juveniles, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in state juvenile correctional institutions or facilities: PROVIDED, FURTHER, That the secretary shall notify the original committing court of such transfer. [1997 c 112 § 36; 1975 1st ex.s. c 199 § 12.]

71.05.530 Facilities part of comprehensive mental health program. Evaluation and treatment facilities authorized pursuant to this chapter may be part of the comprehensive community mental health services program conducted in counties pursuant to chapter 71.24 RCW, and may receive funding pursuant to the provisions thereof. [1998 c 297 § 23; 1973 1st ex.s. c 142 § 58.]

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

71.05.550 Recognition of county financial necessities. The department of social and health services, in planning and providing funding to counties pursuant to chapter 71.24 RCW, shall recognize the financial necessities imposed upon counties by implementation of this chapter and shall consider needs, if any, for additional community mental health ser-

vices and facilities and reduction in commitments to state hospitals for the mentally ill accomplished by individual counties, in planning and providing such funding. The state shall provide financial assistance to the counties to enable the counties to meet all increased costs, if any, to the counties resulting from their administration of the provisions of chapter 142, Laws of 1973 1st ex. sess. [1973 1st ex.s. c 142 § 60.]

71.05.560 Adoption of rules. The department shall adopt such rules as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality of the program and facilities operating pursuant to this chapter, evaluation of the effectiveness and cost effectiveness of such programs and facilities, and procedures and standards for certification and other action relevant to evaluation and treatment facilities. [1998 c 297 § 24; 1973 1st ex.s. c 142 § 61.]

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

71.05.5601 Rule making—Medicaid—Secretary of corrections—Secretary of social and health services. See RCW 72.09.380.

71.05.5602 Rule making—Chapter 214, Laws of 1999—Secretary of corrections—Secretary of social and health services. See RCW 72.09.381.

71.05.570 Rules of court. The supreme court of the state of Washington shall adopt such rules as it shall deem necessary with respect to the court procedures and proceedings provided for by this chapter. [1973 1st ex.s. c 142 § 62.]

71.05.575 Less restrictive alternative treatment—Consideration by court. (1) When making a decision under this chapter whether to require a less restrictive alternative treatment, the court shall consider whether it is appropriate to include or exclude time spent in confinement when determining whether the person has committed a recent overt act.

(2) When determining whether an offender is a danger to himself or herself or others under this chapter, a court shall give great weight to any evidence submitted to the court regarding an offender's recent history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement. [1999 c 214 § 6.]

Intent—Effective date—1999 c 214: See notes following RCW 72.09.370.

71.05.610 Treatment records—Definitions. As used in this chapter or chapter 71.24 or 10.77 RCW, the following words and phrases shall have the meanings indicated.

(1) "Registration records" include all the records of the department, regional support networks, treatment facilities, and other persons providing services to the department, county departments, or facilities which identify individuals who are receiving or who at any time have received services for mental illness.

(2) "Treatment records" include registration and all other records concerning individuals who are receiving or who at

any time have received services for mental illness, which are maintained by the department, by regional support networks and their staffs, and by treatment facilities. Treatment records do not include notes or records maintained for personal use by an individual providing treatment services for the department, regional support networks, or a treatment facility if the notes or records are not available to others. [1989 c 205 § 11.]

Contingent effective date—1989 c 205 §§ 11-19: *"Sections 10 through 19 of this act shall take effect on July 1, 1995, or when regional support networks are established." [1989 c 205 § 24.] See note following chapter digest.

***Reviser's note:** The reference to "sections 10 through 19 of this act" is incorrect. The reference should have been to "sections 11 through 19 of this act," which are codified as RCW 71.05.610 through 71.05.690.

71.05.620 Treatment records—Informed consent for disclosure of information—Court files and records. (1) Informed consent for disclosure of information from court or treatment records to an individual, agency, or organization must be in writing and must contain the following information:

- (a) The name of the individual, agency, or organization to which the disclosure is to be made;
- (b) The name of the individual whose treatment record is being disclosed;
- (c) The purpose or need for the disclosure;
- (d) The specific type of information to be disclosed;
- (e) The time period during which the consent is effective;
- (f) The date on which the consent is signed; and
- (g) The signature of the individual or person legally authorized to give consent for the individual.

(2) The files and records of court proceedings under chapter 71.05 RCW shall be closed but shall be accessible to any individual who is the subject of a petition and to the individual's attorney, guardian ad litem, resource management services, or service providers authorized to receive such information by resource management services. [1989 c 205 § 12.]

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.610.

71.05.630 Treatment records—Confidential—Release. (1) Except as otherwise provided by law, all treatment records shall remain confidential. Treatment records may be released only to the persons designated in this section, or to other persons designated in an informed written consent of the patient.

(2) Treatment records of an individual may be released without informed written consent in the following circumstances:

- (a) To an individual, organization, or agency as necessary for management or financial audits, or program monitoring and evaluation. Information obtained under this subsection shall remain confidential and may not be used in a manner that discloses the name or other identifying information about the individual whose records are being released.
- (b) To the department, the director of regional support networks, or a qualified staff member designated by the

(2004 Ed.)

director only when necessary to be used for billing or collection purposes. The information shall remain confidential.

(c) For purposes of research as permitted in chapter 42.48 RCW.

(d) Pursuant to lawful order of a court.

(e) To qualified staff members of the department, to the director of regional support networks, to resource management services responsible for serving a patient, or to service providers designated by resource management services as necessary to determine the progress and adequacy of treatment and to determine whether the person should be transferred to a less restrictive or more appropriate treatment modality or facility. The information shall remain confidential.

(f) Within the treatment facility where the patient is receiving treatment, confidential information may be disclosed to individuals employed, serving in bona fide training programs, or participating in supervised volunteer programs, at the facility when it is necessary to perform their duties.

(g) Within the department as necessary to coordinate treatment for mental illness, developmental disabilities, alcoholism, or drug abuse of individuals who are under the supervision of the department.

(h) To a licensed physician who has determined that the life or health of the individual is in danger and that treatment without the information contained in the treatment records could be injurious to the patient's health. Disclosure shall be limited to the portions of the records necessary to meet the medical emergency.

(i) To a facility that is to receive an individual who is involuntarily committed under chapter 71.05 RCW, or upon transfer of the individual from one treatment facility to another. The release of records under this subsection shall be limited to the treatment records required by law, a record or summary of all somatic treatments, and a discharge summary. The discharge summary may include a statement of the patient's problem, the treatment goals, the type of treatment which has been provided, and recommendation for future treatment, but may not include the patient's complete treatment record.

(j) Notwithstanding the provisions of RCW 71.05.390(7), to a correctional facility or a corrections officer who is responsible for the supervision of an individual who is receiving inpatient or outpatient evaluation or treatment. Except as provided in RCW 71.05.445 and 71.34.225, release of records under this section is limited to:

- (i) An evaluation report provided pursuant to a written supervision plan.
- (ii) The discharge summary, including a record or summary of all somatic treatments, at the termination of any treatment provided as part of the supervision plan.
- (iii) When an individual is returned from a treatment facility to a correctional facility, the information provided under (j)(iv) of this subsection.

(iv) Any information necessary to establish or implement changes in the individual's treatment plan or the level or kind of supervision as determined by resource management services. In cases involving a person transferred back to a correctional facility, disclosure shall be made to clinical staff only.

(k) To the individual's counsel or guardian ad litem, without modification, at any time in order to prepare for involuntary commitment or recommitment proceedings, reexaminations, appeals, or other actions relating to detention, admission, commitment, or patient's rights under chapter 71.05 RCW.

(l) To staff members of the protection and advocacy agency or to staff members of a private, nonprofit corporation for the purpose of protecting and advocating the rights of persons with mental illness or developmental disabilities. Resource management services may limit the release of information to the name, birthdate, and county of residence of the patient, information regarding whether the patient was voluntarily admitted, or involuntarily committed, the date and place of admission, placement, or commitment, the name and address of a guardian of the patient, and the date and place of the guardian's appointment. Any staff member who wishes to obtain additional information shall notify the patient's resource management services in writing of the request and of the resource management services' right to object. The staff member shall send the notice by mail to the guardian's address. If the guardian does not object in writing within fifteen days after the notice is mailed, the staff member may obtain the additional information. If the guardian objects in writing within fifteen days after the notice is mailed, the staff member may not obtain the additional information.

(3) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the department may restrict the release of the information as necessary to comply with federal law and regulations. [2000 c 75 § 5; 1989 c 205 § 13.]

Intent—2000 c 75: See note following RCW 71.05.445.

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.610.

71.05.640 Treatment records—Access procedures.

(1) Procedures shall be established by resource management services to provide reasonable and timely access to individual treatment records. However, access may not be denied at any time to records of all medications and somatic treatments received by the individual.

(2) Following discharge, the individual shall have a right to a complete record of all medications and somatic treatments prescribed during evaluation, admission, or commitment and to a copy of the discharge summary prepared at the time of his or her discharge. A reasonable and uniform charge for reproduction may be assessed.

(3) Treatment records may be modified prior to inspection to protect the confidentiality of other patients or the names of any other persons referred to in the record who gave information on the condition that his or her identity remain confidential. Entire documents may not be withheld to protect such confidentiality.

(4) At the time of discharge all individuals shall be informed by resource management services of their rights as provided in RCW 71.05.610 through 71.05.690. [2000 c 94 § 11; 1999 c 13 § 9. Prior: 1989 c 205 § 14.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.610.

71.05.650 Treatment records—Notation of and access to released data. Each time written information is released from a treatment record, the record's custodian shall make a notation in the record including the following: The name of the person to whom the information was released; the identification of the information released; the purpose of the release; and the date of the release. The patient shall have access to this release data. [1989 c 205 § 15.]

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.610.

71.05.660 Treatment records—Privileged communications unaffected. Nothing in chapter 205, Laws of 1989 shall be construed to interfere with communications between physicians or psychologists and patients and attorneys and clients. [1989 c 205 § 16.]

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.610.

71.05.670 Treatment records—Violations—Civil action. Except as provided in RCW 4.24.550, any person, including the state or any political subdivision of the state, violating RCW 71.05.610 through 71.05.690 shall be subject to the provisions of RCW 71.05.440. [1999 c 13 § 10. Prior: 1990 c 3 § 115; 1989 c 205 § 17.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

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

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.610.

71.05.680 Treatment records—Access under false pretenses, penalty. Any person who requests or obtains confidential information pursuant to RCW 71.05.610 through 71.05.690 under false pretenses shall be guilty of a gross misdemeanor. [1999 c 13 § 11. Prior: 1989 c 205 § 18.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.610.

71.05.690 Treatment records—Rules. The department shall adopt rules to implement RCW 71.05.610 through 71.05.680. [1999 c 13 § 12. Prior: 1989 c 205 § 19.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Contingent effective date—1989 c 205 §§ 11-19: See note following RCW 71.05.610.

71.05.900 Severability—1973 1st ex.s. c 142. If any provision of this 1973 amendatory act, or its application to any person or circumstance is held invalid, the remainder of this act, or the application of the provision to other persons or circumstances is not affected. [1973 1st ex.s. c 142 § 63.]

71.05.910 Construction—1973 1st ex.s. c 142. Sections 6 through 63 of this 1973 amendatory act shall constitute a new chapter in Title 71 RCW, and shall be considered

the successor to those sections of chapter 71.02 RCW repealed by this 1973 amendatory act. [1973 1st ex.s. c 142 § 64.]

71.05.920 Section headings not part of the law. Section headings as used in sections 6 through 63 of this 1973 amendatory act shall not constitute any part of law. [1973 1st ex.s. c 142 § 65.]

71.05.930 Effective date—1973 1st ex.s. c 142. This 1973 amendatory act shall take effect on January 1, 1974. [1973 1st ex.s. c 142 § 67.]

71.05.940 Equal application of 1989 c 420—Evaluation for developmental disability. The provisions of chapter 420, Laws of 1989 shall apply equally to persons in the custody of the department on May 13, 1989, who were found by a court to be not guilty by reason of insanity or incompetent to stand trial, or who have been found to have committed acts constituting a felony pursuant to RCW 71.05.280(3) and present a substantial likelihood of repeating similar acts, and the secretary shall cause such persons to be evaluated to ascertain if such persons are developmentally disabled for placement in a program specifically reserved for the treatment and training of persons with developmental disabilities. [1999 c 13 § 13; 1989 c 420 § 18.]

Purpose—Construction—1999 c 13: See note following RCW 10.77.010.

Chapter 71.06 RCW SEXUAL PSYCHOPATHS

Sections

| | |
|-----------|--|
| 71.06.005 | Application of chapter. |
| 71.06.010 | Definitions. |
| 71.06.020 | Sexual psychopaths—Petition. |
| 71.06.030 | Procedure on petition—Effect of acquittal on criminal charge. |
| 71.06.040 | Preliminary hearing—Evidence—Detention in hospital for observation. |
| 71.06.050 | Preliminary hearing—Report of findings. |
| 71.06.060 | Preliminary hearing—Commitment, or other disposition of charge. |
| 71.06.070 | Preliminary hearing—Jury trial. |
| 71.06.080 | Preliminary hearing—Construction of chapter—Trial, evidence, law relating to criminally insane. |
| 71.06.091 | Postcommitment proceedings, releases, and further dispositions. |
| 71.06.100 | Postcommitment proceedings, releases, and further dispositions—Hospital record to be furnished court, board of prison terms and paroles. |
| 71.06.120 | Credit for time served in hospital. |
| 71.06.130 | Discharge pursuant to conditional release. |
| 71.06.135 | Sexual psychopaths—Release of information authorized. |
| 71.06.140 | State hospitals for care of sexual psychopaths—Transfers to correctional institutions—Examinations, reports. |
| 71.06.260 | Hospitalization costs—Sexual psychopaths—Financial responsibility. |
| 71.06.270 | Availability of records. |

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Nonresident sexual psychopaths and psychopathic delinquents: Chapter 72.25 RCW.

Telephone calls soliciting immoral acts: RCW 9.61.230 through 9.61.250.

71.06.005 Application of chapter. With respect to sexual psychopaths, this chapter applies only to crimes or offenses committed before July 1, 1984. [1984 c 209 § 27.]

(2004 Ed.)

Effective dates—1984 c 209: See note following RCW 9.94A.030.

71.06.010 Definitions. As used in this chapter, the following terms shall have the following meanings:

"Psychopathic personality" means the existence in any person of such hereditary, congenital or acquired condition affecting the emotional or volitional rather than the intellectual field and manifested by anomalies of such character as to render satisfactory social adjustment of such person difficult or impossible.

"Sexual psychopath" means any person who is affected in a form of psychoneurosis or in a form of psychopathic personality, which form predisposes such person to the commission of sexual offenses in a degree constituting him a menace to the health or safety of others.

"Sex offense" means one or more of the following: Abduction, incest, rape, assault with intent to commit rape, indecent assault, contributing to the delinquency of a minor involving sexual misconduct, sodomy, indecent exposure, indecent liberties with children, carnal knowledge of children, soliciting or enticing or otherwise communicating with a child for immoral purposes, vagrancy involving immoral or sexual misconduct, or an attempt to commit any of the said offenses.

"Minor" means any person under eighteen years of age.

"Department" means department of social and health services.

"Court" means the superior court of the state of Washington.

"Superintendent" means the superintendent of a state institution designated for the custody, care and treatment of sexual psychopaths or psychopathic delinquents. [1985 c 354 § 32; 1977 ex.s. c 80 § 42; 1971 ex.s. c 292 § 65; 1961 c 65 § 1; 1959 c 25 § 71.06.010. Prior: 1957 c 184 § 1; 1951 c 223 § 2; 1949 c 198 §§ 25 and 40; Rem. Supp. 1949 §§ 6953-25 and 6953-40.]

Severability—Effective date—1985 c 354: See RCW 71.34.900 and 71.34.901.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

71.06.020 Sexual psychopaths—Petition. Where any person is charged in the superior court in this state with a sex offense and it appears that such person is a sexual psychopath, the prosecuting attorney may file a petition in the criminal proceeding, alleging that the defendant is a sexual psychopath and stating sufficient facts to support such allegation. Such petition must be filed and served on the defendant or his attorney at least ten days prior to hearing on the criminal charge. [1959 c 25 § 71.06.020. Prior: 1951 c 223 § 3; 1949 c 198 § 26; Rem. Supp. 1949 § 6953-26.]

71.06.030 Procedure on petition—Effect of acquittal on criminal charge. The court shall proceed to hear the criminal charge. If the defendant is convicted or has previously pleaded guilty to such charge, judgment shall be pronounced, but the execution of the sentence may be deferred or suspended, as in other criminal cases, and the court shall then proceed to hear and determine the allegation of sexual psychopathy. Acquittal on the criminal charge shall not oper-

ate to suspend the hearing on the allegation of sexual psychopathy: PROVIDED, That the provisions of RCW 71.06.140 authorizing transfer of a committed sexual psychopath to a correctional institution shall not apply to the committed sexual psychopath who has been acquitted on the criminal charge. [1967 c 104 § 1; 1959 c 25 § 71.06.030. Prior: 1951 c 223 § 4.]

71.06.040 Preliminary hearing—Evidence—Detention in hospital for observation. At a preliminary hearing upon the charge of sexual psychopathy, the court may require the testimony of two duly licensed physicians who have examined the defendant. If the court finds that there are reasonable grounds to believe the defendant is a sexual psychopath, the court shall order said defendant confined at the nearest state hospital for observation as to the existence of sexual psychopathy. Such observation shall be for a period of not to exceed ninety days. The defendant shall be detained in the county jail or other county facilities pending execution of such observation order by the department. [1959 c 25 § 71.06.040. Prior: 1951 c 223 § 5.]

71.06.050 Preliminary hearing—Report of findings. Upon completion of said observation period the superintendent of the state hospital shall return the defendant to the court, together with a written report of his findings as to whether or not the defendant is a sexual psychopath and the facts upon which his opinion is based. [1959 c 25 § 71.06.050. Prior: 1951 c 223 § 6.]

71.06.060 Preliminary hearing—Commitment, or other disposition of charge. After the superintendent's report has been filed, the court shall determine whether or not the defendant is a sexual psychopath. If said defendant is found to be a sexual psychopath, the court shall commit him to the secretary of social and health services for designation of the facility for detention, care, and treatment of the sexual psychopath. If the defendant is found not to be a sexual psychopath, the court shall order the sentence to be executed, or may discharge the defendant as the case may merit. [1979 c 141 § 129; 1967 c 104 § 2; 1959 c 25 § 71.06.060. Prior: 1951 c 223 § 7.]

71.06.070 Preliminary hearing—Jury trial. A jury may be demanded to determine the question of sexual psychopathy upon hearing after return of the superintendent's report. Such demand must be in writing and filed with the court within ten days after filing of the petition alleging the defendant to be a sexual psychopath. [1959 c 25 § 71.06.070. Prior: 1951 c 223 § 14; 1949 c 198 § 38; Rem. Supp. 1949 § 6953-38.]

71.06.080 Preliminary hearing—Construction of chapter—Trial, evidence, law relating to criminally insane. Nothing in this chapter shall be construed as to affect the procedure for the ordinary conduct of criminal trials as otherwise set up by law. Nothing in this chapter shall be construed to prevent the defendant, his attorney or the court of its own motion, from producing evidence and witnesses at the hearing on the probable existence of sexual psychopathy or at

the hearing after the return of the superintendent's report. Nothing in this chapter shall be construed as affecting the laws relating to the criminally insane or the insane criminal, nor shall this chapter be construed as preventing the defendant from raising the defense of insanity as in other criminal cases. [1959 c 25 § 71.06.080. Prior: 1951 c 223 § 15.]

Criminally insane: Chapter 10.77 RCW.

71.06.091 Postcommitment proceedings, releases, and further dispositions. A sexual psychopath committed pursuant to RCW 71.06.060 shall be retained by the superintendent of the institution involved until in the superintendent's opinion he is safe to be at large, or until he has received the maximum benefit of treatment, or is not amenable to treatment, but the superintendent is unable to render an opinion that he is safe to be at large. Thereupon, the superintendent of the institution involved shall so inform whatever court committed the sexual psychopath. The court then may order such further examination and investigation of such person as seems necessary, and may at its discretion, summon such person before it for further hearing, together with any witnesses whose testimony may be pertinent, and together with any relevant documents and other evidence. On the basis of such reports, investigation, and possible hearing, the court shall determine whether the person before it shall be released unconditionally from custody as a sexual psychopath, released conditionally, returned to the custody of the institution as a sexual psychopath, or transferred to the department of corrections to serve the original sentence imposed upon him. The power of the court to grant conditional release for any such person before it shall be the same as its power to grant, amend and revoke probation as provided by chapter 9.95 RCW. When the sexual psychopath has entered upon the conditional release, the state *board of prison terms and paroles shall supervise such person pursuant to the terms and conditions of the conditional release, as set by the court: PROVIDED, That the superintendent of the institution involved shall never release the sexual psychopath from custody without a court release as herein set forth. [1981 c 136 § 64; 1979 c 141 § 130; 1967 c 104 § 3.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

71.06.100 Post commitment proceedings, releases, and further dispositions—Hospital record to be furnished court, board of prison terms and paroles. Where under RCW 71.06.091 the superintendent renders his opinion to the committing court, he shall provide the committing court, and, in the event of conditional release, the Washington state *board of prison terms and paroles, with a copy of the hospital medical record concerning the sexual psychopath. [1967 c 104 § 4; 1959 c 25 § 71.06.100. Prior: 1951 c 223 § 10.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

71.06.120 Credit for time served in hospital. Time served by a sexual psychopath in a state hospital shall count as part of his sentence whether such sentence is pronounced

before or after adjudication of his sexual psychopathy. [1959 c 25 § 71.06.120. Prior: 1951 c 223 § 13.]

71.06.130 Discharge pursuant to conditional release.

Where a sexual psychopath has been conditionally released by the committing court, as provided by RCW 71.06.091 for a period of five years, the court shall review his record and when the court is satisfied that the sexual psychopath is safe to be at large, said sexual psychopath shall be discharged. [1967 c 104 § 5; 1959 c 25 § 71.06.130. Prior: 1951 c 223 § 12; 1949 c 198 § 28, part; Rem. Supp. 1949 § 6953-28, part.]

71.06.135 Sexual psychopaths—Release of information authorized. In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific sexual psychopath committed under this chapter. [1990 c 3 § 120.]

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

71.06.140 State hospitals for care of sexual psychopaths—Transfers to correctional institutions—Examinations, reports. The department may designate one or more state hospitals for the care and treatment of sexual psychopaths: PROVIDED, That a committed sexual psychopath who has been determined by the superintendent of such mental hospital to be a custodial risk, or a hazard to other patients may be transferred by the secretary of social and health services, with the consent of the secretary of corrections, to one of the correctional institutions within the department of corrections which has psychiatric care facilities. A committed sexual psychopath who has been transferred to a correctional institution shall be observed and treated at the psychiatric facilities provided by the correctional institution. A complete psychiatric examination shall be given to each sexual psychopath so transferred at least twice annually. The examinations may be conducted at the correctional institution or at one of the mental hospitals. The examiners shall report in writing the results of said examinations, including recommendations as to future treatment and custody, to the superintendent of the mental hospital from which the sexual psychopath was transferred, and to the committing court, with copies of such reports and recommendations to the superintendent of the correctional institution. [1981 c 136 § 65; 1979 c 141 § 131; 1967 c 104 § 6; 1959 c 25 § 71.06.140. Prior: 1951 c 223 § 11; 1949 c 198 § 37; Rem. Supp. 1949 § 6953-37.]

Effective date—1981 c 136: See RCW 72.09.900.

71.06.260 Hospitalization costs—Sexual psychopaths—Financial responsibility. At any time any person is committed as a sexual psychopath the court shall, after reasonable notice of the time, place and purpose of the hearing has been given to persons subject to liability under this section, inquire into and determine the financial ability of said person, or his parents if he is a minor, or other relatives to pay the cost of care, meals and lodging during his period of hospitalization. Such cost shall be determined by the department of social and health services. Findings of fact shall be made

relative to the ability to pay such cost and a judgment entered against the person or persons found to be financially responsible and directing the payment of said cost or such part thereof as the court may direct. The person committed, or his parents or relatives, may apply for modification of said judgment, or the order last entered by the court, if a proper showing of equitable grounds is made therefor. [1985 c 354 § 33; 1979 c 141 § 132; 1959 c 25 § 71.06.260. Prior: 1957 c 26 § 1; 1951 c 223 § 27.]

Severability—Effective date—1985 c 354: See RCW 71.34.900 and 71.34.901.

71.06.270 Availability of records. The records, files, and other written information prepared by the department of social and health services for individuals committed under this chapter shall be made available upon request to the department of corrections or the *board of prison terms and paroles for persons who are the subject of the records who are committed to the custody of the department of corrections or the board of prison terms and paroles. [1983 c 196 § 5.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Chapter 71.09 RCW

SEXUALLY VIOLENT PREDATORS

Sections

| | |
|------------|---|
| 71.09.010 | Findings. |
| 71.09.015 | Finding—Intent—Clarification. |
| 71.09.020 | Definitions. |
| 71.09.025 | Notice to prosecuting attorney prior to release. |
| 71.09.030 | Sexually violent predator petition—Filing. |
| 71.09.040 | Sexually violent predator petition—Probable cause hearing—Judicial determination—Transfer for evaluation. |
| 71.09.050 | Trial—Rights of parties. |
| 71.09.060 | Trial—Determination—Commitment procedures. |
| 71.09.070 | Annual examinations of persons committed under chapter. |
| 71.09.080 | Rights of persons committed under this chapter. |
| 71.09.085 | Medical care—Contracts for services. |
| 71.09.090 | Petition for conditional release to less restrictive alternative or unconditional discharge—Procedures. |
| 71.09.092 | Conditional release to less restrictive alternative—Findings. |
| 71.09.094 | Conditional release to less restrictive alternative—Verdict. |
| 71.09.096 | Conditional release to less restrictive alternative—Judgment—Conditions—Annual review. |
| 71.09.098 | Conditional release to less restrictive alternative—Hearing on revocation or modification—Authority to apprehend conditionally released person. |
| 71.09.110 | Department of social and health services—Duties—Reimbursement. |
| 71.09.112 | Department of social and health services—Jurisdiction continues after criminal conviction—Exception. |
| 71.09.115 | Record check required for employees of secure facility. |
| 71.09.120 | Release of information authorized. |
| 71.09.130 | Notice of escape or disappearance. |
| 71.09.135 | McNeil Island—Escape planning, response. |
| 71.09.140 | Notice of conditional release or unconditional discharge—Notice of escape and recapture. |
| 71.09.200 | Escorted leave—Definitions. |
| 71.09.210 | Escorted leave—Conditions. |
| 71.09.220 | Escorted leave—Notice. |
| 71.09.230 | Escorted leave—Rules. |
| 71.09.250 | Transition facility—Siting. |
| 71.09.2501 | "All other laws" defined. |
| 71.09.252 | Transition facilities—Agreements for regional facilities. |
| 71.09.255 | Transition facilities—Incentive grants and payments. |
| 71.09.260 | Transition facilities not limited to residential neighborhoods. |
| 71.09.265 | Transition facilities—Distribution of impact. |
| 71.09.275 | Transition facility—Transportation of residents. |
| 71.09.280 | Transition facility—Release to less restrictive placement. |
| 71.09.285 | Transition facility—Siting policy guidelines. |
| 71.09.290 | Other transition facilities—Siting policy guidelines. |

| | |
|-----------|---|
| 71.09.295 | Transition facilities—Security systems. |
| 71.09.300 | Transition facilities—Staffing. |
| 71.09.305 | Transition facility residents—Monitoring, escorting. |
| 71.09.310 | Transition facility residents—Mandatory escorts. |
| 71.09.315 | Transition facilities—Public notice, review, and comment. |
| 71.09.320 | Transition facilities—Operational advisory boards. |
| 71.09.325 | Transition facilities—Conditional release—Reports—Violations. |
| 71.09.330 | Transition facilities—Contracted operation—Enforcement remedies. |
| 71.09.335 | Conditional release from total confinement—Community notification. |
| 71.09.340 | Conditionally released persons—Employment, educational notification. |
| 71.09.341 | Transition facilities—Authority of department—Effect of local regulations. |
| 71.09.342 | Transition facilities—Siting—Local regulations preempted, when—Consideration of public safety measures. |
| 71.09.343 | Transition facilities—Contract between state and local governments. |
| 71.09.344 | Transition facilities—Mitigation agreements. |
| 71.09.345 | Alternative placement—Authority of court. |
| 71.09.350 | Examination and treatment only by certified providers—Exceptions. |
| 71.09.800 | Rules. |
| 71.09.900 | Index, part headings not law—1990 c 3. |
| 71.09.901 | Severability—1990 c 3. |
| 71.09.902 | Effective dates—Application—1990 c 3. |

71.09.010 Findings. The legislature finds that a small but extremely dangerous group of sexually violent predators exist who do not have a mental disease or defect that renders them appropriate for the existing involuntary treatment act, chapter 71.05 RCW, which is intended to be a short-term civil commitment system that is primarily designed to provide short-term treatment to individuals with serious mental disorders and then return them to the community. In contrast to persons appropriate for civil commitment under chapter 71.05 RCW, sexually violent predators generally have personality disorders and/or mental abnormalities which are unamenable to existing mental illness treatment modalities and those conditions render them likely to engage in sexually violent behavior. The legislature further finds that sex offenders' likelihood of engaging in repeat acts of predatory sexual violence is high. The existing involuntary commitment act, chapter 71.05 RCW, is inadequate to address the risk to reoffend because during confinement these offenders do not have access to potential victims and therefore they will not engage in an overt act during confinement as required by the involuntary treatment act for continued confinement. The legislature further finds that the prognosis for curing sexually violent offenders is poor, the treatment needs of this population are very long term, and the treatment modalities for this population are very different than the traditional treatment modalities for people appropriate for commitment under the involuntary treatment act. [2001 c 286 § 3; 1990 c 3 § 1001.]

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

71.09.015 Finding—Intent—Clarification. The legislature finds that presentation of evidence related to conditions of a less restrictive alternative that are beyond the authority of the court to order, and that would not exist in the absence of a court order, reduces the public respect for the rule of law and for the authority of the courts. Consequently, the legislature finds that the decision in *In re the Detention of Casper Ross*, 102 Wn. App 108 (2000), is contrary to the legislature's intent. The legislature hereby clarifies that it intends, and has

always intended, in any proceeding under this chapter that the court and jury be presented only with conditions that would exist or that the court would have the authority to order in the absence of a finding that the person is a sexually violent predator. [2001 c 286 § 1.]

Recommendations—2001 c 286: "The department of social and health services shall, in consultation with interested stakeholders, develop recommendations for improving the procedures used to notify victims when a sexually violent predator is conditionally released to a less restrictive alternative under chapter 71.09 RCW, while at the same time maintaining the confidentiality of victim information." [2001 c 286 § 10.]

Application—2001 c 286: "This act applies to all individuals currently committed or awaiting commitment under chapter 71.09 RCW either on, before, or after May 14, 2001, whether confined in a secure facility or on conditional release." [2001 c 286 § 14.]

Effective date—2001 c 286: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2001]." [2001 c 286 § 15.]

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

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

(2) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46 RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(3) "Health care practitioner" means an individual or firm licensed or certified to engage actively in a regulated health profession.

(4) "Health care services" means those services provided by health professionals licensed pursuant to RCW 18.120.020(4).

(5) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).

(6) "Less restrictive alternative" means court-ordered treatment in a setting less restrictive than total confinement which satisfies the conditions set forth in RCW 71.09.092.

(7) "Likely to engage in predatory acts of sexual violence if not confined in a secure facility" means that the person more probably than not will engage in such acts if released unconditionally from detention on the sexually violent predator petition. Such likelihood must be evidenced by a recent overt act if the person is not totally confined at the time the petition is filed under RCW 71.09.030.

(8) "Mental abnormality" means a congenital or acquired condition affecting the emotional or volitional capacity which predisposes the person to the commission of criminal sexual acts in a degree constituting such person a menace to the health and safety of others.

(9) "Predatory" means acts directed towards: (a) Strangers; (b) individuals with whom a relationship has been established or promoted for the primary purpose of victimization; or (c) persons of casual acquaintance with whom no substantial personal relationship exists.

(10) "Recent overt act" means any act or threat that has either caused harm of a sexually violent nature or creates a reasonable apprehension of such harm in the mind of an

objective person who knows of the history and mental condition of the person engaging in the act.

(11) "Risk potential activity" or "risk potential facility" means an activity or facility that provides a higher incidence of risk to the public from persons conditionally released from the special commitment center. Risk potential activities and facilities include: Public and private schools, school bus stops, licensed day care and licensed preschool facilities, public parks, publicly dedicated trails, sports fields, playgrounds, recreational and community centers, churches, synagogues, temples, mosques, public libraries, public and private youth camps, and others identified by the department following the hearings on a potential site required in RCW 71.09.315. For purposes of this chapter, "school bus stops" does not include bus stops established primarily for public transit.

(12) "Secretary" means the secretary of social and health services or the secretary's designee.

(13) "Secure facility" means a residential facility for persons civilly confined under the provisions of this chapter that includes security measures sufficient to protect the community. Such facilities include total confinement facilities, secure community transition facilities, and any residence used as a court-ordered placement under RCW 71.09.096.

(14) "Secure community transition facility" means a residential facility for persons civilly committed and conditionally released to a less restrictive alternative under this chapter. A secure community transition facility has supervision and security, and either provides or ensures the provision of sex offender treatment services. Secure community transition facilities include but are not limited to the facility established pursuant to RCW 71.09.250(1)(a)(i) and any community-based facilities established under this chapter and operated by the secretary or under contract with the secretary.

(15) "Sexually violent offense" means an act committed on, before, or after July 1, 1990, that is: (a) An act defined in Title 9A RCW as rape in the first degree, rape in the second degree by forcible compulsion, rape of a child in the first or second degree, statutory rape in the first or second degree, indecent liberties by forcible compulsion, indecent liberties against a child under age fourteen, incest against a child under age fourteen, or child molestation in the first or second degree; (b) a felony offense in effect at any time prior to July 1, 1990, that is comparable to a sexually violent offense as defined in (a) of this subsection, or any federal or out-of-state conviction for a felony offense that under the laws of this state would be a sexually violent offense as defined in this subsection; (c) an act of murder in the first or second degree, assault in the first or second degree, assault of a child in the first or second degree, kidnapping in the first or second degree, burglary in the first degree, residential burglary, or unlawful imprisonment, which act, either at the time of sentencing for the offense or subsequently during civil commitment proceedings pursuant to this chapter, has been determined beyond a reasonable doubt to have been sexually motivated, as that term is defined in RCW 9.94A.030; or (d) an act as described in chapter 9A.28 RCW, that is an attempt, criminal solicitation, or criminal conspiracy to commit one of the felonies designated in (a), (b), or (c) of this subsection.

(16) "Sexually violent predator" means any person who has been convicted of or charged with a crime of sexual vio-

lence and who suffers from a mental abnormality or personality disorder which makes the person likely to engage in predatory acts of sexual violence if not confined in a secure facility.

(17) "Total confinement facility" means a secure facility that provides supervision and sex offender treatment services in a total confinement setting. Total confinement facilities include the special commitment center and any similar facility designated as a total confinement facility by the secretary. [2003 c 216 § 2; 2003 c 50 § 1; 2002 c 68 § 4; 2002 c 58 § 2; 2001 2nd sp.s. c 12 § 102; 2001 c 286 § 4; 1995 c 216 § 1; 1992 c 145 § 17; 1990 1st ex.s. c 12 § 2; 1990 c 3 § 1002.]

Reviser's note: This section was amended by 2003 c 50 § 1 and by 2003 c 216 § 2, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—Effective date—2003 c 216: See notes following RCW 71.09.300.

Application—2003 c 50: "This act applies prospectively only and not retroactively and does not apply to development regulations adopted or amended prior to April 17, 2003." [2003 c 50 § 3.]

Effective date—2003 c 50: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 17, 2003]." [2003 c 50 § 4.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

Effective date—2002 c 58: See note following RCW 71.09.085.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

Effective date—1990 1st ex.s. c 12: See note following RCW 13.40.020.

71.09.025 Notice to prosecuting attorney prior to release. (1)(a) When it appears that a person may meet the criteria of a sexually violent predator as defined in *RCW 71.09.020(1), the agency with jurisdiction shall refer the person in writing to the prosecuting attorney of the county where that person was charged, three months prior to:

(i) The anticipated release from total confinement of a person who has been convicted of a sexually violent offense;

(ii) The anticipated release from total confinement of a person found to have committed a sexually violent offense as a juvenile;

(iii) Release of a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial pursuant to RCW 10.77.090(4); or

(iv) Release of a person who has been found not guilty by reason of insanity of a sexually violent offense pursuant to **RCW 10.77.020(3).

(b) The agency shall provide the prosecutor with all relevant information including but not limited to the following information:

(i) A complete copy of the institutional records compiled by the department of corrections relating to the person, and any such out-of-state department of corrections' records, if available;

(ii) A complete copy, if applicable, of any file compiled by the indeterminate sentence review board relating to the person;

(iii) All records relating to the psychological or psychiatric evaluation and/or treatment of the person;

(iv) A current record of all prior arrests and convictions, and full police case reports relating to those arrests and convictions; and

(v) A current mental health evaluation or mental health records review.

(2) This section applies to acts committed before, on, or after March 26, 1992.

(3) The agency, its employees, and officials shall be immune from liability for any good-faith conduct under this section.

(4) As used in this section, "agency with jurisdiction" means that agency with the authority to direct the release of a person serving a sentence or term of confinement and includes the department of corrections, the indeterminate sentence review board, and the department of social and health services. [2001 c 286 § 5; 1995 c 216 § 2; 1992 c 45 § 3.]

Reviser's note: *(1) RCW 71.09.020 was amended by 2001 2nd sp.s. c 12 § 102, changing subsection (1) to subsection (12). RCW 71.09.020 was subsequently amended by 2002 c 58 § 2, changing subsection (12) to subsection (16).

** (2) RCW 10.77.020 was amended by 1998 c 297 § 30, deleting subsection (3).

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

Severability—Application—1992 c 45: See notes following RCW 9.94A.840.

71.09.030 Sexually violent predator petition—Filing.

When it appears that: (1) A person who at any time previously has been convicted of a sexually violent offense is about to be released from total confinement on, before, or after July 1, 1990; (2) a person found to have committed a sexually violent offense as a juvenile is about to be released from total confinement on, before, or after July 1, 1990; (3) a person who has been charged with a sexually violent offense and who has been determined to be incompetent to stand trial is about to be released, or has been released on, before, or after July 1, 1990, pursuant to *RCW 10.77.090(3); (4) a person who has been found not guilty by reason of insanity of a sexually violent offense is about to be released, or has been released on, before, or after July 1, 1990, pursuant to RCW **10.77.020(3), 10.77.110 (1) or (3), or 10.77.150; or (5) a person who at any time previously has been convicted of a sexually violent offense and has since been released from total confinement and has committed a recent overt act; and it appears that the person may be a sexually violent predator, the prosecuting attorney of the county where the person was convicted or charged or the attorney general if requested by the prosecuting attorney may file a petition alleging that the person is a "sexually violent predator" and stating sufficient facts to support such allegation. [1995 c 216 § 3; 1992 c 45 § 4; 1990 1st ex.s. c 12 § 3; 1990 c 3 § 1003.]

Reviser's note: *(1) RCW 10.77.090 was amended by 1998 c 297 § 38, changing subsection (3) to subsection (4).

** (2) RCW 10.77.020 was amended by 1998 c 297 § 30, deleting subsection (3).

Severability—Application—1992 c 45: See notes following RCW 9.94A.840.

Effective date—1990 1st ex.s. c 12: See note following RCW 13.40.020.

71.09.040 Sexually violent predator petition—Probable cause hearing—Judicial determination—Transfer for evaluation. (1) Upon the filing of a petition under RCW 71.09.030, the judge shall determine whether probable cause exists to believe that the person named in the petition is a sexually violent predator. If such determination is made the judge shall direct that the person be taken into custody.

(2) Within seventy-two hours after a person is taken into custody pursuant to subsection (1) of this section, the court shall provide the person with notice of, and an opportunity to appear in person at, a hearing to contest probable cause as to whether the person is a sexually violent predator. At this hearing, the court shall (a) verify the person's identity, and (b) determine whether probable cause exists to believe that the person is a sexually violent predator. At the probable cause hearing, the state may rely upon the petition and certification for determination of probable cause filed pursuant to RCW 71.09.030. The state may supplement this with additional documentary evidence or live testimony.

(3) At the probable cause hearing, the person shall have the following rights in addition to the rights previously specified: (a) To be represented by counsel; (b) to present evidence on his or her behalf; (c) to cross-examine witnesses who testify against him or her; (d) to view and copy all petitions and reports in the court file.

(4) If the probable cause determination is made, the judge shall direct that the person be transferred to an appropriate facility for an evaluation as to whether the person is a sexually violent predator. The evaluation shall be conducted by a person deemed to be professionally qualified to conduct such an examination pursuant to rules developed by the department of social and health services. In adopting such rules, the department of social and health services shall consult with the department of health and the department of corrections. In no event shall the person be released from confinement prior to trial. A witness called by either party shall be permitted to testify by telephone. [2001 c 286 § 6; 1995 c 216 § 4; 1990 c 3 § 1004.]

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

71.09.050 Trial—Rights of parties. (1) Within forty-five days after the completion of any hearing held pursuant to RCW 71.09.040, the court shall conduct a trial to determine whether the person is a sexually violent predator. The trial may be continued upon the request of either party and a showing of good cause, or by the court on its own motion in the due administration of justice, and when the respondent will not be substantially prejudiced. At all stages of the proceedings under this chapter, any person subject to this chapter shall be entitled to the assistance of counsel, and if the person is indigent, the court shall appoint counsel to assist him or her. The person shall be confined in a secure facility for the duration of the trial.

(2) Whenever any person is subjected to an examination under this chapter, he or she may retain experts or professional persons to perform an examination on their behalf. When the person wishes to be examined by a qualified expert or professional person of his or her own choice, such examiner shall be permitted to have reasonable access to the person for the purpose of such examination, as well as to all rel-

evant medical and psychological records and reports. In the case of a person who is indigent, the court shall, upon the person's request, assist the person in obtaining an expert or professional person to perform an examination or participate in the trial on the person's behalf.

(3) The person, the prosecuting attorney or attorney general, or the judge shall have the right to demand that the trial be before a twelve-person jury. If no demand is made, the trial shall be before the court. [1995 c 216 § 5; 1990 c 3 § 1005.]

71.09.060 Trial—Determination—Commitment procedures. (1) The court or jury shall determine whether, beyond a reasonable doubt, the person is a sexually violent predator. In determining whether or not the person would be likely to engage in predatory acts of sexual violence if not confined in a secure facility, the fact finder may consider only placement conditions and voluntary treatment options that would exist for the person if unconditionally released from detention on the sexually violent predator petition. When the determination is made by a jury, the verdict must be unanimous.

If, on the date that the petition is filed, the person was living in the community after release from custody, the state must also prove beyond a reasonable doubt that the person had committed a recent overt act. If the state alleges that the prior sexually violent offense that forms the basis for the petition for commitment was an act that was sexually motivated as provided in *RCW 71.09.020(6)(c), the state must prove beyond a reasonable doubt that the alleged sexually violent act was sexually motivated as defined in RCW 9.94A.030.

If the court or jury determines that the person is a sexually violent predator, the person shall be committed to the custody of the department of social and health services for placement in a secure facility operated by the department of social and health services for control, care, and treatment until such time as: (a) The person's condition has so changed that the person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative as set forth in RCW 71.09.092 is in the best interest of the person and conditions can be imposed that would adequately protect the community.

If the court or unanimous jury decides that the state has not met its burden of proving that the person is a sexually violent predator, the court shall direct the person's release.

If the jury is unable to reach a unanimous verdict, the court shall declare a mistrial and set a retrial within forty-five days of the date of the mistrial unless the prosecuting agency earlier moves to dismiss the petition. The retrial may be continued upon the request of either party accompanied by a showing of good cause, or by the court on its own motion in the due administration of justice provided that the respondent will not be substantially prejudiced. In no event may the person be released from confinement prior to retrial or dismissal of the case.

(2) If the person charged with a sexually violent offense has been found incompetent to stand trial, and is about to or has been released pursuant to RCW 10.77.090(4), and his or her commitment is sought pursuant to subsection (1) of this section, the court shall first hear evidence and determine whether the person did commit the act or acts charged if the

court did not enter a finding prior to dismissal under RCW 10.77.090(4) that the person committed the act or acts charged. The hearing on this issue must comply with all the procedures specified in this section. In addition, the rules of evidence applicable in criminal cases shall apply, and all constitutional rights available to defendants at criminal trials, other than the right not to be tried while incompetent, shall apply. After hearing evidence on this issue, the court shall make specific findings on whether the person did commit the act or acts charged, the extent to which the person's incompetence or developmental disability affected the outcome of the hearing, including its effect on the person's ability to consult with and assist counsel and to testify on his or her own behalf, the extent to which the evidence could be reconstructed without the assistance of the person, and the strength of the prosecution's case. If, after the conclusion of the hearing on this issue, the court finds, beyond a reasonable doubt, that the person did commit the act or acts charged, it shall enter a final order, appealable by the person, on that issue, and may proceed to consider whether the person should be committed pursuant to this section.

(3) The state shall comply with RCW 10.77.220 while confining the person pursuant to this chapter, except that during all court proceedings the person shall be detained in a secure facility. The department shall not place the person, even temporarily, in a facility on the grounds of any state mental facility or regional habilitation center because these institutions are insufficiently secure for this population.

(4) A court has jurisdiction to order a less restrictive alternative placement only after a hearing ordered pursuant to RCW 71.09.090 following initial commitment under this section and in accord with the provisions of this chapter. [2001 c 286 § 7; 1998 c 146 § 1; 1995 c 216 § 6; 1990 1st ex.s. c 12 § 4; 1990 c 3 § 1006.]

***Reviser's note:** RCW 71.09.020 was amended by 2001 2nd sp.s. c 12 § 102, changing subsection (6)(c) to subsection (11)(c). RCW 71.09.020 was subsequently amended by 2002 c 58 § 2, changing subsection (11)(c) to subsection (15)(c).

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

Effective date—1998 c 146: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 25, 1998]." [1998 c 146 § 2.]

Effective date—1990 1st ex.s. c 12: See note following RCW 13.40.020.

71.09.070 Annual examinations of persons committed under chapter. Each person committed under this chapter shall have a current examination of his or her mental condition made by the department of social and health services at least once every year. The annual report shall include consideration of whether the committed person currently meets the definition of a sexually violent predator and whether conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that would adequately protect the community. The department of social and health services shall file this periodic report with the court that committed the person under this chapter. The report shall be in the form of a declaration or certification in compliance with the requirements of RCW 9A.72.085 and shall be prepared by a professionally qualified person as

defined by rules adopted by the secretary. A copy of the report shall be served on the prosecuting agency involved in the initial commitment and upon the committed person and his or her counsel. The committed person may retain, or if he or she is indigent and so requests, the court may appoint a qualified expert or a professional person to examine him or her, and such expert or professional person shall have access to all records concerning the person. [2001 c 286 § 8; 1995 c 216 § 7; 1990 c 3 § 1007.]

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

71.09.080 Rights of persons committed under this chapter. (1) Any person subjected to restricted liberty as a sexually violent predator pursuant to this chapter shall not forfeit any legal right or suffer any legal disability as a consequence of any actions taken or orders made, other than as specifically provided in this chapter.

(2) Any person committed pursuant to this chapter has the right to adequate care and individualized treatment. The department of social and health services shall keep records detailing all medical, expert, and professional care and treatment received by a committed person, and shall keep copies of all reports of periodic examinations made pursuant to this chapter. All such records and reports shall be made available upon request only to: The committed person, his or her attorney, the prosecuting attorney, the court, the protection and advocacy agency, or another expert or professional person who, upon proper showing, demonstrates a need for access to such records.

(3) At the time a person is taken into custody or transferred into a facility pursuant to a petition under this chapter, the professional person in charge of such facility or his or her designee shall take reasonable precautions to inventory and safeguard the personal property of the persons detained or transferred. A copy of the inventory, signed by the staff member making it, shall be given to the person detained and shall, in addition, be open to inspection to any responsible relative, subject to limitations, if any, specifically imposed by the detained person. For purposes of this subsection, "responsible relative" includes the guardian, conservator, attorney, spouse, parent, adult child, or adult brother or sister of the person. The facility shall not disclose the contents of the inventory to any other person without consent of the patient or order of the court.

(4) Nothing in this chapter prohibits a person presently committed from exercising a right presently available to him or her for the purpose of obtaining release from confinement, including the right to petition for a writ of habeas corpus.

(5) No indigent person may be conditionally released or unconditionally discharged under this chapter without suitable clothing, and the secretary shall furnish the person with such sum of money as is required by RCW 72.02.100 for persons without ample funds who are released from correctional institutions. As funds are available, the secretary may provide payment to the indigent persons conditionally released pursuant to this chapter consistent with the optional provisions of RCW 72.02.100 and 72.02.110, and may adopt rules to do so. [1995 c 216 § 8; 1990 c 3 § 1008.]

71.09.085 Medical care—Contracts for services. (1) Notwithstanding any other provisions of law, the secretary may enter into contracts with health care practitioners, health care facilities, and other entities or agents as may be necessary to provide basic medical care to residents. The contracts shall not cause the termination of classified employees of the department rendering the services at the time the contract is executed.

(2) In contracting for services, the secretary is authorized to provide for indemnification of health care practitioners who cannot obtain professional liability insurance through reasonable effort, from liability on any action, claim, or proceeding instituted against them arising out of the good faith performance or failure of performance of services on behalf of the department. The contracts may provide that for the purposes of chapter 4.92 RCW only, those health care practitioners with whom the department has contracted shall be considered state employees. [2002 c 58 § 1.]

Effective date—2002 c 58: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 21, 2002]." [2002 c 58 § 3.]

71.09.090 Petition for conditional release to less restrictive alternative or unconditional discharge—Procedures. (1) If the secretary determines that either: (a) The person's condition has so changed that the person no longer meets the definition of a sexually violent predator; or (b) conditional release to a less restrictive alternative is in the best interest of the person and conditions can be imposed that adequately protect the community, the secretary shall authorize the person to petition the court for conditional release to a less restrictive alternative or unconditional discharge. The petition shall be filed with the court and served upon the prosecuting agency responsible for the initial commitment. The court, upon receipt of the petition for conditional release to a less restrictive alternative or unconditional discharge, shall within forty-five days order a hearing.

(2)(a) Nothing contained in this chapter shall prohibit the person from otherwise petitioning the court for conditional release to a less restrictive alternative or unconditional discharge without the secretary's approval. The secretary shall provide the committed person with an annual written notice of the person's right to petition the court for conditional release to a less restrictive alternative or unconditional discharge over the secretary's objection. The notice shall contain a waiver of rights. The secretary shall file the notice and waiver form and the annual report with the court. If the person does not affirmatively waive the right to petition, the court shall set a show cause hearing to determine whether probable cause exists to warrant a hearing on whether: (i) The person's condition has so changed that he or she no longer meets the definition of a sexually violent predator; or (ii) conditional release to a less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community.

(b) The committed person shall have a right to have an attorney represent him or her at the show cause hearing, which may be conducted solely on the basis of affidavits or declarations, but the person is not entitled to be present at the show cause hearing. At the show cause hearing, the prosecut-

ing attorney or attorney general shall present prima facie evidence establishing that the committed person continues to meet the definition of a sexually violent predator and that a less restrictive alternative is not in the best interest of the person and conditions cannot be imposed that adequately protect the community. In making this showing, the state may rely exclusively upon the annual report prepared pursuant to RCW 71.09.070. The committed person may present responsive affidavits or declarations to which the state may reply.

(c) If the court at the show cause hearing determines that either: (i) The state has failed to present prima facie evidence that the committed person continues to meet the definition of a sexually violent predator and that no proposed less restrictive alternative is in the best interest of the person and conditions cannot be imposed that would adequately protect the community; or (ii) probable cause exists to believe that the person's condition has so changed that: (A) The person no longer meets the definition of a sexually violent predator; or (B) release to a less restrictive alternative would be in the best interest of the person and conditions can be imposed that would adequately protect the community, then the court shall set a hearing on either or both issues.

(d) If the court has not previously considered the issue of release to a less restrictive alternative, either through a trial on the merits or through the procedures set forth in RCW 71.09.094(1), the court shall consider whether release to a less restrictive alternative would be in the best interests of the person and conditions can be imposed that would adequately protect the community, without considering whether the person's condition has changed.

(3)(a) At the hearing resulting from subsection (1) or (2) of this section, the committed person shall be entitled to be present and to the benefit of all constitutional protections that were afforded to the person at the initial commitment proceeding. The prosecuting agency or the attorney general if requested by the county shall represent the state and shall have a right to a jury trial and to have the committed person evaluated by experts chosen by the state. The committed person shall also have the right to a jury trial and the right to have experts evaluate him or her on his or her behalf and the court shall appoint an expert if the person is indigent and requests an appointment.

(b) If the issue at the hearing is whether the person should be unconditionally discharged, the burden of proof shall be upon the state to prove beyond a reasonable doubt that the committed person's condition remains such that the person continues to meet the definition of a sexually violent predator. Evidence of the prior commitment trial and disposition is admissible.

(c) If the issue at the hearing is whether the person should be conditionally released to a less restrictive alternative, the burden of proof at the hearing shall be upon the state to prove beyond a reasonable doubt that conditional release to any proposed less restrictive alternative either: (i) Is not in the best interest of the committed person; or (ii) does not include conditions that would adequately protect the community. Evidence of the prior commitment trial and disposition is admissible.

(4) The jurisdiction of the court over a person civilly committed pursuant to this chapter continues until such time

(2004 Ed.)

as the person is unconditionally discharged. [2001 c 286 § 9; 1995 c 216 § 9; 1992 c 45 § 7; 1990 c 3 § 1009.]

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

Severability—Application—1992 c 45: See notes following RCW 9.94A.840.

71.09.092 Conditional release to less restrictive alternative—Findings. Before the court may enter an order directing conditional release to a less restrictive alternative, it must find the following: (1) The person will be treated by a treatment provider who is qualified to provide such treatment in the state of Washington under chapter 18.155 RCW; (2) the treatment provider has presented a specific course of treatment and has agreed to assume responsibility for such treatment and will report progress to the court on a regular basis, and will report violations immediately to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center; (3) housing exists that is sufficiently secure to protect the community, and the person or agency providing housing to the conditionally released person has agreed in writing to accept the person, to provide the level of security required by the court, and immediately to report to the court, the prosecutor, the supervising community corrections officer, and the superintendent of the special commitment center if the person leaves the housing to which he or she has been assigned without authorization; (4) the person is willing to comply with the treatment provider and all requirements imposed by the treatment provider and by the court; and (5) the person is willing to comply with supervision requirements imposed by the department of corrections. [1995 c 216 § 10.]

71.09.094 Conditional release to less restrictive alternative—Verdict. (1) Upon the conclusion of the evidence in a hearing held pursuant to RCW 71.09.090 or through summary judgment proceedings prior to such a hearing, if the court finds that there is no legally sufficient evidentiary basis for a reasonable jury to find that the conditions set forth in RCW 71.09.092 have been met, the court shall grant a motion by the state for a judgment as a matter of law on the issue of conditional release to a less restrictive alternative.

(2) Whenever the issue of conditional release to a less restrictive alternative is submitted to the jury, the court shall instruct the jury to return a verdict in substantially the following form: Has the state proved beyond a reasonable doubt that either: (a) The proposed less restrictive alternative is not in the best interests of respondent; or (b) does not include conditions that would adequately protect the community? Answer: Yes or No. [2001 c 286 § 11; 1995 c 216 § 11.]

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

71.09.096 Conditional release to less restrictive alternative—Judgment—Conditions—Annual review. (1) If the court or jury determines that conditional release to a less restrictive alternative is in the best interest of the person and includes conditions that would adequately protect the community, and the court determines that the minimum conditions set forth in RCW 71.09.092 and in this section are met,

the court shall enter judgment and direct a conditional release.

(2) The court shall impose any additional conditions necessary to ensure compliance with treatment and to protect the community. If the court finds that conditions do not exist that will both ensure the person's compliance with treatment and protect the community, then the person shall be remanded to the custody of the department of social and health services for control, care, and treatment in a secure facility as designated in RCW 71.09.060(1).

(3) If the service provider designated by the court to provide inpatient or outpatient treatment or to monitor or supervise any other terms and conditions of a person's placement in a less restrictive alternative is other than the department of social and health services or the department of corrections, then the service provider so designated must agree in writing to provide such treatment, monitoring, or supervision in accord with this section. Any person providing or agreeing to provide treatment, monitoring, or supervision services pursuant to this chapter may be compelled to testify and any privilege with regard to such person's testimony is deemed waived.

(4) Prior to authorizing any release to a less restrictive alternative, the court shall impose such conditions upon the person as are necessary to ensure the safety of the community. The court shall order the department of corrections to investigate the less restrictive alternative and recommend any additional conditions to the court. These conditions shall include, but are not limited to the following: Specification of residence, prohibition of contact with potential or past victims, prohibition of alcohol and other drug use, participation in a specific course of inpatient or outpatient treatment that may include monitoring by the use of polygraph and plethysmograph, supervision by a department of corrections community corrections officer, a requirement that the person remain within the state unless the person receives prior authorization by the court, and any other conditions that the court determines are in the best interest of the person or others. A copy of the conditions of release shall be given to the person and to any designated service providers.

(5) Any service provider designated to provide inpatient or outpatient treatment shall monthly, or as otherwise directed by the court, submit to the court, to the department of social and health services facility from which the person was released, to the prosecutor of the county in which the person was found to be a sexually violent predator, and to the supervising community corrections officer, a report stating whether the person is complying with the terms and conditions of the conditional release to a less restrictive alternative.

(6) Each person released to a less restrictive alternative shall have his or her case reviewed by the court that released him or her no later than one year after such release and annually thereafter until the person is unconditionally discharged. Review may occur in a shorter time or more frequently, if the court, in its discretion on its own motion, or on motion of the person, the secretary, or the prosecuting attorney so determines. The sole question to be determined by the court is whether the person shall continue to be conditionally released to a less restrictive alternative. The court in making its determination shall be aided by the periodic reports filed pursuant to subsection (5) of this section and the opinions of the secre-

tary and other experts or professional persons. [2001 c 286 § 12; 1995 c 216 § 12.]

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

71.09.098 Conditional release to less restrictive alternative—Hearing on revocation or modification—Authority to apprehend conditionally released person. (1) Any service provider submitting reports pursuant to RCW 71.09.096(6), the supervising community corrections officer, the prosecuting attorney, or the attorney general may petition the court, or the court on its own motion may schedule an immediate hearing, for the purpose of revoking or modifying the terms of the person's conditional release to a less restrictive alternative if the petitioner or the court believes the released person is not complying with the terms and conditions of his or her release or is in need of additional care, monitoring, supervision, or treatment.

(2) If the prosecuting attorney, the supervising community corrections officer, or the court, based upon information received by them, reasonably believes that a conditionally released person is not complying with the terms and conditions of his or her conditional release to a less restrictive alternative, the court or community corrections officer may order that the conditionally released person be apprehended and taken into custody until such time as a hearing can be scheduled to determine the facts and whether or not the person's conditional release should be revoked or modified. The court shall be notified before the close of the next judicial day of the person's apprehension. Both the prosecuting attorney and the conditionally released person shall have the right to request an immediate mental examination of the conditionally released person. If the conditionally released person is indigent, the court shall, upon request, assist him or her in obtaining a qualified expert or professional person to conduct the examination.

(3) The court, upon receiving notification of the person's apprehension, shall promptly schedule a hearing. The issue to be determined is whether the state has proven by a preponderance of the evidence that the conditionally released person did not comply with the terms and conditions of his or her release. Hearsay evidence is admissible if the court finds it otherwise reliable. At the hearing, the court shall determine whether the person shall continue to be conditionally released on the same or modified conditions or whether his or her conditional release shall be revoked and he or she shall be committed to total confinement, subject to release only in accordance with provisions of this chapter. [2001 c 286 § 13; 1995 c 216 § 13.]

Recommendations—Application—Effective date—2001 c 286: See notes following RCW 71.09.015.

71.09.110 Department of social and health services—Duties—Reimbursement. The department of social and health services shall be responsible for all costs relating to the evaluation and treatment of persons committed to their custody whether in a secure facility or under a less restrictive alternative under any provision of this chapter. Reimbursement may be obtained by the department for the cost of care and treatment of persons committed to its custody whether in a secure facility or under a less restrictive alternative pursuant

to RCW 43.20B.330 through 43.20B.370. [1995 c 216 § 14; 1990 c 3 § 1011.]

71.09.112 Department of social and health services—Jurisdiction continues after criminal conviction—Exception. A person subject to court order under the provisions of this chapter who is thereafter convicted of a criminal offense remains under the jurisdiction of the department following: (1) Completion of the criminal sentence; or (2) release from confinement in a state or local correctional facility, and shall be returned to the custody of the department.

This section does not apply to persons subject to a court order under the provisions of this chapter who are thereafter sentenced to life without the possibility of release. [2002 c 19 § 1.]

71.09.115 Record check required for employees of secure facility. (1) The safety and security needs of the secure facility operated by the department of social and health services pursuant to RCW 71.09.060(1) make it vital that employees working in the facility meet necessary character, suitability, and competency qualifications. The secretary shall require a record check through the Washington state patrol criminal identification system under chapter 10.97 RCW and through the federal bureau of investigation. The record check must include a fingerprint check using a complete Washington state criminal identification fingerprint card. The criminal history record checks shall be at the expense of the department. The secretary shall use the information only in making the initial employment or engagement decision, except as provided in subsection (2) of this section. Further dissemination or use of the record is prohibited.

(2) This section applies to all current employees hired prior to June 6, 1996, who have not previously submitted to a department of social and health services criminal history records check. The secretary shall use the information only in determining whether the current employee meets the necessary character, suitability, and competency requirements for employment or engagement. [1996 c 27 § 1.]

71.09.120 Release of information authorized. In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public, concerning a specific sexually violent predator committed under this chapter. [1990 c 3 § 1012.]

71.09.130 Notice of escape or disappearance. In the event of an escape by a person committed under this chapter from a state institution or the disappearance of such a person while on conditional release, the superintendent or community corrections officer shall notify the following as appropriate: Local law enforcement officers, other governmental agencies, the person's relatives, and any other appropriate persons about information necessary for the public safety or to assist in the apprehension of the person. [1995 c 216 § 16.]

71.09.135 McNeil Island—Escape planning, response. The emergency response team for McNeil Island shall plan, coordinate, and respond in the event of an escape

(2004 Ed.)

from the special commitment center or the secure community transition facility. [2003 c 216 § 6.]

Severability—Effective date—2003 c 216: See notes following RCW 71.09.300.

71.09.140 Notice of conditional release or unconditional discharge—Notice of escape and recapture. (1) At the earliest possible date, and in no event later than thirty days before conditional release or unconditional discharge, except in the event of escape, the department of social and health services shall send written notice of conditional release, unconditional discharge, or escape, to the following:

(a) The chief of police of the city, if any, in which the person will reside or in which placement will be made under a less restrictive alternative;

(b) The sheriff of the county in which the person will reside or in which placement will be made under a less restrictive alternative; and

(c) The sheriff of the county where the person was last convicted of a sexually violent offense, if the department does not know where the person will reside.

The department shall notify the state patrol of the release of all sexually violent predators and that information shall be placed in the Washington crime information center for dissemination to all law enforcement.

(2) The same notice as required by subsection (1) of this section shall be sent to the following if such notice has been requested in writing about a specific person found to be a sexually violent predator under this chapter:

(a) The victim or victims of any sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. "Next of kin" as used in this section means a person's spouse, parents, siblings, and children;

(b) Any witnesses who testified against the person in his or her commitment trial under RCW 71.09.060; and

(c) Any person specified in writing by the prosecuting attorney.

Information regarding victims, next of kin, or witnesses requesting the notice, information regarding any other person specified in writing by the prosecuting attorney to receive the notice, and the notice are confidential and shall not be available to the committed person.

(3) If a person committed as a sexually violent predator under this chapter escapes from a department of social and health services facility, the department shall immediately notify, by the most reasonable and expedient means available, the chief of police of the city and the sheriff of the county in which the committed person resided immediately before his or her commitment as a sexually violent predator, or immediately before his or her incarceration for his or her most recent offense. If previously requested, the department shall also notify the witnesses and the victims of the sexually violent offenses for which the person was convicted in the past or the victim's next of kin if the crime was a homicide. If the person is recaptured, the department shall send notice to the persons designated in this subsection as soon as possible but in no event later than two working days after the department learns of such recapture.

(4) If the victim or victims of any sexually violent offenses for which the person was convicted in the past or the

victim's next of kin, or any witness is under the age of sixteen, the notice required by this section shall be sent to the parents or legal guardian of the child.

(5) The department of social and health services shall send the notices required by this chapter to the last address provided to the department by the requesting party. The requesting party shall furnish the department with a current address.

(6) Nothing in this section shall impose any liability upon a chief of police of a city or sheriff of a county for failing to request in writing a notice as provided in subsection (1) of this section. [1995 c 216 § 17.]

71.09.200 Escorted leave—Definitions. For purposes of RCW 71.09.210 through 71.09.230:

(1) "Escorted leave" means a leave of absence from a facility housing persons detained or committed pursuant to this chapter under the continuous supervision of an escort.

(2) "Escort" means a correctional officer or other person approved by the superintendent or the superintendent's designee to accompany a resident on a leave of absence and be in visual or auditory contact with the resident at all times.

(3) "Resident" means a person detained or committed pursuant to this chapter. [1995 c 216 § 18.]

71.09.210 Escorted leave—Conditions. The superintendent of any facility housing persons detained or committed pursuant to this chapter may, subject to the approval of the secretary, grant escorted leaves of absence to residents confined in such institutions to:

(1) Go to the bedside of the resident's wife, husband, child, mother or father, or other member of the resident's immediate family who is seriously ill;

(2) Attend the funeral of a member of the resident's immediate family listed in subsection (1) of this section; and

(3) Receive necessary medical or dental care which is not available in the institution. [1995 c 216 § 19.]

71.09.220 Escorted leave—Notice. A resident shall not be allowed to start a leave of absence under RCW 71.09.210 until the secretary, or the secretary's designee, has notified any county and city law enforcement agency having jurisdiction in the area of the resident's destination. [1995 c 216 § 20.]

71.09.230 Escorted leave—Rules. (1) The secretary is authorized to adopt rules providing for the conditions under which residents will be granted leaves of absence and providing for safeguards to prevent escapes while on leaves of absence. Leaves of absence granted to residents under RCW 71.09.210, however, shall not allow or permit any resident to go beyond the boundaries of this state.

(2) The secretary shall adopt rules requiring reimbursement of the state from the resident granted leave of absence, or the resident's family, for the actual costs incurred arising from any leave of absence granted under the authority of RCW 71.09.210 (1) and (2). No state funds shall be expended in connection with leaves of absence granted under RCW 71.09.210 (1) and (2) unless the resident and the resident's immediate family are indigent and without resources suffi-

cient to reimburse the state for the expenses of such leaves of absence. [1995 c 216 § 21.]

71.09.250 Transition facility—Siting. (1)(a) The secretary is authorized to site, construct, occupy, and operate (i) a secure community transition facility on McNeil Island for persons authorized to petition for a less restrictive alternative under RCW 71.09.090(1) and who are conditionally released; and (ii) a special commitment center on McNeil Island with up to four hundred four beds as a total confinement facility under this chapter, subject to appropriated funding for those purposes. The secure community transition facility shall be authorized for the number of beds needed to ensure compliance with the orders of the superior courts under this chapter and the federal district court for the western district of Washington. The total number of beds in the secure community transition facility shall be limited to twenty-four, consisting of up to fifteen transitional beds and up to nine pretransitional beds. The residents occupying the transitional beds shall be the only residents eligible for transitional services occurring in Pierce county. In no event shall more than fifteen residents of the secure community transition facility be participating in off-island transitional, educational, or employment activity at the same time in Pierce county. The department shall provide the Pierce county sheriff, or his or her designee, with a list of the fifteen residents so designated, along with their photographs and physical descriptions, and the list shall be immediately updated whenever a residential change occurs. The Pierce county sheriff, or his or her designee, shall be provided an opportunity to confirm the residential status of each resident leaving McNeil Island.

(b) For purposes of this subsection, "transitional beds" means beds only for residents who are judged by a qualified expert to be suitable to leave the island for treatment, education, and employment.

(2)(a) The secretary is authorized to site, either within the secure community transition facility established pursuant to subsection (1)(a)(i) of this section, or within the special commitment center, up to nine pretransitional beds.

(b) Residents assigned to pretransitional beds shall not be permitted to leave McNeil Island for education, employment, treatment, or community activities in Pierce county.

(c) For purposes of this subsection, "pretransitional beds" means beds for residents whose progress toward a less secure residential environment and transition into more complete community involvement is projected to take substantially longer than a typical resident of the special commitment center.

(3) Notwithstanding RCW 36.70A.103 or any other law, this statute preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the secretary to site, construct, occupy, and operate a secure community transition facility on McNeil Island and a total confinement facility on McNeil Island.

(4) To the greatest extent possible, until June 30, 2003, persons who were not civilly committed from the county in which the secure community transition facility established pursuant to subsection (1) of this section is located may not be conditionally released to a setting in that same county less restrictive than that facility.

(5) As of June 26, 2001, the state shall immediately cease any efforts in effect on such date to site secure community transition facilities, other than the facility authorized by subsection (1) of this section, and shall instead site such facilities in accordance with the provisions of this section.

(6) The department must:

(a) Identify the minimum and maximum number of secure community transition facility beds in addition to the facility established under subsection (1) of this section that may be necessary for the period of May 2004 through May 2007 and provide notice of these numbers to all counties by August 31, 2001; and

(b) Develop and publish policy guidelines for the siting and operation of secure community transition facilities.

(7)(a) The total number of secure community transition facility beds that may be required to be sited in a county between June 26, 2001, and June 30, 2008, may be no greater than the total number of persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made on April 1, 2001. The total number of secure community transition facility beds required to be sited in each county between July 1, 2008, and June 30, 2015, may be no greater than the total number of persons civilly committed from that county or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause had been made as of July 1, 2008.

(b) Counties and cities that provide secure community transition facility beds above the maximum number that they could be required to site under this subsection are eligible for a bonus grant under the incentive provisions in RCW 71.09.255. The county where the special commitment center is located shall receive this bonus grant for the number of beds in the facility established in subsection (1) of this section in excess of the maximum number established by this subsection.

(c) No secure community transition facilities in addition to the one established in subsection (1) of this section may be required to be sited in the county where the special commitment center is located until after June 30, 2008, provided however, that the county and its cities may elect to site additional secure community transition facilities and shall be eligible under the incentive provisions of RCW 71.09.255 for any additional facilities meeting the requirements of that section.

(8) In identifying potential sites within a county for the location of a secure community transition facility, the department shall work with and assist local governments to provide for the equitable distribution of such facilities. In coordinating and deciding upon the siting of secure community transition facilities, great weight shall be given by the county and cities within the county to:

(a) The number and location of existing residential facility beds operated by the department of corrections or the mental health division of the department of social and health services in each jurisdiction in the county; and

(b) The number of registered sex offenders classified as level II or level III and the number of sex offenders registered as homeless residing in each jurisdiction in the county.

(2004 Ed.)

(9)(a) "Equitable distribution" means siting or locating secure community transition facilities in a manner that will not cause a disproportionate grouping of similar facilities either in any one county, or in any one jurisdiction or community within a county, as relevant; and

(b) "Jurisdiction" means a city, town, or geographic area of a county in which distinct political or judicial authority may be exercised. [2003 c 216 § 3; 2001 2nd sp.s. c 12 § 201.]

Severability—Effective date—2003 c 216: See notes following RCW 71.09.300.

Intent—2001 2nd sp.s. c 12: "The legislature intends the following omnibus bill to address the management of sex offenders in the civil commitment and criminal justice systems for purposes of public health, safety, and welfare. Provisions address siting of and continued operation of facilities for persons civilly committed under chapter 71.09 RCW and sentencing of persons who have committed sex offenses. Other provisions address the need for sex offender treatment providers with specific credentials. Additional provisions address the continued operation or authorized expansion of criminal justice facilities at McNeil Island, because these facilities are impacted by the civil facilities on McNeil Island for persons committed under chapter 71.09 RCW." [2001 2nd sp.s. c 12 § 101.]

Severability—2001 2nd sp.s. c 12: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 2nd sp.s. c 12 § 504.]

Effective dates—2001 2nd sp.s. c 12: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2001], except for sections 301 through 363, 501, and 503 of this act which take effect September 1, 2001." [2001 2nd sp.s. c 12 § 505.]

71.09.2501 "All other laws" defined. (Expires June 30, 2009.) An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under this chapter. To meet this emergency, for purposes of RCW 71.09.250 and 71.09.342, "all other laws" means the state environmental policy act, the shoreline management act, the hydraulics code, and all other state laws regulating the protection and use of the water, land, and air.

This section expires June 30, 2009. [2002 c 68 § 11.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

71.09.252 Transition facilities—Agreements for regional facilities. (1) To encourage economies of scale in the siting and operation of secure community transition facilities, the department may enter into an agreement with two or more counties to create a regional secure community transition facility. The agreement must clearly identify the number of beds from each county that will be contained in the regional secure community transition facility. The agreement must specify which county must contain the regional secure community transition facility and the facility must be sited accordingly. No county may withdraw from an agreement under this section unless it has provided an alternative acceptable secure community transition facility to house any displaced residents that meets the criteria established for such facilities in this chapter and the guidelines established by the department.

(2) A regional secure community transition facility must meet the criteria established for secure community transition

facilities in this chapter and the guidelines established by the department.

(3) The department shall count the beds identified for each participating county in a regional secure community transition facility against the maximum number of beds that could be required for each county under RCW 71.09.250(7)(a).

(4) An agreement for a regional secure community transition facility does not alter the maximum number of beds for purposes of the incentive grants under RCW 71.09.255 for the county containing the regional facility. [2002 c 68 § 18.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

71.09.255 Transition facilities—Incentive grants and payments. (1) Upon receiving the notification required by RCW 71.09.250, counties must promptly notify the cities within the county of the maximum number of secure community transition facility beds that may be required and the projected number of beds to be needed in that county.

(2) The incentive grants and payments provided under this section are subject to the following provisions:

(a) Counties and the cities within the county must notify each other of siting plans to promote the establishment and equitable distribution of secure community transition facilities;

(b) Development regulations, ordinances, plans, laws, and criteria established for siting must be consistent with statutory requirements and rules applicable to siting and operating secure community transition facilities;

(c) The minimum size for any facility is three beds; and

(d) The department must approve any sites selected.

(3) Any county or city that makes a commitment to initiate the process to site one or more secure community transition facilities by one hundred twenty days after March 21, 2002, shall receive a planning grant as proposed and approved by the department of community, trade, and economic development.

(4) Any county or city that has issued all necessary permits by May 1, 2003, for one or more secure community transition facilities that comply with the requirements of this section shall receive an incentive grant in the amount of fifty thousand dollars for each bed sited.

(5) To encourage the rapid permitting of sites, any county or city that has issued all necessary permits by January 1, 2003, for one or more secure community transition facilities that comply with the requirements of this section shall receive a bonus in the amount of twenty percent of the amount provided under subsection (4) of this section.

(6) Any county or city that establishes secure community transition facility beds in excess of the maximum number that could be required to be sited in that county shall receive a bonus payment of one hundred thousand dollars for each bed established in excess of the maximum requirement.

(7) No payment shall be made under subsection (4), (5), or (6) of this section until all necessary permits have been issued.

(8) The funds available to counties and cities under this section are contingent upon funds being appropriated by the legislature. [2002 c 68 § 8; 2001 2nd sp.s. c 12 § 204.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.260 Transition facilities not limited to residential neighborhoods. The provisions of chapter 12, Laws of 2001 2nd sp. sess. shall not be construed to limit siting of secure community transition facilities to residential neighborhoods. [2001 2nd sp.s. c 12 § 206.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.265 Transition facilities—Distribution of impact. (1) The department shall make reasonable efforts to distribute the impact of the employment, education, and social services needs of the residents of the secure community transition facility established pursuant to RCW 71.09.250(1) among the adjoining counties and not to concentrate the residents' use of resources in any one community.

(2) The department shall develop policies to ensure that, to the extent possible, placement of persons eligible in the future for conditional release to a setting less restrictive than the facility established pursuant to RCW 71.09.250(1) will be equitably distributed among the counties and within jurisdictions in the county. [2001 2nd sp.s. c 12 § 208.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.275 Transition facility—Transportation of residents. (1) If the department does not provide a separate vessel for transporting residents of the secure community transition facility established in RCW 71.09.250(1) between McNeil Island and the mainland, the department shall:

(a) Separate residents from minors and vulnerable adults, except vulnerable adults who have been found to be sexually violent predators.

(b) Not transport residents during times when children are normally coming to and from the mainland for school.

(2) The department shall designate a separate waiting area at the points of debarkation, and residents shall be required to remain in this area while awaiting transportation.

(3) The department shall provide law enforcement agencies in the counties and cities in which residents of the secure community transition facility established pursuant to RCW 71.09.250(1)(a)(i) regularly participate in employment, education, or social services, or through which these persons are regularly transported, with a copy of the court's order of conditional release with respect to these persons. [2003 c 216 § 4; 2001 2nd sp.s. c 12 § 211.]

Severability—Effective date—2003 c 216: See notes following RCW 71.09.300.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.280 Transition facility—Release to less restrictive placement. When considering whether a person civilly committed under this chapter and conditionally released to a secure community transition facility is appropriate for release to a placement that is less restrictive than that facility, the court shall comply with the procedures set forth in RCW

71.09.090 through 71.09.096. In addition, the court shall consider whether the person has progressed in treatment to the point that a significant change in the person's routine, including but not limited to a change of employment, education, residence, or sex offender treatment provider will not cause the person to regress to the point that the person presents a greater risk to the community than can reasonably be addressed in the proposed placement. [2001 2nd sp.s. c 12 § 212.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.285 Transition facility—Siting policy guidelines. (1) Except with respect to the secure community transition facility established pursuant to RCW 71.09.250, the secretary shall develop policy guidelines that balance the average response time of emergency services to the general area of a proposed secure community transition facility against the proximity of the proposed site to risk potential activities and facilities in existence at the time the site is listed for consideration.

(2) In no case shall the policy guidelines permit location of a facility adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

(3) The policy guidelines shall require that great weight be given to sites that are the farthest removed from any risk potential activity.

(4) The policy guidelines shall specify how distance from the location is measured and any variations in the measurement based on the size of the property within which a proposed facility is to be located.

(5) The policy guidelines shall establish a method to analyze and compare the criteria for each site in terms of public safety and security, site characteristics, and program components. In making a decision regarding a site following the analysis and comparison, the secretary shall give priority to public safety and security considerations. The analysis and comparison of the criteria are to be documented and made available at the public hearings prescribed in RCW 71.09.315.

(6) Policy guidelines adopted by the secretary under this section shall be considered by counties and cities when providing for the siting of secure community transition facilities as required under RCW 36.70A.200. [2002 c 68 § 5; 2001 2nd sp.s. c 12 § 213.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.290 Other transition facilities—Siting policy guidelines. The secretary shall establish policy guidelines for the siting of secure community transition facilities, other than the secure community transition facility established pursuant to RCW 71.09.250(1)(a)(i), which shall include at least the following minimum requirements:

(1) The following criteria must be considered prior to any real property being listed for consideration for the location of or use as a secure community transition facility:

(a) The proximity and response time criteria established under RCW 71.09.285;

(b) The site or building is available for lease for the anticipated use period or for purchase;

(c) Security monitoring services and appropriate back-up systems are available and reliable;

(d) Appropriate mental health and sex offender treatment providers must be available within a reasonable commute; and

(e) Appropriate permitting for a secure community transition facility must be possible under the zoning code of the local jurisdiction.

(2) For sites which meet the criteria of subsection (1) of this section, the department shall analyze and compare the criteria in subsections (3) through (5) of this section using the method established in RCW 71.09.285.

(3) Public safety and security criteria shall include at least the following:

(a) Whether limited visibility between the facility and adjacent properties can be achieved prior to placement of any person;

(b) The distance from, and number of, risk potential activities and facilities, as measured using the policies adopted under RCW 71.09.285;

(c) The existence of or ability to establish barriers between the site and the risk potential facilities and activities;

(d) Suitability of the buildings to be used for the secure community transition facility with regard to existing or feasibly modified features; and

(e) The availability of electronic monitoring that allows a resident's location to be determined with specificity.

(4) Site characteristics criteria shall include at least the following:

(a) Reasonableness of rental, lease, or sale terms including length and renewability of a lease or rental agreement;

(b) Traffic and access patterns associated with the real property;

(c) Feasibility of complying with zoning requirements within the necessary time frame; and

(d) A contractor or contractors are available to install, monitor, and repair the necessary security and alarm systems.

(5) Program characteristics criteria shall include at least the following:

(a) Reasonable proximity to available medical, mental health, sex offender, and chemical dependency treatment providers and facilities;

(b) Suitability of the location for programming, staffing, and support considerations;

(c) Proximity to employment, educational, vocational, and other treatment plan components.

(6) For purposes of this section "available" or "availability" of qualified treatment providers includes provider qualifications and willingness to provide services, average commute time, and cost of services. [2003 c 216 § 5; 2001 2nd sp.s. c 12 § 214.]

Severability—Effective date—2003 c 216: See notes following RCW 71.09.300.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.295 Transition facilities—Security systems. (1) Security systems for all secure community transition facilities shall meet the following minimum qualifications:

(a) The security panel must be a commercial grade panel with tamper-proof switches and a key-lock to prevent unauthorized access.

(b) There must be an emergency electrical supply system which shall include a battery back-up system and a generator.

(c) The system must include personal panic devices for all staff.

(d) The security system must be capable of being monitored and signaled either by telephone through either a land or cellular telephone system or by private radio network in the event of a total dial-tone failure or through equivalent technologies.

(e) The department shall issue photo-identification badges to all staff which must be worn at all times.

(2) Security systems for the secure community transition facility established pursuant to RCW 71.09.250(1) shall also include a fence and provide the maximum protection appropriate in a civil facility for persons in less than total confinement. [2001 2nd sp.s. c 12 § 215.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.300 Transition facilities—Staffing. Secure community transition facilities shall meet the following minimum staffing requirements:

(1)(a) At any time the census of a facility that accepts its first resident before July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per three residents during normal waking hours and one awake staff per four residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.

(b) At any time the census of a facility that accepts its first resident on or after July 1, 2003, is six or fewer residents, the facility shall maintain a minimum staffing ratio of one staff per resident during normal waking hours and two awake staff per three residents during normal sleeping hours. In no case shall the staffing ratio permit less than two staff per housing unit.

(2) At any time the census of a facility is six or fewer residents, all staff shall be classified as residential rehabilitation counselor II or have a classification that indicates an equivalent or higher level of skill, experience, and training.

(3) Before being assigned to a facility, all staff shall have training in sex offender issues, self-defense, and crisis de-escalation skills in addition to departmental orientation and, as appropriate, management training. All staff with resident treatment or care duties must participate in ongoing in-service training.

(4) All staff must pass a departmental background check and the check is not subject to the limitations in chapter 9.96A RCW. A person who has been convicted of a felony, or any sex offense, may not be employed at the secure community transition facility or be approved as an escort for a

resident of the facility. [2003 c 216 § 1; 2001 2nd sp.s. c 12 § 216.]

Severability—2003 c 216: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 c 216 § 8.]

Effective date—2003 c 216: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 c 216 § 9.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.305 Transition facility residents—Monitoring, escorting. (1) Unless otherwise ordered by the court:

(a) Residents of a secure community transition facility shall wear electronic monitoring devices at all times. To the extent that electronic monitoring devices that employ global positioning system technology are available and funds for this purpose are appropriated by the legislature, the department shall use these devices.

(b) At least one staff member, or other court-authorized and department-approved person must escort each resident when the resident leaves the secure community transition facility for appointments, employment, or other approved activities. Escorting persons must supervise the resident closely and maintain close proximity to the resident. The escort must immediately notify the department of any serious violation, as defined in RCW 71.09.325, by the resident and must immediately notify law enforcement of any violation of law by the resident. The escort may not be a relative of the resident or a person with whom the resident has, or has had, a dating relationship as defined in RCW 26.50.010.

(2) Staff members of the special commitment center and any other total confinement facility and any secure community transition facility must be trained in self-defense and appropriate crisis responses including incident de-escalation. Prior to escorting a person outside of a facility, staff members must also have training in the offense pattern of the offender they are escorting.

(3) Any escort must carry a cellular telephone or a similar device at all times when escorting a resident of a secure community transition facility.

(4) The department shall require training in offender pattern, self-defense, and incident response for all court-authorized escorts who are not employed by the department or the department of corrections. [2002 c 68 § 6; 2001 2nd sp.s. c 12 § 217.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.310 Transition facility residents—Mandatory escorts. Notwithstanding the provisions of RCW 71.09.305, residents of the secure community transition facility established pursuant to RCW 71.09.250(1) must be escorted at any time the resident leaves the facility. [2001 2nd sp.s. c 12 § 218.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.315 Transition facilities—Public notice, review, and comment. (1) Whenever the department operates, or the secretary enters into a contract to operate, a secure community transition facility except the secure community transition facility established pursuant to RCW 71.09.250(1), the secure community transition facility may be operated only after the public notification and opportunities for review and comment as required by this section.

(2) The secretary shall establish a process for early and continuous public participation in establishing or relocating secure community transition facilities. The process shall include, at a minimum, public meetings in the local communities affected, as well as opportunities for written and oral comments, in the following manner:

(a) If there are more than three sites initially selected as potential locations and the selection process by the secretary or a service provider reduces the number of possible sites for a secure community transition facility to no fewer than three, the secretary or the chief operating officer of the service provider shall notify the public of the possible siting and hold at least two public hearings in each community where a secure community transition facility may be sited.

(b) When the secretary or service provider has determined the secure community transition facility's location, the secretary or the chief operating officer of the service provider shall hold at least one additional public hearing in the community where the secure community transition facility will be sited.

(c) When the secretary has entered negotiations with a service provider and only one site is under consideration, then at least two public hearings shall be held.

(d) To provide adequate notice of, and opportunity for interested persons to comment on, a proposed location, the secretary or the chief operating officer of the service provider shall provide at least fourteen days' advance notice of the meeting to all newspapers of general circulation in the community, all radio and television stations generally available to persons in the community, any school district in which the secure community transition facility would be sited or whose boundary is within two miles of a proposed secure community transition facility, any library district in which the secure community transition facility would be sited, local business or fraternal organizations that request notification from the secretary or agency, and any person or property owner within a one-half mile radius of the proposed secure community transition facility. Before initiating this process, the department of social and health services shall contact local government planning agencies in the communities containing the proposed secure community transition facility. The department of social and health services shall coordinate with local government agencies to ensure that opportunities are provided for effective citizen input and to reduce the duplication of notice and meetings.

(3) If local government land use regulations require that a special use or conditional use permit be submitted and approved before a secure community transition facility can be sited, and the process for obtaining such a permit includes public notice and hearing requirements similar to those required under this section, the requirements of this section shall not apply to the extent they would duplicate requirements under the local land use regulations.

(4) This section applies only to secure community transition facilities sited after June 26, 2001. [2001 2nd sp.s. c 12 § 219.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.320 Transition facilities—Operational advisory boards. (1) The secretary shall develop a process with local governments that allows each community in which a secure community transition facility is located to establish operational advisory boards of at least seven persons for the secure community transition facilities. The department may conduct community awareness activities to publicize this opportunity. The operational advisory boards developed under this section shall be implemented following the decision to locate a secure community transition facility in a particular community.

(2) The operational advisory boards may review and make recommendations regarding the security and operations of the secure community transition facility and conditions or modifications necessary with relation to any person who the secretary proposes to place in the secure community transition facility.

(3) The facility management must consider the recommendations of the community advisory boards. Where the facility management does not implement an operational advisory board recommendation, the management must provide a written response to the operational advisory board stating its reasons for its decision not to implement the recommendation.

(4) The operational advisory boards, their members, and any agency represented by a member shall not be liable in any cause of action as a result of its recommendations unless the advisory board acts with gross negligence or bad faith in making a recommendation. [2001 2nd sp.s. c 12 § 220.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.325 Transition facilities—Conditional release—Reports—Violations. (1) The secretary shall adopt a violation reporting policy for persons conditionally released to less restrictive alternative placements. The policy shall require written documentation by the department and service providers of all violations of conditions set by the department, the department of corrections, or the court and establish criteria for returning a violator to the special commitment center or a secure community transition facility with a higher degree of security. Any conditionally released person who commits a serious violation of conditions shall be returned to the special commitment center, unless arrested by a law enforcement officer, and the court shall be notified immediately and shall initiate proceedings under RCW 71.09.098 to revoke or modify the less restrictive alternative placement. Nothing in this section limits the authority of the department to return a person to the special commitment center based on a violation that is not a serious violation as defined in this section. For the purposes of this section, "serious violation" includes but is not limited to:

(a) The commission of any criminal offense;

(b) Any unlawful use or possession of a controlled substance; and

(c) Any violation of conditions targeted to address the person's documented pattern of offense that increases the risk to public safety.

(2) When a person is conditionally released to a less restrictive alternative under this chapter and is under the supervision of the department of corrections, notice of any violation of the person's conditions of release must also be made to the department of corrections.

(3) Whenever the secretary contracts with a service provider to operate a secure community transition facility, the contract shall include a requirement that the service provider must report to the department of social and health services any known violation of conditions committed by any resident of the secure community transition facility.

(4) The secretary shall document in writing all violations, penalties, actions by the department of social and health services to remove persons from a secure community transition facility, and contract terminations. The secretary shall compile this information and submit it to the appropriate committees of the legislature on an annual basis. The secretary shall give great weight to a service provider's record of violations, penalties, actions by the department of social and health services or the department of corrections to remove persons from a secure community transition facility, and contract terminations in determining whether to execute, renew, or renegotiate a contract with a service provider. [2001 2nd sp.s. c 12 § 221.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.330 Transition facilities—Contracted operation—Enforcement remedies. Whenever the secretary contracts with a provider to operate a secure community transition facility, the secretary shall include in the contract provisions establishing intermediate contract enforcement remedies. [2001 2nd sp.s. c 12 § 222.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.335 Conditional release from total confinement—Community notification. A conditional release from a total confinement facility to a less restrictive alternative is a release that subjects the conditionally released person to the registration requirements specified in RCW 9A.44.130 and to community notification under RCW 4.24.550.

When a person is conditionally released to the secure community transition facility established pursuant to RCW 71.09.250(1), the sheriff must provide each household on McNeil Island with the community notification information provided for under RCW 4.24.550. [2001 2nd sp.s. c 12 § 223.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.340 Conditionally released persons—Employment, educational notification. An employer who hires a person who has been conditionally released to a less restrictive alternative must notify all other employees of the conditionally released person's status. Notification for conditionally released persons who enroll in an institution of higher

education shall be made pursuant to the provisions of RCW 9A.44.130 related to sex offenders enrolled in institutions of higher education and RCW 4.24.550. This section applies only to conditionally released persons whose court-approved treatment plan includes permission or a requirement for the person to obtain education or employment and to employment positions or educational programs that meet the requirements of the court-approved treatment plan. [2001 2nd sp.s. c 12 § 224.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.341 Transition facilities—Authority of department—Effect of local regulations. The minimum requirements set out in RCW 71.09.285 through 71.09.340 are minimum requirements to be applied by the department. Nothing in this section is intended to prevent a city or county from adopting development regulations, as defined in RCW 36.70A.030, unless the proposed regulation imposes requirements more restrictive than those specifically addressed in RCW 71.09.285 through 71.09.340. Regulations that impose requirements more restrictive than those specifically addressed in these sections are void. Nothing in these sections prevents the department from adding requirements to enhance public safety. [2002 c 68 § 7.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

71.09.342 Transition facilities—Siting—Local regulations preempted, when—Consideration of public safety measures. (1) After October 1, 2002, notwithstanding RCW 36.70A.103 or any other law, this section preempts and supersedes local plans, development regulations, permitting requirements, inspection requirements, and all other laws as necessary to enable the department to site, construct, renovate, occupy, and operate secure community transition facilities within the borders of the following:

(a) Any county that had five or more persons civilly committed from that county, or detained at the special commitment center under a pending civil commitment petition from that county where a finding of probable cause has been made, on April 1, 2001, if the department determines that the county has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities. This subsection does not apply to the county in which the secure community transition facility authorized under RCW 71.09.250(1) is located; and

(b) Any city located within a county listed in (a) of this subsection that the department determines has not met the requirements of RCW 36.70A.200 with respect to secure community transition facilities.

(2) The department's determination under subsection (1)(a) or (b) of this section is final and is not subject to appeal under chapter 34.05 or 36.70A RCW.

(3) When siting a facility in a county or city that has been preempted under this section, the department shall consider the policy guidelines established under RCW 71.09.285 and 71.09.290 and shall hold the hearings required in RCW 71.09.315.

(4) Nothing in this section prohibits the department from:

(a) Siting a secure community transition facility in a city or county that has complied with the requirements of RCW 36.70A.200 with respect to secure community transition facilities, including a city that is located within a county that has been preempted. If the department sites a secure community transition facility in such a city or county, the department shall use the process established by the city or county for siting such facilities; or

(b) Consulting with a city or county that has been preempted under this section regarding the siting of a secure community transition facility.

(5)(a) A preempted city or county may propose public safety measures specific to any finalist site to the department. The measures must be consistent with the location of the facility at that finalist site. The proposal must be made in writing by the date of:

(i) The second hearing under RCW 71.09.315(2)(a) when there are three finalist sites; or

(ii) The first hearing under RCW 71.09.315(2)(b) when there is only one site under consideration.

(b) The department shall respond to the city or county in writing within fifteen business days of receiving the proposed measures. The response shall address all proposed measures.

(c) If the city or county finds that the department's response is inadequate, the city or county may notify the department in writing within fifteen business days of the specific items which it finds inadequate. If the city or county does not notify the department of a finding that the response is inadequate within fifteen business days, the department's response shall be final.

(d) If the city or county notifies the department that it finds the response inadequate and the department does not revise its response to the satisfaction of the city or county within seven business days, the city or county may petition the governor to designate a person with law enforcement expertise to review the response under RCW 34.05.479.

(e) The governor's designee shall hear a petition filed under this subsection and shall make a determination within thirty days of hearing the petition. The governor's designee shall consider the department's response, and the effectiveness and cost of the proposed measures, in relation to the purposes of this chapter. The determination by the governor's designee shall be final and may not be the basis for any cause of action in civil court.

(f) The city or county shall bear the cost of the petition to the governor's designee. If the city or county prevails on all issues, the department shall reimburse the city or county costs incurred, as provided under chapter 34.05 RCW.

(g) Neither the department's consideration and response to public safety conditions proposed by a city or county nor the decision of the governor's designee shall affect the preemption under this section or the department's authority to site, construct, renovate, occupy, and operate the secure community transition facility at that finalist site or at any finalist site.

(6) Until June 30, 2009, the secretary shall site, construct, occupy, and operate a secure community transition facility sited under this section in an environmentally responsible manner that is consistent with the substantive objectives of chapter 43.21C RCW, and shall consult with the department of ecology as appropriate in carrying out the planning,

(2004 Ed.)

construction, and operations of the facility. The secretary shall make a threshold determination of whether a secure community transition facility sited under this section would have a probable significant, adverse environmental impact. If the secretary determines that the secure community transition facility has such an impact, the secretary shall prepare an environmental impact statement that meets the requirements of RCW 43.21C.030 and 43.21C.031 and the rules promulgated by the department of ecology relating to such statements. Nothing in this subsection shall be the basis for any civil cause of action or administrative appeal.

(7) In no case may a secure community transition facility be sited adjacent to, immediately across a street or parking lot from, or within the line of sight of a risk potential activity or facility in existence at the time a site is listed for consideration unless the site that the department has chosen in a particular county or city was identified pursuant to a process for siting secure community transition facilities adopted by that county or city in compliance with RCW 36.70A.200. "Within the line of sight" means that it is possible to reasonably visually distinguish and recognize individuals.

(8) This section does not apply to the secure community transition facility established pursuant to RCW 71.09.250(1). [2003 c 50 § 2; 2002 c 68 § 9.]

Application—Effective date—2003 c 50: See notes following RCW 71.09.020.

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

"All other laws" defined: RCW 71.09.2501.

71.09.343 Transition facilities—Contract between state and local governments. (1) At the request of the local government of the city or county in which a secure community transition facility is initially sited after January 1, 2002, the department shall enter into a long-term contract memorializing the agreements between the state and the city or county for the operation of the facility. This contract shall be separate from any contract regarding mitigation due to the facility. The contract shall include a clause that states:

(a) The contract does not obligate the state to continue operating any aspect of the civil commitment program under this chapter;

(b) The operation of any secure community transition facility is contingent upon sufficient appropriation by the legislature. If sufficient funds are not appropriated, the department is not obligated to operate the secure community transition facility and may close it; and

(c) This contract does not obligate the city or county to operate a secure community transition facility.

(2) Any city or county may, at their option, contract with the department to operate a secure community transition facility. [2002 c 68 § 16.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

71.09.344 Transition facilities—Mitigation agreements. (1) Subject to funds appropriated by the legislature, the department may enter into negotiation for a mitigation agreement with:

(a) The county and/or city in which a secure community transition facility sited after January 1, 2002, is located;

(b) Each community in which the persons from those facilities will reside or regularly spend time, pursuant to court orders, for regular work or education, or to receive social services, or through which the person or persons will regularly be transported to reach other communities; and

(c) Educational institutions in the communities identified in (a) and (b) of this subsection.

(2) Mitigation agreements are limited to the following:

(a) One-time training for local law enforcement and administrative staff, upon the establishment of a secure community transition facility.

(i) Training between local government staff and the department includes training in coordination, emergency procedures, program and facility information, legal requirements, and resident profiles.

(ii) Reimbursement for training under this subsection is limited to:

(A) The salaries or hourly wages and benefits of those persons who receive training directly from the department; and

(B) Costs associated with preparation for, and delivery of, training to the department or its contracted staff by local government staff or contractors;

(b) Information coordination:

(i) Information coordination includes data base infrastructure establishment and programming for the dissemination of information among law enforcement and the department related to facility residents.

(ii) Reimbursement for information coordination is limited to start-up costs;

(c) One-time capital costs:

(i) One-time capital costs are off-site costs associated with the need for increased security in specific locations.

(ii) Reimbursement for one-time capital costs is limited to actual costs; and

(d) Incident response:

(i) Incident response costs are law enforcement and criminal justice costs associated with violations of conditions of release or crimes by residents of the secure community transition facility.

(ii) Reimbursement for incident response does not include private causes of action. [2002 c 68 § 17.]

Purpose—Severability—Effective date—2002 c 68: See notes following RCW 36.70A.200.

71.09.345 Alternative placement—Authority of court. Nothing in chapter 12, Laws of 2001 2nd sp. sess. shall operate to restrict a court's authority to make less restrictive alternative placements to a committed person's individual residence or to a setting less restrictive than a secure community transition facility. A court-ordered less restrictive alternative placement to a committed person's individual residence is not a less restrictive alternative placement to a secure community transition facility. [2001 2nd sp.s. c 12 § 226.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.350 Examination and treatment only by certified providers—Exceptions. (1) Examinations and treatment of sexually violent predators who are conditionally

released to a less restrictive alternative under this chapter shall be conducted only by certified sex offender treatment providers or certified affiliate sex offender treatment providers under chapter 18.155 RCW unless the court or the department of social and health services finds that: (a) The court-ordered less restrictive alternative placement is located in another state; (b) the treatment provider is employed by the department; or (c)(i) all certified sex offender treatment providers or certified affiliate sex offender treatment providers become unavailable to provide treatment within a reasonable geographic distance of the person's home, as determined in rules adopted by the department of social and health services; and (ii) the evaluation and treatment plan comply with the rules adopted by the department of social and health services.

A treatment provider approved by the department of social and health services under (c) of this subsection, who is not certified by the department of health, shall consult with a certified sex offender treatment provider during the person's period of treatment to ensure compliance with the rules adopted by the department of health. The frequency and content of the consultation shall be based on the recommendation of the certified sex offender treatment provider.

(2) A treatment provider, whether or not he or she is employed or approved by the department of social and health services under subsection (1) of this section or otherwise certified, may not perform or provide treatment of sexually violent predators under this section if the treatment provider has been:

(a) Convicted of a sex offense, as defined in RCW 9.94A.030;

(b) Convicted in any other jurisdiction of an offense that under the laws of this state would be classified as a sex offense as defined in RCW 9.94A.030; or

(c) Suspended or otherwise restricted from practicing any health care profession by competent authority in any state, federal, or foreign jurisdiction.

(3) Nothing in this section prohibits a qualified expert from examining or evaluating a sexually violent predator who has been conditionally released for purposes of presenting an opinion in court proceedings. [2004 c 38 § 14; 2001 2nd sp.s. c 12 § 404.]

Effective date—2004 c 38: See note following RCW 18.155.075.

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

71.09.800 Rules. The secretary shall adopt rules under the administrative procedure act, chapter 34.05 RCW, for the oversight and operation of the program established pursuant to this chapter. Such rules shall include provisions for an annual inspection of the special commitment center and requirements for treatment plans and the retention of records. [2000 c 44 § 1.]

Effective date—2000 c 44: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2000]." [2000 c 44 § 2.]

71.09.900 Index, part headings not law—1990 c 3. See RCW 18.155.900.

71.09.901 Severability—1990 c 3. See RCW 18.155.901.

71.09.902 Effective dates—Application—1990 c 3. See RCW 18.155.902.

Chapter 71.12 RCW

PRIVATE ESTABLISHMENTS

Sections

| | |
|-----------|--|
| 71.12.455 | Definitions. |
| 71.12.460 | License to be obtained—Penalty. |
| 71.12.470 | License application—Fees. |
| 71.12.480 | Examination of operation of establishment and premises before granting license. |
| 71.12.485 | Fire protection—Duties of chief of the Washington state patrol. |
| 71.12.490 | Expiration and renewal of license. |
| 71.12.500 | Examination of premises as to compliance with the chapter, rules, and license—License changes. |
| 71.12.510 | Examination and visitation in general. |
| 71.12.520 | Scope of examination. |
| 71.12.530 | Conference with management—Improvement. |
| 71.12.540 | Recommendations to be kept on file—Records of inmates. |
| 71.12.550 | Local authorities may also prescribe standards. |
| 71.12.560 | Voluntary patients—Receipt authorized—Application—Report. |
| 71.12.570 | Communications by patients—Rights. |
| 71.12.590 | Revocation of license for noncompliance—Exemption as to Christian Science establishments. |
| 71.12.595 | Suspension of license—Noncompliance with support order—Reissuance. |
| 71.12.640 | Prosecuting attorney shall prosecute violations. |
| 71.12.670 | Licensing, operation, inspection—Adoption of rules. |

Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96A RCW.

Cost of services, disclosure: RCW 70.41.250.

Mentally ill, commitment procedures, rights, etc.: Chapter 71.05 RCW.

Minors—Mental health services, commitment: Chapter 71.34 RCW.

State hospitals for mentally ill: Chapter 72.23 RCW.

71.12.455 Definitions. As used in this chapter, "establishment" and "institution" mean and include every private or county or municipal hospital, including public hospital districts, sanitarium, home, or other place receiving or caring for any mentally ill, mentally incompetent person, or chemically dependent person. [2001 c 254 § 1; 2000 c 93 § 21; 1977 ex.s. c 80 § 43; 1959 c 25 § 71.12.455. Prior: 1949 c 198 § 53; Rem. Supp. 1949 § 6953-52a. Formerly RCW 71.12.010, part.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

71.12.460 License to be obtained—Penalty. No person, association, county, municipality, public hospital district, or corporation, shall establish or keep, for compensation or hire, an establishment as defined in this chapter without first having obtained a license therefor from the department of health, complied with rules adopted under this chapter, and paid the license fee provided in this chapter. Any person who carries on, conducts, or attempts to carry on or conduct an establishment as defined in this chapter without first having obtained a license from the department of health, as in this chapter provided, is guilty of a misdemeanor and on conviction thereof shall be punished by imprisonment in a county jail not exceeding six months, or by a fine not exceeding one thousand dollars, or by both such fine and imprisonment. The

(2004 Ed.)

managing and executive officers of any corporation violating the provisions of this chapter shall be liable under the provisions of this chapter in the same manner and to the same effect as a private individual violating the same. [2001 c 254 § 2; 2000 c 93 § 22; 1989 1st ex.s. c 9 § 226; 1979 c 141 § 133; 1959 c 25 § 71.12.460. Prior: 1949 c 198 § 54; Rem. Supp. 1949 § 6953-53.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.470 License application—Fees. Every application for a license shall be accompanied by a plan of the premises proposed to be occupied, describing the capacities of the buildings for the uses intended, the extent and location of grounds appurtenant thereto, and the number of patients proposed to be received therein, with such other information, and in such form, as the department of health requires. The application shall be accompanied by the proper license fee. The amount of the license fee shall be established by the department of health under RCW 43.70.110. [2000 c 93 § 23; 1987 c 75 § 19; 1982 c 201 § 14; 1959 c 25 § 71.12.470. Prior: 1949 c 198 § 56; Rem. Supp. 1949 § 6953-55.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

71.12.480 Examination of operation of establishment and premises before granting license. The department of health shall not grant any such license until it has made an examination of all phases of the operation of the establishment necessary to determine compliance with rules adopted under this chapter including the premises proposed to be licensed and is satisfied that the premises are substantially as described, and are otherwise fit and suitable for the purposes for which they are designed to be used, and that such license should be granted. [2000 c 93 § 24; 1989 1st ex.s. c 9 § 227; 1979 c 141 § 134; 1959 c 25 § 71.12.480. Prior: 1949 c 198 § 57; Rem. Supp. 1949 § 6953-56.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.485 Fire protection—Duties of chief of the Washington state patrol. Standards for fire protection and the enforcement thereof, with respect to all establishments to be licensed hereunder, shall be the responsibility of the chief of the Washington state patrol, through the director of fire protection, who shall adopt such recognized standards as may be applicable to such establishments for the protection of life against the cause and spread of fire and fire hazards. The department of health, upon receipt of an application for a license, or renewal of a license, shall submit to the chief of the Washington state patrol, through the director of fire protection, in writing, a request for an inspection, giving the applicant's name and the location of the premises to be licensed. Upon receipt of such a request, the chief of the Washington state patrol, through the director of fire protection, or his or her deputy shall make an inspection of the establishment to be licensed, and if it is found that the premises do not comply with the required safety standards and fire regulations as promulgated by the chief of the Washington state patrol, through the director of fire protection, he or she shall promptly make a written report to the establishment

and the department of health as to the manner and time allowed in which the premises must qualify for a license and set forth the conditions to be remedied with respect to fire regulations. The department of health, applicant or licensee shall notify the chief of the Washington state patrol, through the director of fire protection, upon completion of any requirements made by him or her, and the director of fire protection or his or her deputy shall make a reinspection of such premises. Whenever the establishment to be licensed meets with the approval of the chief of the Washington state patrol, through the director of fire protection, he or she shall submit to the department of health a written report approving same with respect to fire protection before a full license can be issued. The chief of the Washington state patrol, through the director of fire protection, shall make or cause to be made inspections of such establishments at least annually. The department of health shall not license or continue the license of any establishment unless and until it shall be approved by the chief of the Washington state patrol, through the director of fire protection, as herein provided.

In cities which have in force a comprehensive building code, the provisions of which are determined by the chief of the Washington state patrol, through the director of fire protection, to be equal to the minimum standards of the chief of the Washington state patrol, through the director of fire protection, for such establishments, the chief of the fire department, provided the latter is a paid chief of a paid fire department, shall make the inspection with the chief of the Washington state patrol, through the director of fire protection, or his or her deputy, and they shall jointly approve the premises before a full license can be issued. [1995 c 369 § 61; 1989 1st ex.s. c 9 § 228; 1986 c 266 § 122; 1979 c 141 § 135; 1959 c 224 § 1.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1986 c 266: See note following RCW 38.52.005.

71.12.490 Expiration and renewal of license. All licenses issued under the provisions of this chapter shall expire on a date to be set by the department of health. No license issued pursuant to this chapter shall exceed thirty-six months in duration. Application for renewal of the license, accompanied by the necessary fee as established by the department of health under RCW 43.70.110, shall be filed with that department, not less than thirty days prior to its expiration and if application is not so filed, the license shall be automatically canceled. [1989 1st ex.s. c 9 § 229; 1987 c 75 § 20; 1982 c 201 § 15; 1971 ex.s. c 247 § 4; 1959 c 25 § 71.12.490. Prior: 1949 c 198 § 59; Rem. Supp. 1949 § 6953-58.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

71.12.500 Examination of premises as to compliance with the chapter, rules, and license—License changes. The department of health may at any time examine and ascertain how far a licensed establishment is conducted in compliance with this chapter, the rules adopted under this chapter,

and the requirements of the license therefor. If the interests of the patients of the establishment so demand, the department may, for just and reasonable cause, suspend, modify, or revoke any such license. RCW 43.70.115 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding. [2000 c 93 § 25. Prior: 1989 1st ex.s. c 9 § 230; 1989 c 175 § 137; 1979 c 141 § 136; 1959 c 25 § 71.12.500; prior: 1949 c 198 § 58; Rem. Supp. 1949 § 6953-57.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—1989 c 175: See note following RCW 34.05.010.

71.12.510 Examination and visitation in general. The department of health may at any time cause any establishment as defined in this chapter to be visited and examined. [2000 c 93 § 26; 1959 c 25 § 71.12.510. Prior: 1949 c 198 § 60; Rem. Supp. 1949 § 6953-59.]

71.12.520 Scope of examination. Each such visit may include an inspection of every part of each establishment. The representatives of the department of health may make an examination of all records, methods of administration, the general and special dietary, the stores and methods of supply, and may cause an examination and diagnosis to be made of any person confined therein. The representatives of the department of health may examine to determine their fitness for their duties the officers, attendants, and other employees, and may talk with any of the patients apart from the officers and attendants. [2000 c 93 § 27; 1989 1st ex.s. c 9 § 231; 1979 c 141 § 137; 1959 c 25 § 71.12.520. Prior: 1949 c 198 § 61; Rem. Supp. 1949 § 6953-60.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.530 Conference with management—Improvement. The representatives of the department of health may, from time to time, at times and places designated by the department, meet the managers or responsible authorities of such establishments in conference, and consider in detail all questions of management and improvement of the establishments, and may send to them, from time to time, written recommendations in regard thereto. [1989 1st ex.s. c 9 § 232; 1979 c 141 § 138; 1959 c 25 § 71.12.530. Prior: 1949 c 198 § 62; Rem. Supp. 1949 § 6953-61.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.540 Recommendations to be kept on file—Records of inmates. The authorities of each establishment as defined in this chapter shall place on file in the office of the establishment the recommendations made by the department of health as a result of such visits, for the purpose of consultation by such authorities, and for reference by the department representatives upon their visits. Every such establishment shall keep records of every person admitted thereto as follows and shall furnish to the department, when required, the following data: Name, age, sex, marital status, date of admission, voluntary or other commitment, name of physician, diagnosis, and date of discharge. [1989 1st ex.s. c 9 §

233; 1979 c 141 § 139; 1959 c 25 § 71.12.540. Prior: 1949 c 198 § 63; Rem. Supp. 1949 § 6953-62.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.550 Local authorities may also prescribe standards. This chapter shall not prevent local authorities of any city, or city and county, within the reasonable exercise of the police power, from adopting rules and regulations, by ordinance or resolution, prescribing standards of sanitation, health and hygiene for establishments as defined in this chapter, which are not in conflict with the provisions of this chapter, and requiring a certificate by the local health officer, that the local health, sanitation and hygiene laws have been complied with before maintaining or conducting any such institution within such city or city and county. [1959 c 25 § 71.12.550. Prior: 1949 c 198 § 64; Rem. Supp. 1949 § 6953-63.]

71.12.560 Voluntary patients—Receipt authorized—Application—Report. The person in charge of any private institution, hospital, or sanitarium which is conducted for, or includes a department or ward conducted for, the care and treatment of persons who are mentally ill or deranged may receive therein as a voluntary patient any person suffering from mental illness or derangement who is a suitable person for care and treatment in the institution, hospital, or sanitarium, who voluntarily makes a written application to the person in charge for admission into the institution, hospital or sanitarium. At the expiration of fourteen continuous days of treatment of a patient voluntarily committed in a private institution, hospital, or sanitarium, if the period of voluntary commitment is to continue, the person in charge shall forward to the office of the department of social and health services a record of the voluntary patient showing the name, residence, date of birth, sex, place of birth, occupation, social security number, marital status, date of admission to the institution, hospital, or sanitarium, and such other information as may be required by rule of the department of social and health services. [1994 sp.s. c 7 § 441; 1974 ex.s. c 145 § 1; 1973 1st ex.s. c 142 § 1; 1959 c 25 § 71.12.560. Prior: 1949 c 198 § 65; Rem. Supp. 1949 § 6953-64.]

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

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

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900 through 71.05.930.

71.12.570 Communications by patients—Rights. No person in an establishment as defined in this chapter shall be restrained from sending written communications of the fact of his detention in such establishment to a friend, relative, or other person. The physician in charge of such person and the person in charge of such establishment shall send each such communication to the person to whom it is addressed. All persons in an establishment as defined by chapter 71.12 RCW shall have no less than all rights secured to involuntarily detained persons by RCW 71.05.360 and 71.05.370 and to voluntarily admitted or committed persons pursuant to RCW 71.05.050 and 71.05.380. [1973 1st ex.s. c 142 § 2;

(2004 Ed.)

1959 c 25 § 71.12.570. Prior: 1949 c 198 § 66; Rem. Supp. 1949 § 6953-65.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900 through 71.05.930.

71.12.590 Revocation of license for noncompliance—Exemption as to Christian Science establishments. Failure to comply with any of the provisions of RCW 71.12.550 through 71.12.570 shall constitute grounds for revocation of license: PROVIDED, HOWEVER, That nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents or patients in any establishment, as defined in this chapter conducted in accordance with the practice and principles of the body known as Church of Christ, Scientist. [1983 c 3 § 180; 1959 c 25 § 71.12.590. Prior: 1949 c 198 § 68; Rem. Supp. 1949 § 6953-67.]

71.12.595 Suspension of license—Noncompliance with support order—Reissuance. The department of health shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the department of health's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 860.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

71.12.640 Prosecuting attorney shall prosecute violations. The prosecuting attorney of every county shall, upon application by the department of social and health services, the department of health, or its authorized representatives, institute and conduct the prosecution of any action brought for the violation within his county of any of the provisions of this chapter. [1989 1st ex.s. c 9 § 234; 1979 c 141 § 140; 1959 c 25 § 71.12.640. Prior: 1949 c 198 § 55; Rem. Supp. 1949 § 6953-54.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

71.12.670 Licensing, operation, inspection—Adoption of rules. The department of health shall adopt rules for the licensing, operation, and inspections of establishments and institutions and the enforcement thereof. [2000 c 93 § 28.]

Chapter 71.20 RCW

LOCAL FUNDS FOR COMMUNITY SERVICES

(Formerly: State and local services for mentally retarded and developmentally disabled)

Sections

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| 71.20.100 | Expenditures of county funds subject to county fiscal laws. |
| 71.20.110 | Tax levy directed—Allocation of funds for federal matching funds purposes. |

71.20.100 Expenditures of county funds subject to county fiscal laws. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 110 § 10.]

71.20.110 Tax levy directed—Allocation of funds for federal matching funds purposes. In order to provide additional funds for the coordination and provision of community services for persons with developmental disabilities or mental health services, the county governing authority of each county in the state shall budget and levy annually a tax in a sum equal to the amount which would be raised by a levy of two and one-half cents per thousand dollars of assessed value against the taxable property in the county to be used for such purposes: PROVIDED, That all or part of the funds collected from the tax levied for the purposes of this section may be transferred to the state of Washington, department of social and health services, for the purpose of obtaining federal matching funds to provide and coordinate community services for persons with developmental disabilities and mental health services. In the event a county elects to transfer such tax funds to the state for this purpose, the state shall grant these moneys and the additional funds received as matching funds to service-providing community agencies or community boards in the county which has made such transfer, pursuant to the plan approved by the county, as provided by chapters 71.24 and 71.28 RCW and by chapter 71A.14 RCW, all as now or hereafter amended.

The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW. [1988 c 176 § 910; 1983 c 3 § 183; 1980 c 155 § 5; 1974 ex.s. c 71 § 8; 1973 1st ex.s. c 195 § 85; 1971 ex.s. c 84 § 1; 1970 ex.s. c 47 § 8; 1967 ex.s. c 110 § 16.]

Severability—1988 c 176: See RCW 71A.10.900.

Effective date—Applicability—1980 c 155: See notes following RCW 84.40.030.

Severability—1974 ex.s. c 71: "If any provision of this amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1974 ex.s. c 71 § 13.]

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

Chapter 71.24 RCW

COMMUNITY MENTAL HEALTH SERVICES ACT

Sections

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| 71.24.011 | Short title. |
| 71.24.015 | Legislative intent and policy. |
| 71.24.016 | Intent. |
| 71.24.025 | Definitions. |
| 71.24.030 | Grants to, purchase of services from counties for programs. |

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|-----------|---|
| 71.24.035 | Secretary's powers and duties as state mental health authority, county authority. |
| 71.24.037 | Licensed service providers, residential services, community support services—Minimum standards. |
| 71.24.045 | County authority powers and duties. |
| 71.24.049 | Identification by regional support network—Children's mental health services. |
| 71.24.100 | Joint agreements of county authorities—Required provisions. |
| 71.24.110 | Joint agreements of county authorities—Permissive provisions. |
| 71.24.155 | Grants to regional support networks—Accounting. |
| 71.24.160 | Proof as to uses made of state funds. |
| 71.24.200 | Expenditures of county funds subject to county fiscal laws. |
| 71.24.215 | Clients to be charged for services. |
| 71.24.220 | Reimbursement may be withheld for noncompliance with chapter or related rules. |
| 71.24.240 | County program plans to be approved by secretary prior to submittal to federal agency. |
| 71.24.250 | Regional support network may accept and expend gifts and grants. |
| 71.24.260 | Waiver of postgraduate educational requirements. |
| 71.24.300 | Regional support networks—Roles and responsibilities. |
| 71.24.310 | Implementation of chapters 71.05 and 71.24 RCW through regional support networks. |
| 71.24.400 | Streamlining delivery system—Finding. |
| 71.24.405 | Streamlining delivery system. |
| 71.24.415 | Streamlining delivery system—Department duties to achieve outcomes. |
| 71.24.420 | Expenditure of federal funds. |
| 71.24.430 | Collaborative service delivery. |
| 71.24.450 | Mentally ill offenders—Findings and intent. |
| 71.24.455 | Mentally ill offenders—Contracts for specialized access and services. |
| 71.24.460 | Mentally ill offenders—Report to legislature—Contingent termination of program. |
| 71.24.470 | Dangerous mentally ill offenders—Contract for case management—Use of appropriated funds. |
| 71.24.480 | Dangerous mentally ill offenders—Limitation on liability due to treatment—Reporting requirements. |
| 71.24.805 | Mental health system review—Performance audit recommendations affirmed. |
| 71.24.810 | Mental health system review—Implementation of performance audit recommendations. |
| 71.24.840 | Mental health system review—Study of long-term outcomes. |
| 71.24.900 | Effective date—1967 ex.s. c 111. |
| 71.24.901 | Severability—1982 c 204. |
| 71.24.902 | Construction. |

Reviser's note: The department of social and health services filed an emergency order, WSR 89-20-030, effective October 1, 1989, establishing rules for the recognition and certification of regional support networks. A final order was filed on January 24, 1990, effective January 25, 1990.

Comprehensive community health centers: Chapter 70.10 RCW.

Funding: RCW 43.79.201 and 79.02.410.

71.24.011 Short title. This chapter may be known and cited as the community mental health services act. [1982 c 204 § 1.]

71.24.015 Legislative intent and policy. It is the intent of the legislature to establish a community mental health program which shall help people experiencing mental illness to retain a respected and productive position in the community. This will be accomplished through programs which provide for:

(1) Access to mental health services for adults of the state who are acutely mentally ill, chronically mentally ill, or seriously disturbed and children of the state who are acutely mentally ill, severely emotionally disturbed, or seriously disturbed, which services recognize the special needs of underserved populations, including minorities, children, the elderly, disabled, and low-income persons. Access to mental health services shall not be limited by a person's history of confinement in a state, federal, or local correctional facility. It is also the purpose of this chapter to promote the early iden-

tification of mentally ill children and to ensure that they receive the mental health care and treatment which is appropriate to their developmental level. This care should improve home, school, and community functioning, maintain children in a safe and nurturing home environment, and should enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment while also recognizing parents' rights to participate in treatment decisions for their children;

(2) Accountability of efficient and effective services through state of the art outcome and performance measures and statewide standards for monitoring client and system outcomes, performance, and reporting of client and system outcome information. These processes shall be designed so as to maximize the use of available resources for direct care of people with a mental illness;

(3) Minimum service delivery standards;

(4) Priorities for the use of available resources for the care of the mentally ill consistent with the priorities defined in the statute;

(5) Coordination of services within the department, including those divisions within the department that provide services to children, between the department and the office of the superintendent of public instruction, and among state mental hospitals, county authorities, community mental health services, and other support services, which shall to the maximum extent feasible also include the families of the mentally ill, and other service providers; and

(6) Coordination of services aimed at reducing duplication in service delivery and promoting complementary services among all entities that provide mental health services to adults and children.

It is the policy of the state to encourage the provision of a full range of treatment and rehabilitation services in the state for mental disorders. The legislature intends to encourage the development of county-based and county-managed mental health services with adequate local flexibility to assure eligible people in need of care access to the least-restrictive treatment alternative appropriate to their needs, and the availability of treatment components to assure continuity of care. To this end, counties are encouraged to enter into joint operating agreements with other counties to form regional systems of care which integrate planning, administration, and service delivery duties assigned to counties under chapters 71.05 and 71.24 RCW to consolidate administration, reduce administrative layering, and reduce administrative costs.

It is further the intent of the legislature to integrate the provision of services to provide continuity of care through all phases of treatment. To this end the legislature intends to promote active engagement with mentally ill persons and collaboration between families and service providers. [2001 c 334 § 6; 2001 c 323 § 1; 1999 c 214 § 7; 1991 c 306 § 1; 1989 c 205 § 1; 1986 c 274 § 1; 1982 c 204 § 2.]

Reviser's note: This section was amended by 2001 c 323 § 1 and by 2001 c 334 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2001 c 334: See note following RCW 71.24.805.

Intent—Effective date—1999 c 214: See notes following RCW 72.09.370.

(2004 Ed.)

Conflict with federal requirements—1991 c 306: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state.

However, if any part of this act conflicts with such federal requirements, the state appropriation for mental health services provided to children whose mental disorders are discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program shall be provided through the division of medical assistance and no state funds appropriated to the division of mental health shall be expended or transferred for this purpose." [1991 c 306 § 7.]

Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9: "Sections 1, 2, 3, 5, and 9 of this act shall take effect on July 1, 1987." [1986 c 274 § 11.]

71.24.016 Intent. It is the intent of the legislature that the community mental health service delivery system focus on maintaining mentally ill individuals in the community. The program shall be evaluated and managed through a limited number of performance measures designed to hold each regional support network accountable for program success. [2001 c 323 § 4.]

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

(1) "Acutely mentally ill" means a condition which is limited to a short-term severe crisis episode of:

(a) A mental disorder as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020;

(b) Being gravely disabled as defined in RCW 71.05.020 or, in the case of a child, a gravely disabled minor as defined in RCW 71.34.020; or

(c) Presenting a likelihood of serious harm as defined in RCW 71.05.020 or, in the case of a child, as defined in RCW 71.34.020.

(2) "Available resources" means funds appropriated for the purpose of providing community mental health programs under RCW 71.24.045, federal funds, except those provided according to Title XIX of the Social Security Act, and state funds appropriated under this chapter or chapter 71.05 RCW by the legislature during any biennium for the purpose of providing residential services, resource management services, community support services, and other mental health services. This does not include funds appropriated for the purpose of operating and administering the state psychiatric hospitals, except as negotiated according to RCW 71.24.300(1)(e).

(3) "Child" means a person under the age of eighteen years.

(4) "Chronically mentally ill adult" means an adult who has a mental disorder and meets at least one of the following criteria:

(a) Has undergone two or more episodes of hospital care for a mental disorder within the preceding two years; or

(b) Has experienced a continuous psychiatric hospitalization or residential treatment exceeding six months' duration within the preceding year; or

(c) Has been unable to engage in any substantial gainful activity by reason of any mental disorder which has lasted for a continuous period of not less than twelve months. "Substan-

tial gainful activity" shall be defined by the department by rule consistent with Public Law 92-603, as amended.

(5) "Community mental health program" means all mental health services, activities, or programs using available resources.

(6) "Community mental health service delivery system" means public or private agencies that provide services specifically to persons with mental disorders as defined under RCW 71.05.020 and receive funding from public sources.

(7) "Community support services" means services authorized, planned, and coordinated through resource management services including, at a minimum, assessment, diagnosis, emergency crisis intervention available twenty-four hours, seven days a week, prescreening determinations for mentally ill persons being considered for placement in nursing homes as required by federal law, screening for patients being considered for admission to residential services, diagnosis and treatment for acutely mentally ill and severely emotionally disturbed children discovered under screening through the federal Title XIX early and periodic screening, diagnosis, and treatment program, investigation, legal, and other nonresidential services under chapter 71.05 RCW, case management services, psychiatric treatment including medication supervision, counseling, psychotherapy, assuring transfer of relevant patient information between service providers, and other services determined by regional support networks.

(8) "County authority" means the board of county commissioners, county council, or county executive having authority to establish a community mental health program, or two or more of the county authorities specified in this subsection which have entered into an agreement to provide a community mental health program.

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

(10) "Licensed service provider" means an entity licensed according to this chapter or chapter 71.05 RCW or an entity deemed to meet state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department, that meets state minimum standards or individuals licensed under chapter 18.57, 18.71, 18.83, or 18.79 RCW, as it applies to registered nurses and advanced registered nurse practitioners.

(11) "Mental health services" means all services provided by regional support networks and other services provided by the state for the mentally ill.

(12) "Mentally ill persons" and "the mentally ill" mean persons and conditions defined in subsections (1), (4), (17), and (18) of this section.

(13) "Regional support network" means a county authority or group of county authorities recognized by the secretary that enter into joint operating agreements to contract with the secretary pursuant to this chapter.

(14) "Residential services" means a complete range of residences and supports authorized by resource management services and which may involve a facility, a distinct part thereof, or services which support community living, for acutely mentally ill persons, chronically mentally ill adults, severely emotionally disturbed children, or seriously disturbed adults determined by the regional support network to

be at risk of becoming acutely or chronically mentally ill. The services shall include at least evaluation and treatment services as defined in chapter 71.05 RCW, acute crisis respite care, long-term adaptive and rehabilitative care, and supervised and supported living services, and shall also include any residential services developed to service mentally ill persons in nursing homes. Residential services for children in out-of-home placements related to their mental disorder shall not include the costs of food and shelter, except for children's long-term residential facilities existing prior to January 1, 1991.

(15) "Resource management services" mean the planning, coordination, and authorization of residential services and community support services administered pursuant to an individual service plan for: (a) Acutely mentally ill adults and children; (b) chronically mentally ill adults; (c) severely emotionally disturbed children; or (d) seriously disturbed adults determined solely by a regional support network to be at risk of becoming acutely or chronically mentally ill. Such planning, coordination, and authorization shall include mental health screening for children eligible under the federal Title XIX early and periodic screening, diagnosis, and treatment program. Resource management services include seven days a week, twenty-four hour a day availability of information regarding mentally ill adults' and children's enrollment in services and their individual service plan to county-designated mental health professionals, evaluation and treatment facilities, and others as determined by the regional support network.

(16) "Secretary" means the secretary of social and health services.

(17) "Seriously disturbed person" means a person who:

(a) Is gravely disabled or presents a likelihood of serious harm to himself or herself or others, or to the property of others, as a result of a mental disorder as defined in chapter 71.05 RCW;

(b) Has been on conditional release status, or under a less restrictive alternative order, at some time during the preceding two years from an evaluation and treatment facility or a state mental health hospital;

(c) Has a mental disorder which causes major impairment in several areas of daily living;

(d) Exhibits suicidal preoccupation or attempts; or

(e) Is a child diagnosed by a mental health professional, as defined in chapter 71.34 RCW, as experiencing a mental disorder which is clearly interfering with the child's functioning in family or school or with peers or is clearly interfering with the child's personality development and learning.

(18) "Severely emotionally disturbed child" means a child who has been determined by the regional support network to be experiencing a mental disorder as defined in chapter 71.34 RCW, including those mental disorders that result in a behavioral or conduct disorder, that is clearly interfering with the child's functioning in family or school or with peers and who meets at least one of the following criteria:

(a) Has undergone inpatient treatment or placement outside of the home related to a mental disorder within the last two years;

(b) Has undergone involuntary treatment under chapter 71.34 RCW within the last two years;

(c) Is currently served by at least one of the following child-serving systems: Juvenile justice, child-protection/welfare, special education, or developmental disabilities;

(d) Is at risk of escalating maladjustment due to:

(i) Chronic family dysfunction involving a mentally ill or inadequate caretaker;

(ii) Changes in custodial adult;

(iii) Going to, residing in, or returning from any placement outside of the home, for example, psychiatric hospital, short-term inpatient, residential treatment, group or foster home, or a correctional facility;

(iv) Subject to repeated physical abuse or neglect;

(v) Drug or alcohol abuse; or

(vi) Homelessness.

(19) "State minimum standards" means minimum requirements established by rules adopted by the secretary and necessary to implement this chapter for: (a) Delivery of mental health services; (b) licensed service providers for the provision of mental health services; (c) residential services; and (d) community support services and resource management services.

(20) "Tribal authority," for the purposes of this section and RCW 71.24.300 only, means: The federally recognized Indian tribes and the major Indian organizations recognized by the secretary insofar as these organizations do not have a financial relationship with any regional support network that would present a conflict of interest. [2001 c 323 § 8; 1999 c 10 § 2; 1997 c 112 § 38; 1995 c 96 § 4. Prior: 1994 sp.s. c 9 § 748; 1994 c 204 § 1; 1991 c 306 § 2; 1989 c 205 § 2; 1986 c 274 § 2; 1982 c 204 § 3.]

Purpose—Intent—1999 c 10: "The purpose of this act is to eliminate dates and provisions in chapter 71.24 RCW which are no longer needed. The legislature does not intend this act to make, and no provision of this act shall be construed as, a substantive change in the service delivery system or funding of the community mental health services law." [1999 c 10 § 1.]

Alphabetization of section—1999 c 10 § 2: "The code reviser shall alphabetize the definitions in RCW 71.24.025 and correct any cross-references." [1999 c 10 § 14.]

Effective date—1995 c 96: See note following RCW 71.24.400.

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Conflict with federal requirements—1991 c 306: See note following RCW 71.24.015.

Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9: See note following RCW 71.24.015.

71.24.030 Grants to, purchase of services from counties for programs. The secretary is authorized to make grants to and/or purchase services from counties or combinations of counties in the establishment and operation of community mental health programs. [2001 c 323 § 9; 1999 c 10 § 3; 1982 c 204 § 6; 1973 1st ex.s. c 155 § 5; 1972 ex.s. c 122 § 30; 1971 ex.s. c 304 § 7; 1967 ex.s. c 111 § 3.]

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

Effective date—1972 ex.s. c 122: See note following RCW 70.96A.010.

71.24.035 Secretary's powers and duties as state mental health authority, county authority. (1) The department is designated as the state mental health authority.

(2) The secretary shall provide for public, client, and licensed service provider participation in developing the state

mental health program, developing contracts with regional support networks, and any waiver request to the federal government under medicaid.

(3) The secretary shall provide for participation in developing the state mental health program for children and other underserved populations, by including representatives on any committee established to provide oversight to the state mental health program.

(4) The secretary shall be designated as the county authority if a county fails to meet state minimum standards or refuses to exercise responsibilities under RCW 71.24.045.

(5) The secretary shall:

(a) Develop a biennial state mental health program that incorporates county biennial needs assessments and county mental health service plans and state services for mentally ill adults and children. The secretary may also develop a six-year state mental health plan;

(b) Assure that any regional or county community mental health program provides access to treatment for the county's residents in the following order of priority: (i) The acutely mentally ill; (ii) chronically mentally ill adults and severely emotionally disturbed children; and (iii) the seriously disturbed. Such programs shall provide:

(A) Outpatient services;

(B) Emergency care services for twenty-four hours per day;

(C) Day treatment for mentally ill persons which includes training in basic living and social skills, supported work, vocational rehabilitation, and day activities. Such services may include therapeutic treatment. In the case of a child, day treatment includes age-appropriate basic living and social skills, educational and prevocational services, day activities, and therapeutic treatment;

(D) Screening for patients being considered for admission to state mental health facilities to determine the appropriateness of admission;

(E) Employment services, which may include supported employment, transitional work, placement in competitive employment, and other work-related services, that result in mentally ill persons becoming engaged in meaningful and gainful full or part-time work. Other sources of funding such as the division of vocational rehabilitation may be utilized by the secretary to maximize federal funding and provide for integration of services;

(F) Consultation and education services; and

(G) Community support services;

(c) Develop and adopt rules establishing state minimum standards for the delivery of mental health services pursuant to RCW 71.24.037 including, but not limited to:

(i) Licensed service providers. The secretary shall provide for deeming of compliance with state minimum standards for those entities accredited by recognized behavioral health accrediting bodies recognized and having a current agreement with the department;

(ii) Regional support networks; and

(iii) Inpatient services, evaluation and treatment services and facilities under chapter 71.05 RCW, resource management services, and community support services;

(d) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this section;

(e) Establish a standard contract or contracts, consistent with state minimum standards, which shall be used in contracting with regional support networks or counties. The standard contract shall include a maximum fund balance, which shall not exceed ten percent;

(f) Establish, to the extent possible, a standardized auditing procedure which minimizes paperwork requirements of county authorities and licensed service providers. The audit procedure shall focus on the outcomes of service and not the processes for accomplishing them;

(g) Develop and maintain an information system to be used by the state, counties, and regional support networks that includes a tracking method which allows the department and regional support networks to identify mental health clients' participation in any mental health service or public program on an immediate basis. The information system shall not include individual patient's case history files. Confidentiality of client information and records shall be maintained as provided in this chapter and in RCW 71.05.390, 71.05.400, 71.05.410, 71.05.420, 71.05.430, and 71.05.440. The design of the system and the data elements to be collected shall be reviewed by the work group appointed by the secretary under *section 5(1) of this act and representing the department, regional support networks, service providers, consumers, and advocates. The data elements shall be designed to provide information that is needed to measure performance and achieve the service outcomes identified in *section 5 of this act;

(h) License service providers who meet state minimum standards;

(i) Certify regional support networks that meet state minimum standards;

(j) Periodically monitor the compliance of certified regional support networks and their network of licensed service providers for compliance with the contract between the department, the regional support network, and federal and state rules at reasonable times and in a reasonable manner;

(k) Fix fees to be paid by evaluation and treatment centers to the secretary for the required inspections;

(l) Monitor and audit counties, regional support networks, and licensed service providers as needed to assure compliance with contractual agreements authorized by this chapter; and

(m) Adopt such rules as are necessary to implement the department's responsibilities under this chapter.

(6) The secretary shall use available resources only for regional support networks.

(7) Each certified regional support network and licensed service provider shall file with the secretary, on request, such data, statistics, schedules, and information as the secretary reasonably requires. A certified regional support network or licensed service provider which, without good cause, fails to furnish any data, statistics, schedules, or information as requested, or files fraudulent reports thereof, may have its certification or license revoked or suspended.

(8) The secretary may suspend, revoke, limit, or restrict a certification or license, or refuse to grant a certification or license for failure to conform to: (a) The law; (b) applicable rules and regulations; (c) applicable standards; or (d) state minimum standards.

(9) The superior court may restrain any regional support network or service provider from operating without certification or a license or any other violation of this section. The court may also review, pursuant to procedures contained in chapter 34.05 RCW, any denial, suspension, limitation, restriction, or revocation of certification or license, and grant other relief required to enforce the provisions of this chapter.

(10) Upon petition by the secretary, and after hearing held upon reasonable notice to the facility, the superior court may issue a warrant to an officer or employee of the secretary authorizing him or her to enter at reasonable times, and examine the records, books, and accounts of any regional support network or service provider refusing to consent to inspection or examination by the authority.

(11) Notwithstanding the existence or pursuit of any other remedy, the secretary may file an action for an injunction or other process against any person or governmental unit to restrain or prevent the establishment, conduct, or operation of a regional support network or service provider without certification or a license under this chapter.

(12) The standards for certification of evaluation and treatment facilities shall include standards relating to maintenance of good physical and mental health and other services to be afforded persons pursuant to this chapter and chapters 71.05 and 71.34 RCW, and shall otherwise assure the effectuation of the purposes of these chapters.

(13)(a) The department, in consultation with affected parties, shall establish a distribution formula that reflects county needs assessments based on the number of persons who are acutely mentally ill, chronically mentally ill, severely emotionally disturbed children, and seriously disturbed. The formula shall take into consideration the impact on counties of demographic factors in counties which result in concentrations of priority populations as set forth in subsection (5)(b) of this section. These factors shall include the population concentrations resulting from commitments under chapters 71.05 and 71.34 RCW to state psychiatric hospitals, as well as concentration in urban areas, at border crossings at state boundaries, and other significant demographic and workload factors.

(b) The formula shall also include a projection of the funding allocations that will result for each county, which specifies allocations according to priority populations, including the allocation for services to children and other underserved populations.

(c) After July 1, 2003, the department may allocate up to two percent of total funds to be distributed to the regional support networks for incentive payments to reward the achievement of superior outcomes, or significantly improved outcomes, as measured by a statewide performance measurement system consistent with the framework recommended in the joint legislative audit and review committee's performance audit of the mental health system. The department shall annually report to the legislature on its criteria and allocation of the incentives provided under this subsection.

(14) The secretary shall assume all duties assigned to the nonparticipating counties under chapters 71.05, 71.34, and 71.24 RCW. Such responsibilities shall include those which would have been assigned to the nonparticipating counties under regional support networks.

The regional support networks, or the secretary's assumption of all responsibilities under chapters 71.05, 71.34, and 71.24 RCW, shall be included in all state and federal plans affecting the state mental health program including at least those required by this chapter, the medicaid program, and P.L. 99-660. Nothing in these plans shall be inconsistent with the intent and requirements of this chapter.

(15) The secretary shall:

(a) Disburse funds for the regional support networks within sixty days of approval of the biennial contract. The department must either approve or reject the biennial contract within sixty days of receipt.

(b) Enter into biennial contracts with regional support networks. The contracts shall be consistent with available resources. No contract shall be approved that does not include progress toward meeting the goals of this chapter by taking responsibility for: (i) Short-term commitments; (ii) residential care; and (iii) emergency response systems.

(c) Allocate one hundred percent of available resources to the regional support networks in accordance with subsection (13) of this section. Incentive payments authorized under subsection (13) of this section may be allocated separately from other available resources.

(d) Notify regional support networks of their allocation of available resources at least sixty days prior to the start of a new biennial contract period.

(e) Deny funding allocations to regional support networks based solely upon formal findings of noncompliance with the terms of the regional support network's contract with the department. Written notice and at least thirty days for corrective action must precede any such action. In such cases, regional support networks shall have full rights to appeal under chapter 34.05 RCW.

(16) The department, in cooperation with the state congressional delegation, shall actively seek waivers of federal requirements and such modifications of federal regulations as are necessary to allow federal medicaid reimbursement for services provided by free-standing evaluation and treatment facilities certified under chapter 71.05 RCW. The department shall periodically report its efforts to the appropriate committees of the senate and the house of representatives. [2001 c 334 § 7; 2001 c 323 § 10; 1999 c 10 § 4; 1998 c 245 § 137. Prior: 1991 c 306 § 3; 1991 c 262 § 1; 1991 c 29 § 1; 1990 1st ex.s. c 8 § 1; 1989 c 205 § 3; 1987 c 105 § 1; 1986 c 274 § 3; 1982 c 204 § 4.]

Reviser's note: *(1) Section 5 of this act was vetoed by the governor.

(2) This section was amended by 2001 c 323 § 10 and by 2001 c 334 § 7, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—2001 c 334: See note following RCW 71.24.805.

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

Conflict with federal requirements—1991 c 306: See note following RCW 71.24.015.

Effective date—1987 c 105: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987." [1987 c 105 § 2.]

Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9: See note following RCW 71.24.015.

(2004 Ed.)

71.24.037 Licensed service providers, residential services, community support services—Minimum standards. (1) The secretary shall by rule establish state minimum standards for licensed service providers and services.

(2) Minimum standards for licensed service providers shall, at a minimum, establish: Qualifications for staff providing services directly to mentally ill persons, the intended result of each service, and the rights and responsibilities of persons receiving mental health services pursuant to this chapter. The secretary shall provide for deeming of licensed service providers as meeting state minimum standards as a result of accreditation by a recognized behavioral health accrediting body recognized and having a current agreement with the department.

(3) Minimum standards for community support services and resource management services shall include at least qualifications for resource management services, client tracking systems, and the transfer of patient information between service providers. [2001 c 323 § 11; 1999 c 10 § 5.]

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

71.24.045 County authority powers and duties. The county authority shall:

(1) Contract as needed with licensed service providers. The county authority may, in the absence of a licensed service provider entity, become a licensed service provider entity pursuant to minimum standards required for licensing by the department for the purpose of providing services not available from licensed service providers;

(2) Operate as a licensed service provider if it deems that doing so is more efficient and cost effective than contracting for services. When doing so, the county authority shall comply with rules promulgated by the secretary that shall provide measurements to determine when a county provided service is more efficient and cost effective;

(3) Monitor and perform biennial fiscal audits of licensed service providers who have contracted with the county to provide services required by this chapter. The monitoring and audits shall be performed by means of a formal process which insures that the licensed service providers and professionals designated in this subsection meet the terms of their contracts;

(4) Assure that the special needs of minorities, the elderly, disabled, children, and low-income persons are met within the priorities established in this chapter;

(5) Maintain patient tracking information in a central location as required for resource management services and the department's information system;

(6) Use not more than two percent of state-appropriated community mental health funds, which shall not include federal funds, to administer community mental health programs under RCW 71.24.155: PROVIDED, That county authorities serving a county or combination of counties whose population is one hundred twenty-five thousand or more may be entitled to sufficient state-appropriated community mental health funds to employ up to one full-time employee or the equivalent thereof in addition to the two percent limit established in this subsection when such employee is providing staff services to a county mental health advisory board;

(7) Coordinate services for individuals who have received services through the community mental health sys-

tem and who become patients at a state mental hospital. [2001 c 323 § 12; 1992 c 230 § 5. Prior: 1991 c 363 § 147; 1991 c 306 § 5; 1991 c 29 § 2; 1989 c 205 § 4; 1986 c 274 § 5; 1982 c 204 § 5.]

Effective date—1992 c 230 § 5: "Section 5 of this act shall take effect July 1, 1995." [1992 c 230 § 8.]

Intent—1992 c 230: See note following RCW 72.23.025.

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

Conflict with federal requirements—1991 c 306: See note following RCW 71.24.015.

Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9: See note following RCW 71.24.015.

71.24.049 Identification by regional support network—Children's mental health services. By January 1st of each odd-numbered year, the regional support network shall identify: (1) The number of children in each priority group, as defined by this chapter, who are receiving mental health services funded in part or in whole under this chapter, (2) the amount of funds under this chapter used for children's mental health services, (3) an estimate of the number of unserved children in each priority group, and (4) the estimated cost of serving these additional children and their families. [2001 c 323 § 13; 1999 c 10 § 6; 1986 c 274 § 6.]

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

71.24.100 Joint agreements of county authorities—Required provisions. Any agreement between two or more county authorities for the establishment of a community mental health program shall provide:

(1) That each county shall bear a share of the cost of mental health services; and

(2) That the treasurer of one participating county shall be the custodian of funds made available for the purposes of such mental health services, and that the treasurer may make payments from such funds upon audit by the appropriate auditing officer of the county for which he is treasurer. [1982 c 204 § 7; 1967 ex.s. c 111 § 10.]

71.24.110 Joint agreements of county authorities—Permissive provisions. An agreement for the establishment of a community mental health program under RCW 71.24.100 may also provide:

(1) For the joint supervision or operation of services and facilities, or for the supervision or operation of service and facilities by one participating county under contract for the other participating counties; and

(2) For such other matters as are necessary or proper to effectuate the purposes of this chapter. [1999 c 10 § 7; 1982 c 204 § 8; 1967 ex.s. c 111 § 11.]

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

71.24.155 Grants to regional support networks—Accounting. Grants shall be made by the department to regional support networks for community mental health programs totaling not less than ninety-five percent of available resources. The department may use up to forty percent of the remaining five percent to provide community demonstration projects, including early intervention or primary prevention programs for children, and the remainder shall be for emer-

gency needs and technical assistance under this chapter. [2001 c 323 § 14; 1987 c 505 § 65; 1986 c 274 § 9; 1982 c 204 § 9.]

Effective date—1986 c 274 §§ 1, 2, 3, 5, and 9: See note following RCW 71.24.015.

71.24.160 Proof as to uses made of state funds. The regional support networks shall make satisfactory showing to the secretary that state funds shall in no case be used to replace local funds from any source being used to finance mental health services prior to January 1, 1990. [2001 c 323 § 15; 1989 c 205 § 7; 1982 c 204 § 10; 1967 ex.s. c 111 § 16.]

71.24.200 Expenditures of county funds subject to county fiscal laws. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1967 ex.s. c 111 § 20.]

71.24.215 Clients to be charged for services. Clients receiving mental health services funded by available resources shall be charged a fee under sliding-scale fee schedules, based on ability to pay, approved by the department. Fees shall not exceed the actual cost of care. [1982 c 204 § 11.]

71.24.220 Reimbursement may be withheld for non-compliance with chapter or related rules. The secretary may withhold state grants in whole or in part for any community mental health program in the event of a failure to comply with this chapter or the related rules adopted by the department. [1999 c 10 § 8; 1982 c 204 § 12; 1967 ex.s. c 111 § 22.]

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

71.24.240 County program plans to be approved by secretary prior to submittal to federal agency. In order to establish eligibility for funding under this chapter, any county or counties seeking to obtain federal funds for the support of any aspect of a community mental health program as defined in this chapter shall submit program plans to the secretary for prior review and approval before such plans are submitted to any federal agency. [1982 c 204 § 13; 1967 ex.s. c 111 § 24.]

71.24.250 Regional support network may accept and expend gifts and grants. The regional support network may accept and expend gifts and grants received from private, county, state, and federal sources. [2001 c 323 § 16; 1982 c 204 § 14; 1967 ex.s. c 111 § 25.]

71.24.260 Waiver of postgraduate educational requirements. The department shall waive postgraduate educational requirements applicable to mental health professionals under this chapter for those persons who have a bachelor's degree and on June 11, 1986:

(1) Are employed by an agency subject to licensure under this chapter, the community mental health services act, in a capacity involving the treatment of mental illness; and

(2) Have at least ten years of full-time experience in the treatment of mental illness. [1986 c 274 § 10.]

71.24.300 Regional support networks—Roles and responsibilities. A county authority or a group of county authorities whose combined population is no less than forty thousand may enter into a joint operating agreement to form a regional support network. Upon the request of a tribal authority or authorities within a regional support network the joint operating agreement or the county authority shall allow for the inclusion of the tribal authority to be represented as a party to the regional support network. The roles and responsibilities of the county and tribal authorities shall be determined by the terms of that agreement including a determination of membership on the governing board and advisory committees, the number of tribal representatives to be party to the agreement, and the provisions of law and shall assure the provision of culturally competent services to the tribes served. The state mental health authority may not determine the roles and responsibilities of county authorities as to each other under regional support networks by rule, except to assure that all duties required of regional support networks are assigned and that counties and the regional support network do not duplicate functions and that a single authority has final responsibility for all available resources and performance under the regional support network's contract with the secretary.

(1) Regional support networks shall submit an overall six-year operating and capital plan, timeline, and budget and submit progress reports and an updated two-year plan biennially thereafter, to assume within available resources all of the following duties:

(a) Administer and provide for the availability of all resource management services, residential services, and community support services.

(b) Assume the powers and duties of county authorities within its area as described in RCW 71.24.045 (1) through (7).

(c) Administer and provide for the availability of all investigation, transportation, court-related, and other services provided by the state or counties pursuant to chapter 71.05 RCW.

(d) Provide within the boundaries of each regional support network evaluation and treatment services for at least eighty-five percent of persons detained or committed for periods up to seventeen days according to chapter 71.05 RCW. Regional support networks with populations of less than one hundred fifty thousand may contract to purchase evaluation and treatment services from other networks. Insofar as the original intent of serving persons in the community is maintained, the secretary is authorized to approve exceptions on a case-by-case basis to the requirement to provide evaluation and treatment services within the boundaries of each regional support network. Such exceptions are limited to contracts with neighboring or contiguous regions.

(e) Administer a portion of funds appropriated by the legislature to house mentally ill persons in state institutions from counties within the boundaries of any regional support network, with the exception of persons currently confined at, or under the supervision of, a state mental hospital pursuant to chapter 10.77 RCW, and provide for the care of all persons needing evaluation and treatment services for periods up to seventeen days according to chapter 71.05 RCW in appropriate residential services, which may include state institutions.

The regional support networks shall reimburse the state for use of state institutions at a rate equal to that assumed by the legislature when appropriating funds for such care at state institutions during the biennium when reimbursement occurs. The secretary shall submit a report to the appropriate committees of the senate and house of representatives on the efforts to implement this section by October 1, 2002. The duty of a state hospital to accept persons for evaluation and treatment under chapter 71.05 RCW is limited by the responsibilities assigned to regional support networks under this section.

(f) Administer and provide for the availability of all other mental health services, which shall include patient counseling, day treatment, consultation, education services, employment services as defined in RCW 71.24.035, and mental health services to children as provided in this chapter designed to achieve the outcomes specified in *section 5 of this act.

(g) Establish standards and procedures for reviewing individual service plans and determining when that person may be discharged from resource management services.

(2) Regional support networks shall assume all duties assigned to county authorities by this chapter and chapter 71.05 RCW.

(3) A regional support network may request that any state-owned land, building, facility, or other capital asset which was ever purchased, deeded, given, or placed in trust for the care of the mentally ill and which is within the boundaries of a regional support network be made available to support the operations of the regional support network. State agencies managing such capital assets shall give first priority to requests for their use pursuant to this chapter.

(4) Each regional support network shall appoint a mental health advisory board which shall review and provide comments on plans and policies developed under this chapter. The composition of the board shall be broadly representative of the demographic character of the region and the mentally ill persons served therein. Length of terms of board members shall be determined by the regional support network.

(5) Regional support networks shall assume all duties specified in their plans and joint operating agreements through biennial contractual agreements with the secretary.

(6) Counties or groups of counties participating in a regional support network are not subject to RCW 71.24.045(6).

(7) Regional support networks may receive technical assistance from the housing trust fund and may identify and submit projects for housing and housing support services to the housing trust fund established under chapter 43.185 RCW. Projects identified or submitted under this subsection must be fully integrated with the regional support network six-year operating and capital plan, timeline, and budget required by subsection (1) of this section. [2001 c 323 § 17. Prior: 1999 c 214 § 8; 1999 c 10 § 9; 1994 c 204 § 2; 1992 c 230 § 6; prior: 1991 c 295 § 3; 1991 c 262 § 2; 1991 c 29 § 3; 1989 c 205 § 5.]

***Reviser's note:** Section 5 of this act was vetoed by the governor.

Intent—Effective date—1999 c 214: See notes following RCW 72.09.370.

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

Intent—1992 c 230: See note following RCW 72.23.025.

Evaluation of transition to regional systems—1989 c 205: See note following RCW 71.24.015.

71.24.310 Implementation of chapters 71.05 and 71.24 RCW through regional support networks. The legislature finds that administration of chapter 71.05 RCW and this chapter can be most efficiently and effectively implemented as part of the regional support network defined in RCW 71.24.025. For this reason, the legislature intends that any enhanced program funding for implementation of chapter 71.05 RCW or this chapter, except for funds allocated for implementation of mandatory statewide programs as required by federal statute, be made available primarily to those counties participating in regional support networks. [1989 c 205 § 6.]

Evaluation of transition to regional systems—1989 c 205: See note following RCW 71.24.015.

71.24.400 Streamlining delivery system—Finding. The legislature finds that the current complex set of federal, state, and local rules and regulations, audited and administered at multiple levels, which affect the community mental health service delivery system, focus primarily on the process of providing mental health services and do not sufficiently address consumer and system outcomes. The legislature finds that the department and the community mental health service delivery system must make ongoing efforts to achieve the purposes set forth in RCW 71.24.015 related to reduced administrative layering, duplication, elimination of process measures not specifically required by the federal government for the receipt of federal funds, and reduced administrative costs. [2001 c 323 § 18; 1999 c 10 § 10; 1995 c 96 § 1; 1994 c 259 § 1.]

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

Effective date—1995 c 96: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 18, 1995]." [1995 c 96 § 5.]

71.24.405 Streamlining delivery system. The department shall establish a comprehensive and collaborative effort within regional support networks and with local mental health service providers aimed at creating innovative and streamlined community mental health service delivery systems, in order to carry out the purposes set forth in RCW 71.24.400 and to capture the diversity of the community mental health service delivery system.

The department must accomplish the following:

(1) Identification, review, and cataloging of all rules, regulations, duplicative administrative and monitoring functions, and other requirements that currently lead to inefficiencies in the community mental health service delivery system and, if possible, eliminate the requirements;

(2) The systematic and incremental development of a single system of accountability for all federal, state, and local funds provided to the community mental health service delivery system. Systematic efforts should be made to include federal and local funds into the single system of accountability;

(3) The elimination of process regulations and related contract and reporting requirements. In place of the regulations and requirements, a set of outcomes for mental health

adult and children clients according to chapter 71.24 RCW must be used to measure the performance of mental health service providers and regional support networks. Such outcomes shall focus on stabilizing out-of-home and hospital care, increasing stable community living, increasing age-appropriate activities, achieving family and consumer satisfaction with services, and system efficiencies;

(4) Evaluation of the feasibility of contractual agreements between the department of social and health services and regional support networks and mental health service providers that link financial incentives to the success or failure of mental health service providers and regional support networks to meet outcomes established for mental health service clients;

(5) The involvement of mental health consumers and their representatives. Mental health consumers and their representatives will be involved in the development of outcome standards for mental health clients under *section 5 of this act; and

(6) An independent evaluation component to measure the success of the department in fully implementing the provisions of RCW 71.24.400 and this section. [2001 c 323 § 19; 1999 c 10 § 11; 1995 c 96 § 2; 1994 c 259 § 2.]

***Reviser's note:** Section 5 of this act was vetoed by the governor.

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

Effective date—1995 c 96: See note following RCW 71.24.400.

71.24.415 Streamlining delivery system—Department duties to achieve outcomes. To carry out the purposes specified in RCW 71.24.400, the department is encouraged to utilize its authority to eliminate any unnecessary rules, regulations, standards, or contracts, to immediately eliminate duplication of audits or any other unnecessarily duplicated functions, and to seek any waivers of federal or state rules or regulations necessary to achieve the purpose of streamlining the community mental health service delivery system and infusing it with incentives that reward efficiency, positive outcomes for clients, and quality services. [1999 c 10 § 12; 1995 c 96 § 3; 1994 c 259 § 4.]

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

Effective date—1995 c 96: See note following RCW 71.24.400.

71.24.420 Expenditure of federal funds. The department shall operate the community mental health service delivery system authorized under this chapter within the following constraints:

(1) The full amount of federal funds for mental health services, plus qualifying state expenditures as appropriated in the biennial operating budget, shall be appropriated to the department each year in the biennial appropriations act to carry out the provisions of the community mental health service delivery system authorized in this chapter.

(2) The department may expend funds defined in subsection (1) of this section in any manner that will effectively accomplish the outcome measures defined in *section 5 of this act.

(3) The department shall implement strategies that accomplish the outcome measures identified in *section 5 of this act that are within the funding constraints in this section.

(4) The department shall monitor expenditures against the appropriation levels provided for in subsection (1) of this section. [2001 c 323 § 2.]

***Reviser's note:** Section 5 of this act was vetoed by the governor.

71.24.430 Collaborative service delivery. (1) The department shall ensure the coordination of allied services for mental health clients. The department shall implement strategies for resolving organizational, regulatory, and funding issues at all levels of the system, including the state, the regional support networks, and local service providers.

(2) The department shall propose, in operating budget requests, transfers of funding among programs to support collaborative service delivery to persons who require services from multiple department programs. The department shall report annually to the appropriate committees of the senate and house of representatives on actions and projects it has taken to promote collaborative service delivery. [2001 c 323 § 3.]

71.24.450 Mentally ill offenders—Findings and intent. (1) Many acute and chronically mentally ill offenders are delayed in their release from Washington correctional facilities due to their inability to access reasonable treatment and living accommodations prior to the maximum expiration of their sentences. Often the offender reaches the end of his or her sentence and is released without any follow-up care, funds, or housing. These delays are costly to the state, often lead to psychiatric relapse, and result in unnecessary risk to the public.

These offenders rarely possess the skills or emotional stability to maintain employment or even complete applications to receive entitlement funding. Nation-wide only five percent of diagnosed schizophrenics are able to maintain part-time or full-time employment. Housing and appropriate treatment are difficult to obtain.

This lack of resources, funding, treatment, and housing creates additional stress for the mentally ill offender, impairing self-control and judgment. When the mental illness is instrumental in the offender's patterns of crime, such stresses may lead to a worsening of his or her illness, reoffending, and a threat to public safety.

(2) It is the intent of the legislature to create a pilot program to provide for postrelease mental health care and housing for a select group of mentally ill offenders entering community living, in order to reduce incarceration costs, increase public safety, and enhance the offender's quality of life. [1997 c 342 § 1.]

Severability—1997 c 342: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1997 c 342 § 6.]

71.24.455 Mentally ill offenders—Contracts for specialized access and services. (1) The secretary shall select and contract with a regional support network or private provider to provide specialized access and services to mentally ill offenders upon release from total confinement within the department of corrections who have been identified by the department of corrections and selected by the regional support network or private provider as high-priority clients for

(2004 Ed.)

services and who meet service program entrance criteria. The program shall enroll no more than twenty-five offenders at any one time, or a number of offenders that can be accommodated within the appropriated funding level, and shall seek to fill any vacancies that occur.

(2) Criteria shall include a determination by department of corrections staff that:

(a) The offender suffers from a major mental illness and needs continued mental health treatment;

(b) The offender's previous crime or crimes have been determined by either the court or department of corrections staff to have been substantially influenced by the offender's mental illness;

(c) It is believed the offender will be less likely to commit further criminal acts if provided ongoing mental health care;

(d) The offender is unable or unlikely to obtain housing and/or treatment from other sources for any reason; and

(e) The offender has at least one year remaining before his or her sentence expires but is within six months of release to community housing and is currently housed within a work release facility or any department of corrections' division of prisons facility.

(3) The regional support network or private provider shall provide specialized access and services to the selected offenders. The services shall be aimed at lowering the risk of recidivism. An oversight committee composed of a representative of the department, a representative of the selected regional support network or private provider, and a representative of the department of corrections shall develop policies to guide the pilot program, provide dispute resolution including making determinations as to when entrance criteria or required services may be waived in individual cases, advise the department of corrections and the regional support network or private provider on the selection of eligible offenders, and set minimum requirements for service contracts. The selected regional support network or private provider shall implement the policies and service contracts. The following services shall be provided:

(a) Intensive case management to include a full range of intensive community support and treatment in client-to-staff ratios of not more than ten offenders per case manager including: (i) A minimum of weekly group and weekly individual counseling; (ii) home visits by the program manager at least two times per month; and (iii) counseling focusing on relapse prevention and past, current, or future behavior of the offender.

(b) The case manager shall attempt to locate and procure housing appropriate to the living and clinical needs of the offender and as needed to maintain the psychiatric stability of the offender. The entire range of emergency, transitional, and permanent housing and involuntary hospitalization must be considered as available housing options. A housing subsidy may be provided to offenders to defray housing costs up to a maximum of six thousand six hundred dollars per offender per year and be administered by the case manager. Additional funding sources may be used to offset these costs when available.

(c) The case manager shall collaborate with the assigned prison, work release, or community corrections staff during release planning, prior to discharge, and in ongoing supervi-

sion of the offender while under the authority of the department of corrections.

(d) Medications including the full range of psychotropic medications including atypical antipsychotic medications may be required as a condition of the program. Medication prescription, medication monitoring, and counseling to support offender understanding, acceptance, and compliance with prescribed medication regimens must be included.

(e) A systematic effort to engage offenders to continuously involve themselves in current and long-term treatment and appropriate rehabilitative activities shall be made.

(f) Classes appropriate to the clinical and living needs of the offender and appropriate to his or her level of understanding.

(g) The case manager shall assist the offender in the application and qualification for entitlement funding, including medicaid, state assistance, and other available government and private assistance at any point that the offender is qualified and resources are available.

(h) The offender shall be provided access to daily activities such as drop-in centers, prevocational and vocational training and jobs, and volunteer activities.

(4) Once an offender has been selected into the pilot program, the offender shall remain in the program until the end of his or her sentence or unless the offender is released from the pilot program earlier by the department of corrections.

(5) Specialized training in the management and supervision of high-crime risk mentally ill offenders shall be provided to all participating mental health providers by the department and the department of corrections prior to their participation in the program and as requested thereafter.

(6) The pilot program provided for in this section must be providing services by July 1, 1998. [1997 c 342 § 2.]

Severability—1997 c 342: See note following RCW 71.24.450.

71.24.460 Mentally ill offenders—Report to legislature—Contingent termination of program. The department, in collaboration with the department of corrections and the oversight committee created in RCW 71.24.455, shall track outcomes and submit to the legislature annual reports regarding services and outcomes. The reports shall include the following: (1) A statistical analysis regarding the reoffense and reinstitutionalization rate by the enrollees in the program set forth in RCW 71.24.455; (2) a quantitative description of the services provided in the program set forth in RCW 71.24.455; and (3) recommendations for any needed modifications in the services and funding levels to increase the effectiveness of the program set forth in RCW 71.24.455. By December 1, 2003, the department shall certify the reoffense rate for enrollees in the program authorized by RCW 71.24.455 to the office of financial management and the appropriate legislative committees. If the reoffense rate exceeds fifteen percent, the authorization for the department to conduct the program under RCW 71.24.455 is terminated on January 1, 2004. [1999 c 10 § 13; 1997 c 342 § 4.]

Purpose—Intent—1999 c 10: See note following RCW 71.24.025.

Severability—1997 c 342: See note following RCW 71.24.450.

71.24.470 Dangerous mentally ill offenders—Contract for case management—Use of appropriated funds.

(1) The secretary shall contract, to the extent that funds are appropriated for this purpose, for case management services and such other services as the secretary deems necessary to assist offenders identified under RCW 72.09.370. The contracts may be with regional support networks or any other qualified and appropriate entities.

(2) The case manager has the authority to assist these offenders in obtaining the services, as set forth in the plan created under RCW 72.09.370(2), for up to five years. The services may include coordination of mental health services, assistance with unfunded medical expenses, obtaining chemical dependency treatment, housing, employment services, educational or vocational training, independent living skills, parenting education, anger management services, and such other services as the case manager deems necessary.

(3) The legislature intends that funds appropriated for the purposes of RCW 72.09.370, 71.05.145, and 71.05.212, and this section and distributed to the regional support networks are to supplement and not to supplant general funding. Funds appropriated to implement RCW 72.09.370, 71.05.145, and 71.05.212, and this section are not to be considered available resources as defined in RCW 71.24.025 and are not subject to the statutory distribution formula established pursuant to RCW 71.24.035. [1999 c 214 § 9.]

Intent—Effective date—1999 c 214: See notes following RCW 72.09.370.

71.24.480 Dangerous mentally ill offenders—Limitation on liability due to treatment—Reporting requirements. (1) A licensed service provider or regional support network, acting in the course of the provider's or network's duties under this chapter, is not liable for civil damages resulting from the injury or death of another caused by a dangerous mentally ill offender who is a client of the provider or network, unless the act or omission of the provider or network constitutes:

(a) Gross negligence;

(b) Willful or wanton misconduct; or

(c) A breach of the duty to warn of and protect from a client's threatened violent behavior if the client has communicated a serious threat of physical violence against a reasonably ascertainable victim or victims.

(2) In addition to any other requirements to report violations, the licensed service provider and regional support network shall report an offender's expressions of intent to harm or other predatory behavior, regardless of whether there is an ascertainable victim, in progress reports and other established processes that enable courts and supervising entities to assess and address the progress and appropriateness of treatment.

(3) A licensed service provider's or regional support network's mere act of treating a dangerous mentally ill offender is not negligence. Nothing in this subsection alters the licensed service provider's or regional support network's normal duty of care with regard to the client.

(4) The limited liability provided by this section applies only to the conduct of licensed service providers and regional support networks and does not apply to conduct of the state.

(5) For purposes of this section, "dangerous mentally ill offender" means a person who has been identified under RCW 72.09.370 as an offender who: (a) Is reasonably

believed to be dangerous to himself or herself or others; and (b) has a mental disorder. [2002 c 173 § 1.]

71.24.805 Mental health system review—Performance audit recommendations affirmed. The legislature affirms its support for those recommendations of the performance audit of the public mental health system conducted by the joint legislative audit and review committee relating to: Improving the coordination of services for clients with multiple needs; improving the consistency of client, service, and fiscal data collected by the mental health division; replacing process-oriented accountability activities with a uniform statewide outcome measurement system; and using outcome information to identify and provide incentives for best practices in the provision of public mental health services. [2001 c 334 § 1.]

Effective date—2001 c 334: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 15, 2001]." [2001 c 334 § 10.]

71.24.810 Mental health system review—Implementation of performance audit recommendations. The legislature supports recommendations 1 through 10 and 12 through 14 of the mental health system performance audit conducted by the joint legislative audit and review committee. The legislature expects the department of social and health services to work diligently within available funds to implement these recommendations. [2001 c 334 § 2.]

Effective date—2001 c 334: See note following RCW 71.24.805.

71.24.840 Mental health system review—Study of long-term outcomes. The Washington institute for public policy shall conduct a longitudinal study of long-term client outcomes to assess any changes in client status at two, five, and ten years. The measures tracked shall include client change as a result of services, employment and/or education, housing stability, criminal justice involvement, and level of services needed. The institute shall report these long-term outcomes to the appropriate policy and fiscal committee of the legislature annually beginning not later than December 31, 2005. [2001 c 334 § 5.]

Effective date—2001 c 334: See note following RCW 71.24.805.

71.24.900 Effective date—1967 ex.s. c 111. This act shall take effect on July 1, 1967. [1967 ex.s. c 111 § 26.]

71.24.901 Severability—1982 c 204. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1982 c 204 § 28.]

71.24.902 Construction. Nothing in this chapter shall be construed as prohibiting the secretary from consolidating within the department children's mental health services with other departmental services related to children. [1986 c 274 § 7.]

(2004 Ed.)

Chapter 71.28 RCW

MENTAL HEALTH AND DEVELOPMENTAL DISABILITIES SERVICES—INTERSTATE CONTRACTS

Sections

71.28.010 Contracts by boundary counties or cities therein.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

71.28.010 Contracts by boundary counties or cities therein. Any county, or city within a county which is situated on the state boundaries is authorized to contract for mental health services with a county situated in either the states of Oregon or Idaho, located on the boundaries of such states with the state of Washington. [1988 c 176 § 911; 1977 ex.s. c 80 § 44; 1967 c 84 § 1.]

Severability—1988 c 176: See RCW 71A.10.900.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Chapter 71.32 RCW

MENTAL HEALTH ADVANCE DIRECTIVES

Sections

71.32.010 Legislative declaration—Findings.

71.32.020 Definitions.

71.32.030 Construction of definitions.

71.32.040 Adult presumed to have capacity.

71.32.050 Execution of directive—Scope.

71.32.060 Execution of directive—Elements—Effective date—Expiration.

71.32.070 Prohibited elements.

71.32.080 Revocation—Waiver.

71.32.090 Witnesses.

71.32.100 Appointment of agent.

71.32.110 Determination of capacity.

71.32.120 Action to contest directive.

71.32.130 Determination of capacity—Reevaluations of capacity.

71.32.140 Refusal of admission to inpatient treatment—Effect of directive.

71.32.150 Compliance with directive—Conditions for noncompliance.

71.32.160 Electroconvulsive therapy.

71.32.170 Providers—Immunity from liability—Conditions.

71.32.180 Multiple directives, agents—Effect—Disclosure of court orders.

71.32.190 Preexisting, foreign directives—Validity.

71.32.200 Fraud, duress, undue influence—Appointment of guardian.

71.32.210 Execution of directive not evidence of mental disorder or lack of capacity.

71.32.220 Requiring directive prohibited.

71.32.230 Coercion, threats prohibited.

71.32.240 Other authority not limited.

71.32.250 Long-term care facility residents—Readmission after inpatient mental health treatment—Evaluation, report to legislature.

71.32.260 Form.

71.32.900 Severability—2003 c 283.

71.32.901 Part headings not law—2003 c 283.

71.32.010 Legislative declaration—Findings. (1) The legislature declares that an individual with capacity has the ability to control decisions relating to his or her own mental health care. The legislature finds that:

(a) Some mental illnesses cause individuals to fluctuate between capacity and incapacity;

(b) During periods when an individual's capacity is unclear, the individual may be unable to access needed treatment because the individual may be unable to give informed consent;

(c) Early treatment may prevent an individual from becoming so ill that involuntary treatment is necessary; and

(d) Mentally ill individuals need some method of expressing their instructions and preferences for treatment and providing advance consent to or refusal of treatment.

The legislature recognizes that a mental health advance directive can be an essential tool for an individual to express his or her choices at a time when the effects of mental illness have not deprived him or her of the power to express his or her instructions or preferences.

(2) The legislature further finds that:

(a) A mental health advance directive must provide the individual with a full range of choices;

(b) Mentally ill individuals have varying perspectives on whether they want to be able to revoke a directive during periods of incapacity;

(c) For a mental health advance directive to be an effective tool, individuals must be able to choose how they want their directives treated during periods of incapacity; and

(d) There must be clear standards so that treatment providers can readily discern an individual's treatment choices.

Consequently, the legislature affirms that, pursuant to other provisions of law, a validly executed mental health advance directive is to be respected by agents, guardians, and other surrogate decision makers, health care providers, professional persons, and health care facilities. [2003 c 283 § 1.]

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

(1) "Adult" means any individual who has attained the age of majority or is an emancipated minor.

(2) "Agent" has the same meaning as an attorney-in-fact or agent as provided in chapter 11.94 RCW.

(3) "Capacity" means that an adult has not been found to be incapacitated pursuant to this chapter or RCW 11.88.010(1)(e).

(4) "Court" means a superior court under chapter 2.08 RCW.

(5) "Health care facility" means a hospital, as defined in RCW 70.41.020; an institution, as defined in RCW 71.12.455; a state hospital, as defined in RCW 72.23.010; a nursing home, as defined in RCW 18.51.010; or a clinic that is part of a community mental health service delivery system, as defined in RCW 71.24.025.

(6) "Health care provider" means an osteopathic physician or osteopathic physician's assistant licensed under chapter 18.57 or 18.57A RCW, a physician or physician's assistant licensed under chapter 18.71 or 18.71A RCW, or an advanced registered nurse practitioner licensed under RCW 18.79.050.

(7) "Incapacitated" means an adult who: (a) Is unable to understand the nature, character, and anticipated results of proposed treatment or alternatives; understand the recognized serious possible risks, complications, and anticipated benefits in treatments and alternatives, including nontreatment; or communicate his or her understanding or treatment decisions; or (b) has been found to be incompetent pursuant to RCW 11.88.010(1)(e).

(8) "Informed consent" means consent that is given after the person: (a) Is provided with a description of the nature,

character, and anticipated results of proposed treatments and alternatives, and the recognized serious possible risks, complications, and anticipated benefits in the treatments and alternatives, including nontreatment, in language that the person can reasonably be expected to understand; or (b) elects not to be given the information included in (a) of this subsection.

(9) "Long-term care facility" has the same meaning as defined in RCW 43.190.020.

(10) "Mental disorder" means any organic, mental, or emotional impairment which has substantial adverse effects on an individual's cognitive or volitional functions.

(11) "Mental health advance directive" or "directive" means a written document in which the principal makes a declaration of instructions or preferences or appoints an agent to make decisions on behalf of the principal regarding the principal's mental health treatment, or both, and that is consistent with the provisions of this chapter.

(12) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary pursuant to the provisions of chapter 71.05 RCW.

(13) "Principal" means an adult who has executed a mental health advance directive.

(14) "Professional person" means a mental health professional and shall also mean a physician, registered nurse, and such others as may be defined by rules adopted by the secretary pursuant to the provisions of chapter 71.05 RCW. [2003 c 283 § 2.]

71.32.030 Construction of definitions. (1) The definition of informed consent is to be construed to be consistent with that term as it is used in chapter 7.70 RCW.

(2) The definitions of mental disorder, mental health professional, and professional person are to be construed to be consistent with those terms as they are defined in RCW 71.05.020. [2003 c 283 § 3.]

71.32.040 Adult presumed to have capacity. For the purposes of this chapter, an adult is presumed to have capacity. [2003 c 283 § 4.]

71.32.050 Execution of directive—Scope. (1) An adult with capacity may execute a mental health advance directive.

(2) A directive executed in accordance with this chapter is presumed to be valid. The inability to honor one or more provisions of a directive does not affect the validity of the remaining provisions.

(3) A directive may include any provision relating to mental health treatment or the care of the principal or the principal's personal affairs. Without limitation, a directive may include:

(a) The principal's preferences and instructions for mental health treatment;

(b) Consent to specific types of mental health treatment;

(c) Refusal to consent to specific types of mental health treatment;

(d) Consent to admission to and retention in a facility for mental health treatment for up to fourteen days;

(e) Descriptions of situations that may cause the principal to experience a mental health crisis;

(f) Suggested alternative responses that may supplement or be in lieu of direct mental health treatment, such as treatment approaches from other providers;

(g) Appointment of an agent pursuant to chapter 11.94 RCW to make mental health treatment decisions on the principal's behalf, including authorizing the agent to provide consent on the principal's behalf to voluntary admission to inpatient mental health treatment; and

(h) The principal's nomination of a guardian or limited guardian as provided in RCW 11.94.010 for consideration by the court if guardianship proceedings are commenced.

(4) A directive may be combined with or be independent of a nomination of a guardian or other durable power of attorney under chapter 11.94 RCW, so long as the processes for each are executed in accordance with its own statutes. [2003 c 283 § 5.]

71.32.060 Execution of directive—Elements—Effective date—Expiration. (1) A directive shall:

(a) Be in writing;

(b) Contain language that clearly indicates that the principal intends to create a directive;

(c) Be dated and signed by the principal or at the principal's direction in the principal's presence if the principal is unable to sign;

(d) Designate whether the principal wishes to be able to revoke the directive during any period of incapacity or wishes to be unable to revoke the directive during any period of incapacity; and

(e) Be witnessed in writing by at least two adults, each of whom shall declare that he or she personally knows the principal, was present when the principal dated and signed the directive, and that the principal did not appear to be incapacitated or acting under fraud, undue influence, or duress.

(2) A directive that includes the appointment of an agent under chapter 11.94 RCW shall contain the words "This power of attorney shall not be affected by the incapacity of the principal," or "This power of attorney shall become effective upon the incapacity of the principal," or similar words showing the principal's intent that the authority conferred shall be exercisable notwithstanding the principal's incapacity.

(3) A directive is valid upon execution, but all or part of the directive may take effect at a later time as designated by the principal in the directive.

(4) A directive may:

(a) Be revoked, in whole or in part, pursuant to the provisions of RCW 71.32.080; or

(b) Expire under its own terms. [2003 c 283 § 6.]

71.32.070 Prohibited elements. A directive may not:

(1) Create an entitlement to mental health or medical treatment or supersede a determination of medical necessity;

(2) Obligate any health care provider, professional person, or health care facility to pay the costs associated with the treatment requested;

(3) Obligate any health care provider, professional person, or health care facility to be responsible for the nontreatment personal care of the principal or the principal's personal affairs outside the scope of services the facility normally provides;

(4) Replace or supersede the provisions of any will or testamentary document or supersede the provisions of intestate succession;

(5) Be revoked by an incapacitated principal unless that principal selected the option to permit revocation while incapacitated at the time his or her directive was executed; or

(6) Be used as the authority for inpatient admission for more than fourteen days in any twenty-one day period. [2003 c 283 § 7.]

71.32.080 Revocation—Waiver. (1)(a) A principal with capacity may, by written statement by the principal or at the principal's direction in the principal's presence, revoke a directive in whole or in part.

(b) An incapacitated principal may revoke a directive only if he or she elected at the time of executing the directive to be able to revoke when incapacitated.

(2) The revocation need not follow any specific form so long as it is written and the intent of the principal can be discerned.

(3) The principal shall provide a copy of his or her written statement of revocation to his or her agent, if any, and to each health care provider, professional person, or health care facility that received a copy of the directive from the principal.

(4) The written statement of revocation is effective:

(a) As to a health care provider, professional person, or health care facility, upon receipt. The professional person, health care provider, or health care facility, or persons acting under their direction shall make the statement of revocation part of the principal's medical record; and

(b) As to the principal's agent, upon receipt. The principal's agent shall notify the principal's health care provider, professional person, or health care facility of the revocation and provide them with a copy of the written statement of revocation.

(5) A directive also may:

(a) Be revoked, in whole or in part, expressly or to the extent of any inconsistency, by a subsequent directive; or

(b) Be superseded or revoked by a court order, including any order entered in a criminal matter. A directive may be superseded by a court order regardless of whether the order contains an explicit reference to the directive. To the extent a directive is not in conflict with a court order, the directive remains effective, subject to the provisions of RCW 71.32.150. A directive shall not be interpreted in a manner that interferes with: (i) Incarceration or detention by the department of corrections, in a city or county jail, or by the department of social and health services; or (ii) treatment of a principal who is subject to involuntary treatment pursuant to chapter 10.77, 70.96A, 71.05, 71.09, or 71.34 RCW.

(6) A directive that would have otherwise expired but is effective because the principal is incapacitated remains effective until the principal is no longer incapacitated unless the principal has elected to be able to revoke while incapacitated and has revoked the directive.

(7) When a principal with capacity consents to treatment that differs from, or refuses treatment consented to in, the provisions of his or her directive, the consent or refusal constitutes a waiver of that provision and does not constitute a revocation of the provision or directive unless the principal also revokes the directive or provision. [2003 c 283 § 8.]

71.32.090 Witnesses. A witness may not be any of the following:

(1) A person designated to make health care decisions on the principal's behalf;

(2) A health care provider or professional person directly involved with the provision of care to the principal at the time the directive is executed;

(3) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in which the principal is a patient or resident;

(4) A person who is related by blood, marriage, or adoption to the person or with whom the principal has a dating relationship, as defined in RCW 26.50.010;

(5) A person who is declared to be an incapacitated person; or

(6) A person who would benefit financially if the principal making the directive undergoes mental health treatment. [2003 c 283 § 9.]

71.32.100 Appointment of agent. (1) If a directive authorizes the appointment of an agent, the provisions of chapter 11.94 RCW and RCW 7.70.065 shall apply unless otherwise stated in this chapter.

(2) The principal who appoints an agent must notify the agent in writing of the appointment.

(3) An agent must act in good faith.

(4) An agent may make decisions on behalf of the principal. Unless the principal has revoked the directive, the decisions must be consistent with the instructions and preferences the principal has expressed in the directive, or if not expressed, as otherwise known to the agent. If the principal's instructions or preferences are not known, the agent shall make a decision he or she determines is in the best interest of the principal.

(5) Except to the extent the right is limited by the appointment or any federal or state law, the agent has the same right as the principal to receive, review, and authorize the use and disclosure of the principal's health care information when the agent is acting on behalf of the principal and to the extent required for the agent to carry out his or her duties. This subsection shall be construed to be consistent with chapters 70.02, 70.24, 70.96A, 71.05, and 71.34 RCW, and with federal law regarding health care information.

(6) Unless otherwise provided in the appointment and agreed to in writing by the agent, the agent is not, as a result of acting in the capacity of agent, personally liable for the cost of treatment provided to the principal.

(7) An agent may resign or withdraw at any time by giving written notice to the principal. The agent must also give written notice to any health care provider, professional person, or health care facility providing treatment to the principal. The resignation or withdrawal is effective upon receipt unless otherwise specified in the resignation or withdrawal.

(8) If the directive gives the agent authority to act while the principal has capacity, the decisions of the principal supersede those of the agent at any time the principal has capacity.

(9) Unless otherwise provided in the durable power of attorney, the principal may revoke the agent's appointment as provided under other state law. [2003 c 283 § 10.]

71.32.110 Determination of capacity. (1) For the purposes of this chapter, a principal, agent, professional person, or health care provider may seek a determination whether the principal is incapacitated or has regained capacity.

(2)(a) For the purposes of this chapter, no adult may be declared an incapacitated person except by:

(i) A court, if the request is made by the principal or the principal's agent;

(ii) One mental health professional and one health care provider; or

(iii) Two health care providers.

(b) One of the persons making the determination under (a)(ii) or (iii) of this subsection must be a psychiatrist, psychologist, or a psychiatric advanced registered nurse practitioner.

(3) When a professional person or health care provider requests a capacity determination, he or she shall promptly inform the principal that:

(a) A request for capacity determination has been made; and

(b) The principal may request that the determination be made by a court.

(4) At least one mental health professional or health care provider must personally examine the principal prior to making a capacity determination.

(5)(a) When a court makes a determination whether a principal has capacity, the court shall, at a minimum, be informed by the testimony of one mental health professional familiar with the principal and shall, except for good cause, give the principal an opportunity to appear in court prior to the court making its determination.

(b) To the extent that local court rules permit, any party or witness may testify telephonically.

(6) When a court has made a determination regarding a principal's capacity and there is a subsequent change in the principal's condition, subsequent determinations whether the principal is incapacitated may be made in accordance with any of the provisions of subsection (2) of this section. [2003 c 283 § 11.]

71.32.120 Action to contest directive. A principal may bring an action to contest the validity of his or her directive. If an action under this section is commenced while an action to determine the principal's capacity is pending, the court shall consolidate the actions and decide the issues simultaneously. [2003 c 283 § 12.]

71.32.130 Determination of capacity—Reevaluations of capacity. (1) An initial determination of capacity must be completed within forty-eight hours of a request made by a person authorized in RCW 71.32.110. During the period between the request for an initial determination of the princi-

pal's capacity and completion of that determination, the principal may not be treated unless he or she consents at the time or treatment is otherwise authorized by state or federal law.

(2)(a)(i) When an incapacitated principal is admitted to inpatient treatment pursuant to the provisions of his or her directive, his or her capacity must be reevaluated within seventy-two hours or when there has been a change in the principal's condition that indicates that he or she appears to have regained capacity, whichever occurs first.

(ii) When an incapacitated principal has been admitted to and remains in inpatient treatment for more than seventy-two hours pursuant to the provisions of his or her directive, the principal's capacity must be reevaluated when there has been a change in his or her condition that indicates that he or she appears to have regained capacity.

(iii) When a principal who is being treated on an inpatient basis and has been determined to be incapacitated requests, or his or her agent requests, a redetermination of the principal's capacity the redetermination must be made within seventy-two hours.

(b) When a principal who has been determined to be incapacitated is being treated on an outpatient basis and there is a request for a redetermination of his or her capacity, the redetermination must be made within five days of the first request following a determination.

(3)(a) When a principal who has appointed an agent for mental health treatment decisions requests a determination or redetermination of capacity, the agent must make reasonable efforts to obtain the determination or redetermination.

(b) When a principal who does not have an agent for mental health treatment decisions is being treated in an inpatient facility and requests a determination or redetermination of capacity, the mental health professional or health care provider must complete the determination or, if the principal is seeking a determination from a court, must make reasonable efforts to notify the person authorized to make decisions for the principal under RCW 7.70.065 of the principal's request.

(c) When a principal who does not have an agent for mental health treatment decisions is being treated on an outpatient basis, the person requesting a capacity determination must arrange for the determination.

(4) If no determination has been made within the time frames established in subsection (1) or (2) of this section, the principal shall be considered to have capacity.

(5) When an incapacitated principal is being treated pursuant to his or her directive, a request for a redetermination of capacity does not prevent treatment. [2003 c 283 § 13.]

71.32.140 Refusal of admission to inpatient treatment—Effect of directive. (1) A principal who:

(a) Chose not to be able to revoke his or her directive during any period of incapacity;

(b) Consented to voluntary admission to inpatient mental health treatment, or authorized an agent to consent on the principal's behalf; and

(c) At the time of admission to inpatient treatment, refuses to be admitted, may only be admitted into inpatient mental health treatment under subsection (2) of this section.

(2) A principal may only be admitted to inpatient mental health treatment under his or her directive if, prior to admis-

(2004 Ed.)

sion, a physician member of the treating facility's professional staff:

(a) Evaluates the principal's mental condition, including a review of reasonably available psychiatric and psychological history, diagnosis, and treatment needs, and determines, in conjunction with another health care provider or mental health professional, that the principal is incapacitated;

(b) Obtains the informed consent of the agent, if any, designated in the directive;

(c) Makes a written determination that the principal needs an inpatient evaluation or is in need of inpatient treatment and that the evaluation or treatment cannot be accomplished in a less restrictive setting; and

(d) Documents in the principal's medical record a summary of the physician's findings and recommendations for treatment or evaluation.

(3) In the event the admitting physician is not a psychiatrist, the principal shall receive a complete psychological assessment by a mental health professional within twenty-four hours of admission to determine the continued need for inpatient evaluation or treatment.

(4)(a) If it is determined that the principal has capacity, then the principal may only be admitted to, or remain in, inpatient treatment if he or she consents at the time or is detained under the involuntary treatment provisions of chapter 70.96A, 71.05, or 71.34 RCW.

(b) If a principal who is determined by two health care providers or one mental health professional and one health care provider to be incapacitated continues to refuse inpatient treatment, the principal may immediately seek injunctive relief for release from the facility.

(5) If, at the end of the period of time that the principal or the principal's agent, if any, has consented to voluntary inpatient treatment, but no more than fourteen days after admission, the principal has not regained capacity or has regained capacity but refuses to consent to remain for additional treatment, the principal must be released during reasonable daylight hours, unless detained under chapter 70.96A, 71.05, or 71.34 RCW.

(6)(a) Except as provided in (b) of this subsection, any principal who is voluntarily admitted to inpatient mental health treatment under this chapter shall have all the rights provided to individuals who are voluntarily admitted to inpatient treatment under chapter 71.05, 71.34, or 72.23 RCW.

(b) Notwithstanding RCW 71.05.050 regarding consent to inpatient treatment for a specified length of time, the choices an incapacitated principal expressed in his or her directive shall control, provided, however, that a principal who takes action demonstrating a desire to be discharged, in addition to making statements requesting to be discharged, shall be discharged, and no principal shall be restrained in any way in order to prevent his or her discharge. Nothing in this subsection shall be construed to prevent detention and evaluation for civil commitment under chapter 71.05 RCW.

(7) Consent to inpatient admission in a directive is effective only while the professional person, health care provider, and health care facility are in substantial compliance with the material provisions of the directive related to inpatient treatment. [2004 c 39 § 2; 2003 c 283 § 14.]

Finding—Intent—2004 c 39: "Questions have been raised about the intent of the legislature in cross-referencing RCW 71.05.050 without further

clarification in RCW 71.32.140. The legislature finds that because RCW 71.05.050 pertains to a variety of rights as well as the procedures for detaining a voluntary patient for evaluation for civil commitment, and the legislature intended only to address the right of release upon request, there is ambiguity as to whether an incapacitated person admitted pursuant to his or her mental health advance directive and seeking release can be held for evaluation for civil commitment under chapter 71.05 RCW. The legislature therefore intends to clarify the ambiguity without making any change to its intended policy as laid out in chapter 71.32 RCW." [2004 c 39 § 1.]

71.32.150 Compliance with directive—Conditions for noncompliance. (1) Upon receiving a directive, a health care provider, professional person, or health care facility providing treatment to the principal, or persons acting under the direction of the health care provider, professional person, or health care facility, shall make the directive a part of the principal's medical record and shall be deemed to have actual knowledge of the directive's contents.

(2) When acting under authority of a directive, a health care provider, professional person, or health care facility shall act in accordance with the provisions of the directive to the fullest extent possible, unless in the determination of the health care provider, professional person, or health care facility:

(a) Compliance with the provision would violate the accepted standard of care established in RCW 7.70.040;

(b) The requested treatment is not available;

(c) Compliance with the provision would violate applicable law; or

(d) It is an emergency situation and compliance would endanger any person's life or health.

(3)(a) In the case of a principal committed or detained under the involuntary treatment provisions of chapter 10.77, 70.96A, 71.05, 71.09, or 71.34 RCW, those provisions of a principal's directive that, in the determination of the health care provider, professional person, or health care facility, are inconsistent with the purpose of the commitment or with any order of the court relating to the commitment are invalid during the commitment.

(b) Remaining provisions of a principal's directive are advisory while the principal is committed or detained.

The treatment provider is encouraged to follow the remaining provisions of the directive, except as provided in (a) of this subsection or subsection (2) of this section.

(4) In the case of a principal who is incarcerated or committed in a state or local correctional facility, provisions of the principal's directive that are inconsistent with reasonable penological objectives or administrative hearings regarding involuntary medication are invalid during the period of incarceration or commitment. In addition, treatment may be given despite refusal of the principal or the provisions of the directive: (a) For any reason under subsection (2) of this section; or (b) if, without the benefit of the specific treatment measure, there is a significant possibility that the person will harm self or others before an improvement of the person's condition occurs.

(5)(a) If the health care provider, professional person, or health care facility is, at the time of receiving the directive, unable or unwilling to comply with any part or parts of the directive for any reason, the health care provider, professional person, or health care facility shall promptly notify the

principal and, if applicable, his or her agent and shall document the reason in the principal's medical record.

(b) If the health care provider, professional person, or health care facility is acting under authority of a directive and is unable to comply with any part or parts of the directive for the reasons listed in subsection (2) or (3) of this section, the health care provider, professional person, or health care facility shall promptly notify the principal and if applicable, his or her agent, and shall document the reason in the principal's medical record.

(6) In the event that one or more parts of the directive are not followed because of one or more of the reasons set forth in subsection (2) or (4) of this section, all other parts of the directive shall be followed.

(7) If no provider-patient relationship has previously been established, nothing in this chapter requires the establishment of a provider-patient relationship. [2003 c 283 § 15.]

71.32.160 Electroconvulsive therapy. Where a principal consents in a directive to electroconvulsive therapy, the health care provider, professional person, or health care facility, or persons acting under the direction of the health care provider, professional person, or health care facility, shall document the therapy and the reason it was used in the principal's medical record. [2003 c 283 § 16.]

71.32.170 Providers—Immunity from liability—Conditions. (1) For the purposes of this section, "provider" means a private or public agency, government entity, health care provider, professional person, health care facility, or person acting under the direction of a health care provider or professional person, health care facility, or long-term care facility.

(2) A provider is not subject to civil liability or sanctions for unprofessional conduct under the uniform disciplinary act, chapter 18.130 RCW, when in good faith and without negligence:

(a) The provider provides treatment to a principal in the absence of actual knowledge of the existence of a directive, or provides treatment pursuant to a directive in the absence of actual knowledge of the revocation of the directive;

(b) A health care provider or mental health professional determines that the principal is or is not incapacitated for the purpose of deciding whether to proceed according to a directive, and acts upon that determination;

(c) The provider administers or does not administer mental health treatment according to the principal's directive in good faith reliance upon the validity of the directive and the directive is subsequently found to be invalid;

(d) The provider does not provide treatment according to the directive for one of the reasons authorized under RCW 71.32.150; or

(e) The provider provides treatment according to the principal's directive. [2003 c 283 § 17.]

71.32.180 Multiple directives, agents—Effect—Disclosure of court orders. (1) Where an incapacitated principal has executed more than one valid directive and has not revoked any of the directives:

(a) The directive most recently created shall be treated as the principal's mental health treatment preferences and instructions as to any inconsistent or conflicting provisions, unless provided otherwise in either document.

(b) Where a directive executed under this chapter is inconsistent with a directive executed under any other chapter, the most recently created directive controls as to the inconsistent provisions.

(2) Where an incapacitated principal has appointed more than one agent under chapter 11.94 RCW with authority to make mental health treatment decisions, RCW 11.94.010 controls.

(3) The treatment provider shall inquire of a principal whether the principal is subject to any court orders that would affect the implementation of his or her directive. [2003 c 283 § 18.]

71.32.190 Preexisting, foreign directives—Validity.

(1) Directives validly executed before July 27, 2003, shall be given full force and effect until revoked, superseded, or expired.

(2) A directive validly executed in another political jurisdiction is valid to the extent permitted by Washington state law. [2003 c 283 § 19.]

71.32.200 Fraud, duress, undue influence—Appointment of guardian. Any person with reasonable cause to believe that a directive has been created or revoked under circumstances amounting to fraud, duress, or undue influence may petition the court for appointment of a guardian for the person or to review the actions of the agent or person alleged to be involved in improper conduct under RCW 11.94.090 or 74.34.110. [2003 c 283 § 20.]

71.32.210 Execution of directive not evidence of mental disorder or lack of capacity. The fact that a person has executed a directive does not constitute an indication of mental disorder or that the person is not capable of providing informed consent. [2003 c 283 § 21.]

71.32.220 Requiring directive prohibited. A person shall not be required to execute or to refrain from executing a directive, nor shall the existence of a directive be used as a criterion for insurance, as a condition for receiving mental or physical health services, or as a condition of admission to or discharge from a health care facility or long-term care facility. [2003 c 283 § 22.]

71.32.230 Coercion, threats prohibited. No person or health care facility may use or threaten abuse, neglect, financial exploitation, or abandonment of the principal, as those

terms are defined in RCW 74.34.020, to carry out the directive. [2003 c 283 § 23.]

71.32.240 Other authority not limited. A directive does not limit any authority otherwise provided in Title 10, 70, or 71 RCW, or any other applicable state or federal laws to detain a person, take a person into custody, or to admit, retain, or treat a person in a health care facility. [2003 c 283 § 24.]

71.32.250 Long-term care facility residents—Readmission after inpatient mental health treatment—Evaluation, report to legislature. (1) If a principal who is a resident of a long-term care facility is admitted to inpatient mental health treatment pursuant to his or her directive, the principal shall be allowed to be readmitted to the same long-term care facility as if his or her inpatient admission had been for a physical condition on the same basis that the principal would be readmitted under state or federal statute or rule when:

(a) The treating facility's professional staff determine that inpatient mental health treatment is no longer medically necessary for the resident. The determination shall be made in writing by a psychiatrist or by a mental health professional and a physician; or

(b) The person's consent to admission in his or her directive has expired.

(2)(a) If the long-term care facility does not have a bed available at the time of discharge, the treating facility may discharge the resident, in consultation with the resident and agent if any, and in accordance with a medically appropriate discharge plan, to another long-term care facility.

(b) This section shall apply to inpatient mental health treatment admission of long-term care facility residents, regardless of whether the admission is directly from a facility, hospital emergency room, or other location.

(c) This section does not restrict the right of the resident to an earlier release from the inpatient treatment facility. This section does not restrict the right of a long-term care facility to initiate transfer or discharge of a resident who is readmitted pursuant to this section, provided that the facility has complied with the laws governing the transfer or discharge of a resident.

(3) The joint legislative audit and review committee shall conduct an evaluation of the operation and impact of this section. The committee shall report its findings to the appropriate committees of the legislature by December 1, 2004. [2003 c 283 § 25.]

71.32.260 Form. The directive shall be in substantially the following form:

Mental Health Advance Directive

**NOTICE TO PERSONS
CREATING A MENTAL HEALTH ADVANCE DIRECTIVE**

This is an important legal document. It creates an advance directive for mental health treatment. Before signing this document you should know these important facts:

(1) This document is called an advance directive and allows you to make decisions in advance about your mental health treatment, including medications, short-term admission to inpatient treatment and electroconvulsive therapy.

**YOU DO NOT HAVE TO FILL OUT OR SIGN THIS FORM.
IF YOU DO NOT SIGN THIS FORM, IT WILL NOT TAKE EFFECT.**

If you choose to complete and sign this document, you may still decide to leave some items blank.

- (2) You have the right to appoint a person as your agent to make treatment decisions for you. You must notify your agent that you have appointed him or her as an agent. The person you appoint has a duty to act consistently with your wishes made known by you. If your agent does not know what your wishes are, he or she has a duty to act in your best interest. Your agent has the right to withdraw from the appointment at any time.
- (3) The instructions you include with this advance directive and the authority you give your agent to act will only become effective under the conditions you select in this document. You may choose to limit this directive and your agent's authority to times when you are incapacitated or to times when you are exhibiting symptoms or behavior that you specify. You may also make this directive effective immediately. No matter when you choose to make this directive effective, your treatment providers must still seek your informed consent at all times that you have capacity to give informed consent.
- (4) You have the right to revoke this document in writing at any time you have capacity.
YOU MAY NOT REVOKE THIS DIRECTIVE WHEN YOU HAVE BEEN FOUND TO BE INCAPACITATED UNLESS YOU HAVE SPECIFICALLY STATED IN THIS DIRECTIVE THAT YOU WANT IT TO BE REVOCABLE WHEN YOU ARE INCAPACITATED.
- (5) This directive will stay in effect until you revoke it unless you specify an expiration date. If you specify an expiration date and you are incapacitated at the time it expires, it will remain in effect until you have capacity to make treatment decisions again unless you chose to be able to revoke it while you are incapacitated and you revoke the directive.
- (6) You cannot use your advance directive to consent to civil commitment. The procedures that apply to your advance directive are different than those provided for in the Involuntary Treatment Act. Involuntary treatment is a different process.
- (7) If there is anything in this directive that you do not understand, you should ask a lawyer to explain it to you.
- (8) You should be aware that there are some circumstances where your provider may not have to follow your directive.
- (9) You should discuss any treatment decisions in your directive with your provider.
- (10) You may ask the court to rule on the validity of your directive.

**PART I.
STATEMENT OF INTENT TO CREATE A
MENTAL HEALTH ADVANCE DIRECTIVE**

I, being a person with capacity, willfully and voluntarily execute this mental health advance directive so that my choices regarding my mental health care will be carried out in circumstances when I am unable to express my instructions and preferences regarding my mental health care. If a guardian is appointed by a court to make mental health decisions for me, I intend this document to take precedence over all other means of ascertaining my intent.

The fact that I may have left blanks in this directive does not affect its validity in any way. I intend that all completed sections be followed. If I have not expressed a choice, my agent should make the decision that he or she determines is in my best interest. I intend this directive to take precedence over any other directives I have previously executed, to the extent that they are inconsistent with this document, or unless I expressly state otherwise in either document.

I understand that I may revoke this directive in whole or in part if I am a person with capacity. I understand that I cannot revoke this directive if a court, two health care providers, or one mental health professional and one health care provider find that I am an incapacitated person, unless, when I executed this directive, I chose to be able to revoke this directive while incapacitated.

I understand that, except as otherwise provided in law, revocation must be in writing. I understand that nothing in this directive, or in my refusal of treatment to which I consent in this directive, authorizes any health care provider, professional person, health care facility, or agent appointed in this directive to use or threaten to use abuse, neglect, financial exploitation, or abandonment to carry out my directive.

I understand that there are some circumstances where my provider may not have to follow my directive.

**PART II.
WHEN THIS DIRECTIVE IS EFFECTIVE**

YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.

I intend that this directive become effective (*YOU MUST CHOOSE ONLY ONE*):

- Immediately upon my signing of this directive.
- If I become incapacitated.
- When the following circumstances, symptoms, or behaviors occur:
-
-

**PART III.
DURATION OF THIS DIRECTIVE**

YOU MUST COMPLETE THIS PART FOR YOUR DIRECTIVE TO BE VALID.

I want this directive to (*YOU MUST CHOOSE ONLY ONE*):

- Remain valid and in effect for an indefinite period of time.
- Automatically expire years from the date it was created.

**PART IV.
WHEN I MAY REVOKE THIS DIRECTIVE**

YOU MUST COMPLETE THIS PART FOR THIS DIRECTIVE TO BE VALID.

I intend that I be able to revoke this directive (*YOU MUST CHOOSE ONLY ONE*):

- Only when I have capacity.
I understand that choosing this option means I may only revoke this directive if I have capacity. I further understand that if I choose this option and become incapacitated while this directive is in effect, I may receive treatment that I specify in this directive, even if I object at the time.
- Even if I am incapacitated.
I understand that choosing this option means that I may revoke this directive even if I am incapacitated. I further understand that if I choose this option and revoke this directive while I am incapacitated I may not receive treatment that I specify in this directive, even if I want the treatment.

**PART V.
PREFERENCES AND INSTRUCTIONS ABOUT TREATMENT, FACILITIES, AND PHYSICIANS**

A. Preferences and Instructions About Physician(s) to be Involved in My Treatment

I would like the physician(s) named below to be involved in my treatment decisions:

Dr. Contact information:

Dr. Contact information:

I do not wish to be treated by Dr.

B. Preferences and Instructions About Other Providers

I am receiving other treatment or care from providers who I feel have an impact on my mental health care. I would like the following treatment provider(s) to be contacted when this directive is effective:

Name Profession Contact information.

Name Profession Contact information.

C. Preferences and Instructions About Medications for Psychiatric Treatment (*initial and complete all that apply*)

- I consent, and authorize my agent (if appointed) to consent, to the following medications:
- I do not consent, and I do not authorize my agent (if appointed) to consent, to the administration of the following medications:
- I am willing to take the medications excluded above if my only reason for excluding them is the side effects which include. and these side effects can be eliminated by dosage adjustment or other means
- I am willing to try any other medication the hospital doctor recommends
- I am willing to try any other medications my outpatient doctor recommends
- I do not want to try any other medications.

Medication Allergies

I have allergies to, or severe side effects from, the following:

Other Medication Preferences or Instructions

. I have the following other preferences or instructions about medications

D. Preferences and Instructions About Hospitalization and Alternatives

(*initial all that apply and, if desired, rank "1" for first choice, "2" for second choice, and so on*)

- In the event my psychiatric condition is serious enough to require 24-hour care and I have no physical conditions that require immediate access to emergency medical care, I prefer to receive this care in programs/facilities designed as alternatives to psychiatric hospitalizations.
- I would also like the interventions below to be tried before hospitalization is considered:

..... Calling someone or having someone call me when needed.

Name: Telephone:

..... Staying overnight with someone

Name: Telephone:

..... Having a mental health service provider come to see me

..... Going to a crisis triage center or emergency room

..... Staying overnight at a crisis respite (temporary) bed

..... Seeing a service provider for help with psychiatric medications

..... Other, specify:

Authority to Consent to Inpatient Treatment

I consent, and authorize my agent (if appointed) to consent, to voluntary admission to inpatient mental health treatment for days (*not to exceed 14 days*)

(Sign one):

..... If deemed appropriate by my agent (if appointed) and treating physician

.....
(Signature)

or

..... Under the following circumstances (specify symptoms, behaviors, or circumstances that indicate the need for hospitalization)

.....
(Signature)

..... I do **not** consent, or authorize my agent (if appointed) to consent, to inpatient treatment

.....
(Signature)

Hospital Preferences and Instructions

If hospitalization is required, I prefer the following hospitals:

I do not consent to be admitted to the following hospitals:

E. Preferences and Instructions About Preemergency

I would like the interventions below to be tried before use of seclusion or restraint is considered (*initial all that apply*):

..... "Talk me down" one-on-one

..... More medication

..... Time out/privacy

..... Show of authority/force

..... Shift my attention to something else

..... Set firm limits on my behavior

..... Help me to discuss/vent feelings

..... Decrease stimulation

..... Offer to have neutral person settle dispute

..... Other, specify

F. Preferences and Instructions About Seclusion, Restraint, and Emergency Medications

If it is determined that I am engaging in behavior that requires seclusion, physical restraint, and/or emergency use of medication, I prefer these interventions in the order I have chosen (*choose "1" for first choice, "2" for second choice, and so on*):

..... Seclusion

..... Seclusion and physical restraint (combined)

..... Medication by injection

..... Medication in pill or liquid form

In the event that my attending physician decides to use medication in response to an emergency situation after due consideration of my preferences and instructions for emergency treatments stated above, I expect the choice of medication to reflect any preferences and instructions I have expressed in Part III C of this form. The preferences and instructions I express in this section regarding medication in emergency situations do not constitute consent to use of the medication for nonemergency treatment.

G. Preferences and Instructions About Electroconvulsive Therapy (ECT or Shock Therapy)

My wishes regarding electroconvulsive therapy are (*sign one*):

..... I do not consent, nor authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy
.....
(Signature)

..... I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy
.....
(Signature)

..... I consent, and authorize my agent (if appointed) to consent, to the administration of electroconvulsive therapy, but only under the following conditions:
.....
(Signature)

H. Preferences and Instructions About Who is Permitted to Visit

If I have been admitted to a mental health treatment facility, the following people are not permitted to visit me there:

Name:
Name:
Name:

I understand that persons not listed above may be permitted to visit me.

I. Additional Instructions About My Mental Health Care

Other instructions about my mental health care:
.....

In case of emergency, please contact:

Name: Address:
Work telephone: Home telephone:
Physician: Address:
Telephone:

The following may help me to avoid a hospitalization:
.....

I generally react to being hospitalized as follows:
.....

Staff of the hospital or crisis unit can help me by doing the following:
.....
.....

J. Refusal of Treatment

I do not consent to any mental health treatment.

.....
(Signature)

**PART VI.
DURABLE POWER OF ATTORNEY (APPOINTMENT OF MY AGENT)**

(Fill out this part only if you wish to appoint an agent or nominate a guardian.)

I authorize an agent to make mental health treatment decisions on my behalf. The authority granted to my agent includes the right to consent, refuse consent, or withdraw consent to any mental health care, treatment, service, or procedure, consistent with any instructions and/or limitations I have set forth in this directive. I intend that those decisions should be made in accordance with my expressed wishes as set forth in this document. If I have not expressed a choice in this document **and my agent does not otherwise know my wishes**, I authorize my agent to make the decision that my agent determines is in my best interest. This agency shall not be affected by my incapacity. Unless I state otherwise in this durable power of attorney, I may revoke it unless prohibited by other state law.

A. Designation of an Agent

I appoint the following person as my agent to make mental health treatment decisions for me as authorized in this document and request that this person be notified immediately when this directive becomes effective:

Name: Address:
Work telephone: Home telephone:
Relationship:

B. Designation of Alternate Agent

If the person named above is unavailable, unable, or refuses to serve as my agent, or I revoke that person's authority to serve as my agent, I hereby appoint the following person as my alternate agent and request that this person be notified immediately when this directive becomes effective or when my original agent is no longer my agent:

Name: Address:
Work telephone: Home telephone:
Relationship:

C. When My Spouse is My Agent *(initial if desired)*

..... If my spouse is my agent, that person shall remain my agent even if we become legally separated or our marriage is dissolved, unless there is a court order to the contrary or I have remarried.

D. Limitations on My Agent's Authority

I do not grant my agent the authority to consent on my behalf to the following:

.....
.....

E. Limitations on My Ability to Revoke this Durable Power of Attorney

I choose to limit my ability to revoke this durable power of attorney as follows:

.....
.....

F. Preference as to Court-Appointed Guardian

In the event a court appoints a guardian who will make decisions regarding my mental health treatment, I **nominate** the following person **as my guardian**:

Name: Address:
Work telephone: Home telephone:
Relationship:

The appointment of a guardian of my estate or my person or any other decision maker shall not give the guardian or decision maker the power to revoke, suspend, or terminate this directive or the powers of my agent, except as authorized by law.

.....
(Signature required if nomination is made)

**PART VII.
OTHER DOCUMENTS**

(Initial all that apply)

I have executed the following documents that include the power to make decisions regarding health care services for myself:

- Health care power of attorney (chapter 11.94 RCW)
- "Living will" (Health care directive; chapter 70.122 RCW)

..... I have appointed more than one agent. I understand that the most recently appointed agent controls except as stated below:

.....

**PART VIII.
NOTIFICATION OF OTHERS AND CARE OF PERSONAL AFFAIRS**

(Fill out this part only if you wish to provide nontreatment instructions.)

I understand the preferences and instructions in this part are **NOT** the responsibility of my treatment provider and that no treatment provider is required to act on them.

A. Who Should Be Notified

I desire my agent to notify the following individuals as soon as possible when this directive becomes effective:

Name: Address:
Day telephone: Evening telephone:
Name: Address:
Day telephone: Evening telephone:

B. Preferences or Instructions About Personal Affairs

I have the following preferences or instructions about my personal affairs (e.g., care of dependents, pets, household) if I am admitted to a mental health treatment facility:

.....
.....

C. Additional Preferences and Instructions:

.....
.....
.....
.....

**PART IX.
SIGNATURE**

By signing here, I indicate that I understand the purpose and effect of this document and that I am giving my informed consent to the treatments and/or admission to which I have consented or authorized my agent to consent in this directive. I intend that my consent in this directive be construed as being consistent with the elements of informed consent under chapter 7.70 RCW.

Signature: Date:
Printed Name:

This directive was signed and declared by the "Principal," to be his or her directive, in our presence who, at his or her request, have signed our names below as witnesses. We declare that, at the time of the creation of this instrument, the Principal is personally known to us, and, according to our best knowledge and belief, has capacity at this time and does not appear to be acting under duress, undue influence, or fraud. We further declare that none of us is:

- (A) A person designated to make medical decisions on the principal's behalf;
- (B) A health care provider or professional person directly involved with the provision of care to the principal at the time the directive is executed;
- (C) An owner, operator, employee, or relative of an owner or operator of a health care facility or long-term care facility in which the principal is a patient or resident;
- (D) A person who is related by blood, marriage, or adoption to the person, or with whom the principal has a dating relationship as defined in RCW 26.50.010;
- (E) An incapacitated person;
- (F) A person who would benefit financially if the principal undergoes mental health treatment; or
- (G) A minor.

Witness 1: Signature: Date:
Printed Name:
Telephone: Address:
Witness 2: Signature: Date:
Printed Name:
Telephone: Address:

PART X. RECORD OF DIRECTIVE

I have given a copy of this directive to the following persons:

DO NOT FILL OUT PART XI UNLESS YOU INTEND TO REVOKE THIS DIRECTIVE IN PART OR IN WHOLE

PART XI. REVOCATION OF THIS DIRECTIVE

(Initial any that apply):

I am revoking the following part(s) of this directive (specify):

I am revoking all of this directive.

By signing here, I indicate that I understand the purpose and effect of my revocation and that no person is bound by any revoked provision(s). I intend this revocation to be interpreted as if I had never completed the revoked provision(s).

Signature: Date:

Printed Name:

DO NOT SIGN THIS PART UNLESS YOU INTEND TO REVOKE THIS DIRECTIVE IN PART OR IN WHOLE

[2003 c 283 § 26.]

71.32.900 Severability—2003 c 283. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [2003 c 283 § 35.]

71.32.901 Part headings not law—2003 c 283. Part headings used in this act are not any part of the law. [2003 c 283 § 38.]

Chapter 71.34 RCW

MENTAL HEALTH SERVICES FOR MINORS

Sections

- 71.34.010 Purpose—Parental participation in treatment decisions—Parental control of minor children during treatment.
71.34.015 Availability of treatment does not create right to obtain public funds.
71.34.020 Definitions.
71.34.025 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treatment—At-risk youth petition—Costs—Public funds.
71.34.027 Eligibility for medical assistance under chapter 74.09 RCW—Payment by department.
71.34.030 Age of consent—Outpatient treatment of minors.
71.34.032 Notice to parents, school contacts for referring students to inpatient treatment.
71.34.035 Evaluation of treatment of minors.
71.34.040 Evaluation of minor thirteen or older brought for immediate mental health services—Temporary detention.
71.34.042 Minor thirteen or older may be admitted for inpatient mental treatment without parental consent—Professional person in charge must concur—Written renewal of consent required.
71.34.044 Notice to parents when minor admitted to inpatient treatment without parental consent.
71.34.046 Minor voluntarily admitted may give notice to leave at any time.
71.34.050 Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor.
71.34.052 Parent may request determination whether minor has mental disorder requiring inpatient treatment—Minor consent not

- required—Duties and obligations of professional person and facility.
71.34.054 Parent may request determination whether minor has mental disorder requiring outpatient treatment—Consent of minor not required—Discharge of minor.
71.34.056 Parent-initiated treatment—Notice to parents of available treatment options.
71.34.060 Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period.
71.34.070 Petition for fourteen-day commitment—Requirements.
71.34.080 Commitment hearing—Requirements—Findings by court—Commitment—Release.
71.34.090 Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments.
71.34.100 Placement of minor in state evaluation and treatment facility—Placement committee—Facility to report to committee.
71.34.110 Minor's failure to adhere to outpatient conditions—Deterioration of minor's functioning—Transport to inpatient facility—Order of apprehension and detention—Revocation of alternative treatment or conditional release—Hearings.
71.34.120 Release of minor—Conditional release—Discharge.
71.34.130 Liability for costs of minor's treatment and care—Rules.
71.34.140 Responsibility of counties for evaluation and treatment services for minors.
71.34.150 Transportation for minors committed to state facility for one hundred eighty-day treatment.
71.34.160 Rights of minors undergoing treatment—Posting.
71.34.162 Minor may petition court for release from facility.
71.34.164 Minor not released by petition under RCW 71.34.162—Release within thirty days—Professional may initiate proceedings to stop release.
71.34.170 Release of minor—Requirements.
71.34.180 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities.
71.34.190 No detention of minors after eighteenth birthday—Exceptions.
71.34.200 Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent.
71.34.210 Court records and files confidential—Availability.
71.34.220 Disclosure of information or records—Required entries in minor's clinical record.
71.34.225 Mental health services information—Release to department of corrections—Rules.
71.34.230 Attorneys appointed for minors—Compensation.
71.34.240 Court proceedings under chapter subject to rules of state supreme court.
71.34.250 Jurisdiction over proceedings under chapter—Venue.
71.34.260 Transfer of superior court proceedings to juvenile department.
71.34.270 Liability for performance of duties under this chapter limited.
71.34.280 Mental health commissioners—Authority.
71.34.290 Antipsychotic medication and shock treatment.
71.34.800 Department to adopt rules to effectuate chapter.

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| 71.34.805 | Uniform application of chapter—Training for county-designated mental health professionals. |
| 71.34.810 | Redirection of Title XIX funds to fund placements within the state. |
| 71.34.900 | Severability—1985 c 354. |
| 71.34.901 | Effective date—1985 c 354. |

71.34.010 Purpose—Parental participation in treatment decisions—Parental control of minor children during treatment. It is the purpose of this chapter to assure that minors in need of mental health care and treatment receive an appropriate continuum of culturally relevant care and treatment, including prevention and early intervention, self-directed care, parent-directed care, and involuntary treatment. To facilitate the continuum of care and treatment to minors in out-of-home placements, all divisions of the department that provide mental health services to minors shall jointly plan and deliver those services.

It is also the purpose of this chapter to protect the rights of minors against needless hospitalization and deprivations of liberty and to enable treatment decisions to be made in response to clinical needs in accordance with sound professional judgment. The mental health care and treatment providers shall encourage the use of voluntary services and, whenever clinically appropriate, the providers shall offer less restrictive alternatives to inpatient treatment. Additionally, all mental health care and treatment providers shall assure that minors' parents are given an opportunity to participate in the treatment decisions for their minor children. The mental health care and treatment providers shall, to the extent possible, offer services that involve minors' parents or family.

It is also the purpose of this chapter to assure the ability of parents to exercise reasonable, compassionate care and control of their minor children when there is a medical necessity for treatment and without the requirement of filing a petition under this chapter. [1998 c 296 § 7; 1992 c 205 § 302; 1985 c 354 § 1.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

71.34.015 Availability of treatment does not create right to obtain public funds. The ability of a parent to bring his or her minor child to a certified evaluation and treatment program for evaluation and treatment does not create a right to obtain or benefit from any funds or resources of the state. The state may provide services for indigent minors to the extent that funds are available. [1998 c 296 § 21.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

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

(1) "Child psychiatrist" means a person having a license as a physician and surgeon in this state, who has had graduate training in child psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and who is board eligible or board certified in child psychiatry.

(2) "Children's mental health specialist" means:

(a) A mental health professional who has completed a minimum of one hundred actual hours, not quarter or semester hours, of specialized training devoted to the study of child development and the treatment of children; and

(b) A mental health professional who has the equivalent of one year of full-time experience in the treatment of children under the supervision of a children's mental health specialist.

(3) "Commitment" means a determination by a judge or court commissioner, made after a commitment hearing, that the minor is in need of inpatient diagnosis, evaluation, or treatment or that the minor is in need of less restrictive alternative treatment.

(4) "County-designated mental health professional" means a mental health professional designated by one or more counties to perform the functions of a county-designated mental health professional described in this chapter.

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

(6) "Evaluation and treatment facility" means a public or private facility or unit that is certified by the department to provide emergency, inpatient, residential, or outpatient mental health evaluation and treatment services for minors. A physically separate and separately-operated portion of a state hospital may be designated as an evaluation and treatment facility for minors. A facility which is part of or operated by the department or federal agency does not require certification. No correctional institution or facility, juvenile court detention facility, or jail may be an evaluation and treatment facility within the meaning of this chapter.

(7) "Evaluation and treatment program" means the total system of services and facilities coordinated and approved by a county or combination of counties for the evaluation and treatment of minors under this chapter.

(8) "Gravely disabled minor" means a minor who, as a result of a mental disorder, is in danger of serious physical harm resulting from a failure to provide for his or her essential human needs of health or safety, or manifests severe deterioration in routine functioning evidenced by repeated and escalating loss of cognitive or volitional control over his or her actions and is not receiving such care as is essential for his or her health or safety.

(9) "Inpatient treatment" means twenty-four-hour-per-day mental health care provided within a general hospital, psychiatric hospital, or residential treatment facility certified by the department as an evaluation and treatment facility for minors.

(10) "Less restrictive alternative" or "less restrictive setting" means outpatient treatment provided to a minor who is not residing in a facility providing inpatient treatment as defined in this chapter.

(11) "Likelihood of serious harm" means either: (a) A substantial risk that physical harm will be inflicted by an individual upon his or her own person, as evidenced by threats or attempts to commit suicide or inflict physical harm on oneself; (b) a substantial risk that physical harm will be inflicted by an individual upon another, as evidenced by behavior which has caused such harm or which places another person or persons in reasonable fear of sustaining such harm; or (c) a substantial risk that physical harm will be inflicted by an individual upon the property of others, as evidenced by behavior

which has caused substantial loss or damage to the property of others.

(12) "Medical necessity" for inpatient care means a requested service which is reasonably calculated to: (a) Diagnose, correct, cure, or alleviate a mental disorder; or (b) prevent the worsening of mental conditions that endanger life or cause suffering and pain, or result in illness or infirmity or threaten to cause or aggravate a handicap, or cause physical deformity or malfunction, and there is no adequate less restrictive alternative available.

(13) "Mental disorder" means any organic, mental, or emotional impairment that has substantial adverse effects on an individual's cognitive or volitional functions. The presence of alcohol abuse, drug abuse, juvenile criminal history, antisocial behavior, or mental retardation alone is insufficient to justify a finding of "mental disorder" within the meaning of this section.

(14) "Mental health professional" means a psychiatrist, psychologist, psychiatric nurse, or social worker, and such other mental health professionals as may be defined by rules adopted by the secretary under this chapter.

(15) "Minor" means any person under the age of eighteen years.

(16) "Outpatient treatment" means any of the nonresidential services mandated under chapter 71.24 RCW and provided by licensed services providers as identified by *RCW 71.24.025(3).

(17) "Parent" means:

(a) A biological or adoptive parent who has legal custody of the child, including either parent if custody is shared under a joint custody agreement; or

(b) A person or agency judicially appointed as legal guardian or custodian of the child.

(18) "Professional person in charge" or "professional person" means a physician or other mental health professional empowered by an evaluation and treatment facility with authority to make admission and discharge decisions on behalf of that facility.

(19) "Psychiatric nurse" means a registered nurse who has a bachelor's degree from an accredited college or university, and who has had, in addition, at least two years' experience in the direct treatment of mentally ill or emotionally disturbed persons, such experience gained under the supervision of a mental health professional. "Psychiatric nurse" shall also mean any other registered nurse who has three years of such experience.

(20) "Psychiatrist" means a person having a license as a physician in this state who has completed residency training in psychiatry in a program approved by the American Medical Association or the American Osteopathic Association, and is board eligible or board certified in psychiatry.

(21) "Psychologist" means a person licensed as a psychologist under chapter 18.83 RCW.

(22) "Responsible other" means the minor, the minor's parent or estate, or any other person legally responsible for support of the minor.

(23) "Secretary" means the secretary of the department or secretary's designee.

(24) "Start of initial detention" means the time of arrival of the minor at the first evaluation and treatment facility offering inpatient treatment if the minor is being involun-

tarily detained at the time. With regard to voluntary patients, "start of initial detention" means the time at which the minor gives notice of intent to leave under the provisions of this chapter. [1998 c 296 § 8; 1985 c 354 § 2.]

*Reviser's note: Due to an alphabetization directive by 1999 c 10 § 14, subsection (3) is now subsection (10).

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 71.13.025.

71.34.025 Review of admission and inpatient treatment of minors—Determination of medical necessity—Department review—Minor declines necessary treatment—At-risk youth petition—Costs—Public funds. (1) The department shall assure that, for any minor admitted to inpatient treatment under RCW 71.34.052, a review is conducted by a physician or other mental health professional who is employed by the department, or an agency under contract with the department, and who neither has a financial interest in continued inpatient treatment of the minor nor is affiliated with the facility providing the treatment. The physician or other mental health professional shall conduct the review not less than seven nor more than fourteen days following the date the minor was brought to the facility under RCW 71.34.052 to determine whether it is a medical necessity to continue the minor's treatment on an inpatient basis.

(2) In making a determination under subsection (1) of this section, the department shall consider the opinion of the treatment provider, the safety of the minor, and the likelihood the minor's mental health will deteriorate if released from inpatient treatment. The department shall consult with the parent in advance of making its determination.

(3) If, after any review conducted by the department under this section, the department determines it is no longer a medical necessity for a minor to receive inpatient treatment, the department shall immediately notify the parents and the facility. The facility shall release the minor to the parents within twenty-four hours of receiving notice. If the professional person in charge and the parent believe that it is a medical necessity for the minor to remain in inpatient treatment, the minor shall be released to the parent on the second judicial day following the department's determination in order to allow the parent time to file an at-risk youth petition under chapter 13.32A RCW. If the department determines it is a medical necessity for the minor to receive outpatient treatment and the minor declines to obtain such treatment, such refusal shall be grounds for the parent to file an at-risk youth petition.

(4) If the evaluation conducted under RCW 71.34.052 is done by the department, the reviews required by subsection (1) of this section shall be done by contract with an independent agency.

(5) The department may, subject to available funds, contract with other governmental agencies to conduct the reviews under this section. The department may seek reimbursement from the parents, their insurance, or medicaid for the expense of any review conducted by an agency under contract.

(6) In addition to the review required under this section, the department may periodically determine and redetermine the medical necessity of treatment for purposes of payment with public funds. [1998 c 296 § 9; 1995 c 312 § 56.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Short title—1995 c 312: See note following RCW 13.32A.010.

71.34.027 Eligibility for medical assistance under chapter 74.09 RCW—Payment by department. For purposes of eligibility for medical assistance under chapter 74.09 RCW, minors in inpatient mental health treatment shall be considered to be part of their parent's or legal guardian's household, unless the minor has been assessed by the department or its designee as likely to require such treatment for at least ninety consecutive days, or is in out-of-home care in accordance with chapter 13.34 RCW, or the parents are found to not be exercising responsibility for care and control of the minor. Payment for such care by the department shall be made only in accordance with rules, guidelines, and clinical criteria applicable to inpatient treatment of minors established by the department. [1998 c 296 § 11.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

71.34.030 Age of consent—Outpatient treatment of minors. Any minor thirteen years or older may request and receive outpatient treatment without the consent of the minor's parent. Parental authorization is required for outpatient treatment of a minor under the age of thirteen. [1998 c 296 § 12; 1995 c 312 § 52; 1985 c 354 § 3.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Short title—1995 c 312: See note following RCW 13.32A.010.

71.34.032 Notice to parents, school contacts for referring students to inpatient treatment. School district personnel who contact a mental health inpatient treatment program or provider for the purpose of referring a student to inpatient treatment shall provide the parents with notice of the contact within forty-eight hours. [1996 c 133 § 6.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

71.34.035 Evaluation of treatment of minors. The department shall randomly select and review the information on children who are admitted to inpatient treatment on application of the child's parent regardless of the source of payment, if any. The review shall determine whether the children reviewed were appropriately admitted into treatment based on an objective evaluation of the child's condition and the outcome of the child's treatment. [1996 c 133 § 36; 1995 c 312 § 58.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

71.34.040 Evaluation of minor thirteen or older brought for immediate mental health services—Temporary detention. If a minor, thirteen years or older, is brought to an evaluation and treatment facility or hospital emergency room for immediate mental health services, the professional person in charge of the facility shall evaluate the minor's mental condition, determine whether the minor suffers from a mental disorder, and whether the minor is in need of immedi-

ate inpatient treatment. If it is determined that the minor suffers from a mental disorder, inpatient treatment is required, the minor is unwilling to consent to voluntary admission, and the professional person believes that the minor meets the criteria for initial detention set forth herein, the facility may detain or arrange for the detention of the minor for up to twelve hours in order to enable a county-designated mental health professional to evaluate the minor and commence initial detention proceedings under the provisions of this chapter. [1985 c 354 § 4.]

71.34.042 Minor thirteen or older may be admitted for inpatient mental treatment without parental consent—Professional person in charge must concur—Written renewal of consent required. (1) A minor thirteen years or older may admit himself or herself to an evaluation and treatment facility for inpatient mental treatment, without parental consent. The admission shall occur only if the professional person in charge of the facility concurs with the need for inpatient treatment.

(2) When, in the judgment of the professional person in charge of an evaluation and treatment facility, there is reason to believe that a minor is in need of inpatient treatment because of a mental disorder, and the facility provides the type of evaluation and treatment needed by the minor, and it is not feasible to treat the minor in any less restrictive setting or the minor's home, the minor may be admitted to an evaluation and treatment facility.

(3) Written renewal of voluntary consent must be obtained from the applicant no less than once every twelve months. The minor's need for continued inpatient treatments shall be reviewed and documented no less than every one hundred eighty days. [1998 c 296 § 14.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

71.34.044 Notice to parents when minor admitted to inpatient treatment without parental consent. The administrator of the treatment facility shall provide notice to the parents of a minor when the minor is voluntarily admitted to inpatient treatment under RCW 71.34.042. The notice shall be in the form most likely to reach the parent within twenty-four hours of the minor's voluntary admission and shall advise the parent: (1) That the minor has been admitted to inpatient treatment; (2) of the location and telephone number of the facility providing such treatment; (3) of the name of a professional person on the staff of the facility providing treatment who is designated to discuss the minor's need for inpatient treatment with the parent; and (4) of the medical necessity for admission. [1998 c 296 § 15.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

71.34.046 Minor voluntarily admitted may give notice to leave at any time. (1) Any minor thirteen years or older voluntarily admitted to an evaluation and treatment facility under RCW 71.34.042 may give notice of intent to leave at any time. The notice need not follow any specific form so long as it is written and the intent of the minor can be discerned.

(2) The staff member receiving the notice shall date it immediately, record its existence in the minor's clinical record, and send copies of it to the minor's attorney, if any, the county-designated mental health professional, and the parent.

(3) The professional person shall discharge the minor, thirteen years or older, from the facility by the second judicial day following receipt of the minor's notice of intent to leave. [2003 c 106 § 1; 1998 c 296 § 16.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

71.34.050 Minor thirteen or older who presents likelihood of serious harm or is gravely disabled—Transport to inpatient facility—Petition for initial detention—Notice of commitment hearing—Facility to evaluate and admit or release minor. (1) When a county-designated mental health professional receives information that a minor, thirteen years or older, as a result of a mental disorder presents a likelihood of serious harm or is gravely disabled, has investigated the specific facts alleged and of the credibility of the person or persons providing the information, and has determined that voluntary admission for inpatient treatment is not possible, the county-designated mental health professional may take the minor, or cause the minor to be taken, into custody and transported to an evaluation and treatment facility providing inpatient treatment.

If the minor is not taken into custody for evaluation and treatment, the parent who has custody of the minor may seek review of that decision made by the county designated mental health professional in court. The parent shall file notice with the court and provide a copy of the county designated mental health professional's report or notes.

(2) Within twelve hours of the minor's arrival at the evaluation and treatment facility, the county-designated mental health professional shall serve on the minor a copy of the petition for initial detention, notice of initial detention, and statement of rights. The county-designated mental health professional shall file with the court on the next judicial day following the initial detention the original petition for initial detention, notice of initial detention, and statement of rights along with an affidavit of service. The county-designated mental health professional shall commence service of the petition for initial detention and notice of the initial detention on the minor's parent and the minor's attorney as soon as possible following the initial detention.

(3) At the time of initial detention, the county-designated mental health professional shall advise the minor both orally and in writing that if admitted to the evaluation and treatment facility for inpatient treatment, a commitment hearing shall be held within seventy-two hours of the minor's provisional acceptance to determine whether probable cause exists to commit the minor for further mental health treatment.

The minor shall be advised that he or she has a right to communicate immediately with an attorney and that he or she has a right to have an attorney appointed to represent him or her before and at the hearing if the minor is indigent.

(4) Whenever the county designated mental health professional petitions for detention of a minor under this chapter, an evaluation and treatment facility providing seventy-two hour evaluation and treatment must immediately accept on a

provisional basis the petition and the person. Within twenty-four hours of the minor's arrival, the facility must evaluate the minor's condition and either admit or release the minor in accordance with this chapter.

(5) If a minor is not approved for admission by the inpatient evaluation and treatment facility, the facility shall make such recommendations and referrals for further care and treatment of the minor as necessary. [1995 c 312 § 53; 1985 c 354 § 5.]

Short title—1995 c 312: See note following RCW 13.32A.010.

71.34.052 Parent may request determination whether minor has mental disorder requiring inpatient treatment—Minor consent not required—Duties and obligations of professional person and facility. (1) A parent may bring, or authorize the bringing of, his or her minor child to an evaluation and treatment facility and request that the professional person examine the minor to determine whether the minor has a mental disorder and is in need of inpatient treatment.

(2) The consent of the minor is not required for admission, evaluation, and treatment if the parent brings the minor to the facility.

(3) An appropriately trained professional person may evaluate whether the minor has a mental disorder. The evaluation shall be completed within twenty-four hours of the time the minor was brought to the facility, unless the professional person determines that the condition of the minor necessitates additional time for evaluation. In no event shall a minor be held longer than seventy-two hours for evaluation. If, in the judgment of the professional person, it is determined it is a medical necessity for the minor to receive inpatient treatment, the minor may be held for treatment. The facility shall limit treatment to that which the professional person determines is medically necessary to stabilize the minor's condition until the evaluation has been completed. Within twenty-four hours of completion of the evaluation, the professional person shall notify the department if the child is held for treatment and of the date of admission.

(4) No provider is obligated to provide treatment to a minor under the provisions of this section. No provider may admit a minor to treatment under this section unless it is medically necessary.

(5) No minor receiving inpatient treatment under this section may be discharged from the facility based solely on his or her request.

(6) Prior to the review conducted under RCW 71.34.025, the professional person shall notify the minor of his or her right to petition superior court for release from the facility.

(7) For the purposes of this section "professional person" does not include a social worker, unless the social worker is certified under *RCW 18.19.110 and appropriately trained and qualified by education and experience, as defined by the department, in psychiatric social work. [1998 c 296 § 17.]

***Reviser's note:** RCW 18.19.110 was repealed by 2001 c 251 § 37.

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

71.34.054 Parent may request determination whether minor has mental disorder requiring outpatient

treatment—Consent of minor not required—Discharge of minor. (1) A parent may bring, or authorize the bringing of, his or her minor child to a provider of outpatient mental health treatment and request that an appropriately trained professional person examine the minor to determine whether the minor has a mental disorder and is in need of outpatient treatment.

(2) The consent of the minor is not required for evaluation if the parent brings the minor to the provider.

(3) The professional person may evaluate whether the minor has a mental disorder and is in need of outpatient treatment.

(4) Any minor admitted to inpatient treatment under RCW 71.34.042 or 71.34.052 shall be discharged immediately from inpatient treatment upon written request of the parent. [1998 c 296 § 18.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

71.34.056 Parent-initiated treatment—Notice to parents of available treatment options. (1) The evaluation and treatment facility is required to promptly provide written and verbal notice of all statutorily available treatment options contained in this chapter to every parent or guardian of a minor child when the parent or guardian seeks to have his or her minor child treated at an evaluation and treatment facility.

(2) The notice must contain the following information:

(a) All current statutorily available treatment options including but not limited to those provided in this chapter; and

(b) The procedures to be followed to utilize the treatment options described in this chapter.

(3) The department shall produce, and make available, the written notification that must include, at a minimum, the information contained in subsection (2) of this section. [2003 c 107 § 1.]

71.34.060 Examination and evaluation of minor approved for inpatient admission—Referral to chemical dependency treatment program—Right to communication, exception—Evaluation and treatment period. (1) Each minor approved by the facility for inpatient admission shall be examined and evaluated by a children's mental health specialist as to the child's mental condition and by a physician as to the child's physical condition within twenty-four hours of admission. Reasonable measures shall be taken to ensure medical treatment is provided for any condition requiring immediate medical attention.

(2) If, after examination and evaluation, the children's mental health specialist and the physician determine that the initial needs of the minor would be better served by placement in a chemical dependency treatment facility, then the minor shall be referred to an approved treatment program defined under RCW 70.96A.020.

(3) The admitting facility shall take reasonable steps to notify immediately the minor's parent of the admission.

(4) During the initial seventy-two hour treatment period, the minor has a right to associate or receive communications from parents or others unless the professional person in charge determines that such communication would be seriously detrimental to the minor's condition or treatment and so

(2004 Ed.)

indicates in the minor's clinical record, and notifies the minor's parents of this determination. In no event may the minor be denied the opportunity to consult an attorney.

(5) If the evaluation and treatment facility admits the minor, it may detain the minor for evaluation and treatment for a period not to exceed seventy-two hours from the time of provisional acceptance. The computation of such seventy-two hour period shall exclude Saturdays, Sundays, and holidays. This initial treatment period shall not exceed seventy-two hours except when an application for voluntary inpatient treatment is received or a petition for fourteen-day commitment is filed.

(6) Within twelve hours of the admission, the facility shall advise the minor of his or her rights as set forth in this chapter. [1991 c 364 § 12; 1985 c 354 § 6.]

Findings—Construction—Conflict with federal requirements—1991 c 364: See notes following RCW 70.96A.020.

71.34.070 Petition for fourteen-day commitment—Requirements. (1) The professional person in charge of an evaluation and treatment facility where a minor has been admitted involuntarily for the initial seventy-two hour treatment period under this chapter may petition to have a minor committed to an evaluation and treatment facility for fourteen-day diagnosis, evaluation, and treatment.

If the professional person in charge of the treatment and evaluation facility does not petition to have the minor committed, the parent who has custody of the minor may seek review of that decision in court. The parent shall file notice with the court and provide a copy of the treatment and evaluation facility's report.

(2) A petition for commitment of a minor under this section shall be filed with the superior court in the county where the minor is residing or being detained.

(a) A petition for a fourteen-day commitment shall be signed either by two physicians or by one physician and a mental health professional who have examined the minor and shall contain the following:

(i) The name and address of the petitioner;

(ii) The name of the minor alleged to meet the criteria for fourteen-day commitment;

(iii) The name, telephone number, and address if known of every person believed by the petitioner to be legally responsible for the minor;

(iv) A statement that the petitioner has examined the minor and finds that the minor's condition meets required criteria for fourteen-day commitment and the supporting facts therefor;

(v) A statement that the minor has been advised of the need for voluntary treatment but has been unwilling or unable to consent to necessary treatment;

(vi) A statement recommending the appropriate facility or facilities to provide the necessary treatment; and

(vii) A statement concerning whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(b) A copy of the petition shall be personally delivered to the minor by the petitioner or petitioner's designee. A copy of the petition shall be sent to the minor's attorney and the minor's parent. [1995 c 312 § 54; 1985 c 354 § 7.]

Short title—1995 c 312: See note following RCW 13.32A.010.

71.34.080 Commitment hearing—Requirements—Findings by court—Commitment—Release. (1) A commitment hearing shall be held within seventy-two hours of the minor's admission, excluding Saturday, Sunday, and holidays, unless a continuance is requested by the minor or the minor's attorney.

(2) The commitment hearing shall be conducted at the superior court or an appropriate place at the facility in which the minor is being detained.

(3) At the commitment hearing, the evidence in support of the petition shall be presented by the county prosecutor.

(4) The minor shall be present at the commitment hearing unless the minor, with the assistance of the minor's attorney, waives the right to be present at the hearing.

(5) If the parents are opposed to the petition, they may be represented at the hearing and shall be entitled to court-appointed counsel if they are indigent.

(6) At the commitment hearing, the minor shall have the following rights:

- (a) To be represented by an attorney;
- (b) To present evidence on his or her own behalf;
- (c) To question persons testifying in support of the petition.

(7) If the minor has received medication within twenty-four hours of the hearing, the court shall be informed of that fact and of the probable effects of the medication.

(8) Rules of evidence shall not apply in fourteen-day commitment hearings.

(9) For a fourteen-day commitment, the court must find by a preponderance of the evidence that:

(a) The minor has a mental disorder and presents a "likelihood of serious harm" or is "gravely disabled";

(b) The minor is in need of evaluation and treatment of the type provided by the inpatient evaluation and treatment facility to which continued inpatient care is sought or is in need of less restrictive alternative treatment found to be in the best interests of the minor; and

(c) The minor is unwilling or unable in good faith to consent to voluntary treatment.

(10) If the court finds that the minor meets the criteria for a fourteen-day commitment, the court shall either authorize commitment of the minor for inpatient treatment or for less restrictive alternative treatment upon such conditions as are necessary. If the court determines that the minor does not meet the criteria for a fourteen-day commitment, the minor shall be released.

(11) Nothing in this section prohibits the professional person in charge of the evaluation and treatment facility from releasing the minor at any time, when, in the opinion of the professional person in charge of the facility, further inpatient treatment is no longer necessary. The release may be subject to reasonable conditions if appropriate.

Whenever a minor is released under this section, the professional person in charge shall within three days, notify the court in writing of the release.

(12) A minor who has been committed for fourteen days shall be released at the end of that period unless a petition for one hundred eighty-day commitment is pending before the court. [1985 c 354 § 8.]

71.34.090 Petition for one hundred eighty-day commitment—Hearing—Requirements—Findings by court—Commitment order—Release—Successive commitments. (1) At any time during the minor's period of fourteen-day commitment, the professional person in charge may petition the court for an order requiring the minor to undergo an additional one hundred eighty-day period of treatment. The evidence in support of the petition shall be presented by the county prosecutor unless the petition is filed by the professional person in charge of a state-operated facility in which case the evidence shall be presented by the attorney general.

(2) The petition for one hundred eighty-day commitment shall contain the following:

(a) The name and address of the petitioner or petitioners;

(b) The name of the minor alleged to meet the criteria for one hundred eighty-day commitment;

(c) A statement that the petitioner is the professional person in charge of the evaluation and treatment facility responsible for the treatment of the minor;

(d) The date of the fourteen-day commitment order; and

(e) A summary of the facts supporting the petition.

(3) The petition shall be supported by accompanying affidavits signed by two examining physicians, one of whom shall be a child psychiatrist, or by one examining physician and one children's mental health specialist. The affidavits shall describe in detail the behavior of the detained minor which supports the petition and shall state whether a less restrictive alternative to inpatient treatment is in the best interests of the minor.

(4) The petition for one hundred eighty-day commitment shall be filed with the clerk of the court at least three days before the expiration of the fourteen-day commitment period. The petitioner or the petitioner's designee shall within twenty-four hours of filing serve a copy of the petition on the minor and notify the minor's attorney and the minor's parent. A copy of the petition shall be provided to such persons at least twenty-four hours prior to the hearing.

(5) At the time of filing, the court shall set a date within seven days for the hearing on the petition. The court may continue the hearing upon the written request of the minor or the minor's attorney for not more than ten days. The minor or the parents shall be afforded the same rights as in a fourteen-day commitment hearing. Treatment of the minor shall continue pending the proceeding.

(6) For one hundred eighty-day commitment, the court must find by clear, cogent, and convincing evidence that the minor:

(a) Is suffering from a mental disorder;

(b) Presents a likelihood of serious harm or is gravely disabled; and

(c) Is in need of further treatment that only can be provided in a one hundred eighty-day commitment.

(7) If the court finds that the criteria for commitment are met and that less restrictive treatment in a community setting is not appropriate or available, the court shall order the minor committed for further inpatient treatment to the custody of the secretary or to a private treatment and evaluation facility if the minor's parents have assumed responsibility for payment for the treatment. If the court finds that a less restrictive alternative is in the best interest of the minor, the court shall

order less restrictive alternative treatment upon such conditions as necessary.

If the court determines that the minor does not meet the criteria for one hundred eighty-day commitment, the minor shall be released.

(8) Successive one hundred eighty-day commitments are permissible on the same grounds and under the same procedures as the original one hundred eighty-day commitment. Such petitions shall be filed at least five days prior to the expiration of the previous one hundred eighty-day commitment order. [1985 c 354 § 9.]

71.34.100 Placement of minor in state evaluation and treatment facility—Placement committee—Facility to report to committee. (1) If a minor is committed for one hundred eighty-day inpatient treatment and is to be placed in a state-supported program, the secretary shall accept immediately and place the minor in a state-funded long-term evaluation and treatment facility.

(2) The secretary's placement authority shall be exercised through a designated placement committee appointed by the secretary and composed of children's mental health specialists, including at least one child psychiatrist who represents the state-funded, long-term, evaluation and treatment facility for minors. The responsibility of the placement committee will be to:

(a) Make the long-term placement of the minor in the most appropriate, available state-funded evaluation and treatment facility, having carefully considered factors including the treatment needs of the minor, the most appropriate facility able to respond to the minor's identified treatment needs, the geographic proximity of the facility to the minor's family, the immediate availability of bed space, and the probable impact of the placement on other residents of the facility;

(b) Approve or deny requests from treatment facilities for transfer of a minor to another facility;

(c) Receive and monitor reports required under this section;

(d) Receive and monitor reports of all discharges.

(3) The secretary may authorize transfer of minors among treatment facilities if the transfer is in the best interests of the minor or due to treatment priorities.

(4) The responsible state-funded evaluation and treatment facility shall submit a report to the department's designated placement committee within ninety days of admission and no less than every one hundred eighty days thereafter, setting forth such facts as the department requires, including the minor's individual treatment plan and progress, recommendations for future treatment, and possible less restrictive treatment. [1985 c 354 § 10.]

71.34.110 Minor's failure to adhere to outpatient conditions—Deterioration of minor's functioning—Transport to inpatient facility—Order of apprehension and detention—Revocation of alternative treatment or conditional release—Hearings. (1) If the professional person in charge of an outpatient treatment program, a county-designated mental health professional, or the secretary determines that a minor is failing to adhere to the conditions of the court order for less restrictive alternative treatment or the

conditions for the conditional release, or that substantial deterioration in the minor's functioning has occurred, the county-designated mental health professional, or the secretary may order that the minor be taken into custody and transported to an inpatient evaluation and treatment facility.

(2) The county-designated mental health professional or the secretary shall file the order of apprehension and detention and serve it upon the minor and notify the minor's parent and the minor's attorney, if any, of the detention within two days of return. At the time of service the minor shall be informed of the right to a hearing and to representation by an attorney. The county-designated mental health professional or the secretary may modify or rescind the order of apprehension and detention at any time prior to the hearing.

(3) A petition for revocation of less restrictive alternative treatment shall be filed by the county-designated mental health professional or the secretary with the court in the county ordering the less restrictive alternative treatment. The court shall conduct the hearing in that county. A petition for revocation of conditional release may be filed with the court in the county ordering inpatient treatment or the county where the minor on conditional release is residing. A petition shall describe the behavior of the minor indicating violation of the conditions or deterioration of routine functioning and a dispositional recommendation. Upon motion for good cause, the hearing may be transferred to the county of the minor's residence or to the county in which the alleged violations occurred. The hearing shall be held within seven days of the minor's return. The issues to be determined are whether the minor did or did not adhere to the conditions of the less restrictive alternative treatment or conditional release, or whether the minor's routine functioning has substantially deteriorated, and, if so, whether the conditions of less restrictive alternative treatment or conditional release should be modified or whether the minor should be returned to inpatient treatment. Pursuant to the determination of the court, the minor shall be returned to less restrictive alternative treatment or conditional release on the same or modified conditions or shall be returned to inpatient treatment. If the minor is returned to inpatient treatment, RCW 71.34.100 regarding the secretary's placement responsibility shall apply. The hearing may be waived by the minor and the minor returned to inpatient treatment or to less restrictive alternative treatment or conditional release on the same or modified conditions. [1985 c 354 § 11.]

71.34.120 Release of minor—Conditional release—Discharge. (1) The professional person in charge of the inpatient treatment facility may authorize release for the minor under such conditions as appropriate. Conditional release may be revoked pursuant to RCW 71.34.110 if leave conditions are not met or the minor's functioning substantially deteriorates.

(2) Minors may be discharged prior to expiration of the commitment period if the treating physician or professional person in charge concludes that the minor no longer meets commitment criteria. [1985 c 354 § 12.]

71.34.130 Liability for costs of minor's treatment and care—Rules. (1) A minor receiving treatment under the pro-

visions of this chapter and responsible others shall be liable for the costs of treatment, care, and transportation to the extent of available resources and ability to pay.

(2) The secretary shall establish rules to implement this section and to define income, resources, and exemptions to determine the responsible person's or persons' ability to pay. [1985 c 354 § 13.]

71.34.140 Responsibility of counties for evaluation and treatment services for minors. (1) The county or combination of counties is responsible for development and coordination of the evaluation and treatment program for minors, for incorporating the program into the county mental health plan, and for coordination of evaluation and treatment services and resources with the community mental health program required under chapter 71.24 RCW.

(2) The county shall be responsible for maintaining its support of involuntary treatment services for minors at its 1984 level, adjusted for inflation, with the department responsible for additional costs to the county resulting from this chapter. [1985 c 354 § 14.]

71.34.150 Transportation for minors committed to state facility for one hundred eighty-day treatment. Necessary transportation for minors committed to the secretary under this chapter for one hundred eighty-day treatment shall be provided by the department in the most appropriate and cost-effective means. [1985 c 354 § 15.]

71.34.160 Rights of minors undergoing treatment—Posting. Absent a risk to self or others, minors treated under this chapter have the following rights, which shall be prominently posted in the evaluation and treatment facility:

- (1) To wear their own clothes and to keep and use personal possessions;
- (2) To keep and be allowed to spend a reasonable sum of their own money for canteen expenses and small purchases;
- (3) To have individual storage space for private use;
- (4) To have visitors at reasonable times;
- (5) To have reasonable access to a telephone, both to make and receive confidential calls;
- (6) To have ready access to letter-writing materials, including stamps, and to send and receive uncensored correspondence through the mails;
- (7) To discuss treatment plans and decisions with mental health professionals;
- (8) To have the right to adequate care and individualized treatment;
- (9) Not to consent to the performance of electro-convulsive treatment or surgery, except emergency life-saving surgery, upon him or her, and not to have electro-convulsive treatment or nonemergency surgery in such circumstance unless ordered by a court pursuant to a judicial hearing in which the minor is present and represented by counsel, and the court shall appoint a psychiatrist, psychologist, or physician designated by the minor or the minor's counsel to testify on behalf of the minor. The minor's parent may exercise this right on the minor's behalf, and must be informed of any impending treatment;

(10) Not to have psychosurgery performed on him or her under any circumstances. [1985 c 354 § 16.]

71.34.162 Minor may petition court for release from facility. Following the review conducted under RCW 71.34.025, a minor child may petition the superior court for his or her release from the facility. The petition may be filed not sooner than five days following the review. The court shall release the minor unless it finds, upon a preponderance of the evidence, that it is a medical necessity for the minor to remain at the facility. [1998 c 296 § 19.]

Findings—Intent—Part headings not law—Short title—1998 c 296:
See notes following RCW 74.13.025.

71.34.164 Minor not released by petition under RCW 71.34.162—Release within thirty days—Professional may initiate proceedings to stop release. If the minor is not released as a result of the petition filed under RCW 71.34.162, he or she shall be released not later than thirty days following the later of: (1) The date of the department's determination under RCW 71.34.025(2); or (2) the filing of a petition for judicial review under RCW 71.34.162, unless a professional person or the county designated mental health professional initiates proceedings under this chapter. [1998 c 296 § 20.]

Findings—Intent—Part headings not law—Short title—1998 c 296:
See notes following RCW 74.13.025.

71.34.170 Release of minor—Requirements. (1) If a minor is not accepted for admission or is released by an inpatient evaluation and treatment facility, the facility shall release the minor to the custody of the minor's parent or other responsible person. If not otherwise available, the facility shall furnish transportation for the minor to the minor's residence or other appropriate place.

(2) If the minor is released to someone other than the minor's parent, the facility shall make every effort to notify the minor's parent of the release as soon as possible.

(3) No indigent minor may be released to less restrictive alternative treatment or setting or discharged from inpatient treatment without suitable clothing, and the department shall furnish this clothing. As funds are available, the secretary may provide necessary funds for the immediate welfare of indigent minors upon discharge or release to less restrictive alternative treatment. [1985 c 354 § 17.]

71.34.180 Transferring or moving persons from juvenile correctional institutions or facilities to evaluation and treatment facilities. When in the judgment of the department the welfare of any person committed to or confined in any state juvenile correctional institution or facility necessitates that the person be transferred or moved for observation, diagnosis, or treatment to an evaluation and treatment facility, the secretary or the secretary's designee is authorized to order and effect such move or transfer for a period of up to fourteen days, provided that the secretary notifies the original committing court of the transfer and the evaluation and treatment facility is in agreement with the transfer. No person committed to or confined in any state juvenile correctional institution or facility may be transferred to an evaluation and treatment facility for more than fourteen

days unless that person has been admitted as a voluntary patient or committed for one hundred eighty-day treatment under this chapter or ninety-day treatment under chapter 71.05 RCW if eighteen years of age or older. Underlying jurisdiction of minors transferred or committed under this section remains with the state correctional institution. A voluntary admitted minor or minors committed under this section and no longer meeting the criteria for one hundred eighty-day commitment shall be returned to the state correctional institution to serve the remaining time of the underlying dispositional order or sentence. The time spent by the minor at the evaluation and treatment facility shall be credited towards the minor's juvenile court sentence. [1985 c 354 § 19.]

71.34.190 No detention of minors after eighteenth birthday—Exceptions. No minor received as a voluntary patient or committed under this chapter may be detained after his or her eighteenth birthday unless the person, upon reaching eighteen years of age, has applied for admission to an appropriate evaluation and treatment facility or unless involuntary commitment proceedings under chapter 71.05 RCW have been initiated: PROVIDED, That a minor may be detained after his or her eighteenth birthday for purposes of completing the fourteen-day diagnosis, evaluation, and treatment. [1985 c 354 § 20.]

71.34.200 Information concerning treatment of minors confidential—Disclosure—Admissible as evidence with written consent. The fact of admission and all information obtained through treatment under this chapter is confidential. Confidential information may be disclosed only:

- (1) In communications between mental health professionals to meet the requirements of this chapter, in the provision of services to the minor, or in making appropriate referrals;
- (2) In the course of guardianship or dependency proceedings;
- (3) To persons with medical responsibility for the minor's care;
- (4) To the minor, the minor's parent, and the minor's attorney, subject to RCW 13.50.100;
- (5) When the minor or the minor's parent designates in writing the persons to whom information or records may be released;
- (6) To the extent necessary to make a claim for financial aid, insurance, or medical assistance to which the minor may be entitled or for the collection of fees or costs due to providers for services rendered under this chapter;
- (7) To the courts as necessary to the administration of this chapter;
- (8) To law enforcement officers or public health officers as necessary to carry out the responsibilities of their office. However, only the fact and date of admission, and the date of discharge, the name and address of the treatment provider, if any, and the last known address shall be disclosed upon request;
- (9) To law enforcement officers, public health officers, relatives, and other governmental law enforcement agencies,

(2004 Ed.)

if a minor has escaped from custody, disappeared from an evaluation and treatment facility, violated conditions of a less restrictive treatment order, or failed to return from an authorized leave, and then only such information as may be necessary to provide for public safety or to assist in the apprehension of the minor. The officers are obligated to keep the information confidential in accordance with this chapter;

(10) To the secretary for assistance in data collection and program evaluation or research, provided that the secretary adopts rules for the conduct of such evaluation and research. The rules shall include, but need not be limited to, the requirement that all evaluators and researchers sign an oath of confidentiality substantially as follows:

"As a condition of conducting evaluation or research concerning persons who have received services from (fill in the facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of such evaluation or research regarding minors who have received services in a manner such that the minor is identifiable.

I recognize that unauthorized release of confidential information may subject me to civil liability under state law.

/s/ "

(11) To appropriate law enforcement agencies, upon request, all necessary and relevant information in the event of a crisis or emergent situation that poses a significant and imminent risk to the public. The decision to disclose or not shall not result in civil liability for the mental health service provider or its employees so long as the decision was reached in good faith and without gross negligence;

(12) To appropriate law enforcement agencies and to a person, when the identity of the person is known to the public or private agency, whose health and safety has been threatened, or who is known to have been repeatedly harassed, by the patient. The person may designate a representative to receive the disclosure. The disclosure shall be made by the professional person in charge of the public or private agency or his or her designee and shall include the dates of admission, discharge, authorized or unauthorized absence from the agency's facility, and only such other information that is pertinent to the threat or harassment. The decision to disclose or not shall not result in civil liability for the agency or its employees so long as the decision was reached in good faith and without gross negligence;

(13) To a minor's next of kin, attorney, guardian, or conservator, if any, the information that the minor is presently in the facility or that the minor is seriously physically ill and a statement evaluating the mental and physical condition of the minor as well as a statement of the probable duration of the minor's confinement;

(14) Upon the death of a minor, to the minor's next of kin;

(15) To a facility in which the minor resides or will reside.

This section shall not be construed to prohibit the compilation and publication of statistical data for use by government or researchers under standards, including standards to assure maintenance of confidentiality, set forth by the secretary. The fact of admission and all information obtained pur-

suant to this chapter are not admissible as evidence in any legal proceeding outside this chapter, except guardianship or dependency, without the written consent of the minor or the minor's parent. [2000 c 75 § 7; 1985 c 354 § 18.]

Intent—2000 c 75: See note following RCW 71.05.445.

71.34.210 Court records and files confidential—Availability. The records and files maintained in any court proceeding under this chapter are confidential and available only to the minor, the minor's parent, and the minor's attorney. In addition, the court may order the subsequent release or use of these records or files only upon good cause shown if the court finds that appropriate safeguards for strict confidentiality will be maintained. [1985 c 354 § 21.]

71.34.220 Disclosure of information or records—Required entries in minor's clinical record. When disclosure of information or records is made, the date and circumstances under which the disclosure was made, the name or names of the persons or agencies to whom such disclosure was made and their relationship if any, to the minor, and the information disclosed shall be entered promptly in the minor's clinical record. [1985 c 354 § 22.]

71.34.225 Mental health services information—Release to department of corrections—Rules. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "Information related to mental health services" means all information and records compiled, obtained, or maintained in the course of providing services to either voluntary or involuntary recipients of services by a mental health service provider. This may include documents of legal proceedings under this chapter or chapter 71.05 or 10.77 RCW, or somatic health care information.

(b) "Mental health service provider" means a public or private agency that provides services to persons with mental disorders as defined under RCW 71.34.020 and receives funding from public sources. This includes evaluation and treatment facilities as defined in RCW 71.34.020, community mental health service delivery systems, or community mental health programs, as defined in RCW 71.24.025, and facilities conducting competency evaluations and restoration under chapter 10.77 RCW.

(2) Information related to mental health services delivered to a person subject to chapter 9.94A or 9.95 RCW shall be released, upon request, by a mental health service provider to department of corrections personnel for whom the information is necessary to carry out the responsibilities of their office. The information must be provided only for the purpose of completing presentence investigations, supervision of an incarcerated person, planning for and provision of supervision of a person, or assessment of a person's risk to the community. The request shall be in writing and shall not require the consent of the subject of the records.

(3) The information to be released to the department of corrections shall include all relevant records and reports, as defined by rule, necessary for the department of corrections to carry out its duties, including those records and reports identified in subsection (2) of this section.

(4) The department shall, subject to available resources, electronically, or by the most cost-effective means available, provide the department of corrections with the names, last dates of services, and addresses of specific regional support networks and mental health service providers that delivered mental health services to a person subject to chapter 9.94A or 9.95 RCW pursuant to an agreement between the departments.

(5) The department and the department of corrections, in consultation with regional support networks, mental health service providers as defined in subsection (1) of this section, mental health consumers, and advocates for persons with mental illness, shall adopt rules to implement the provisions of this section related to the type and scope of information to be released. These rules shall:

(a) Enhance and facilitate the ability of the department of corrections to carry out its responsibility of planning and ensuring community protection with respect to persons subject to sentencing under chapter 9.94A or 9.95 RCW, including accessing and releasing or disclosing information of persons who received mental health services as a minor; and

(b) Establish requirements for the notification of persons under the supervision of the department of corrections regarding the provisions of this section.

(6) The information received by the department of corrections under this section shall remain confidential and subject to the limitations on disclosure outlined in RCW 71.34.200, except as provided in RCW 72.09.585.

(7) No mental health service provider or individual employed by a mental health service provider shall be held responsible for information released to or used by the department of corrections under the provisions of this section or rules adopted under this section.

(8) Whenever federal law or federal regulations restrict the release of information contained in the treatment records of any patient who receives treatment for alcoholism or drug dependency, the release of the information may be restricted as necessary to comply with federal law and regulations.

(9) This section does not modify the terms and conditions of disclosure of information related to sexually transmitted diseases under chapter 70.24 RCW. [2004 c 166 § 8; 2002 c 39 § 1; 2000 c 75 § 2.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Intent—2000 c 75: See note following RCW 71.05.445.

71.34.230 Attorneys appointed for minors—Compensation. Attorneys appointed for minors under this chapter shall be compensated for their services as follows:

(1) Responsible others shall bear the costs of such legal services if financially able according to standards set by the court of the county in which the proceeding is held.

(2) If all responsible others are indigent as determined by these standards, the costs of these legal services shall be borne by the county in which the proceeding is held. [1985 c 354 § 23.]

71.34.240 Court proceedings under chapter subject to rules of state supreme court. Court procedures and proceedings provided for in this chapter shall be in accordance

with rules adopted by the supreme court of the state of Washington. [1985 c 354 § 24.]

71.34.250 Jurisdiction over proceedings under chapter—Venue. (1) The superior court has jurisdiction over proceedings under this chapter.

(2) A record of all petitions and proceedings under this chapter shall be maintained by the clerk of the superior court in the county in which the petition or proceedings was initiated.

(3) Petitions for commitment shall be filed and venue for hearings under this chapter shall be in the county in which the minor is being detained. The court may, for good cause, transfer the proceeding to the county of the minor's residence, or to the county in which the alleged conduct evidencing need for commitment occurred. If the county of detention is changed, subsequent petitions may be filed in the county in which the minor is detained without the necessity of a change of venue. [1985 c 354 § 26.]

71.34.260 Transfer of superior court proceedings to juvenile department. For purposes of this chapter, a superior court may transfer proceedings under this chapter to its juvenile department. [1985 c 354 § 28.]

71.34.270 Liability for performance of duties under this chapter limited. No public or private agency or governmental entity, nor officer of a public or private agency, nor the superintendent, or professional person in charge, his or her professional designee or attending staff of any such agency, nor any public official performing functions necessary to the administration of this chapter, nor peace officer responsible for detaining a person under this chapter, nor any county designated mental health professional, shall be civilly or criminally liable for performing his or her duties under this chapter with regard to the decision of whether to admit, release, or detain a person for evaluation and treatment: PROVIDED, That such duties were performed in good faith and without gross negligence. [1985 c 354 § 27.]

71.34.280 Mental health commissioners—Authority. The judges of the superior court of the county by majority vote may authorize mental health commissioners, appointed pursuant to RCW 71.05.135, to perform any or all of the following duties:

(1) Receive all applications, petitions, and proceedings filed in the superior court for the purpose of disposing of them pursuant to this chapter;

(2) Investigate the facts upon which to base warrants, subpoenas, orders to directions in actions, or proceedings filed pursuant to this chapter;

(3) For the purpose of this chapter, exercise all powers and perform all the duties of a court commissioner appointed pursuant to RCW 2.24.010;

(4) Hold hearings in proceedings under this chapter and make written reports of all proceedings under this chapter which shall become a part of the record of superior court;

(5) Provide such supervision in connection with the exercise of its jurisdiction as may be ordered by the presiding judge; and

(2004 Ed.)

(6) Cause the orders and findings to be entered in the same manner as orders and findings are entered in cases in the superior court. [1989 c 174 § 3.]

Severability—1989 c 174: See note following RCW 71.05.135.

71.34.290 Antipsychotic medication and shock treatment. For the purposes of administration of antipsychotic medication and shock treatment, the provisions of chapter 120, Laws of 1989 apply to minors pursuant to chapter 71.34 RCW. [1989 c 120 § 9.]

71.34.800 Department to adopt rules to effectuate chapter. The department shall adopt such rules pursuant to chapter 34.05 RCW as may be necessary to effectuate the intent and purposes of this chapter, which shall include but not be limited to evaluation of the quality, effectiveness, efficiency, and use of services and facilities operating under this chapter, procedures and standards for commitment, and other action relevant to evaluation and treatment facilities, and establishment of criteria and procedures for placement and transfer of committed minors. [1985 c 354 § 25.]

71.34.805 Uniform application of chapter—Training for county-designated mental health professionals. The department shall ensure that the provisions of this chapter are applied by the counties in a consistent and uniform manner. The department shall also ensure that, to the extent possible within available funds, the county-designated mental health professionals are specifically trained in adolescent mental health issues, the mental health civil commitment laws, and the criteria for civil commitment. [1992 c 205 § 304.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

71.34.810 Redirection of Title XIX funds to fund placements within the state. For the purpose of encouraging the expansion of existing evaluation and treatment facilities and the creation of new facilities, the department shall endeavor to redirect federal Title XIX funds which are expended on out-of-state placements to fund placements within the state. [1992 c 205 § 303.]

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

71.34.900 Severability—1985 c 354. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 354 § 37.]

71.34.901 Effective date—1985 c 354. This act shall take effect January 1, 1986. [1985 c 354 § 38.]

Chapter 71.36 RCW

COORDINATION OF CHILDREN'S MENTAL HEALTH SERVICES

Sections

71.36.005 Intent.
71.36.010 Definitions.

| | |
|-----------|--|
| 71.36.020 | Plan for early periodic screening, diagnosis, and treatment services. |
| 71.36.030 | Children's mental health services delivery system—Local planning efforts. |
| 71.36.040 | Issue identification, data collection, plan revision—Coordination with other state agencies. |
| 71.36.050 | Report on implementation status. |
| 71.36.900 | Part headings not law—1991 c 326. |
| 71.36.901 | Severability—1991 c 326. |

71.36.005 Intent. The legislature intends to encourage the development of community-based interagency collaborative efforts to plan for and provide mental health services to children in a manner that coordinates existing categorical children's mental health programs and funding, is sensitive to the unique cultural circumstances of children of color, eliminates duplicative case management, and to the greatest extent possible, blends categorical funding to offer more service options to each child. [1991 c 326 § 11.]

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

(1) "Agency" means a state or local governmental entity or a private not-for-profit organization.

(2) "Child" means a person under eighteen years of age, except as expressly provided otherwise in federal law.

(3) "County authority" means the board of county commissioners or county executive.

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

(5) "Early periodic screening, diagnosis, and treatment" means the component of the federal medicaid program established pursuant to 42 U.S.C. Sec. 1396d(r), as amended.

(6) "Regional support network" means a county authority or group of county authorities that have entered into contracts with the secretary pursuant to chapter 71.24 RCW.

(7) "Secretary" means the secretary of social and health services. [1991 c 326 § 12.]

71.36.020 Plan for early periodic screening, diagnosis, and treatment services. The department, in consultation with the office of financial management, shall develop a plan and criteria for the use of early periodic screening, diagnosis, and treatment services related to mental health that includes at least the following components:

(1) Criteria for screening and assessment of mental illness and emotional disturbance;

(2) Criteria for determining the appropriate level of medically necessary services a child receives, including but not limited to development of a multidisciplinary plan of care when appropriate, and prior authorization for receipt of mental health services;

(3) Qualifications for children's mental health providers;

(4) Other cost control mechanisms, such as managed care arrangements and prospective or capitated payments for mental health services; and

(5) Mechanisms to ensure that federal medicaid matching funds are obtained for services, to the greatest extent practicable.

In developing the plan, the department shall provide an opportunity for comment by the major child-serving systems and regional support networks. The plan shall be submitted

to appropriate committees of the legislature on or before December 1, 2003. [2003 c 281 § 4; 1991 c 326 § 13.]

Legislative support affirmed—2003 c 281: See note following RCW 71.36.040.

71.36.030 Children's mental health services delivery system—Local planning efforts. (1) On or before January 1, 1992, each regional support network, or county authority in counties that have not established a regional support network, shall initiate a local planning effort to develop a children's mental health services delivery system.

(2) Representatives of the following agencies or organizations and the following individuals shall participate in the local planning effort:

(a) Representatives of the department of social and health services in the following program areas: Children and family services, medical care, mental health, juvenile rehabilitation, alcohol and substance abuse, and developmental disabilities;

(b) The juvenile courts;

(c) The public health department or health district;

(d) The school districts;

(e) The educational service district serving schools in the county;

(f) Head start or early childhood education and assistance programs;

(g) Community action agencies; and

(h) Children's services providers, including minority mental health providers.

(3) Parents of children in need of mental health services and parents of children of color shall be invited to participate in the local planning effort.

(4) The following information shall be developed through the local planning effort and submitted to the secretary:

(a) A supplement to the county's January 1, 1991, children's mental health services report prepared pursuant to RCW 71.24.049 to include the following data:

(i) The number of children in need of mental health services in the county or counties covered by the local planning effort, including children in school and children receiving services through the department of social and health services division of children and family services, division of developmental disabilities, division of alcohol and substance abuse, and division of juvenile rehabilitation, grouped by severity of their mental illness;

(ii) The number of such children that are underserved or unserved and the types of services needed by such children; and

(iii) The supply of children's mental health specialists in the county or counties covered by the local planning effort.

(b) A children's mental health services delivery plan that includes a description of the following:

(i) Children that will be served, giving consideration to children who are at significant risk of experiencing mental illness, as well as those already experiencing mental illness;

(ii) How appropriate services needed by children served through the plan will be identified and provided, including prevention and identification services;

(iii) How a lead case manager for each child will be identified;

(iv) How funding for existing services will be coordinated to create more flexibility in meeting children's needs. Such funding shall include the services and programs inventoried pursuant to *RCW 71.36.020(1);

(v) How the children's mental health delivery system will incorporate the elements of the early periodic screening, diagnosis, and treatment services plan developed pursuant to *RCW 71.36.020(2); and

(vi) How the children's mental health delivery system will coordinate with the regional support network information system developed pursuant to RCW 71.24.035(5)(g).

(5) In developing the children's mental health services delivery plan, every effort shall be made to reduce duplication in service delivery and promote complementary services among all entities that provide children's services related to mental health.

(6) The children's mental health services delivery plan shall address the needs of children of color through at least the following mechanisms:

(a) Outreach initiatives, services, and modes of service delivery that meet the unique needs of children of color; and

(b) Services to children of color that are culturally relevant and acceptable, as well as linguistically accessible. [1991 c 326 § 14.]

***Reviser's note:** RCW 71.36.020 was amended by 2003 c 281 § 4, deleting subsection (1) and changing subsection (2)(a) through (e) to subsections (1) through (5).

71.36.040 Issue identification, data collection, plan revision—Coordination with other state agencies. (1) The legislature supports recommendations made in the August 2002 study of the public mental health system for children conducted by the joint legislative audit and review committee.

(2) The department shall, within available funds:

(a) Identify internal business operation issues that limit the agency's ability to meet legislative intent to coordinate existing categorical children's mental health programs and funding;

(b) Collect reliable mental health cost, service, and outcome data specific to children. This information must be used to identify best practices and methods of improving fiscal management;

(c) Revise the early periodic screening diagnosis and treatment plan to reflect the mental health system structure in place on July 27, 2003, and thereafter revise the plan as necessary to conform to subsequent changes in the structure.

(3) The department and the office of the superintendent of public instruction shall jointly identify school districts where mental health and education systems coordinate services and resources to provide public mental health care for children. The department and the office of the superintendent of public instruction shall work together to share information about these approaches with other school districts, regional support networks, and state agencies. [2003 c 281 § 2.]

Legislative support affirmed—2003 c 281: "The legislature affirms its support for: Improving field-level cross-program collaboration and efficiency; collecting reliable mental health cost, service, and outcome data specific to children; revising the early periodic screening diagnosis and treatment plan to reflect the current mental health system structure; and identifying and promulgating the approaches used in school districts where mental

(2004 Ed.)

health and education systems coordinate services and resources to provide public mental health care for children." [2003 c 281 § 1.]

71.36.050 Report on implementation status. (Expires June 30, 2006.) (1) In addition to any follow-up requirements recommended by the joint legislative audit and review committee, the department of social and health services shall submit a report to the governor and the legislature on the status of the implementation of the recommendations provided in RCW 71.36.040(2) (a) through (c) and, in coordination with the office of the superintendent of public instruction, on RCW 71.36.040(3). An initial implementation status report must be submitted to the governor and appropriate policy and fiscal committees of the legislature by June 1, 2004. A final report shall be provided no later than June 1, 2006.

(2) This section expires June 30, 2006. [2003 c 281 § 3.]

Legislative support affirmed—2003 c 281: See note following RCW 71.36.040.

71.36.900 Part headings not law—1991 c 326. Part headings used in this act do not constitute any part of the law. [1991 c 326 § 17.]

71.36.901 Severability—1991 c 326. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1991 c 326 § 19.]

Chapter 71.98 RCW CONSTRUCTION

Sections

| | |
|-----------|--|
| 71.98.010 | Continuation of existing law. |
| 71.98.020 | Title, chapter, section headings not part of law. |
| 71.98.030 | Invalidity of part of title not to affect remainder. |
| 71.98.040 | Repeals and saving. |
| 71.98.050 | Emergency—1959 c 25. |

71.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 25 § 71.98.010.]

71.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 25 § 71.98.020.]

71.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1959 c 25 § 71.98.030.]

71.98.040 Repeals and saving. See 1959 c 25 § 71.98.040.

71.98.050 Emergency—1959 c 25. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1959 c 25 § 71.98.050.]

Title 71A

DEVELOPMENTAL DISABILITIES

Chapters

- 71A.10** General provisions.
- 71A.12** State services.
- 71A.14** Local services.
- 71A.16** Eligibility for services.
- 71A.18** Service delivery.
- 71A.20** Residential habilitation centers.
- 71A.22** Training centers and homes.

Chapter 71A.10 RCW GENERAL PROVISIONS

Sections

- 71A.10.010 Legislative finding—Intent—1988 c 176.
- 71A.10.011 Intent—1995 c 383.
- 71A.10.015 Declaration of policy.
- 71A.10.020 Definitions.
- 71A.10.030 Civil and parental rights not affected.
- 71A.10.040 Protection from discrimination.
- 71A.10.050 Appeal of department actions—Right to.
- 71A.10.060 Notice by secretary.
- 71A.10.070 Secretary's duty to consult.
- 71A.10.080 Governor to designate an agency to implement a program for protection and advocacy of the rights of persons with developmental disabilities and mentally ill persons—Authority of designated agency—Liaison with state agencies.
- 71A.10.800 Application of Title 71A RCW to matters pending as of June 9, 1988.
- 71A.10.805 Headings in Title 71A RCW not part of law.
- 71A.10.900 Severability—1988 c 176.
- 71A.10.901 Saving—1988 c 176.
- 71A.10.902 Continuation of existing law—1988 c 176.

71A.10.010 Legislative finding—Intent—1988 c 176.

The legislature finds that the statutory authority for the programs, policies, and services of the department of social and health services for persons with developmental disabilities often lack[s] clarity and contain[s] internal inconsistencies. In addition, existing authority is in several chapters of the code and frequently contains obsolete language not reflecting current use. The legislature declares that it is in the public interest to unify and update statutes for programs, policies, and services provided to persons with developmental disabilities.

The legislature intends to recodify the authority for the programs, policies, and services for persons with developmental disabilities. This recodification is not intended to affect existing programs, policies, and services, nor to establish any new program, policies, or services not otherwise authorized before June 9, 1988. The legislature intends to provide only those services authorized under state law before June 9, 1988, and only to the extent funds are provided by the legislature. [1988 c 176 § 1.]

71A.10.011 Intent—1995 c 383. The legislature recognizes that the emphasis of state developmental disability services is shifting from institutional-based care to community services in an effort to increase the personal and social inde-

pendence and fulfillment of persons with developmental disabilities, consistent with state policy as expressed in RCW 71A.10.015. It is the intent of the legislature that financial savings achieved from program reductions and efficiencies within the developmental disabilities program shall be redirected within the program to provide public or private community-based services for eligible persons who would otherwise be unidentified or unserved. [1995 c 383 § 1.]

71A.10.015 Declaration of policy. The legislature recognizes the capacity of all persons, including those with developmental disabilities, to be personally and socially productive. The legislature further recognizes the state's obligation to provide aid to persons with developmental disabilities through a uniform, coordinated system of services to enable them to achieve a greater measure of independence and fulfillment and to enjoy all rights and privileges under the Constitution and laws of the United States and the state of Washington. [1988 c 176 § 101.]

71A.10.020 Definitions. As used in this title, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Community residential support services," or "community support services," and "in-home services" means one or more of the services listed in RCW 71A.12.040.

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

(3) "Developmental disability" means a disability attributable to mental retardation, cerebral palsy, epilepsy, autism, or another neurological or other condition of an individual found by the secretary to be closely related to mental retardation or to require treatment similar to that required for individuals with mental retardation, which disability originates before the individual attains age eighteen, which has continued or can be expected to continue indefinitely, and which constitutes a substantial handicap to the individual. By January 1, 1989, the department shall promulgate rules which define neurological or other conditions in a way that is not limited to intelligence quotient scores as the sole determinant of these conditions, and notify the legislature of this action.

(4) "Eligible person" means a person who has been found by the secretary under RCW 71A.16.040 to be eligible for services.

(5) "Habilitative services" means those services provided by program personnel to assist persons in acquiring and maintaining life skills and to raise their levels of physical, mental, social, and vocational functioning. Habilitative services include education, training for employment, and therapy.

(6) "Legal representative" means a parent of a person who is under eighteen years of age, a person's legal guardian, a person's limited guardian when the subject matter is within

the scope of the limited guardianship, a person's attorney at law, a person's attorney in fact, or any other person who is authorized by law to act for another person.

(7) "Notice" or "notification" of an action of the secretary means notice in compliance with RCW 71A.10.060.

(8) "Residential habilitation center" means a state-operated facility for persons with developmental disabilities governed by chapter 71A.20 RCW.

(9) "Secretary" means the secretary of social and health services or the secretary's designee.

(10) "Service" or "services" means services provided by state or local government to carry out this title.

(11) "Vacancy" means an opening at a residential habilitation center, which when filled, would not require the center to exceed its biannually [biennially] budgeted capacity. [1998 c 216 § 2; 1988 c 176 § 102.]

Effective date—1998 c 216: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 30, 1998]." [1998 c 216 § 10.]

71A.10.030 Civil and parental rights not affected. (1)

The existence of developmental disabilities does not affect the civil rights of the person with the developmental disability except as otherwise provided by law.

(2) The secretary's determination under RCW 71A.16.040 that a person is eligible for services under this title shall not deprive the person of any civil rights or privileges. The secretary's determination alone shall not constitute cause to declare the person to be legally incompetent.

(3) This title shall not be construed to deprive the parent or parents of any parental rights with relation to a child residing in a residential habilitation center, except as provided in this title for the orderly operation of such residential habilitation centers. [1988 c 176 § 103.]

71A.10.040 Protection from discrimination. Persons are protected from discrimination because of a developmental disability as well as other mental or physical handicaps by the law against discrimination, chapter 49.60 RCW, by other state and federal statutes, rules, and regulations, and by local ordinances, when the persons qualify as handicapped under those statutes, rules, regulations, and ordinances. [1988 c 176 § 104.]

71A.10.050 Appeal of department actions—Right to.

(1) An applicant or recipient or former recipient of a developmental disabilities service under this title from the department of social and health services has the right to appeal the following department actions:

(a) A denial of an application for eligibility under RCW 71A.16.040;

(b) An unreasonable delay in acting on an application for eligibility, for a service, or for an alternative service under RCW 71A.18.040;

(c) A denial, reduction, or termination of a service;

(d) A claim that the person owes a debt to the state for an overpayment;

(e) A disagreement with an action of the secretary under RCW 71A.10.060 or 71A.10.070;

(f) A decision to return a resident of an [a] habilitation center to the community; and

(g) A decision to change a person's placement from one category of residential services to a different category of residential services.

The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW.

(2) This subsection applies only to an adjudicative proceeding in which the department action appealed is a decision to return a resident of a habilitation center to the community. The resident or his or her representative may appeal on the basis of whether the specific placement decision is in the best interests of the resident. When the resident or his or her representative files an application for an adjudicative proceeding under this section the department has the burden of proving that the specific placement decision is in the best interests of the resident.

(3) When the department takes any action described in subsection (1) of this section it shall give notice as provided by RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding and the time limits for filing an application for an adjudicative proceeding. Notice of a decision to return a resident of a habilitation center to the community under RCW 71A.20.080 must also include a statement advising the recipient of the right to file a petition for judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW. [1989 c 175 § 138; 1988 c 176 § 105.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.10.060 Notice by secretary. (1) Whenever this title requires the secretary to give notice, the secretary shall give notice to the person with a developmental disability and, except as provided in subsection (3) of this section, to at least one other person. The other person shall be the first person known to the secretary in the following order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) A person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) Notice to a person with a developmental disability shall be given in a way that the person is best able to understand. This can include reading or explaining the materials to the person.

(3) A person with a developmental disability may in writing request the secretary to give notice only to that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in subsections (1) and (2) of this section. On filing an application with the secretary

within thirty days of receipt of the notice, the person who made the request has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(4) The giving of notice to a person under this title does not empower the person who is given notice to take any action or give any consent. [1989 c 175 § 139; 1988 c 176 § 106.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.10.070 Secretary's duty to consult. (1) Whenever this title places on the secretary the duty to consult, the secretary shall carry out that duty by consulting with the person with a developmental disability and, except as provided in subsection (2) of this section, with at least one other person. The other person shall be in order of priority:

(a) A legal representative of the person with a developmental disability;

(b) A parent of a person with a developmental disability who is eighteen years of age or older;

(c) Other kin of the person with a developmental disability, with preference to persons with the closest kinship;

(d) The Washington protection and advocacy system for the rights of persons with developmental disabilities, appointed in compliance with 42 U.S.C. Sec. 6042; or

(e) Any other person who is not an employee of the department or of a person who contracts with the department under this title who, in the opinion of the secretary, will be concerned with the welfare of the person.

(2) A person with a developmental disability may in writing request the secretary to consult only with that person. The secretary shall comply with that direction unless the secretary denies the request because the person may be at risk of losing rights if the secretary complies with the request. The secretary shall give notice as provided in RCW 71A.10.060 when a request is denied. On filing an application with the secretary within thirty days of receipt of the notice, the person who made the request has the right to an adjudicative proceeding under RCW 71A.10.050 on the secretary's decision.

(3) Consultation with a person under this section does not authorize the person who is consulted to take any action or give any consent. [1989 c 175 § 140; 1988 c 176 § 107.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.10.080 Governor to designate an agency to implement a program for protection and advocacy of the rights of persons with developmental disabilities and mentally ill persons—Authority of designated agency—Liaison with state agencies. (1) The governor shall designate an agency to implement a program for the protection and advocacy of the rights of persons with developmental disabilities pursuant to the developmentally disabled assistance and bill of rights act, 89 Stat. 486; 42 U.S.C. Secs. 6000-6083 (1975), (as amended). The designated agency shall have the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of the developmentally disabled and to investigate allegations of abuse and neglect. The designated agency shall be independent of any state agency that provides treatment or services other than advocacy services to persons with developmental disabilities.

(2) The agency designated under subsection (1) of this section shall implement a program for the protection and advocacy of the rights of mentally ill persons pursuant to the protection and advocacy for mentally ill individuals act of 1986, 100 Stat. 478; 42 U.S.C. Secs. 10801-10851 (1986), (as amended). The designated agency shall have the authority to pursue legal, administrative, and other appropriate remedies to protect the rights of mentally ill persons and to investigate allegations of abuse or neglect of mentally ill persons. The designated agency shall be independent of any state agency that provides treatment or services other than advocacy services to mentally ill persons.

(3) The governor shall designate an appropriate state official to serve as liaison between the agency designated to implement the protection and advocacy programs and the state departments and agencies that provide services to persons with developmental disabilities and mentally ill persons. [1991 c 333 § 1.]

71A.10.800 Application of Title 71A RCW to matters pending as of June 9, 1988. Except as provided in RCW 71A.10.901, this title shall govern:

(1) The continued provision of services to persons with developmental disabilities who are receiving services on June 9, 1988.

(2) The disposition of hearings, lawsuits, or appeals that are pending on June 9, 1988.

(3) All other questions or matters covered by this title, from June 9, 1988. [1988 c 176 § 1008.]

71A.10.805 Headings in Title 71A RCW not part of law. Title headings, chapter headings, and section headings used in this title do not constitute any part of the law. [1988 c 176 § 1002.]

71A.10.900 Severability—1988 c 176. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1988 c 176 § 1003.]

71A.10.901 Saving—1988 c 176. The repeals made by sections 1005 through 1007, chapter 176, Laws of 1988, shall not be construed as affecting any existing right, status, or eligibility for services acquired under the provisions of the statutes repealed, nor as affecting the validity of any rule or order promulgated under the prior statutes, nor as affecting the status of any person appointed or employed under the prior statutes. [1988 c 176 § 1004.]

71A.10.902 Continuation of existing law—1988 c 176. Insofar as provisions of this title are substantially the same as provisions of the statutes repealed by sections 1005, 1006, and 1007, chapter 176, Laws of 1988, the provisions of this title shall be construed as restatements and continuations of the prior law, and not as new enactments. [1988 c 176 § 1001.]

Chapter 71A.12 RCW
STATE SERVICES

Sections

| | |
|------------|--|
| 71A.12.010 | State and local program—Coordination—Continuum. |
| 71A.12.020 | Objectives of program. |
| 71A.12.030 | General authority of secretary—Rule adoption. |
| 71A.12.040 | Authorized services. |
| 71A.12.050 | Payments for nonresidential services. |
| 71A.12.060 | Payment authorized for residents in community residential programs. |
| 71A.12.070 | Payments under RCW 71A.12.060 supplemental to payments from other resources—Direct payments. |
| 71A.12.080 | Rules. |
| 71A.12.090 | Eligibility of parent for services. |
| 71A.12.100 | Other services. |
| 71A.12.110 | Authority to contract for services. |
| 71A.12.120 | Authority to participate in federal programs. |
| 71A.12.130 | Gifts—Acceptance, use, record. |
| 71A.12.140 | Duties of state agencies generally. |
| 71A.12.150 | Contracts with United States and other states for developmental disability services. |

71A.12.010 State and local program—Coordination—Continuum. It is declared to be the policy of the state to authorize the secretary to develop and coordinate state services for persons with developmental disabilities; to encourage research and staff training for state and local personnel working with persons with developmental disabilities; and to cooperate with communities to encourage the establishment and development of services to persons with developmental disabilities through locally administered and locally controlled programs.

The complexities of developmental disabilities require the services of many state departments as well as those of the community. Services should be planned and provided as a part of a continuum. A pattern of facilities and services should be established, within appropriations designated for this purpose, which is sufficiently complete to meet the needs of each person with a developmental disability regardless of age or degree of handicap, and at each stage of the person's development. [1988 c 176 § 201.]

71A.12.020 Objectives of program. (1) To the extent that state, federal, or other funds designated for services to persons with developmental disabilities are available, the secretary shall provide every eligible person with habilitative services suited to the person's needs, regardless of age or degree of developmental disability.

(2) The secretary shall provide persons who receive services with the opportunity for integration with nonhandicapped and less handicapped persons to the greatest extent possible.

(3) The secretary shall establish minimum standards for habilitative services. Consumers, advocates, service providers, appropriate professionals, and local government agencies shall be involved in the development of the standards. [1988 c 176 § 202.]

71A.12.030 General authority of secretary—Rule adoption. The secretary is authorized to provide, or arrange with others to provide, all services and facilities that are necessary or appropriate to accomplish the purposes of this title, and to take all actions that are necessary or appropriate to accomplish the purposes of this title. The secretary shall adopt rules under the administrative procedure act, chapter

34.05 RCW, as are appropriate to carry out this title. [1988 c 176 § 203.]

71A.12.040 Authorized services. Services that the secretary may provide or arrange with others to provide under this title include, but are not limited to:

- (1) Architectural services;
- (2) Case management services;
- (3) Early childhood intervention;
- (4) Employment services;
- (5) Family counseling;
- (6) Family support;
- (7) Information and referral;
- (8) Health services and equipment;
- (9) Legal services;
- (10) Residential services and support;
- (11) Respite care;
- (12) Therapy services and equipment;
- (13) Transportation services; and
- (14) Vocational services. [1988 c 176 § 204.]

71A.12.050 Payments for nonresidential services. The secretary may make payments for nonresidential services which exceed the cost of caring for an average individual at home, and which are reasonably necessary for the care, treatment, maintenance, support, and training of persons with developmental disabilities, upon application pursuant to RCW 71A.18.050. The secretary shall adopt rules determining the extent and type of care and training for which the department will pay all or a portion of the costs. [1988 c 176 § 205.]

71A.12.060 Payment authorized for residents in community residential programs. The secretary is authorized to pay for all or a portion of the costs of care, support, and training of residents of a residential habilitation center who are placed in community residential programs under this section and RCW 71A.12.070 and 71A.12.080. [1988 c 176 § 206.]

71A.12.070 Payments under RCW 71A.12.060 supplemental to payments from other resources—Direct payments. All payments made by the secretary under RCW 71A.12.060 shall, insofar as reasonably possible, be supplementary to payments to be made for the costs of care, support, and training in a community residential program by the estate of such resident of the residential habilitation center, or from any resource which such resident may have, or become entitled to, from any public, federal, or state agency. Payments by the secretary under this title may, in the secretary's discretion, be paid directly to community residential programs, or to counties having created developmental disability boards under chapter 71A.14 RCW. [1988 c 176 § 207.]

71A.12.080 Rules. (1) The secretary shall adopt rules concerning the eligibility of residents of residential habilitation centers for placement in community residential programs under this title; determination of ability of such persons or their estates to pay all or a portion of the cost of care, support, and training; the manner and method of licensing or certifica-

tion and inspection and approval of such community residential programs for placement under this title; and procedures for the payment of costs of care, maintenance, and training in community residential programs. The rules shall include standards for care, maintenance, and training to be met by such community residential programs.

(2) The secretary shall coordinate state activities and resources relating to placement in community residential programs to help efficiently expend state and local resources and, to the extent designated funds are available, create an effective community residential program. [1988 c 176 § 208.]

71A.12.090 Eligibility of parent for services. If a person with developmental disabilities is the parent of a child who is about to be placed for adoption or foster care by the secretary, the parent shall be eligible to receive services in order to promote the integrity of the family unit. [1988 c 176 § 209.]

71A.12.100 Other services. Consistent with the general powers of the secretary and whether or not a particular person with a developmental disability is involved, the secretary may:

(1) Provide information to the public on developmental disabilities and available services;

(2) Engage in research concerning developmental disabilities and the habilitation of persons with developmental disabilities, and cooperate with others who do such research;

(3) Provide consultant services to public and private agencies to promote and coordinate services to persons with developmental disabilities;

(4) Provide training for persons in state or local governmental agencies or with private entities who come in contact with persons with developmental disabilities or who have a role in the care or habilitation of persons with developmental disabilities. [1988 c 176 § 210.]

71A.12.110 Authority to contract for services. (1) The secretary may enter into agreements with any person, corporation, or governmental entity to pay the contracting party to perform services that the secretary is authorized to provide under this title, except for operation of residential habilitation centers under chapter 71A.20 RCW.

(2) The secretary by contract or by rule may impose standards for services contracted for by the secretary. [1988 c 176 § 211.]

71A.12.120 Authority to participate in federal programs. (1) The governor may take whatever action is necessary to enable the state to participate in the manner set forth in this title in any programs provided by any federal law and to designate state agencies authorized to administer within this state the several federal acts providing federal moneys to assist in providing services and training at the state or local level for persons with developmental disabilities and for persons who work with persons with developmental disabilities.

(2) Designated state agencies may apply for and accept and disburse federal grants, matching funds, or other funds or gifts or donations from any source available for use by the

state or by local government to provide more adequate services for and habilitation of persons with developmental disabilities. [1988 c 176 § 212.]

71A.12.130 Gifts—Acceptance, use, record. The secretary may receive and accept from any person, organization, or estate gifts of money or personal property on behalf of a residential habilitation center, or the residents therein, or on behalf of the entire program for persons with developmental disabilities, or any part of the program, and to use the gifts for the purposes specified by the donor where such use is consistent with law. In the absence of a specified purpose, the secretary shall use such money or personal property for the general benefit of persons with developmental disabilities. The secretary shall keep an accurate record of the amount or kind of gift, the date received, manner expended, and the name and address of the donor. Any increase resulting from such gift may be used for the same purpose as the original gift. [1988 c 176 § 213.]

71A.12.140 Duties of state agencies generally. Each state agency that administers federal or state funds for services to persons with developmental disabilities, or for research or staff training in the field of developmental disabilities, shall:

(1) Investigate and determine the nature and extent of services within its legal authority that are presently available to persons with developmental disabilities in this state;

(2) Develop and prepare any state plan or application which may be necessary to establish the eligibility of the state or any community to participate in any program established by the federal government relating to persons with developmental disabilities;

(3) Cooperate with other state agencies providing services to persons with developmental disabilities to determine the availability of services and facilities within the state, and to coordinate state and local services in order to maximize services to persons with developmental disabilities and their families;

(4) Review and approve any proposed plans that local governments are required to submit for the expenditure of funds by local governments for services to persons with developmental disabilities; and

(5) Provide consultant and staff training for state and local personnel working in the field of developmental disability. [1988 c 176 § 214.]

71A.12.150 Contracts with United States and other states for developmental disability services. The secretary shall have the authority, in the name of the state, to enter into contracts with any duly authorized representative of the United States of America, or its territories, or other states for the provision of services under this title at the expense of the United States, its territories, or other states. The contracts may provide for the separate or joint maintenance, care, treatment, training, or education of persons. The contracts shall provide that all payments due to the state of Washington from the United States, its territories, or other states for services rendered under the contracts shall be paid to the department

and transmitted to the state treasurer for deposit in the general fund. [1988 c 176 § 215.]

Chapter 71A.14 RCW LOCAL SERVICES

Sections

- 71A.14.010 Coordinated and comprehensive state and local program.
- 71A.14.020 County developmental disability boards—Composition—Expenses.
- 71A.14.030 County authorities—State fund eligibility—Rules—Application.
- 71A.14.040 Applications for state funds—Review—Approval—Rules.
- 71A.14.050 Services to community may be required.
- 71A.14.060 Local authority to provide services.
- 71A.14.070 Confidentiality of information—Oath.
- 71A.14.080 Local authority to receive and spend funds.
- 71A.14.090 Local authority to participate in federal programs.
- 71A.14.100 Funds from tax levy under RCW 71.20.110.
- 71A.14.110 Contracts by boundary counties or cities in boundary counties.

71A.14.010 Coordinated and comprehensive state and local program. The legislative policy to provide a coordinated and comprehensive state and local program of services for persons with developmental disability is expressed in RCW 71A.12.010. [1988 c 176 § 301.]

71A.14.020 County developmental disability boards—Composition—Expenses. (1) The county governing authority of any county may appoint a developmental disability board to plan services for persons with developmental disabilities, to provide directly or indirectly a continuum of care and services to persons with developmental disabilities within the county or counties served by the community board. The governing authorities of more than one county by joint action may appoint a single developmental disability board. Nothing in this section shall prohibit a county or counties from combining the developmental disability board with another county board, such as a mental health board.

(2) Members appointed to the board shall include but not be limited to representatives of public, private, or voluntary agencies, representatives of local governmental units, and citizens knowledgeable about developmental disabilities or interested in services to persons with developmental disabilities in the community.

(3) The board shall consist of not less than nine nor more than fifteen members.

(4) Members shall be appointed for terms of three years and until their successors are appointed and qualified.

(5) The members of the developmental disability board shall not be compensated for the performance of their duties as members of the board, but may be paid subsistence rates and mileage in the amounts prescribed by RCW 42.24.090. [1988 c 176 § 302.]

71A.14.030 County authorities—State fund eligibility—Rules—Application. Pursuant to RCW 71A.14.040 the secretary shall work with the county governing authorities and developmental disability boards who apply for state funds to coordinate and provide local services for persons with developmental disabilities and their families. The secretary is authorized to promulgate rules establishing the eligibility of each county and the developmental disability board

for state funds to be used for the work of the board in coordinating and providing services to persons with developmental disabilities and their families. An application for state funds shall be made by the board with the approval of the county governing authority, or by the county governing authority on behalf of the board. [1988 c 176 § 303.]

71A.14.040 Applications for state funds—Review—Approval—Rules. The secretary shall review the applications from the county governing authority made under RCW 71A.14.030. The secretary may approve an application if it meets the requirements of this chapter and the rules promulgated by the secretary. The secretary shall promulgate rules to assist in determining the amount of the grant. In promulgating the rules, the secretary shall consider the population of the area served, the needs of the area, and the ability of the community to provide funds for the developmental disability program provided in this title. [1988 c 176 § 304.]

71A.14.050 Services to community may be required. The department may require by rule that in order to be eligible for state funds, the county and the developmental disability board shall provide the following indirect services to the community:

(1) Serve as an informational and referral agency within the community for persons with developmental disabilities and their families;

(2) Coordinate all local services for persons with developmental disabilities and their families to insure the maximum utilization of all available services;

(3) Prepare comprehensive plans for present and future development of services and for reasonable progress toward the coordination of all local services to persons with developmental disabilities. [1988 c 176 § 305.]

71A.14.060 Local authority to provide services. The secretary by rule may authorize the county and the developmental disability board to provide any service for persons with developmental disabilities that the department is authorized to provide, except for operating residential habilitation centers under chapter 71A.20 RCW. [1988 c 176 § 306.]

71A.14.070 Confidentiality of information—Oath. In order for the developmental disability board to plan, coordinate, and provide required services for persons with developmental disabilities, the county governing authority and the board shall be eligible to obtain such confidential information from public or private schools and the department as is necessary to accomplish the purposes of this chapter. Such information shall be kept in accordance with state law and rules promulgated by the secretary under chapter 34.05 RCW to permit the use of the information to coordinate and plan services. All persons permitted to have access to or to use such information shall sign an oath of confidentiality, substantially as follows:

"As a condition of obtaining information from (fill in facility, agency, or person) I,, agree not to divulge, publish, or otherwise make known to unauthorized persons or the public any information obtained in the course of using such confidential information, where release of such infor-

mation may possibly make the person who received such services identifiable. I recognize that unauthorized release of confidential information may subject me to civil liability under state law."

[1988 c 176 § 307.]

71A.14.080 Local authority to receive and spend funds. The county governing authority and the developmental disability board created under RCW 71A.14.020 are authorized to receive and spend funds received from the state under this chapter, or any federal funds received through any state agency, or any gifts or donations received by it for the benefit of persons with developmental disabilities. [1988 c 176 § 308.]

71A.14.090 Local authority to participate in federal programs. RCW 71A.12.120 authorizes local governments to participate in federal programs for persons with developmental disabilities. [1988 c 176 § 309.]

71A.14.100 Funds from tax levy under RCW 71.20.110. Counties are authorized by RCW 71.20.110 to fund county activities under this chapter. Expenditures of county funds under this chapter shall be subject to the provisions of chapter 36.40 RCW and other statutes relating to expenditures by counties. [1988 c 176 § 310.]

71A.14.110 Contracts by boundary counties or cities in boundary counties. Any county or city within a county either of which is situated on the state boundaries is authorized to contract for developmental disability services with a county situated in either the states of Oregon or Idaho, which county is located on boundaries with the state of Washington. [1988 c 176 § 311.]

Chapter 71A.16 RCW

ELIGIBILITY FOR SERVICES

Sections

| | |
|------------|---|
| 71A.16.010 | Referral for services—Admittance to residential habilitation centers—Expiration of subsections. |
| 71A.16.020 | Eligibility for services—Rules. |
| 71A.16.030 | Outreach program—Determination of eligibility for services—Application. |
| 71A.16.040 | Determination of eligibility—Notice—Rules for redetermination. |
| 71A.16.050 | Determination of eligibility—Effect—Determination of appropriate services. |

71A.16.010 Referral for services—Admittance to residential habilitation centers—Expiration of subsections. (1) It is the intention of the legislature in this chapter to establish a single point of referral for persons with developmental disabilities and their families so that they may have a place of entry and continuing contact for services authorized under this title to persons with developmental disabilities. Eligible persons with developmental disabilities, whether they live in the community or residential habilitation centers, should have the opportunity to choose where they live.

(2004 Ed.)

(2) Until June 30, 2003, and subject to subsection (3) of this section, if there is a vacancy in a residential habilitation center, the department shall offer admittance to the center to any eligible adult, or eligible adolescent on an exceptional case-by-case basis, with developmental disabilities if his or her assessed needs require the funded level of resources that are provided by the center.

(3) The department shall not offer a person admittance to a residential habilitation center under subsection (2) of this section unless the department also offers the person appropriate community support services listed in RCW 71A.12.040.

(4) Community support services offered under subsection (3) of this section may only be offered using funds specifically designated for this purpose in the state operating budget. When these funds are exhausted, the department may not offer admittance to a residential habilitation center, or community support services under this section.

(5) Nothing in this section shall be construed to create an entitlement to state services for persons with developmental disabilities.

(6) Subsections (2) through (6) of this section expire June 30, 2003. [1998 c 216 § 3; 1988 c 176 § 401.]

Effective date—1998 c 216: See note following RCW 71A.10.020.

71A.16.020 Eligibility for services—Rules. (1) A person is eligible for services under this title if the secretary finds that the person has a developmental disability as defined in *RCW 71A.10.020(2).

(2) The secretary may adopt rules further defining and implementing the criteria in the definition of "developmental disability" under *RCW 71A.10.020(2). [1988 c 176 § 402.]

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

71A.16.030 Outreach program—Determination of eligibility for services—Application. (1) The department will develop an outreach program to ensure that any eligible person with developmental disabilities services in homes, the community, and residential habilitation centers will be made aware of these services. This subsection (1) expires June 30, 2003.

(2) The secretary shall establish a single procedure for persons to apply for a determination of eligibility for services provided to persons with developmental disabilities.

(3) Until June 30, 2003, the procedure set out under subsection (1) of this section must require that all applicants and all persons with developmental disabilities currently receiving services from the division of developmental disabilities within the department be given notice of the existence and availability of residential habilitation center and community support services. For genuine choice to exist, people must know what the options are. Available options must be clearly explained, with services customized to fit the unique needs and circumstances of developmentally disabled clients and their families. Choice of providers and design of services and supports will be determined by the individual in conjunction with the department. When the person cannot make these choices, the person's legal guardian may make them, consistent with chapter 11.88 or 11.92 RCW. This subsection expires June 30, 2003.

(4) An application may be submitted by a person with a developmental disability, by the legal representative of a person with a developmental disability, or by any other person who is authorized by rule of the secretary to submit an application. [1998 c 216 § 4; 1988 c 176 § 403.]

Effective date—1998 c 216: See note following RCW 71A.10.020.

71A.16.040 Determination of eligibility—Notice—Rules for redetermination. (1) On receipt of an application for services submitted under RCW 71A.16.030, the secretary in a timely manner shall make a written determination as to whether the applicant is eligible for services provided under this title for persons with developmental disabilities.

(2) The secretary shall give notice of the secretary's determination on eligibility to the person who submitted the application and to the applicant, if the applicant is a person other than the person who submitted the application for services. The notice shall also include a statement advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the right to judicial review of the secretary's final decision.

(3) The secretary may establish rules for redetermination of eligibility for services under this title. [1989 c 175 § 141; 1988 c 176 § 404.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.16.050 Determination of eligibility—Effect—Determination of appropriate services. The determination made under this chapter is only as to whether a person is eligible for services. After the secretary has determined under this chapter that a person is eligible for services, the secretary shall make a determination as to what services are appropriate for the person. [1988 c 176 § 405.]

Chapter 71A.18 RCW SERVICE DELIVERY

Sections

| | |
|------------|---|
| 71A.18.010 | Individual service plans. |
| 71A.18.020 | Services provided if funds available. |
| 71A.18.030 | Rejection of service. |
| 71A.18.040 | Alternative service—Application—Determination—Reauthorization—Notice. |
| 71A.18.050 | Discontinuance of a service. |

71A.18.010 Individual service plans. The secretary may produce and maintain an individual service plan for each eligible person. An individual service plan is a plan that identifies the needs of a person for services and determines what services will be in the best interests of the person and will meet the person's needs. [1988 c 176 § 501.]

71A.18.020 Services provided if funds available. The secretary may provide a service to a person eligible under this title if funds are available. If there is an individual service plan, the secretary shall consider the need for services as provided in that plan. [1988 c 176 § 601.]

71A.18.030 Rejection of service. An eligible person or the person's legal representative may reject an authorized service. Rejection of an authorized service shall not affect the

person's eligibility for services and shall not eliminate the person from consideration for other services or for the same service at a different time or under different circumstances. [1988 c 176 § 602.]

71A.18.040 Alternative service—Application—Determination—Reauthorization—Notice. (1) A person who is receiving a service under this title or the person's legal representative may request the secretary to authorize a service that is available under this title in place of a service that the person is presently receiving.

(2) The secretary upon receiving a request for change of service shall consult in the manner provided in RCW 71A.10.070 and within ninety days shall determine whether the following criteria are met:

(a) The alternative plan proposes a less dependent program than the person is participating in under current service;

(b) The alternative service is appropriate under the goals and objectives of the person's individual service plan;

(c) The alternative service is not in violation of applicable state and federal law; and

(d) The service can reasonably be made available.

(3) If the requested alternative service meets all of the criteria of subsection (2) of this section, the service shall be authorized as soon as reasonable, but not later than one hundred twenty days after completion of the determination process, unless the secretary determines that:

(a) The alternative plan is more costly than the current plan;

(b) Current appropriations are not sufficient to implement the alternative service without reducing services to existing clients; or

(c) Providing alternative service would take precedence over other priorities for delivery of service.

(4) The secretary shall give notice as provided in RCW 71A.10.060 of the grant of a request for a change of service. The secretary shall give notice as provided in RCW 71A.10.060 of denial of a request for change of service and of the right to an adjudicative proceeding.

(5) When the secretary has changed service from a residential habilitation center to a setting other than a residential habilitation center, the secretary shall reauthorize service at the residential habilitation center if the secretary in reevaluating the needs of the person finds that the person needs service in a residential habilitation center.

(6) If the secretary determines that current appropriations are sufficient to deliver additional services without reducing services to persons who are presently receiving services, the secretary is authorized to give persons notice under RCW 71A.10.060 that they may request the services as new services or as changes of services under this section. [1989 c 175 § 142; 1988 c 176 § 603.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.18.050 Discontinuance of a service. (1) When considering the discontinuance of a service that is being provided to a person, the secretary shall consult as required in RCW 71A.10.070.

(2) The discontinuance of a service under this section does not affect the person's eligibility for services. Other ser-

vices may be provided or the same service may be restored when it is again available or when it is again needed.

(3) Except when the service is discontinued at the request of the person receiving the service or that person's legal representative, the secretary shall give notice as required in RCW 71A.10.060. [1988 c 176 § 604.]

Chapter 71A.20 RCW

RESIDENTIAL HABILITATION CENTERS

Sections

| | |
|------------|---|
| 71A.20.010 | Scope of chapter. |
| 71A.20.020 | Residential habilitation centers. |
| 71A.20.030 | Facilities for Interlake School. |
| 71A.20.040 | Use of Harrison Memorial Hospital property. |
| 71A.20.050 | Superintendents—Secretary's custody of residents. |
| 71A.20.060 | Work programs for residents. |
| 71A.20.070 | Educational programs. |
| 71A.20.080 | Return of resident to community—Notice—Adjudicative proceeding—Judicial review—Effect of appeal. |
| 71A.20.090 | Secretary to determine capacity of residential quarters. |
| 71A.20.100 | Personal property of resident—Secretary as custodian—Limitations—Judicial proceedings to recover. |
| 71A.20.110 | Clothing for residents—Cost. |
| 71A.20.120 | Financial responsibility. |
| 71A.20.130 | Death of resident, payment of funeral expenses—Limitation. |
| 71A.20.140 | Resident desiring to leave center—Authority to hold resident limited. |
| 71A.20.150 | Admission to residential habilitation center for observation. |
| 71A.20.800 | Chapter to be liberally construed. |

71A.20.010 Scope of chapter. This chapter covers the operation of residential habilitation centers. The selection of persons to be served at the centers is governed by chapters 71A.16 and 71A.18 RCW. The purposes of this chapter are: To provide for those children and adults who are exceptional in their needs for care, treatment, and education by reason of developmental disabilities, residential care designed to develop their individual capacities to their optimum; to provide for admittance, withdrawal and discharge from state residential habilitation centers upon application; and to insure a comprehensive program for the education, guidance, care, treatment, and rehabilitation of all persons admitted to residential habilitation centers. [1988 c 176 § 701.]

71A.20.020 Residential habilitation centers. The following residential habilitation centers are permanently established to provide services to persons with developmental disabilities: Lakeland Village, located at Medical Lake, Spokane county; Rainier School, located at Buckley, Pierce county; Yakima Valley School, located at Selah, Yakima county; Fircrest School, located at Seattle, King county; and Frances Haddon Morgan Children's Center, located at Bremerton, Kitsap county. [1994 c 215 § 1; 1988 c 176 § 702.]

Effective date—1994 c 215: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 1, 1994]." [1994 c 215 § 3.]

71A.20.030 Facilities for Interlake School. (1) The secretary may use surplus physical facilities at Eastern State Hospital as a residential habilitation center, which shall be known as the "Interlake School."

(2) The secretary may designate and select such buildings and facilities and tracts of land at Eastern State Hospital

that are surplus to the needs of the department for mentally ill persons and that are reasonably necessary and adequate for services for persons with developmental disabilities. The secretary shall also designate those buildings, equipment, and facilities which are to be used jointly and mutually by both Eastern State Hospital and Interlake School. [1988 c 176 § 703.]

71A.20.040 Use of Harrison Memorial Hospital property. The secretary may under RCW 72.29.010 use the Harrison Memorial Hospital property at Bremerton, Kitsap county, for services to persons with developmental disabilities. [1988 c 176 § 704.]

71A.20.050 Superintendents—Secretary's custody of residents. (1) The secretary shall appoint a superintendent for each residential habilitation center. The superintendent of a residential habilitation center shall have a demonstrated history of knowledge, understanding, and compassion for the needs, treatment, and training of persons with developmental disabilities.

(2) The secretary shall have custody of all residents of the residential habilitation centers and control of the medical, educational, therapeutic, and dietetic treatment of all residents, except that the school district that conducts the program of education provided pursuant to RCW 28A.190.030 through 28A.190.050 shall have control of and joint custody of residents while they are participating in the program. The secretary shall cause surgery to be performed on any resident only upon gaining the consent of a parent, guardian, or limited guardian as authorized, except, if after reasonable effort to locate the parents, guardian, or limited guardian as authorized, and the health of the resident is certified by the attending physician to be jeopardized unless such surgery is performed, the required consent shall not be necessary. [1990 c 33 § 589; 1988 c 176 § 705.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

71A.20.060 Work programs for residents. The secretary shall have authority to engage the residents of a residential habilitation center in beneficial work programs, but the secretary shall not engage residents in excessive hours of work or work for disciplinary purposes. [1988 c 176 § 706.]

71A.20.070 Educational programs. (1) An educational program shall be created and maintained for each residential habilitation center pursuant to RCW 28A.190.030 through 28A.190.050. The educational program shall provide a comprehensive program of academic, vocational, recreational, and other educational services best adapted to meet the needs and capabilities of each resident.

(2) The superintendent of public instruction shall assist the secretary in all feasible ways, including financial aid, so that the educational programs maintained within the residential habilitation centers are comparable to the programs advocated by the superintendent of public instruction for children with similar aptitudes in local school districts.

(3) Within available resources, the secretary shall, upon request from a local school district, provide such clinical,

counseling, and evaluating services as may assist the local district lacking such professional resources in determining the needs of its exceptional children. [1990 c 33 § 590; 1988 c 176 § 707.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

71A.20.080 Return of resident to community—Notice—Adjudicative proceeding—Judicial review—Effect of appeal. Whenever in the judgment of the secretary, the treatment and training of any resident of a residential habilitation center has progressed to the point that it is deemed advisable to return such resident to the community, the secretary may grant placement on such terms and conditions as the secretary may deem advisable after consultation in the manner provided in RCW 71A.10.070. The secretary shall give written notice of the decision to return a resident to the community as provided in RCW 71A.10.060. The notice must include a statement advising the recipient of the right to an adjudicative proceeding under RCW 71A.10.050 and the time limits for filing an application for an adjudicative proceeding. The notice must also include a statement advising the recipient of the right to judicial review of an adverse adjudicative order as provided in chapter 34.05 RCW.

A placement decision shall not be implemented at any level during any period during which an appeal can be taken or while an appeal is pending and undecided, unless authorized by court order so long as the appeal is being diligently pursued.

The department of social and health services shall periodically evaluate at reasonable intervals the adjustment of the resident to the specific placement to determine whether the resident should be continued in the placement or returned to the institution or given a different placement. [1989 c 175 § 143; 1988 c 176 § 708.]

Effective date—1989 c 175: See note following RCW 34.05.010.

71A.20.090 Secretary to determine capacity of residential quarters. The secretary shall determine by the application of proper criteria the maximum number of persons to reside in the residential quarters of each residential habilitation center. The secretary in authorizing service at a residential habilitation center shall not exceed the maximum population for the residential habilitation center unless the secretary makes a written finding of reasons for exceeding the rated capacity. [1988 c 176 § 709.]

71A.20.100 Personal property of resident—Secretary as custodian—Limitations—Judicial proceedings to recover. The secretary shall serve as custodian without compensation of personal property of a resident of a residential habilitation center that is located at the residential habilitation center, including moneys deposited with the secretary for the benefit of the resident. As custodian, the secretary shall have authority to disburse moneys from the resident's fund for the following purposes and subject to the following limitations:

(1) Subject to specific instructions by a donor of money to the secretary for the benefit of a resident, the secretary may disburse any of the funds belonging to a resident for such per-

sonal needs of the resident as the secretary may deem proper and necessary.

(2) The secretary may pay to the department as reimbursement for the costs of care, support, maintenance, treatment, hospitalization, medical care, and habilitation of a resident from the resident's fund when such fund exceeds a sum as established by rule of the department, to the extent of any notice and finding of financial responsibility served upon the secretary after such findings shall have become final. If the resident does not have a guardian, parent, spouse, or other person acting in a representative capacity, upon whom notice and findings of financial responsibility have been served, then the secretary shall not make payments to the department as provided in this subsection, until a guardian has been appointed by the court, and the time for the appeal of findings of financial responsibility as provided in RCW 43.20B.430 shall not commence to run until the appointment of such guardian and the service upon the guardian of notice and findings of financial responsibility.

(3) When services to a person are changed from a residential center to another setting, the secretary shall deliver to the person, or to the parent, guardian, or agency legally responsible for the person, all or such portion of the funds of which the secretary is custodian as defined in this section, or other property belonging to the person, as the secretary may deem necessary to the person's welfare, and the secretary may deliver to the person such additional property or funds belonging to the person as the secretary may from time to time deem proper, so long as the person continues to receive service under this title. When the resident no longer receives any services under this title, the secretary shall deliver to the person, or to the parent, person, or agency legally responsible for the person, all funds or other property belonging to the person remaining in the secretary's possession as custodian.

(4) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures from the fund to be accurately accounted for by the secretary. All interest accruing from, or as a result of the deposit of such moneys in a single fund shall be credited to the personal accounts of the residents. All expenditures under this section shall be subject to the duty of accounting provided for in this section.

(5) The appointment of a guardian for the estate of a resident shall terminate the secretary's authority as custodian of any funds of the resident which may be subject to the control of the guardianship, upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to the guardian any funds subject to the control of the guardianship or other property of the resident remaining in the secretary's possession, together with a full and final accounting of all receipts and expenditures made.

(6) Upon receipt of a written request from the secretary stating that a designated individual is a resident of the residential habilitation center and that such resident has no legally appointed guardian of his or her estate, any person, bank, corporation, or agency having possession of any money, bank accounts, or choses in action owned by such resident, shall, if the amount does not exceed two hundred dollars, deliver the same to the secretary as custodian and mail written notice of the delivery to such resident at the res-

idential habilitation center. The receipt by the secretary shall constitute full and complete acquittance for such payment and the person, bank, corporation, or agency making such payment shall not be liable to the resident or his or her legal representative. All funds so received by the secretary shall be duly deposited by the secretary as custodian in the resident's fund to the personal account of the resident. If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the lawsuit without cost to the person, bank, corporation, or agency that delivered the property to the secretary, and the state shall indemnify such person, bank, corporation, or agency against any judgment rendered as a result of such proceeding. [1988 c 176 § 710.]

71A.20.110 Clothing for residents—Cost. When clothing for a resident of a residential habilitation center is not otherwise provided, the secretary shall provide a resident with suitable clothing, the actual cost of which shall be a charge against the parents, guardian, or estate of the resident. If such parent or guardian is unable to provide or pay for the clothing, or the estate of the resident is insufficient to provide or pay for the clothing, the clothing shall be provided by the state. [1988 c 176 § 711.]

71A.20.120 Financial responsibility. The subject of financial responsibility for the provision of services to persons in residential habilitation centers is covered by RCW 43.20B.410 through 43.20B.455. [1988 c 176 § 712.]

71A.20.130 Death of resident, payment of funeral expenses—Limitation. Upon the death of a resident of a residential habilitation center, the secretary may supplement such funds as were in the resident's account at the time of the person's death to provide funeral and burial expense for the deceased resident. These expenses shall not exceed funeral and burial expenses allowed under *RCW 74.08.120. [1988 c 176 § 713.]

*Reviser's note: RCW 74.08.120 was repealed by 1997 c 58 § 1002.

71A.20.140 Resident desiring to leave center—Authority to hold resident limited. (1) If a resident of a residential habilitation center desires to leave the center and the secretary believes that departures may be harmful to the resident, the secretary may hold the resident at the residential habilitation center for a period not to exceed forty-eight hours in order to consult with the person's legal representative as provided in RCW 71A.10.070 as to the best interests of the resident.

(2) The secretary shall adopt rules to provide for the application of subsection (1) of this section in a manner that protects the constitutional rights of the resident.

(3) Neither the secretary nor any person taking action under this section shall be civilly or criminally liable for performing duties under this section if such duties were performed in good faith and without gross negligence. [1988 c 176 § 714.]

71A.20.150 Admission to residential habilitation center for observation. Without committing the department to continued provision of service, the secretary may admit a per-

son eligible for services under this chapter to a residential habilitation center for a period not to exceed thirty days for observation prior to determination of needed services, where such observation is necessary to determine the extent and necessity of services to be provided. [1988 c 176 § 715.]

71A.20.800 Chapter to be liberally construed. The provisions of this chapter shall be liberally construed to accomplish its purposes. [1988 c 176 § 716.]

Chapter 71A.22 RCW

TRAINING CENTERS AND HOMES

Sections

| | |
|------------|---|
| 71A.22.010 | Contracts for services authorized. |
| 71A.22.020 | Definitions. |
| 71A.22.030 | Payments by secretary under this chapter supplemental—Limitation. |
| 71A.22.040 | Certification of facility as day training center or group training home. |
| 71A.22.050 | Services in day training center or group training home—Application for payment. |
| 71A.22.060 | Facilities to be nonsectarian. |

71A.22.010 Contracts for services authorized. The secretary may enter into agreements with any person or with any person, corporation, or association operating a day training center or group training home or a combination day training center and group training home approved by the department, for the payment of all, or a portion, of the cost of the care, treatment, maintenance, support, and training of persons with developmental disabilities. [1988 c 176 § 801.]

71A.22.020 Definitions. As used in this chapter:

(1) "Day training center" means a facility equipped, supervised, managed, and operated at least three days per week by any person, association, or corporation on a non-profit basis for the day-care, treatment, training, and maintenance of persons with developmental disabilities, and approved under this chapter and the standards under rules adopted by the secretary.

(2) "Group training home" means a facility equipped, supervised, managed, and operated on a full-time basis by any person, association, or corporation on a nonprofit basis for the full-time care, treatment, training, and maintenance of persons with developmental disabilities, and approved under this chapter and the standards under the rules adopted by the secretary. [1988 c 176 § 802.]

71A.22.030 Payments by secretary under this chapter supplemental—Limitation. All payments made by the secretary under this chapter, shall be, insofar as possible, supplementary to payments to be made to a day training center or group training home, or a combination of both, by the persons with developmental disabilities resident in the home or center. Payments made by the secretary under this chapter shall not exceed actual costs for the care, treatment, support, maintenance, and training of any person with a developmental disability whether at a day training center or group training home or combination of both. [1988 c 176 § 803.]

71A.22.040 Certification of facility as day training center or group training home. Any person, corporation, or association may apply to the secretary for approval and certification of the applicant's facility as a day training center or a group training home for persons with developmental disabilities, or a combination of both. The secretary may either grant or deny certification or revoke certification previously granted after investigation of the applicant's facilities, to ascertain whether or not such facilities are adequate for the care, treatment, maintenance, training, and support of persons with developmental disabilities, under standards in rules adopted by the secretary. Day training centers and group training homes must meet local health and safety standards as may be required by local health and fire-safety authorities. [1989 c 329 § 2; 1988 c 176 § 804.]

71A.22.050 Services in day training center or group training home—Application for payment. (1) Except as otherwise provided in this section, the provisions of this title govern applications for payment by the state for services in a day training center or group training home approved by the secretary under this chapter.

(2) In determining eligibility and the amount of payment, the secretary shall make special provision for group training homes where parents are actively involved as a member of the administrative board of the group training home and who may provide for some of the services required by a resident therein. The special provisions shall include establishing eligibility requirements for a person placed in such a group training home to have a parent able and willing to attend administrative board meetings and participate insofar as possible in carrying out special activities deemed by the board to contribute to the well being of the residents.

(3) If the secretary determines that a person is eligible for services in a day training center or group training home, the secretary shall determine the extent and type of services to be provided and the amount that the department will pay, based upon the needs of the person and the ability of the parent or the guardian to pay or contribute to the payment of the monthly cost of the services.

(4) The secretary may, upon application of the person who is receiving services or the person's legal representative, after investigation of the ability or inability of such persons to pay, or without application being made, modify the amount of the monthly payments to be paid by the secretary for services at a day training center or group training home or combination of both. [1988 c 176 § 805.]

71A.22.060 Facilities to be nonsectarian. A day training center and a group training home under this chapter shall be a nonsectarian training center and a nonsectarian group training home. [1988 c 176 § 806.]

Title 72

STATE INSTITUTIONS

Chapters

- 72.01 Administration.**
- 72.02 Adult corrections.**
- 72.04A Probation and parole.**
- 72.05 Children and youth services.**
- 72.06 Mental health.**
- 72.09 Department of corrections.**
- 72.10 Health care services—Department of corrections.**
- 72.11 Offenders' responsibility for legal financial obligations.**
- 72.16 Green Hill school.**
- 72.19 Juvenile correctional institution in King county.**
- 72.20 Maple Lane school.**
- 72.23 Public and private facilities for mentally ill.**
- 72.25 Nonresident mentally ill, sexual psychopaths, and psychopathic delinquents—Deportation, transportation.**
- 72.27 Interstate compact on mental health.**
- 72.29 Multi-use facilities for the mentally or physically handicapped or the mentally ill.**
- 72.36 Soldiers' and veterans' homes.**
- 72.40 State schools for blind, deaf, sensory handicapped.**
- 72.41 Board of trustees—School for the blind.**
- 72.42 Board of trustees—School for the deaf.**
- 72.49 Narcotic or dangerous drugs—Treatment and rehabilitation.**
- 72.60 Correctional industries.**
- 72.62 Vocational education programs.**
- 72.63 Prison work programs—Fish and game.**
- 72.64 Labor and employment of prisoners.**
- 72.65 Work release program.**
- 72.66 Furloughs for prisoners.**
- 72.68 Transfer, removal, transportation—Detention contracts.**
- 72.70 Western interstate corrections compact.**
- 72.72 Criminal behavior of residents of institutions.**
- 72.74 Interstate Corrections Compact.**
- 72.76 Intrastate Corrections Compact.**
- 72.98 Construction.**
- 72.99 State building construction act.**

Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96A RCW.

Central stores: RCW 43.19.1921, 43.19.1923.

County hospitals: Chapter 36.62 RCW.

Educational programs for residential school residents: RCW 28A.190.020 through 28A.190.060.

Jurisdiction over Indians concerning mental illness: Chapter 37.12 RCW.

Mental illness—Financial responsibility: Chapter 71.02 RCW.

Public bodies may retain collection agencies to collect public debts—Fees: RCW 19.16.500.

Rehabilitation services for individuals with disabilities: Chapter 74.29 RCW.

State institutions: State Constitution Art. 13.

Uniform interstate compact on juveniles: Chapter 13.24 RCW.

Veterans affairs, powers and duties concerning transferred to department of veterans affairs: RCW 43.60A.020.

Youth development and conservation corps: Chapter 79A.05 RCW.

Chapter 72.01 RCW ADMINISTRATION

Sections

- 72.01.010 Powers and duties apply to department of social and health services and department of corrections—Joint exercise authorized.
- 72.01.042 Hours of labor for full time employees—Compensatory time—Premium pay.
- 72.01.043 Hours of labor for full time employees—Certain personnel excepted.
- 72.01.045 Assaults to employees—Reimbursement for costs.
- 72.01.050 Secretary's powers and duties—Management of public institutions and correctional facilities.
- 72.01.060 Chief executive officers—Appointment—Salaries—Assistants.
- 72.01.090 Rules and regulations.
- 72.01.110 Construction or repair of buildings—Contracts or inmate labor.
- 72.01.120 Construction or repair of buildings—Award of contracts.
- 72.01.130 Destruction of buildings—Reconstruction.
- 72.01.140 Agricultural and farm activities.
- 72.01.142 Transfer of dairy operation from Rainier school.
- 72.01.150 Industrial activities.
- 72.01.180 Dietitian—Duties—Travel expenses.
- 72.01.190 Fire protection.
- 72.01.200 Employment of teachers—Exceptions.
- 72.01.210 Institutional chaplains—Appointment.
- 72.01.220 Institutional chaplains—Duties.
- 72.01.230 Institutional chaplains—Offices, chapels, supplies.
- 72.01.240 Supervisor of chaplains.
- 72.01.260 Outside ministers not excluded.
- 72.01.270 Gifts, acceptance of.
- 72.01.280 Quarters for personnel—Charges.
- 72.01.282 Quarters for personnel—Deposit of receipts.
- 72.01.290 Record of patients and inmates.
- 72.01.300 Accounting systems.
- 72.01.310 Political influence forbidden.
- 72.01.320 Examination of conditions and needs—Report.
- 72.01.365 Escorted leaves of absence for inmates—Definitions.
- 72.01.370 Escorted leaves of absence for inmates—Grounds.
- 72.01.375 Escorted leaves of absence for inmates—Notification of local law enforcement agencies.
- 72.01.380 Leaves of absence for inmates—Rules—Restrictions—Costs.
- 72.01.410 Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders.
- 72.01.415 Offender under eighteen confined to a jail—Segregation from adult offenders.
- 72.01.430 Transfer of equipment, supplies, livestock between institutions—Notice—Conditions.
- 72.01.450 Use of facilities, equipment and personnel by school districts and institutions of higher learning authorized.
- 72.01.452 Use of facilities, equipment and personnel by state agencies, counties, cities or political subdivisions.
- 72.01.454 Use of facilities by counties, community service organizations, nonprofit associations, etc.
- 72.01.458 Use of files and records for courses of education, instruction and training at institutions.
- 72.01.460 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands.
- 72.01.480 Agreements with nonprofit organizations to provide services for persons admitted or committed to institutions.
- 72.01.490 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure.

Children's center for research and training in mental retardation, director as member of advisory committee: RCW 28B.20.412.

Counties may engage in probation and parole services: RCW 36.01.070.

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

Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.

Out-of-state physicians, conditional license to practice in conjunction with institutions: RCW 18.71.095.

Public purchase preferences: Chapter 39.24 RCW.

Social security benefits, payment to survivors or department of social and health services: RCW 11.66.010.

State administrative departments and agencies: Chapter 43.17 RCW.

72.01.010 Powers and duties apply to department of social and health services and department of corrections—Joint exercise authorized. As used in this chapter:

"Department" means the departments of social and health services and corrections; and

"Secretary" means the secretaries of social and health services and corrections.

The powers and duties granted and imposed in this chapter, when applicable, apply to both the departments of social and health services and corrections and the secretaries of social and health services and corrections for institutions under their control. A power or duty may be exercised or fulfilled jointly if joint action is more efficient, as determined by the secretaries. [1981 c 136 § 66; 1979 c 141 § 142; 1970 ex.s. c 18 § 56; 1959 c 28 § 72.01.010. Prior: 1907 c 166 § 10; RRS § 10919. Formerly RCW 72.04.010.]

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.01.042 Hours of labor for full time employees—Compensatory time—Premium pay. The hours of labor for each full time employee shall be a maximum of eight hours in any work day and forty hours in any work week.

Employees required to work in excess of the eight-hour maximum per day or the forty-hour maximum per week shall be compensated by not less than equal hours of compensatory time off or, in lieu thereof, a premium rate of pay per hour equal to not less than one-one hundred and seventy-sixth of the employee's gross monthly salary: PROVIDED, That in the event that an employee is granted compensatory time off, such time off should be given within the calendar year and in the event that such an arrangement is not possible the employee shall be given a premium rate of pay: PROVIDED FURTHER, That compensatory time and/or payment thereof shall be allowed only for overtime as is duly authorized and accounted for under rules and regulations established by the secretary. [1981 c 136 § 67; 1979 c 141 § 143; 1970 ex.s. c 18 § 60; 1953 c 169 § 1. Formerly RCW 43.19.255.]

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.01.043 Hours of labor for full time employees—Certain personnel excepted. RCW 72.01.042 shall not be applicable to the following designated personnel: Administrative officers of the department; institutional superinten-

dents, medical staff other than nurses, and business managers; and such professional, administrative and supervisory personnel as designated prior to July 1, 1970 by the department of social and health services with the concurrence of the merit system board having jurisdiction. [1979 c 141 § 144; 1970 ex.s. c 18 § 61; 1953 c 169 § 2. Formerly RCW 43.19.256.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.01.045 Assaults to employees—Reimbursement for costs. (1) For purposes of this section only, "assault" means an unauthorized touching of an employee by a resident, patient, or juvenile offender resulting in physical injury to the employee.

(2) In recognition of the hazardous nature of employment in state institutions, the legislature hereby provides a supplementary program to reimburse employees of the department of social and health services, the department of natural resources, and the department of veterans affairs for some of their costs attributable to their being the victims of assault by residents, patients, or juvenile offenders. This program shall be limited to the reimbursement provided in this section.

(3) An employee is only entitled to receive the reimbursement provided in this section if the secretary of social and health services, the commissioner of public lands, or the director of the department of veterans affairs, or the secretary's, commissioner's, or director's designee, finds that each of the following has occurred:

(a) A resident or patient has assaulted the employee and as a result thereof the employee has sustained demonstrated physical injuries which have required the employee to miss days of work;

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment; and

(c) The department of labor and industries has approved the employee's workers' compensation application pursuant to chapter 51.32 RCW.

(4) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(5) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(6) The employee shall not be entitled to the reimbursement provided in subsection (4) of this section for any workday for which the secretary, commissioner, director, or applicable designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(7) The reimbursement shall only be made for absences which the secretary, commissioner, director, or applicable designee believes are justified.

(8) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(9) All reimbursement payments required to be made to employees under this section shall be made by the employing department. The payments shall be considered as a salary or wage expense and shall be paid by the department in the same manner and from the same appropriations as other salary and wage expenses of the department.

(10) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right. [2002 c 77 § 1; 1990 c 153 § 1; 1987 c 102 § 1; 1986 c 269 § 4.]

72.01.050 Secretary's powers and duties—Management of public institutions and correctional facilities. (1) The secretary of social and health services shall have full power to manage and govern the following public institutions: The western state hospital, the eastern state hospital, the northern state hospital, the state training school, the state school for girls, Lakeland Village, the Rainier school, and such other institutions as authorized by law, subject only to the limitations contained in laws relating to the management of such institutions.

(2) The secretary of corrections shall have full power to manage, govern, and name all state correctional facilities, subject only to the limitations contained in laws relating to the management of such institutions.

(3) If any state correctional facility is fully or partially destroyed by natural causes or otherwise, the secretary of corrections may, with the approval of the governor, provide for the establishment and operation of additional residential correctional facilities to place those inmates displaced by such destruction. However, such additional facilities may not be established if there are existing residential correctional facilities to which all of the displaced inmates can be appropriately placed. The establishment and operation of any additional facility shall be on a temporary basis, and the facility may not be operated beyond July 1 of the year following the year in which it was partially or fully destroyed. [1992 c 7 § 51; 1988 c 143 § 1. Prior: 1985 c 378 § 8; 1985 c 350 § 1; 1981 c 136 § 68; 1979 c 141 § 145; 1977 c 31 § 1; 1959 c 28 § 72.01.050; prior: 1955 c 195 § 4(1); 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.020, part.]

Severability—1985 c 378: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1985 c 378 § 36.]

Effective date—1985 c 378: "This act shall take effect July 1, 1986. The secretary of social and health services and the governor may immediately take such steps as are necessary to ensure that this act is implemented on its effective date." [1985 c 378 § 37.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.060 Chief executive officers—Appointment—Salaries—Assistants. The secretary shall appoint the chief executive officers necessary to manage one or more of the public facilities operated by the department. This section, however, shall not apply to RCW 72.40.020.

Except as otherwise provided in this title, the chief executive officer of each institution may appoint all assistants and employees required for the management of the institution placed in his charge, the number of such assistants and employees to be determined and fixed by the secretary. The chief executive officer of any institution may, at his pleasure, discharge any person therein employed. The secretary shall investigate all complaints made against the chief executive officer of any institution and also any complaint against any other officer or employee thereof, if it has not been investigated and reported upon by the chief executive officer.

The secretary may, after investigation, for good and sufficient reasons, order the discharge of any subordinate officer or employee of an institution.

Each chief executive officer shall receive such salary as is fixed by the secretary, who shall also fix the compensation of other officers and the employees of each institution. Such latter compensation shall be fixed on or before the first day of April of each year and no change shall be made in the compensation, so fixed, during the twelve month period commencing April 1st. [1983 1st ex.s. c 41 § 26; 1979 c 141 § 146; 1959 c 28 § 72.01.060. Prior: 1907 c 166 § 5; 1901 c 119 § 6; RRS § 10902. Formerly RCW 72.04.020.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Authority to appoint a single executive officer for multiple institutions—Exception: RCW 43.20A.607.

Juvenile correctional institution in King county, appointment of superintendent: RCW 72.19.030.

Maple Lane School, appointment of superintendent and subordinate officers and employees: RCW 72.20.020.

State hospitals for mentally ill—Superintendents: RCW 72.23.030.

72.01.090 Rules and regulations. The department is authorized to make its own rules for the proper execution of its powers. It shall also have the power to adopt rules and regulations for the government of the public institutions placed under its control, and shall therein prescribe, in a manner consistent with the provisions of this title, the duties of the persons connected with the management of such public institutions. [1959 c 28 § 72.01.090. Prior: 1907 c 166 § 7; 1901 c 119 § 9; RRS § 10905. Formerly RCW 72.04.060.]

72.01.110 Construction or repair of buildings—Contracts or inmate labor. The department may employ the services of competent architects for the preparation of plans and specifications for new buildings, or for repairs, changes, or additions to buildings already constructed, employ competent persons to superintend the construction of new buildings or repairs, changes, or additions to buildings already constructed and call for bids and award contracts for the erection of new buildings, or for repairs, changes, or additions to buildings already constructed: PROVIDED, That the department may proceed with the erecting of any new building, or repairs, changes, or additions to any buildings already constructed, employing thereon the labor of the inmates of the institution, when in its judgment the improvements can be

made in as satisfactory a manner and at a less cost to the state by so doing. [1959 c 28 § 72.01.110. Prior: 1901 c 119 § 12; RRS § 10909. Formerly RCW 72.04.100.]

Public works: Chapter 39.04 RCW.

72.01.120 Construction or repair of buildings—

Award of contracts. When improvements are to be made under contract, notice of the call for the same shall be published in at least two newspapers of general circulation in the state for two weeks prior to the award being made. The contract shall be awarded to the lowest responsible bidder. The secretary is authorized to require such security as he may deem proper to accompany the bids submitted, and shall also fix the amount of the bond or other security that shall be furnished by the person or firm to whom the contract is awarded. The secretary shall have the power to reject any or all bids submitted, if for any reason it is deemed for the best interest of the state to do so, and to readvertise in accordance with the provisions hereof. The secretary shall also have the power to reject the bid of any person or firm who has had a prior contract, and who did not, in the opinion of the secretary, faithfully comply with the same. [1979 c 141 § 148; 1959 c 28 § 72.01.120. Prior: 1901 c 119 § 10, part; RRS § 10906.]

72.01.130 Destruction of buildings—Reconstruction.

If any of the shops or buildings in which convicts are employed are destroyed in any way, or injured by fire or otherwise, they may be rebuilt or repaired immediately under the direction of the department, by and with the advice and consent of the governor, and the expenses thereof shall be paid out of any unexpended funds appropriated to the department for any purpose, not to exceed one hundred thousand dollars: PROVIDED, That if a specific appropriation for a particular project has been made by the legislature, only such funds exceeding the cost of such project may be expended for the purposes of this section. [1959 c 28 § 72.01.130. Prior: 1957 c 25 § 1; 1891 c 147 § 29; RRS § 10908. Formerly RCW 72.04.090.]

72.01.140 Agricultural and farm activities. The secretary shall:

(1) Make a survey, investigation, and classification of the lands connected with the state institutions under his control, and determine which thereof are of such character as to be most profitably used for agricultural, horticultural, dairying, and stock raising purposes, taking into consideration the costs of making them ready for cultivation, the character of the soil, its depth and fertility, the number of kinds of crops to which it is adapted, the local climatic conditions, the local annual rainfall, the water supply upon the land or available, the needs of all state institutions for the food products that can be grown or produced, and the amount and character of the available labor of inmates at the several institutions;

(2) Establish and carry on suitable farming operations at the several institutions under his control;

(3) Supply the several institutions with the necessary food products produced thereat;

(4) Exchange with, or furnish to, other institutions, food products at the cost of production;

(5) Sell and dispose of surplus food products produced.

This section shall not apply to the Rainier school for which cognizance of farming operations has been transferred to Washington State University by RCW 72.01.142. [1981 c 238 § 1; 1979 c 141 § 149; 1959 c 28 § 72.01.140. Prior: 1955 c 195 § 4(7), (8), (9), (10), and (11); 1921 c 7 § 39; RRS § 10797. Formerly RCW 43.28.020, part.]

Effective date—1981 c 238: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1981." [1981 c 238 § 7.]

Savings—Liabilities—1981 c 238: "The enactment of this act shall not have the effect of terminating, or in any way modifying, any liability, civil or criminal, which is already in existence on the effective date of this act." [1981 c 238 § 5.]

Savings—Rights, actions, contracts—1981 c 238: "Nothing in this act shall be construed as affecting any existing rights except as to the agencies referred to, nor as affecting any pending actions, activities, proceedings, or contracts, nor affect the validity of any act performed by such agency or any employee thereof prior to the effective date of this act." [1981 c 238 § 6.]

72.01.142 Transfer of dairy operation from Rainier

school. The secretary of social and health services shall transfer on July 1, 1981, cognizance and control of all real property and improvements thereon owned by the state at the Rainier school, used for agricultural purposes, other than the school buildings and school grounds, to Washington State University for use as a dairy/forage research facility established pursuant to RCW 28B.30.810.

All livestock and the supplies, equipment, implements, documents, records, papers, vehicles, appropriations, tangible property, and other items used in the dairy operation or production of forage shall also be transferred to the university. [1981 c 238 § 2.]

Effective date—Savings—Liabilities, rights, actions, contracts—1981 c 238: See notes following RCW 72.01.140.

72.01.150 Industrial activities. The secretary shall:

(1) Establish, install and operate, at the several state institutions under his control, such industries and industrial plants as may be most suitable and beneficial to the inmates thereof, and as can be operated at the least relative cost and the greatest relative benefit to the state, taking into consideration the needs of the state institutions for industrial products, and the amount and character of labor of inmates available at the several institutions;

(2) Supply the several institutions with the necessary industrial products produced thereat;

(3) Exchange with, or furnish to, other state institutions industrial products at prices to be fixed by the department, not to exceed in any case the price of such products in the open market;

(4) Sell and dispose of surplus industrial products produced, to such persons and under such rules, regulations, terms, and prices as may be in his judgment for the best interest of the state;

(5) Sell products of the plate mill to any department, to any state, county, or other public institution and to any governmental agency, of this or any other state under such rules, regulations, terms, and prices as may be in his judgment for the best interests of the state. [1979 c 141 § 150; 1959 c 28 § 72.01.150. Prior: 1955 c 195 § 4(12), (13), (14), (15), and

(16); 1923 c 101 § 1; 1921 c 7 § 40; RRS § 10798. Formerly RCW 43.28.020, part.]

Correctional industries: Chapter 72.60 RCW.

72.01.180 Dietitian—Duties—Travel expenses. The secretary shall have the power to select a member of the faculty of the University of Washington, or the Washington State University, skilled in scientific food analysis and dietetics, to be known as the state dietitian, who shall make and furnish to the department food analyses showing the relative food value, in respect to cost, of food products, and advise the department as to the quantity, comparative cost, and food values, of proper diets for the inmates of the state institutions under the control of the department. The state dietitian shall receive travel expenses while engaged in the performance of his duties in accordance with RCW 43.03.050 and 43.03.060 as now existing or hereafter amended. [1979 c 141 § 152; 1975-'76 2nd ex.s. c 34 § 166; 1959 c 28 § 72.01.180. Prior: 1921 c 7 § 32; RRS § 10790. Formerly RCW 43.19.150.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

72.01.190 Fire protection. The secretary may enter into an agreement with a city or town adjacent to any state institution for fire protection for such institution. [1979 c 141 § 153; 1959 c 28 § 72.01.190. Prior: 1947 c 188 § 1; Rem. Supp. 1947 § 10898a. Formerly RCW 72.04.140.]

72.01.200 Employment of teachers—Exceptions. State correctional facilities may employ certificated teachers to carry on their educational work, except for the educational programs provided pursuant to RCW 28A.190.030 through 28A.190.050 and all such teachers so employed shall be eligible to membership in the state teachers' retirement fund. [1992 c 7 § 52; 1990 c 33 § 591; 1979 ex.s. c 217 § 6; 1959 c 28 § 72.01.200. Prior: 1947 c 211 § 1; Rem. Supp. 1947 § 10319-1. Formerly RCW 72.04.130.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.190.020.

Teachers' qualifications at state schools for the deaf and blind: RCW 72.40.028.

Teachers' retirement: Chapter 41.32 RCW.

72.01.210 Institutional chaplains—Appointment. The secretary of corrections shall appoint chaplains for the state correctional institutions for convicted felons; and the secretary of social and health services shall appoint chaplains for the correctional institutions for juveniles found delinquent by the juvenile courts; and the secretary of corrections and the secretary of social and health services shall appoint one or more chaplains for other custodial, correctional and mental institutions under their control. The chaplains so appointed shall have the qualifications and shall be compensated in an amount, as shall hereafter be recommended by the department and approved by the Washington personnel resources board. [1993 c 281 § 62; 1981 c 136 § 69; 1979 c 141 § 154; 1967 c 58 § 1; 1959 c 33 § 1; 1959 c 28 § 72.01.210. Prior: 1955 c 248 § 1. Formerly RCW 72.04.160.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Housing allowance for state-employed chaplains: RCW 41.04.360.

Washington personnel resources board: RCW 41.06.110.

72.01.220 Institutional chaplains—Duties. It shall be the duty of the chaplains at the respective institutions mentioned in RCW 72.01.210, under the direction of the department, to conduct religious services and to give religious and moral instruction to the inmates of the institutions, and to attend to their spiritual wants. They shall counsel with and interview the inmates concerning their social and family problems, and shall give assistance to the inmates and their families in regard to such problems. [1959 c 28 § 72.01.220. Prior: 1955 c 248 § 2. Formerly RCW 72.04.170.]

72.01.230 Institutional chaplains—Offices, chapels, supplies. The chaplains at the respective institutions mentioned in RCW 72.01.210 shall be provided with the offices and chapels at their institutions, and such supplies as may be necessary for the carrying out of their duties. [1959 c 28 § 72.01.230. Prior: 1955 c 248 § 3. Formerly RCW 72.04.180.]

72.01.240 Supervisor of chaplains. Each secretary is hereby empowered to appoint one of the chaplains, authorized by RCW 72.01.210, to act as supervisor of chaplains for his department, in addition to his duties at one of the institutions designated in RCW 72.01.210. [1981 c 136 § 70; 1979 c 141 § 155; 1959 c 28 § 72.01.240. Prior: 1955 c 248 § 4. Formerly RCW 72.04.190.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.260 Outside ministers not excluded. Nothing contained in RCW 72.01.210 through 72.01.240 shall be so construed as to exclude ministers of any denomination from giving gratuitous religious or moral instruction to prisoners under such reasonable rules and regulations as the secretary may prescribe. [1983 c 3 § 184; 1979 c 141 § 156; 1959 c 28 § 72.01.260. Prior: 1929 c 59 § 2; Code 1881 § 3297; RRS § 10236-1. Formerly RCW 72.08.210.]

72.01.270 Gifts, acceptance of. The secretary shall have the power to receive, hold and manage all real and personal property made over to the department by gift, devise or bequest, and the proceeds and increase thereof shall be used for the benefit of the institution for which it is received. [1979 c 141 § 157; 1959 c 28 § 72.01.270. Prior: 1901 c 119 § 8; RRS § 10904. Formerly RCW 72.04.050.]

72.01.280 Quarters for personnel—Charges. The superintendent of each public institution and the assistant physicians, steward, accountant and chief engineer of each hospital for the mentally ill may be furnished with quarters, household furniture, board, fuel, and lights for themselves and their families, and the secretary may, when in his opinion any public institution would be benefited by so doing, extend this privilege to any officer at any of the public institutions under his control. The words "family" or "families" used in this section shall be construed to mean only the spouse and dependent children of an officer. Employees may be furnished with quarters and board for themselves. The secretary shall charge and collect from such officers and employees the

full cost of the items so furnished, including an appropriate charge for depreciation of capital items. [1979 c 141 § 158; 1959 c 39 § 3; 1959 c 28 § 72.01.280. Prior: 1957 c 188 § 1; 1907 c 166 § 6; 1901 c 119 § 6; RRS § 10903. Formerly RCW 72.04.040.]

72.01.282 Quarters for personnel—Deposit of receipts. All moneys received by the secretary from charges made pursuant to RCW 72.01.280 shall be deposited by him in the state general fund. [1981 c 136 § 71; 1979 c 141 § 159; 1959 c 210 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.290 Record of patients and inmates. The department shall keep at its office, accessible only to the secretary and to proper officers and employees, and to other persons authorized by the secretary, a record showing the residence, sex, age, nativity, occupation, civil condition and date of entrance, or commitment of every person, patient, inmate or convict, in the several public institutions governed by the department, the date of discharge of every person from the institution, and whether such discharge is final: PROVIDED, That in addition to this information the superintendents for the hospitals for the mentally ill shall also state the condition of the person at the time of leaving the institution. The record shall also state if the person is transferred from one institution to another and to what institution; and if dead the date and cause of death. This information shall be furnished to the department by the several institutions, and also such other obtainable facts as the department may from time to time require, not later than the fifth day of each month for the month preceding, by the chief executive officer of each public institution, upon blank forms which the department may prescribe. [1979 c 141 § 160; 1959 c 28 § 72.01.290. Prior: 1907 c 166 § 9; 1901 c 119 § 13; RRS § 10910. Formerly RCW 72.04.110.]

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.01.300 Accounting systems. The secretary shall have the power, and it shall be his duty, to install and maintain in the department a proper cost accounting system of accounts for each of the institutions under the control of the department, for the purpose of detecting and avoiding unprofitable expenditures and operations. [1979 c 141 § 161; 1959 c 28 § 72.01.300. Prior: 1921 c 7 § 43; RRS § 10801. Formerly RCW 43.19.160.]

72.01.310 Political influence forbidden. Any officer, including the secretary, or employee of the department or of the institutions under the control of the department, who, by solicitation or otherwise, exercises his influence, directly or indirectly, to influence other officers or employees of the state to adopt his political views or to favor any particular person or candidate for office, shall be removed from his office or position by the proper authority. [1979 c 141 § 162; 1959 c 28 § 72.01.310. Prior: 1901 c 119 § 15; RRS § 10917. Formerly RCW 72.04.150.]

72.01.320 Examination of conditions and needs—Report. The secretary shall examine into the conditions and needs of the several state institutions under the secretary's control and report in writing to the governor the condition of each institution. [1987 c 505 § 66; 1979 c 141 § 163; 1977 c 75 § 84; 1959 c 28 § 72.01.320. Prior: 1955 c 195 § 5. (i) 1901 c 119 § 14; RRS § 10915. (ii) 1915 c 107 § 1, part; 1907 c 166 § 2, part; 1901 c 119 § 3, part; RRS § 10899, part. Formerly RCW 43.28.030.]

72.01.365 Escorted leaves of absence for inmates—Definitions. As used in RCW 72.01.370 and 72.01.375:

"Escorted leave" means a leave of absence from a correctional facility under the continuous supervision of an escort.

"Escort" means a correctional officer or other person approved by the superintendent or the superintendent's designee to accompany an inmate on a leave of absence and be in visual or auditory contact with the inmate at all times.

"Nonviolent offender" means an inmate under confinement for an offense other than a violent offense defined by RCW 9.94A.030. [1983 c 255 § 2.]

Severability—1983 c 255: See RCW 72.74.900.

Prisoner furloughs: Chapter 72.66 RCW.

72.01.370 Escorted leaves of absence for inmates—Grounds. The superintendent of any state correctional facility may, subject to the approval of the secretary and under RCW 72.01.375, grant escorted leaves of absence to inmates confined in such institutions to:

- (1) Go to the bedside of the inmate's wife, husband, child, mother or father, or other member of the inmate's immediate family who is seriously ill;
- (2) Attend the funeral of a member of the inmate's immediate family listed in subsection (1) of this section;
- (3) Participate in athletic contests;
- (4) Perform work in connection with the industrial, educational, or agricultural programs of the department;
- (5) Receive necessary medical or dental care which is not available in the institution; and
- (6) Participate as a volunteer in community service work projects which are approved by the superintendent, but only inmates who are nonviolent offenders may participate in these projects. Such community service work projects shall only be instigated at the request of a local community. [1992 c 7 § 53; 1983 c 255 § 3; 1981 c 136 § 72; 1979 c 141 § 164; 1959 c 40 § 1.]

Severability—1983 c 255: See RCW 72.74.900.

Effective date—1981 c 136: See RCW 72.09.900.

72.01.375 Escorted leaves of absence for inmates—Notification of local law enforcement agencies. An inmate shall not be allowed to start a leave of absence under RCW 72.01.370 until the secretary, or the secretary's designee, has notified any county and city law enforcement agency having jurisdiction in the area of the inmate's destination. [1983 c 255 § 4.]

Severability—1983 c 255: See RCW 72.74.900.

72.01.380 Leaves of absence for inmates—Rules—Restrictions—Costs. The secretary is authorized to make rules and regulations providing for the conditions under which inmates will be granted leaves of absence, and providing for safeguards to prevent escapes while on leave of absence: PROVIDED, That leaves of absence granted to inmates under RCW 72.01.370 shall not allow or permit any inmate to go beyond the boundaries of this state. The secretary shall also make rules and regulations requiring the reimbursement of the state from the inmate granted leave of absence, or his family, for the actual costs incurred arising from any leave of absence granted under the authority of RCW 72.01.370, subsections (1) and (2): PROVIDED FURTHER, That no state funds shall be expended in connection with leaves of absence granted under RCW 72.01.370, subsections (1) and (2), unless such inmate and his immediate family are indigent and without resources sufficient to reimburse the state for the expenses of such leaves of absence. [1981 c 136 § 73; 1979 c 141 § 165; 1959 c 40 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.410 Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders. (1) Whenever any child under the age of eighteen is convicted in the courts of this state of a crime amounting to a felony, and is committed for a term of confinement in a correctional institution wherein adults are confined, the secretary of corrections, after making an independent assessment and evaluation of the child and determining that the needs and correctional goals for the child could better be met by the programs and housing environment provided by the juvenile correctional institution, with the consent of the secretary of social and health services, may transfer such child to a juvenile correctional institution, or to such other institution as is now, or may hereafter be authorized by law to receive such child, until such time as the child arrives at the age of twenty-one years, whereupon the child shall be returned to the institution of original commitment. Retention within a juvenile detention facility or return to an adult correctional facility shall regularly be reviewed by the secretary of corrections and the secretary of social and health services with a determination made based on the level of maturity and sophistication of the individual, the behavior and progress while within the juvenile detention facility, security needs, and the program/treatment alternatives which would best prepare the individual for a successful return to the community. Notice of such transfers shall be given to the clerk of the committing court and the parents, guardian, or next of kin of such child, if known.

(2)(a) Except as provided in (b) and (c) of this subsection, an offender under the age of eighteen who is convicted in adult criminal court and who is committed to a term of confinement at the department of corrections must be placed in a housing unit, or a portion of a housing unit, that is separated from offenders eighteen years of age or older, until the offender reaches the age of eighteen.

(b) An offender who reaches eighteen years of age may remain in a housing unit for offenders under the age of eighteen if the secretary of corrections determines that: (i) The offender's needs and the correctional goals for the offender could continue to be better met by the programs and housing

environment that is separate from offenders eighteen years of age and older; and (ii) the programs or housing environment for offenders under the age of eighteen will not be substantially affected by the continued placement of the offender in that environment. The offender may remain placed in a housing unit for offenders under the age of eighteen until such time as the secretary of corrections determines that the offender's needs and correctional goals are no longer better met in that environment but in no case past the offender's twenty-first birthday.

(c) An offender under the age of eighteen may be housed in an intensive management unit or administrative segregation unit containing offenders eighteen years of age or older if it is necessary for the safety or security of the offender or staff. In these cases, the offender shall be kept physically separate from other offenders at all times. [2002 c 171 § 1; 1997 c 338 § 41; 1994 c 220 § 1; 1981 c 136 § 74; 1979 c 141 § 166; 1959 c 140 § 1.]

Effective date—2002 c 171: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 27, 2002]." [2002 c 171 § 3.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Effective date—1981 c 136: See RCW 72.09.900.

Juvenile not to be confined with adult inmates: RCW 13.04.116.

72.01.415 Offender under eighteen confined to a jail—Segregation from adult offenders. An offender under the age of eighteen who is convicted in adult criminal court of a crime and who is committed for a term of confinement in a jail as defined in RCW 70.48.020, must be housed in a jail cell that does not contain adult offenders, until the offender reaches the age of eighteen. [1997 c 338 § 42.]

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

72.01.430 Transfer of equipment, supplies, livestock between institutions—Notice—Conditions. The secretary, notwithstanding any provision of law to the contrary, is hereby authorized to transfer equipment, livestock and supplies between the several institutions within the department without reimbursement to the transferring institution excepting, however, any such equipment donated by organizations for the sole use of such transferring institutions. Whenever transfers of capital items are made between institutions of the department, notice thereof shall be given to the director of the department of general administration accompanied by a full description of such items with inventory numbers, if any. [1981 c 136 § 75; 1979 c 141 § 167; 1967 c 23 § 1; 1961 c 193 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.450 Use of facilities, equipment and personnel by school districts and institutions of higher learning authorized. The secretary is authorized to enter into agreements with any school district or any institution of higher

learning for the use of the facilities, equipment and personnel of any state institution of the department, for the purpose of conducting courses of education, instruction or training in the professions and skills utilized by one or more of the institutions, at such times and under such circumstances and with such terms and conditions as may be deemed appropriate. [1981 c 136 § 76; 1979 c 141 § 168; 1970 ex.s. c 50 § 2; 1967 c 46 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.452 Use of facilities, equipment and personnel by state agencies, counties, cities or political subdivisions.

The secretary is authorized to enter into an agreement with any agency of the state, a county, city or political subdivision of the state for the use of the facilities, equipment and personnel of any institution of the department for the purpose of conducting courses of education, instruction or training in any professional skill having a relationship to one or more of the functions or programs of the department. [1979 c 141 § 169; 1970 ex.s. c 50 § 3.]

72.01.454 Use of facilities by counties, community service organizations, nonprofit associations, etc.

(1) The secretary may permit the use of the facilities of any state institution by any community service organization, nonprofit corporation, group or association for the purpose of conducting a program of education, training, entertainment or other purpose, for the residents of such institutions, if determined by the secretary to be beneficial to such residents or a portion thereof.

(2) The secretary may permit the nonresidential use of the facilities of any state institution by any county, community service organization, nonprofit corporation, group or association for the purpose of conducting programs under RCW 72.06.070. [1982 c 204 § 15; 1979 c 141 § 170; 1970 ex.s. c 50 § 5.]

72.01.458 Use of files and records for courses of education, instruction and training at institutions.

In any course of education, instruction or training conducted in any state institution of the department use may be made of selected files and records of such institution, notwithstanding the provisions of any statute to the contrary. [1970 ex.s. c 50 § 4.]

72.01.460 Lease of lands with outdoor recreation potential—Restrictions—Unlawful to use posted lands.

(1) Any lease of public lands with outdoor recreation potential authorized by the department shall be open and available to the public for compatible recreational use unless the department determines that the leased land should be closed in order to prevent damage to crops or other land cover, to improvements on the land, to the lessee, or to the general public or is necessary to avoid undue interference with carrying forward a departmental program. Any lessee may file an application with the department to close the leased land to any public use. The department shall cause written notice of the impending closure to be posted in a conspicuous place in the department's Olympia office, at the principal office of the institution administering the land, and in the office of the

county auditor in which the land is located thirty days prior to the public hearing. This notice shall state the parcel or parcels involved and shall indicate the time and place of the public hearing. Upon a determination by the department that posting is not necessary, the lessee shall desist from posting. Upon a determination by the department that posting is necessary, the lessee shall post his leased premises so as to prohibit recreational uses thereon. In the event any such lands are so posted, it shall be unlawful for any person to hunt or fish, or for any person other than the lessee or his immediate family to use any such posted land for recreational purposes.

(2) The department may insert the provisions of subsection (1) of this section in all leases hereafter issued. [1981 c 136 § 77; 1979 c 141 § 171; 1969 ex.s. c 46 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

72.01.480 Agreements with nonprofit organizations to provide services for persons admitted or committed to institutions.

The secretary is authorized to enter into agreements with any nonprofit corporation or association for the purpose of providing and coordinating voluntary and community based services for the treatment or rehabilitation of persons admitted or committed to any institution under the supervision of the department. [1981 c 136 § 78; 1979 c 141 § 172; 1970 ex.s. c 50 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.

Severability—1970 ex.s. c 50: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1970 ex.s. c 50 § 8.]

72.01.490 Authority of superintendents, business managers and officers of correctional institutions to take acknowledgments and administer oaths—Procedure. See RCW 64.08.090.

Chapter 72.02 RCW

ADULT CORRECTIONS

Sections

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| 72.02.015 | Powers of court or judge not impaired. |
| 72.02.040 | Secretary acting for department exercises powers and duties. |
| 72.02.045 | Superintendent's authority. |
| 72.02.055 | Appointment of associate superintendents. |
| 72.02.100 | Earnings, clothing, transportation and subsistence payments upon release of certain prisoners. |
| 72.02.110 | Weekly payments to certain released prisoners. |
| 72.02.150 | Disturbances at state penal facilities—Development of contingency plans—Scope—Local participation. |
| 72.02.160 | Disturbances at state penal facilities—Utilization of outside law enforcement personnel—Scope. |
| 72.02.200 | Reception and classification units. |
| 72.02.210 | Sentence—Commitment to reception units. |
| 72.02.220 | Cooperation with reception units by state agencies. |
| 72.02.230 | Persons to be received for classification and placement. |
| 72.02.240 | Secretary to determine placement—What laws govern confinement, parole and discharge. |
| 72.02.250 | Commitment of convicted female persons—Procedure as to death sentences. |
| 72.02.260 | Letters of inmates may be withheld. |
| 72.02.270 | Abused victims—Murder of abuser—Notice of provisions for reduction in sentence. |
| 72.02.280 | Motion pictures. |

72.02.015 Powers of court or judge not impaired. Nothing in this chapter shall be construed to restrict or impair

the power of any court or judge having jurisdiction to pronounce sentence upon a person to whom this chapter applies, to fix the term of imprisonment and to order commitment, according to law, nor to deny the right of any such court or judge to sentence to imprisonment; nor to deny the right of any such court or judge to suspend sentence or the execution of judgment thereon or to make any other disposition of the case pursuant to law. [1988 c 143 § 9; 1959 c 214 § 13. Formerly RCW 72.13.130.]

72.02.040 Secretary acting for department exercises powers and duties. The secretary of corrections acting for the department of corrections shall exercise all powers and perform all duties prescribed by law with respect to the administration of any adult correctional program by the department of corrections. [1981 c 136 § 79; 1970 ex.s. c 18 § 57; 1959 c 28 § 72.02.040. Prior: 1957 c 272 § 16. Formerly RCW 43.28.110.]

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.02.045 Superintendent's authority. The superintendent of each institution has the powers, duties, and responsibilities specified in this section.

(1) Subject to the rules of the department, the superintendent is responsible for the supervision and management of the institution, the grounds and buildings, the subordinate officers and employees, and the prisoners committed, admitted, or transferred to the institution.

(2) Subject to the rules of the department and the director of the division of prisons or his or her designee and the Washington personnel resources board, the superintendent shall appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of all funds and valuable personal property of convicted persons as may be in their possession upon admission to the institution, or which may be sent or brought in to such persons, or earned by them while in custody, or which shall be forwarded to the superintendent on behalf of convicted persons. All such funds shall be deposited in the personal account of the convicted person and the superintendent shall have authority to disburse moneys from such person's personal account for the personal and incidental needs of the convicted person as may be deemed reasonably necessary. When convicted persons are released from the confines of the institution either on parole, transfer, or discharge, all funds and valuable personal property in the possession of the superintendent belonging to such convicted persons shall be delivered to them. In no case shall the state of Washington, or any state officer, including state elected officials, employees, or volunteers, be liable for the loss of such personal property, except upon a showing that the loss was occasioned by the intentional act, gross negligence, or negligence of the officer, official, employee, or volunteer, and that the actions or omissions occurred while the person was performing, or in good faith purporting to perform, his or her official duties. Recovery of damages for loss of personal property while in the custody of the superintendent under this subsection shall be limited to the lesser of the market value of the item lost at the time of the loss, or the

original purchase price of the item or, in the case of hand-made goods, the materials used in fabricating the item.

(4) The superintendent, subject to the approval of the director of the division of prisons and the secretary, shall make, amend, and repeal rules for the administration, supervision, discipline, and security of the institution.

(5) When in the superintendent's opinion an emergency exists, the superintendent may promulgate temporary rules for the governance of the institution, which shall remain in effect until terminated by the director of the division of prisons or the secretary.

(6) The superintendent shall perform such other duties as may be prescribed. [1993 c 281 § 63; 1988 c 143 § 2.]

Effective date—1993 c 281: See note following RCW 41.06.022.

Health care: RCW 41.05.280.

72.02.055 Appointment of associate superintendents.

The superintendent, subject to the approval of the director of the division of prisons and the secretary, shall appoint such associate superintendents as shall be deemed necessary, who shall have such qualifications as shall be determined by the secretary. In the event the superintendent is absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his or her duties, one of the associate superintendents of such institution as may be designated by the director of the division of prisons and the secretary shall act as superintendent. [1988 c 143 § 3.]

72.02.100 Earnings, clothing, transportation and subsistence payments upon release of certain prisoners.

Any person serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the *indeterminate sentencing review board, or who is discharged from custody upon expiration of sentence, or who is ordered discharged from custody by a court of appropriate jurisdiction, shall be entitled to retain his earnings from labor or employment while in confinement and shall be supplied by the superintendent of the state correctional facility with suitable and presentable clothing, the sum of forty dollars for subsistence, and transportation by the least expensive method of public transportation not to exceed the cost of one hundred dollars to his place of residence or the place designated in his parole plan, or to the place from which committed if such person is being discharged on expiration of sentence, or discharged from custody by a court of appropriate jurisdiction: PROVIDED, That up to sixty additional dollars may be made available to the parolee for necessary personal and living expenses upon application to and approval by such person's community corrections officer. If in the opinion of the superintendent suitable arrangements have been made to provide the person to be released with suitable clothing and/or the expenses of transportation, the superintendent may consent to such arrangement. If the superintendent has reasonable cause to believe that the person to be released has ample funds, with the exception of earnings from labor or employment while in confinement, to assume the expenses of clothing, transportation, or the expenses for which payments made pursuant to RCW 72.02.100 or

72.02.110 or any one or more of such expenses, the person released shall be required to assume such expenses. [1988 c 143 § 5; 1971 ex.s. c 171 § 1.]

***Reviser's note:** The "indeterminate sentencing review board" should be referred to as the "indeterminate sentence review board." See RCW 9.95.001.

72.02.110 Weekly payments to certain released prisoners. As state, federal or other funds are available, the secretary of corrections or his designee is authorized, in his discretion, not to provide the forty dollars subsistence money or the optional sixty dollars to a person or persons released as described in RCW 72.02.100, and instead to utilize the authorization and procedure contained in this section relative to such person or persons.

Any person designated by the secretary serving a sentence for a term of confinement in a state correctional facility for convicted felons, pursuant to court commitment, who is thereafter released upon an order of parole of the *indeterminate sentencing review board, or is discharged from custody upon expiration of sentence, or is ordered discharged from custody by a court of appropriate jurisdiction, shall receive the sum of fifty-five dollars per week for a period of up to six weeks. The initial weekly payment shall be made to such person upon his release or parole by the superintendent of the institution. Subsequent weekly payments shall be made to such person by the community corrections officer at the office of such officer. In addition to the initial six weekly payments provided for in this section, a community corrections officer and his supervisor may, at their discretion, continue such payments up to a maximum of twenty additional weeks when they are satisfied that such person is actively seeking employment and that such payments are necessary to continue the efforts of such person to gain employment: PROVIDED, That if, at the time of release or parole, in the opinion of the superintendent funds are otherwise available to such person, with the exception of earnings from labor or employment while in confinement, such weekly sums of money or part thereof shall not be provided to such person.

When a person receiving such payments provided for in this section becomes employed, he may continue to receive payments for two weeks after the date he becomes employed but payments made after he becomes employed shall be discontinued as of the date he is first paid for such employment: PROVIDED, That no person shall receive payments for a period exceeding the twenty-six week maximum as established in this section.

The secretary of corrections may annually adjust the amount of weekly payment provided for in this section to reflect changes in the cost of living and the purchasing power of the sum set for the previous year. [1988 c 143 § 6; 1981 c 136 § 80; 1971 ex.s. c 171 § 2.]

***Reviser's note:** The "indeterminate sentencing review board" should be referred to as the "indeterminate sentence review board." See RCW 9.95.001.

Effective date—1981 c 136: See RCW 72.09.900.

72.02.150 Disturbances at state penal facilities—Development of contingency plans—Scope—Local participation. The secretary or the secretary's designee shall be responsible for the preparation of contingency plans for deal-

ing with disturbances at state penal facilities. The plans shall be developed or revised in cooperation with representatives of state and local agencies at least annually. Contingency plans developed shall encompass contingencies of varying levels of severity, specific contributions of personnel and material from participating agencies, and a unified chain of command. Agencies providing personnel under the plan shall provide commanders for the personnel who will be included in the unified chain of command. [1982 c 49 § 1.]

72.02.160 Disturbances at state penal facilities—Utilization of outside law enforcement personnel—Scope.

Whenever the secretary or the secretary's designee determines that due to a disturbance at a state penal facility within the jurisdiction of the department that the assistance of law enforcement officers in addition to department of corrections' personnel is required, the secretary may notify the Washington state patrol, the chief law enforcement officer of any nearby county and the county in which the facility is located, and the chief law enforcement officer of any municipality near the facility or in which the facility is located. These law enforcement agencies may provide such assistance as expressed in the contingency plan or plans, or as is deemed necessary by the secretary, or the secretary's designee, to restore order at the facility, consistent with the resources available to the law enforcement agencies and the law enforcement agencies' other statutory obligations. While on the grounds of a penal facility and acting under this section, all law enforcement officials shall be under the immediate control of their respective supervisors who shall be responsive to the secretary, or the secretary's designee, which designee need not be an employee of the department of corrections. [1982 c 49 § 2.]

Reimbursement for local support at prison disturbances: RCW 72.72.050, 72.72.060.

72.02.200 Reception and classification units. There shall be units known as reception and classification centers which, subject to the rules and regulations of the department, shall be charged with the function of receiving and classifying all persons committed or transferred to the institution, taking into consideration age, type of crime for which committed, physical condition, behavior, attitude and prospects for reformation for the purposes of confinement and treatment of offenders convicted of offenses punishable by imprisonment, except offenders convicted of crime and sentenced to death. [1988 c 143 § 7; 1959 c 214 § 11. Formerly RCW 72.13.110.]

72.02.210 Sentence—Commitment to reception units. Any offender convicted of an offense punishable by imprisonment, except an offender sentenced to death, shall, notwithstanding any inconsistent provision of law, be sentenced to imprisonment in a penal institution under the jurisdiction of the department without designating the name of such institution, and be committed to the reception units for classification, confinement and placement in such correctional facility under the supervision of the department as the secretary shall deem appropriate. [1988 c 143 § 8; 1981 c

136 § 95; 1979 c 141 § 206; 1959 c 214 § 12. Formerly RCW 72.13.120.]

Effective date—1981 c 136: See RCW 72.09.900.

72.02.220 Cooperation with reception units by state agencies. The indeterminate sentence review board and other state agencies shall cooperate with the department in obtaining necessary investigative materials concerning offenders committed to the reception unit and supply the reception unit with necessary information regarding social histories and community background. [1988 c 143 § 10; 1979 c 141 § 207; 1959 c 214 § 14. Formerly RCW 72.13.140.]

Indeterminate sentences: Chapter 9.95 RCW.

72.02.230 Persons to be received for classification and placement. The division of prisons shall receive all persons convicted of a felony by the superior court and committed by the superior court to the reception units for classification and placement in such facility as the secretary shall designate. The superintendent of these institutions shall only receive prisoners for classification and study in the institution upon presentation of certified copies of a judgment, sentence, and order of commitment of the superior court and the statement of the prosecuting attorney, along with other reports as may have been made in reference to each individual prisoner. [1988 c 143 § 11; 1984 c 114 § 4; 1979 c 141 § 208; 1959 c 214 § 15. Formerly RCW 72.13.150.]

72.02.240 Secretary to determine placement—What laws govern confinement, parole and discharge. The secretary shall determine the state correctional institution in which the offender shall be confined during the term of imprisonment. The confinement of any offender shall be governed by the laws applicable to the institution to which the offender is certified for confinement, but parole and discharge shall be governed by the laws applicable to the sentence imposed by the court. [1988 c 143 § 12; 1979 c 141 § 209; 1959 c 214 § 16. Formerly RCW 72.13.160.]

72.02.250 Commitment of convicted female persons—Procedure as to death sentences. All female persons convicted in the superior courts of a felony and sentenced to a term of confinement, shall be committed to the Washington correctional institution for women. Female persons sentenced to death shall be committed to the Washington correctional institution for women, notwithstanding the provisions of RCW 10.95.170, except that the death warrant shall provide for the execution of such death sentence at the Washington state penitentiary as provided by RCW 10.95.160, and the secretary of corrections shall transfer to the Washington state penitentiary any female offender sentenced to death not later than seventy-two hours prior to the date fixed in the death warrant for the execution of the death sentence. The provisions of this section shall not become effective until the secretary of corrections certifies to the chief justice of the supreme court, the chief judge of each division of the court of appeals, the superior courts and the prosecuting attorney of each county that the facilities and personnel for the implementation of commitments are ready to receive persons com-

(2004 Ed.)

mitted to the Washington correctional institution for women under the provisions of this section. [1983 c 3 § 185; 1981 c 136 § 97; 1971 c 81 § 134; 1967 ex.s. c 122 § 8. Formerly RCW 72.15.060.]

Effective date—1981 c 136: See RCW 72.09.900.

72.02.260 Letters of inmates may be withheld. Whenever the superintendent of an institution withholds from mailing letters written by inmates of such institution, the superintendent shall forward such letters to the secretary of corrections or the secretary's designee for study and the inmate shall be forthwith notified that such letter has been withheld from mailing and the reason for so doing. Letters forwarded to the secretary for study shall either be mailed within seven days to the addressee or, if deemed objectionable by the secretary, retained in a separate file for two years and then destroyed. [1988 c 143 § 13; 1981 c 136 § 87; 1979 c 141 § 192; 1959 c 28 § 72.08.380. Prior: 1957 c 61 § 1. Formerly RCW 72.08.380.]

Effective date—1981 c 136: See RCW 72.09.900.

72.02.270 Abused victims—Murder of abuser—Notice of provisions for reduction in sentence. The department shall advise all inmates in the department's custody who were convicted of a murder that the inmate committed prior to July 23, 1989, about the provisions in RCW 9.95.045, 9.95.047, and 9.94A.890. The department shall advise the inmates of the method and deadline for submitting petitions to the indeterminate sentence review board for review of the inmate's sentence. The department shall issue the notice to the inmates no later than July 1, 1993. [1993 c 144 § 6.]

Effective date—1993 c 144: See note following RCW 9.95.045.

72.02.280 Motion pictures. Motion pictures unrated after November 1968 or rated X or NC-17 by the motion picture association of America shall not be shown in adult correctional facilities. [1994 sp.s. c 7 § 808.]

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

**Chapter 72.04A RCW
PROBATION AND PAROLE**

Sections

- 72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to secretary of corrections.
- 72.04A.070 Plans and recommendations for conditions of supervision of parolees.
- 72.04A.080 Parolees subject to supervision of department—Progress reports.
- 72.04A.090 Violations of parole or probation—Revision of parole conditions—Detention.
- 72.04A.120 Parolee assessments.
- 72.04A.900 RCW 72.04A.050 through 72.04A.090 inapplicable to felonies committed after July 1, 1984.

Counties may provide probation and parole services: RCW 36.01.070.

Indeterminate sentence review board: Chapter 9.95 RCW.

Siting of community-based facilities: RCW 72.65.220.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

72.04A.050 Transfer of certain powers and duties of board of prison terms and paroles to secretary of correc-

tions. The powers and duties of the state *board of prison terms and paroles, relating to (1) the supervision of parolees of any of the state penal institutions, (2) the supervision of persons placed on probation by the courts, and (3) duties with respect to persons conditionally pardoned by the governor, are transferred to the secretary of corrections.

This section shall not be construed as affecting any of the remaining powers and duties of the *board of prison terms and paroles including, but not limited to, the following:

(1) The fixing of minimum terms of confinement of convicted persons, or the reconsideration of its determination of minimum terms of confinement;

(2) Determining when and under what conditions a convicted person may be released from custody on parole, and the revocation or suspension of parole or the modification or revision of the conditions of the parole, of any convicted person. [1981 c 136 § 81; 1979 c 141 § 173; 1967 c 134 § 7.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

72.04A.070 Plans and recommendations for conditions of supervision of parolees. The secretary of corrections shall cause to be prepared plans and recommendations for the conditions of supervision under which each inmate of any state penal institutions who is eligible for parole may be released from custody. Such plans and recommendations shall be submitted to the *board of prison terms and paroles which may, at its discretion, approve, reject, or revise or amend such plans and recommendations for the conditions of supervision of release of inmates on parole, and, in addition, the board may stipulate any special conditions of supervision to be carried out by a probation and parole officer. [1981 c 136 § 82; 1979 c 141 § 174; 1967 c 134 § 9.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

72.04A.080 Parolees subject to supervision of department—Progress reports. Each inmate hereafter released on parole shall be subject to the supervision of the department of corrections, and the probation and parole officers of the department shall be charged with the preparation of progress reports of parolees and to give guidance and supervision to such parolees within the conditions of a parolee's release from custody. Copies of all progress reports prepared by the probation and parole officers shall be supplied to the *board of prison terms and paroles for their files and records. [1981 c 136 § 83; 1979 c 141 § 175; 1967 c 134 § 10.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

72.04A.090 Violations of parole or probation—Revision of parole conditions—Detention. Whenever a parolee breaches a condition or conditions under which he was granted parole, or violates any law of the state or rules and regulations of the *board of prison terms and paroles, any

probation and parole officer may arrest, or cause the arrest and suspension of parole of, such parolee without a warrant, pending a determination by the board. The facts and circumstances of such conduct of the parolee shall be reported by the probation and parole officer, with recommendations, to the *board of prison terms and paroles, who may order the revocation or suspension of parole, revise or modify the conditions of parole or take such other action as may be deemed appropriate in accordance with RCW 9.95.120. The *board of prison terms and paroles, after consultation with the secretary of corrections, shall make all rules and regulations concerning procedural matters, which shall include the time when state probation and parole officers shall file with the board reports required by this section, procedures pertaining thereto and the filing of such information as may be necessary to enable the *board of prison terms and paroles to perform its functions under this section.

The probation and parole officers shall have like authority and power regarding the arrest and detention of a probationer who has breached a condition or conditions under which he was granted probation by the superior court, or violates any law of the state, pending a determination by the superior court.

In the event a probation and parole officer shall arrest or cause the arrest and suspension of parole of a parolee or probationer in accordance with the provisions of this section, such parolee or probationer shall be confined and detained in the county jail of the county in which the parolee or probationer was taken into custody, and the sheriff of such county shall receive and keep in the county jail, where room is available, all prisoners delivered thereto by the probation and parole officer, and such parolees shall not be released from custody on bail or personal recognizance, except upon approval of the *board of prison terms and paroles and the issuance by the board of an order of reinstatement on parole on the same or modified conditions of parole. [1981 c 136 § 84; 1979 c 141 § 176; 1969 c 98 § 1; 1967 c 134 § 11.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—Effective date—1969 c 98: See notes following RCW 9.95.120.

Suspension, revision of parole, retaking violators, community corrections officers, etc.: RCW 9.95.120.

72.04A.120 Parolee assessments. (1) Any person placed on parole shall be required to pay the monthly assessment, prescribed under subsection (2) of this section, which shall be for the duration of the parole and which shall be considered as payment or part payment of the cost of providing parole supervision to the parolee. The department may exempt a person from the payment of all or any part of the assessment based upon any of the following factors:

(a) The offender has diligently attempted but has been unable to obtain employment which provides the offender sufficient income to make such payments.

(b) The offender is a student in a school, college, university, or a course of vocational or technical training designed to fit the student for gainful employment.

(c) The offender has an employment handicap, as determined by an examination acceptable to or ordered by the department.

(d) The offender's age prevents him from obtaining employment.

(e) The offender is responsible for the support of dependents and the payment of the assessment constitutes an undue hardship on the offender.

(f) Other extenuating circumstances as determined by the department.

(2) The department of corrections shall adopt a rule prescribing the amount of the assessment. The department may, if it finds it appropriate, prescribe a schedule of assessments which shall vary in accordance with the intensity or cost of the supervision. The department may not prescribe any assessment which is less than ten dollars nor more than fifty dollars.

(3) Payment of the assessed amount shall constitute a condition of parole for purposes of the application of RCW 72.04A.090.

(4) All amounts required to be paid under this section shall be collected by the department of corrections and deposited by the department in the dedicated fund established pursuant to RCW 72.11.040.

(5) This section shall not apply to parole services provided under an interstate compact pursuant to chapter 9.95 RCW or to parole services provided for offenders paroled before June 10, 1982. [1991 c 104 § 2; 1989 c 252 § 20; 1982 c 207 § 1.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

72.04A.900 RCW 72.04A.050 through 72.04A.090 inapplicable to felonies committed after July 1, 1984. The following sections of law do not apply to any felony offense committed on or after July 1, 1984: RCW 72.04A.050, 72.04A.070, 72.04A.080, and 72.04A.090. [1981 c 137 § 34.]

Severability—1981 c 137: See RCW 9.94A.910.

Chapter 72.05 RCW

CHILDREN AND YOUTH SERVICES

Sections

- 72.05.010 Declaration of purpose.
- 72.05.020 Definitions.
- 72.05.130 Powers and duties of department—"Close security" institutions designated.
- 72.05.150 "Minimum security" institutions.
- 72.05.152 Juvenile forest camps—Industrial insurance benefits prohibited—Exceptions.
- 72.05.154 Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions.
- 72.05.160 Contracts with other divisions, agencies authorized.
- 72.05.170 Counseling and consultative services.
- 72.05.200 Parental right to provide treatment preserved.
- 72.05.210 Juvenile court law—Applicability—Synonymous terms.
- 72.05.300 Parental schools—Leases, purchases—Powers of school district.
- 72.05.310 Parental schools—Personnel.
- 72.05.400 Operation of community facility—Establishing or relocating—Public participation required—Secretary's duties.
- 72.05.405 Juveniles in community facility—Infraction policy—Return to institution upon serious violation—Definitions by rule.
- 72.05.410 Violations by juveniles in community facility—Toll-free hotline for reporting.

- 72.05.415 Establishing community placement oversight committees—Review and recommendations—Liability—Travel expenses—Notice to law enforcement of placement decisions.
- 72.05.420 Placement in community facility—Necessary conditions and actions—Department's duties.
- 72.05.425 Student records and information—Necessary for risk assessment, security classification, and proper placement—Rules.
- 72.05.430 Placement and supervision of juveniles in community facility—Monitoring requirements—Copies of agreements.
- 72.05.435 Common use of residential group homes for juvenile offenders—Placement of juvenile convicted of a class A felony.
- 72.05.440 Eligibility for employment or volunteer position with juveniles—Must report convictions—Rules.

Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders: RCW 72.01.410.

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

Educational programs for residential school residents: RCW 28A.190.020 through 28A.190.060.

Employment of dental hygienist without supervision of dentist authorized: RCW 18.29.056.

Financial responsibility for cost of detention of minor: RCW 13.16.085.

Handicapped children, parental responsibility, order of commitment: Chapter 26.40 RCW.

Minors—Mental health services, commitment: Chapter 71.34 RCW.

Uniform interstate compact on juveniles: Chapter 13.24 RCW.

72.05.010 Declaration of purpose. The purposes of RCW 72.05.010 through 72.05.210 are: To provide for every child with behavior problems, mentally and physically handicapped persons, and hearing and visually impaired children, within the purview of RCW 72.05.010 through 72.05.210, as now or hereafter amended, such care, guidance and instruction, control and treatment as will best serve the welfare of the child or person and society; to insure nonpolitical and qualified operation, supervision, management, and control of the Green Hill school, the Maple Lane school, the Naselle Youth Camp, the Mission Creek Youth Camp, Echo Glen, the Cascadia Diagnostic Center, Lakeland Village, Rainier school, the Yakima Valley school, Interlake school, Fircrest school, the Francis Haddon Morgan Center, the Child Study and Treatment Center and Secondary School of Western State Hospital, and like residential state schools, camps and centers hereafter established, and to place them under the department of social and health services except where specified otherwise; and to provide for the persons committed or admitted to those schools that type of care, instruction, and treatment most likely to accomplish their rehabilitation and restoration to normal citizenship. [1985 c 378 § 9; 1980 c 167 § 7; 1979 ex.s. c 217 § 7; 1979 c 141 § 177; 1959 c 28 § 72.05.010. Prior: 1951 c 234 § 1.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.190.020.

72.05.020 Definitions. As used in this chapter, unless the context requires otherwise:

(1) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility.

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

(3) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(4) "Service provider" means the entity that operates a community facility. [1998 c 269 § 2; 1979 c 141 § 178; 1970 ex.s. c 18 § 58; 1959 c 28 § 72.05.020. Prior: 1951 c 234 § 2. Formerly RCW 43.19.260.]

Intent—Finding—1998 c 269: "It is the intent of the legislature to:

(1) Enhance public safety and maximize the rehabilitative potential of juvenile offenders through modifications to licensed community residential placements for juveniles;

(2) Ensure community support for community facilities by enabling community participation in decisions involving these facilities and assuring the safety of communities in which community facilities for juvenile offenders are located; and

(3) Improve public safety by strengthening the safeguards in placement, oversight, and monitoring of the juvenile offenders placed in the community, and by establishing minimum standards for operation of licensed residential community facilities. The legislature finds that community support and participation is vital to the success of community programming." [1998 c 269 § 1.]

Effective date—1998 c 269: "This act takes effect September 1, 1998." [1998 c 269 § 19.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.05.130 Powers and duties of department—"Close security" institutions designated. The department shall establish, maintain, operate and administer a comprehensive program for the custody, care, education, treatment, instruction, guidance, control and rehabilitation of all persons who may be committed or admitted to institutions, schools, or other facilities controlled and operated by the department, except for the programs of education provided pursuant to RCW 28A.190.030 through 28A.190.050 which shall be established, operated and administered by the school district conducting the program, and in order to accomplish these purposes, the powers and duties of the secretary shall include the following:

(1) The assembling, analyzing, tabulating, and reproduction in report form, of statistics and other data with respect to children with behavior problems in the state of Washington, including, but not limited to, the extent, kind, and causes of such behavior problems in the different areas and population centers of the state. Such reports shall not be open to public inspection, but shall be open to the inspection of the governor and to the superior court judges of the state of Washington.

(2) The establishment and supervision of diagnostic facilities and services in connection with the custody, care, and treatment of mentally and physically handicapped, and behavior problem children who may be committed or admitted to any of the institutions, schools, or facilities controlled and operated by the department, or who may be referred for such diagnosis and treatment by any superior court of this state. Such diagnostic services may be established in connection with, or apart from, any other state institution under the supervision and direction of the secretary. Such diagnostic services shall be available to the superior courts of the state for persons referred for such services by them prior to commitment, or admission to, any school, institution, or other facility. Such diagnostic services shall also be available to

other departments of the state. When the secretary determines it necessary, the secretary may create waiting lists and set priorities for use of diagnostic services for juvenile offenders on the basis of those most severely in need.

(3) The supervision of all persons committed or admitted to any institution, school, or other facility operated by the department, and the transfer of such persons from any such institution, school, or facility to any other such school, institution, or facility: PROVIDED, That where a person has been committed to a minimum security institution, school, or facility by any of the superior courts of this state, a transfer to a close security institution shall be made only with the consent and approval of such court.

(4) The supervision of parole, discharge, or other release, and the post-institutional placement of all persons committed to Green Hill school and Maple Lane school, or such as may be assigned, paroled, or transferred therefrom to other facilities operated by the department. Green Hill school and Maple Lane school are hereby designated as "close security" institutions to which shall be given the custody of children with the most serious behavior problems. [1990 c 33 § 592; 1985 c 378 § 10; 1983 c 191 § 12; 1979 ex.s. c 217 § 8; 1979 c 141 § 179; 1959 c 28 § 72.05.130. Prior: 1951 c 234 § 13. Formerly RCW 43.19.370.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.190.020.

72.05.150 "Minimum security" institutions. The department shall have power to acquire, establish, maintain, and operate "minimum security" facilities for the care, custody, education, and treatment of children with less serious behavior problems. Such facilities may include parental schools or homes, farm units, and forest camps. Admission to such minimum security facilities shall be by juvenile court commitment or by transfer as herein otherwise provided. In carrying out the purposes of this section, the department may establish or acquire the use of such facilities by gift, purchase, lease, contract, or other arrangement with existing public entities, and to that end the secretary may execute necessary leases, contracts, or other agreements. In establishing forest camps, the department may contract with other divisions of the state and the federal government; including, but not limited to, the department of natural resources, the state parks and recreation commission, the U.S. forest service, and the national park service, on a basis whereby such camps may be made as nearly as possible self-sustaining. Under any such arrangement the contracting agency shall reimburse the department for the value of services which may be rendered by the inmates of a camp. [1979 ex.s. c 67 § 6; 1979 c 141 § 181; 1959 c 28 § 72.05.150. Prior: 1951 c 234 § 15. Formerly RCW 43.19.390.]

Severability—1979 ex.s. c 67: See note following RCW 19.28.351.

72.05.152 Juvenile forest camps—Industrial insurance benefits prohibited—Exceptions. No inmate of a juvenile forest camp who is affected by this chapter or receives benefits pursuant to RCW 72.05.152 and 72.05.154

shall be considered as an employee or to be employed by the state or the department of social and health services or the department of natural resources, nor shall any such inmate, except those provided for in RCW 72.05.154, come within any of the provisions of the workers' compensation act, or be entitled to any benefits thereunder, whether on behalf of himself or any other person. All moneys paid to inmates shall be considered a gratuity. [1987 c 185 § 37; 1973 c 68 § 1.]

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Effective date—1973 c 68: "This 1973 act shall take effect on July 1, 1973." [1973 c 68 § 3.]

72.05.154 Juvenile forest camps—Industrial insurance—Eligibility for benefits—Exceptions. From and after July 1, 1973, any inmate working in a juvenile forest camp established and operated pursuant to RCW 72.05.150, pursuant to an agreement between the department of social and health services and the department of natural resources shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions provided by this section.

No inmate as described in RCW 72.05.152, until released upon an order of parole by the department of social and health services, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter amended, or to the benefits of chapter 51.36 RCW relating to medical aid: PROVIDED, That RCW 72.05.152 and 72.05.154 shall not affect the eligibility, payment or distribution of benefits for any industrial injury to the inmate which occurred prior to his existing commitment to the department of social and health services.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1973 c 68 § 2.]

Effective date—1973 c 68: See note following RCW 72.05.152.

72.05.160 Contracts with other divisions, agencies authorized. In carrying out the provisions of RCW 72.05.010 through 72.05.210, the department shall have power to contract with other divisions or departments of the state or its political subdivisions, with any agency of the federal government, or with any private social agency. [1979 c 141 § 182; 1959 c 28 § 72.05.160. Prior: 1951 c 234 § 16. Formerly RCW 43.19.400.]

72.05.170 Counseling and consultative services. The department may provide professional counseling services to delinquent children and their parents, consultative services to communities dealing with problems of children and youth, and may give assistance to law enforcement agencies by means of juvenile control officers who may be selected from the field of police work. [1977 ex.s. c 80 § 45; 1959 c 28 § 72.05.170. Prior: 1955 c 240 § 1. Formerly RCW 43.19.405.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

(2004 Ed.)

72.05.200 Parental right to provide treatment preserved. Nothing in RCW 72.05.010 through 72.05.210 shall be construed as limiting the right of a parent, guardian or person standing in loco parentis in providing any medical or other remedial treatment recognized or permitted under the laws of this state. [1959 c 28 § 72.05.200. Prior: 1951 c 234 § 19. Formerly RCW 43.19.410.]

72.05.210 Juvenile court law—Applicability—Synonymous terms. RCW 72.05.010 through 72.05.210 shall be construed in connection with and supplemental to the juvenile court law as embraced in chapter 13.04 RCW. Process, procedure, probation by the court prior to commitment, and commitment shall be as provided therein. The terms "delinquency", "delinquent" and "delinquent children" as used and applied in the juvenile court law and the terms "behavior problems" and "children with behavior problems" as used in RCW 72.05.010 through 72.05.210 are synonymous and interchangeable. [1959 c 28 § 72.05.210. Prior: 1951 c 234 § 20. Formerly RCW 43.19.420.]

72.05.300 Parental schools—Leases, purchases—Powers of school district. The department may execute leases, with options to purchase, of parental school facilities now or hereafter owned and operated by school districts, and such leases with options to purchase shall include such terms and conditions as the secretary of social and health services deems reasonable and necessary to acquire such facilities. Notwithstanding any provisions of the law to the contrary, the board of directors of each school district now or hereafter owning and operating parental school facilities may, without submission for approval to the voters of the school district, execute leases, with options to purchase, of such parental school facilities, and such leases with options to purchase shall include such terms and conditions as the board of directors deems reasonable and necessary to dispose of such facilities in a manner beneficial to the school district. The department if it enters into a lease, with an option to purchase, of parental school facilities, may exercise its option and purchase such parental school facilities; and a school district may, if it enters into a lease, with an option to purchase, of parental school facilities, upon exercise of the option to purchase by the department, sell such parental school facilities and such sale may be accomplished without first obtaining a vote of approval from the electorate of the school district. [1979 c 141 § 183; 1959 c 28 § 72.05.300. Prior: 1957 c 297 § 2. Formerly RCW 43.28.160.]

72.05.310 Parental schools—Personnel. The department may employ personnel, including but not limited to, superintendents and all other officers, agents, and teachers necessary to the operation of parental schools. [1979 c 141 § 184; 1959 c 28 § 72.05.310. Prior: 1957 c 297 § 3. Formerly RCW 43.28.170.]

72.05.400 Operation of community facility—Establishing or relocating—Public participation required—Secretary's duties. (1) Whenever the department operates, or the secretary enters a contract to operate, a community facility, the community facility may be operated only after

[Title 72 RCW—page 15]

the public notification and opportunities for review and comment as required by this section.

(2) The secretary shall establish a process for early and continuous public participation in establishing or relocating community facilities. The process shall include, at a minimum, public meetings in the local communities affected, as well as opportunities for written and oral comments, in the following manner:

(a) If there are more than three sites initially selected as potential locations and the selection process by the secretary or a service provider reduces the number of possible sites for a community facility to no fewer than three, the secretary or the chief operating officer of the service provider shall notify the public of the possible siting and hold at least two public hearings in each community where a community facility may be sited.

(b) When the secretary or service provider has determined the community facility's location, the secretary or the chief operating officer of the service provider shall hold at least one additional public hearing in the community where the community facility will be sited.

(c) When the secretary has entered negotiations with a service provider and only one site is under consideration, then at least two public hearings shall be held.

(d) To provide adequate notice of, and opportunity for interested persons to comment on, a proposed location, the secretary or the chief operating officer of the service provider shall provide at least fourteen days' advance notice of the meeting to all newspapers of general circulation in the community, all radio and television stations generally available to persons in the community, any school district in which the community facility would be sited or whose boundary is within two miles of a proposed community facility, any library district in which the community facility would be sited, local business or fraternal organizations that request notification from the secretary or agency, and any person or property owner within a one-half mile radius of the proposed community facility. Before initiating this process, the department shall contact local government planning agencies in the communities containing the proposed community facility. The department shall coordinate with local government agencies to ensure that opportunities are provided for effective citizen input and to reduce the duplication of notice and meetings.

(3) The secretary shall not issue a license to any service provider until the service provider submits proof that the requirements of this section have been met.

(4) This section shall apply only to community facilities sited after September 1, 1998. [1998 c 269 § 5.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

72.05.405 Juveniles in community facility—Infraction policy—Return to institution upon serious violation—Definitions by rule. The department shall adopt an infraction policy for juveniles placed in community facilities. The policy shall require written documentation by the department and service providers of all infractions and violations by juveniles of conditions set by the department. Any juvenile who commits a serious infraction or a serious violation of conditions set by the department shall be returned to an insti-

tution. The secretary shall not return a juvenile to a community facility until a new risk assessment has been completed and the secretary reasonably believes that the juvenile can adhere to the conditions set by the department. The department shall define the terms "serious infraction" and "serious violation" in rule and shall include but not necessarily [be] limited to the commission of any criminal offense, any unlawful use or possession of a controlled substance, and any use or possession of an alcoholic beverage. [1998 c 269 § 6.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

72.05.410 Violations by juveniles in community facility—Toll-free hotline for reporting. (1) The department shall publish and operate a staffed, toll-free twenty-four-hour hotline for the purpose of receiving reports of violation of conditions set for juveniles who are placed in community facilities.

(2) The department shall include the phone number on all documents distributed to the juvenile and the juvenile's employer, school, parents, and treatment providers.

(3) The department shall include the phone number in every contract it executes with any service provider after September 1, 1998. [1998 c 269 § 8.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

72.05.415 Establishing community placement oversight committees—Review and recommendations—Liability—Travel expenses—Notice to law enforcement of placement decisions. (1) Promptly following the report due under section 17, chapter 269, Laws of 1998, the secretary shall develop a process with local governments that allows each community to establish a community placement oversight committee. The department may conduct community awareness activities. The community placement oversight committees developed pursuant to this section shall be implemented no later than September 1, 1999.

(2) The community placement oversight committees may review and make recommendations regarding the placement of any juvenile who the secretary proposes to place in the community facility.

(3) The community placement oversight committees, their members, and any agency represented by a member shall not be liable in any cause of action as a result of its decision in regard to a proposed placement of a juvenile unless the committee acts with gross negligence or bad faith in making a placement decision.

(4) Members of the committee shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(5) Except as provided in RCW 13.40.215, at least seventy-two hours prior to placing a juvenile in a community facility the secretary shall provide to the chief law enforcement officer of the jurisdiction in which the community facility is sited: (a) The name of the juvenile; (b) the juvenile's criminal history; and (c) such other relevant and disclosable information as the law enforcement officer may require. [1998 c 269 § 9.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

72.05.420 Placement in community facility—Necessary conditions and actions—Department's duties. (1) The department shall not initially place an offender in a community facility unless:

(a) The department has conducted a risk assessment, including a determination of drug and alcohol abuse, and the results indicate the juvenile will pose not more than a minimum risk to public safety; and

(b) The offender has spent at least ten percent of his or her sentence, but in no event less than thirty days, in a secure institution operated by, or under contract with, the department.

The risk assessment must include consideration of all prior convictions and all available nonconviction data released upon request under RCW 10.97.050, and any serious infractions or serious violations while under the jurisdiction of the secretary or the courts.

(2) No juvenile offender may be placed in a community facility until the juvenile's student records and information have been received and the department has reviewed them in conjunction with all other information used for risk assessment, security classification, and placement of the juvenile.

(3) A juvenile offender shall not be placed in a community facility until the department's risk assessment and security classification is complete and local law enforcement has been properly notified. [1998 c 269 § 10.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

72.05.425 Student records and information—Necessary for risk assessment, security classification, and proper placement—Rules. (1) The department shall establish by rule, in consultation with the office of the superintendent of public instruction, those student records and information necessary to conduct a risk assessment, make a security classification, and ensure proper placement. Those records shall include at least:

(a) Any history of placement in special education programs;

(b) Any past, current, or pending disciplinary action;

(c) Any history of violent, aggressive, or disruptive behavior, or gang membership, or behavior listed in RCW 13.04.155;

(d) Any use of weapons that is illegal or in violation of school policy;

(e) Any history of truancy;

(f) Any drug or alcohol abuse;

(g) Any health conditions affecting the juvenile's placement needs; and

(h) Any other relevant information.

(2) For purposes of this section "gang" has the meaning defined in RCW 28A.225.225. [1998 c 269 § 13.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

72.05.430 Placement and supervision of juveniles in community facility—Monitoring requirements—Copies of agreements. (1) Whenever the department operates, or the secretary enters a contract to operate, a community facility, the placement and supervision of juveniles must be accomplished in accordance with this section.

(2) The secretary shall require that any juvenile placed in a community facility and who is employed or assigned as a volunteer be subject to monitoring for compliance with requirements for attendance at his or her job or assignment. The monitoring requirements shall be included in a written agreement between the employer or supervisor, the secretary or chief operating officer of the contracting agency, and the juvenile. The requirements shall include, at a minimum, the following:

(a) Acknowledgment of the juvenile's offender status;

(b) The name, address, and telephone number of the community facility at which the juvenile resides;

(c) The twenty-four-hour telephone number required under RCW 72.05.410;

(d) The name and work telephone number of all persons responsible for the supervision of the juvenile;

(e) A prohibition on the juvenile's departure from the work or volunteer site without prior approval of the person in charge of the community facility;

(f) A prohibition on personal telephone calls except to the community facility;

(g) A prohibition on receiving compensation in any form other than a negotiable instrument;

(h) A requirement that rest breaks during work hours be taken only in those areas at the location which are designated for such breaks;

(i) A prohibition on visits from persons not approved in advance by the person in charge of the community facility;

(j) A requirement that any unexcused absence, tardiness, or departure by the juvenile be reported immediately upon discovery to the person in charge of the community facility;

(k) A requirement that any notice from the juvenile that he or she will not report to the work or volunteer site be verified as legitimate by contacting the person in charge of the community facility; and

(l) An agreement that the community facility will conduct and document random visits to determine compliance by the juvenile with the terms of this section.

(3) The secretary shall require that any juvenile placed in a community facility and who is enrolled in a public or private school be subject to monitoring for compliance with requirements for attendance at his or her school. The monitoring requirements shall be included in a written agreement between the school district or appropriate administrative officer, the secretary or chief operating officer of the contracting agency, and the juvenile. The requirements shall include, at a minimum, the following:

(a) Acknowledgment of the juvenile's offender status;

(b) The name, address, and telephone number of the community facility at which the juvenile resides;

(c) The twenty-four-hour telephone number required under RCW 72.05.410;

(d) The name and work telephone number of at least two persons at the school to contact if issues arise concerning the juvenile's compliance with the terms of his or her attendance at school;

(e) A prohibition on the juvenile's departure from the school without prior approval of the appropriate person at the school;

(f) A prohibition on personal telephone calls except to the community facility;

(g) A requirement that the juvenile remain on school grounds except for authorized and supervised school activities;

(h) A prohibition on visits from persons not approved in advance by the person in charge of the community facility;

(i) A requirement that any unexcused absence or departure by the juvenile be reported immediately upon discovery to the person in charge of the community facility;

(j) A requirement that any notice from the juvenile that he or she will not attend school be verified as legitimate by contacting the person in charge of the community facility; and

(k) An agreement that the community facility will conduct and document random visits to determine compliance by the juvenile with the terms of this section.

(4) The secretary shall require that when any juvenile placed in a community facility is employed, assigned as a volunteer, or enrolled in a public or private school:

(a) Program staff members shall make and document periodic and random accountability checks while the juvenile is at the school or work facility;

(b) A program counselor assigned to the juvenile shall contact the juvenile's employer, teacher, or school counselor regularly to discuss school or job performance-related issues.

(5) The department shall maintain a copy of all agreements executed under this section. The department shall also provide each affected juvenile with a copy of every agreement to which he or she is a party. The service provider shall maintain a copy of every agreement it executes under this section. [1998 c 269 § 14.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

72.05.435 Common use of residential group homes for juvenile offenders—Placement of juvenile convicted of a class A felony. (1) The department shall establish by rule a policy for the common use of residential group homes for juvenile offenders under the jurisdiction of the juvenile rehabilitation administration and the children's administration.

(2) A juvenile confined under the jurisdiction of the juvenile rehabilitation administration who is convicted of a class A felony is not eligible for placement in a community facility operated by children's administration that houses juveniles who are not under the jurisdiction of juvenile rehabilitation administration unless:

(a) The juvenile is housed in a separate living unit solely for juvenile offenders;

(b) The community facility is a specialized treatment program and the youth is not assessed as sexually aggressive under RCW 13.40.470; or

(c) The community facility is a specialized treatment program that houses one or more sexually aggressive youth and the juvenile is not assessed as sexually vulnerable under RCW 13.40.470. [1998 c 269 § 15.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

72.05.440 Eligibility for employment or volunteer position with juveniles—Must report convictions—Rules. (1) A person shall not be eligible for an employed or volun-

teer position within the juvenile rehabilitation administration or any agency with which it contracts in which the person may have regular access to juveniles under the jurisdiction of the department of social and health services or the department of corrections if the person has been convicted of one or more of the following:

(a) Any felony sex offense;

(b) Any violent offense, as defined in RCW 9.94A.030.

(2) Subsection (1) of this section applies only to persons hired by the department or any of its contracting agencies after September 1, 1998.

(3) Any person employed by the juvenile rehabilitation administration, or by any contracting agency, who may have regular access to juveniles under the jurisdiction of the department or the department of corrections and who is convicted of an offense set forth in this section after September 1, 1998, shall report the conviction to his or her supervisor. The report must be made within seven days of conviction. Failure to report within seven days of conviction constitutes misconduct under Title 50 RCW.

(4) For purposes of this section "may have regular access to juveniles" means access for more than a nominal amount of time.

(5) The department shall adopt rules to implement this section. [1998 c 269 § 16.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Chapter 72.06 RCW MENTAL HEALTH

Sections

| | |
|-----------|--|
| 72.06.010 | "Department" defined. |
| 72.06.050 | Mental health—Dissemination of information and advice by department. |
| 72.06.060 | Mental health—Psychiatric outpatient clinics. |
| 72.06.070 | Mental health—Cooperation of department and state hospitals with local programs. |

Reviser's note: 1979 ex.s. c 108, which was to be added to this chapter, has been codified as chapter 72.72 RCW.

Alcoholism, intoxication, and drug addiction treatment: Chapter 70.96A RCW.

Minors—Mental health services, commitment: Chapter 71.34 RCW.

State hospitals for the mentally ill: Chapter 72.23 RCW.

72.06.010 "Department" defined. "Department" for the purposes of this chapter shall mean the department of social and health services. [1970 ex.s. c 18 § 59; 1959 c 28 § 72.06.010. Prior: 1957 c 272 § 9. Formerly RCW 43.28.040.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

72.06.050 Mental health—Dissemination of information and advice by department. The department shall cooperate with other departments of state government and its political subdivisions in the following manner:

(1) By disseminating educational information relating to the prevention, diagnosis and treatment of mental illness.

(2) Upon request therefor, by advising public officers, organizations and agencies interested in the mental health of the people of the state. [1977 ex.s. c 80 § 46; 1959 c 28 § 72.06.050. Prior: 1955 c 136 § 2. Formerly RCW 43.28.600.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.06.060 Mental health—Psychiatric outpatient clinics. The department is hereby authorized to establish and maintain psychiatric outpatient clinics at such of the several state mental institutions as the secretary shall designate for the prevention, diagnosis and treatment of mental illnesses, and the services of such clinics shall be available to any citizen of the state in need thereof, when determined by a physician that such services are not otherwise available, subject to the rules of the department. [1979 c 141 § 185; 1977 ex.s. c 80 § 47; 1959 c 28 § 72.06.060. Prior: 1955 c 136 § 3. Formerly RCW 43.28.610.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.06.070 Mental health—Cooperation of department and state hospitals with local programs. The department and the several state hospitals for the mentally ill shall cooperate with local mental health programs by providing necessary information, recommendations relating to proper after care for patients paroled or discharged from such institutions and shall also supply the services of psychiatrists, psychologists and other persons specialized in mental illness as they are available. [1959 c 28 § 72.06.070. Prior: 1955 c 136 § 4. Formerly RCW 43.28.620.]

Chapter 72.09 RCW

DEPARTMENT OF CORRECTIONS

Sections

| | | | |
|-----------|---|-----------|--|
| 72.09.010 | Legislative intent. | 72.09.190 | Legal services for inmates. |
| 72.09.015 | Definitions. | 72.09.200 | Transfer of files, property, and appropriations. |
| 72.09.030 | Department created—Secretary. | 72.09.210 | Transfer of employees. |
| 72.09.040 | Transfer of functions from department of social and health services. | 72.09.220 | Employee rights under collective bargaining. |
| 72.09.050 | Powers and duties of secretary. | 72.09.225 | Sexual misconduct by state employees, contractors. |
| 72.09.055 | Affordable housing—Inventory of suitable property. | 72.09.230 | Duties continued during transition. |
| 72.09.057 | Fees for reproduction, shipment, and certification of documents and records. | 72.09.240 | Reimbursement of employees for offender assaults. |
| 72.09.060 | Organization of department—Program for public involvement and volunteers. | 72.09.251 | Communicable disease prevention guidelines. |
| 72.09.070 | Correctional industries board of directors—Duties. | 72.09.260 | Litter cleanup programs—Requirements. |
| 72.09.080 | Correctional industries board of directors—Appointment of members, chair—Compensation—Support. | 72.09.300 | Local law and justice council, plan—Rules—Base level of services—Juvenile justice services. |
| 72.09.090 | Correctional industries account—Expenditure—Profits—Appropriations. | 72.09.310 | Community custody violator. |
| 72.09.095 | Transfer of funds to department of labor and industries for crime victims' compensation. | 72.09.315 | Court-ordered treatment—Violations—Required notifications. |
| 72.09.100 | Inmate work program—Classes of work programs—Participation—Benefits. | 72.09.320 | Community placement—Liability. |
| 72.09.101 | Inmate work program—Administrators' duty. | 72.09.330 | Sex offenders and kidnapping offenders—Registration—Notice to persons convicted of sex offenses and kidnapping offenses. |
| 72.09.104 | Prison work programs to operate automated data input and retrieval systems. | 72.09.333 | Sex offenders—Facilities on McNeil Island. |
| 72.09.106 | Subcontracting of data input and microfilm capacities. | 72.09.335 | Sex offenders—Treatment opportunity. |
| 72.09.110 | Inmates' wages—Supporting cost of corrections—Crime victims' compensation and family support. | 72.09.337 | Sex offenders—Rules regarding. |
| 72.09.111 | Inmate wages—Deductions—Availability of savings—Employment goals—Recovery of cost of incarceration. | 72.09.340 | Supervision of sex offenders—Public safety—Policy for release plan evaluation and approval—Implementation, publicizing, notice—Rejection of residence locations of felony sex offenders of minor victims—Supervised visitation considerations. |
| 72.09.115 | Proposed new class I correctional industries work program—Threshold analysis—Business impact analysis—Public hearing—Finding. | 72.09.345 | Sex offenders—Release of information to protect public—End-of-sentence review committee—Assessment—Records access—Review, classification, referral of offenders—Issuance of narrative notices. |
| 72.09.116 | Information obtained under RCW 72.09.115 exempt from public disclosure. | 72.09.350 | Corrections mental health center—Collaborative arrangement with University of Washington—Services for mentally ill offenders—Annual report to the legislature. |
| 72.09.120 | Distribution of list of inmate job opportunities. | 72.09.370 | Dangerous mentally ill offenders—Plan for postrelease treatment and support services—Rules. |
| 72.09.130 | Incentive system for participation in education and work programs—Rules—Dissemination. | 72.09.380 | Rule making—Medicaid—Secretary of corrections—Secretary of social and health services. |
| 72.09.135 | Adoption of standards for correctional facilities. | 72.09.381 | Rule making—Chapter 214, Laws of 1999—Secretary of corrections—Secretary of social and health services. |
| 72.09.160 | Corrections standards board—Responsibilities, powers, support. | 72.09.400 | Work ethic camp program—Findings—Intent. |
| | | 72.09.410 | Work ethic camp program—Generally. |
| | | 72.09.450 | Limitation on denial of access to services and supplies—Recoupment of assessments—Collections. |
| | | 72.09.460 | Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Department coordination and plans. |
| | | 72.09.470 | Inmate contributions for cost of privileges—Standards. |
| | | 72.09.480 | Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions. |
| | | 72.09.490 | Policy on extended family visitation. |
| | | 72.09.500 | Prohibition on weight-lifting. |
| | | 72.09.510 | Limitation on purchasing recreational equipment and dietary supplements that increase muscle mass. |
| | | 72.09.520 | Limitation on purchase of televisions. |
| | | 72.09.530 | Prohibition on receipt or possession of contraband—Rules. |
| | | 72.09.540 | Inmate name change—Limitations on use—Penalty. |
| | | 72.09.560 | Camp for alien offenders. |
| | | 72.09.580 | Offender records and reports. |
| | | 72.09.585 | Mental health services information—Required inquiries and disclosures—Release to court, individuals, indeterminate sentence review board, state and local agencies. |
| | | 72.09.590 | Community safety. |
| | | 72.09.600 | Rules—Chapter 196, Laws of 1999. |
| | | 72.09.610 | Community custody study. |
| | | 72.09.620 | Extraordinary medical placement—Reports. |
| | | 72.09.630 | Custodial sexual misconduct—Investigation of allegations. |
| | | 72.09.650 | Use of force by limited authority Washington peace officers—Detention of persons. |
| | | 72.09.900 | Effective date—1981 c 136. |
| | | 72.09.901 | Short title. |
| | | 72.09.902 | Construction—1981 c 136. |
| | | 72.09.903 | Savings—1981 c 136. |
| | | 72.09.904 | Construction—1999 c 196. |
| | | 72.09.905 | Short title—1999 c 196. |
| | | | <i>Disturbances at state penal facilities</i> |
| | | | <i>development of contingency plans—Scope—Local participation:</i> RCW 72.02.150. |
| | | | <i>reimbursement to cities and counties for certain expenses incurred:</i> RCW 72.72.050, 72.72.060. |
| | | | <i>utilization of outside law enforcement personnel—Scope:</i> RCW 72.02.160. |

Interagency agreement on fetal alcohol exposure programs: RCW 70.96A.510.

Rule-making authority: RCW 70.24.107.

72.09.010 Legislative intent. It is the intent of the legislature to establish a comprehensive system of corrections for convicted law violators within the state of Washington to accomplish the following objectives.

(1) The system should ensure the public safety. The system should be designed and managed to provide the maximum feasible safety for the persons and property of the general public, the staff, and the inmates.

(2) The system should punish the offender for violating the laws of the state of Washington. This punishment should generally be limited to the denial of liberty of the offender.

(3) The system should positively impact offenders by stressing personal responsibility and accountability and by discouraging recidivism.

(4) The system should treat all offenders fairly and equitably without regard to race, religion, sex, national origin, residence, or social condition.

(5) The system, as much as possible, should reflect the values of the community including:

(a) Avoiding idleness. Idleness is not only wasteful but destructive to the individual and to the community.

(b) Adoption of the work ethic. It is the community expectation that all individuals should work and through their efforts benefit both themselves and the community.

(c) Providing opportunities for self improvement. All individuals should have opportunities to grow and expand their skills and abilities so as to fulfill their role in the community.

(d) Linking the receipt or denial of privileges to responsible behavior and accomplishments. The individual who works to improve himself or herself and the community should be rewarded for these efforts. As a corollary, there should be no rewards for no effort.

(e) Sharing in the obligations of the community. All citizens, the public and inmates alike, have a personal and fiscal obligation in the corrections system. All communities must share in the responsibility of the corrections system.

(6) The system should provide for prudent management of resources. The avoidance of unnecessary or inefficient public expenditures on the part of offenders and the department is essential. Offenders must be accountable to the department, and the department to the public and the legislature. The human and fiscal resources of the community are limited. The management and use of these resources can be enhanced by wise investment, productive programs, the reduction of duplication and waste, and the joining together of all involved parties in a common endeavor. Since most offenders return to the community, it is wise for the state and the communities to make an investment in effective rehabilitation programs for offenders and the wise use of resources.

(7) The system should provide for restitution. Those who have damaged others, persons or property, have a responsibility to make restitution for these damages.

(8) The system should be accountable to the citizens of the state. In return, the individual citizens and local units of government must meet their responsibilities to make the corrections system effective.

(9) The system should meet those national standards which the state determines to be appropriate. [1995 1st sp.s. c 19 § 2; 1981 c 136 § 2.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.015 Definitions. The definitions in this section apply throughout this chapter.

(1) "Base level of correctional services" means the minimum level of field services the department of corrections is required by statute to provide for the supervision and monitoring of offenders.

(2) "Contraband" means any object or communication the secretary determines shall not be allowed to be: (a) Brought into; (b) possessed while on the grounds of; or (c) sent from any institution under the control of the secretary.

(3) "County" means a county or combination of counties.

(4) "Department" means the department of corrections.

(5) "Earned early release" means earned release as authorized by RCW 9.94A.728.

(6) "Extended family visit" means an authorized visit between an inmate and a member of his or her immediate family that occurs in a private visiting unit located at the correctional facility where the inmate is confined.

(7) "Good conduct" means compliance with department rules and policies.

(8) "Good performance" means successful completion of a program required by the department, including an education, work, or other program.

(9) "Immediate family" means the inmate's children, stepchildren, grandchildren, great grandchildren, parents, stepparents, grandparents, great grandparents, siblings, and a person legally married to an inmate. "Immediate family" does not include an inmate adopted by another inmate or the immediate family of the adopted or adopting inmate.

(10) "Indigent inmate," "indigent," and "indigency" mean an inmate who has less than a ten-dollar balance of disposable income in his or her institutional account on the day a request is made to utilize funds and during the thirty days previous to the request.

(11) "Inmate" means a person committed to the custody of the department, including but not limited to persons residing in a correctional institution or facility and persons released on furlough, work release, or community custody, and persons received from another state, state agency, county, or federal jurisdiction.

(12) "Privilege" means any goods or services, education or work programs, or earned early release days, the receipt of which are directly linked to an inmate's (a) good conduct; and (b) good performance. Privileges do not include any goods or services the department is required to provide under the state or federal Constitution or under state or federal law.

(13) "Secretary" means the secretary of corrections or his or her designee.

(14) "Significant expansion" includes any expansion into a new product line or service to the class I business that results from an increase in benefits provided by the department, including a decrease in labor costs, rent, or utility rates (for water, sewer, electricity, and disposal), an increase in work program space, tax advantages, or other overhead costs.

(15) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections, or his or her designee.

(16) "Unfair competition" means any net competitive advantage that a business may acquire as a result of a correctional industries contract, including labor costs, rent, tax advantages, utility rates (water, sewer, electricity, and disposal), and other overhead costs. To determine net competitive advantage, the correctional industries board shall review and quantify any expenses unique to operating a for-profit business inside a prison.

(17) "Washington business" means an in-state manufacturer or service provider subject to chapter 82.04 RCW existing on June 10, 2004.

(18) "Work programs" means all classes of correctional industries jobs authorized under RCW 72.09.100. [2004 c 167 § 6; 1995 1st sp.s. c 19 § 3; 1987 c 312 § 2.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.030 Department created—Secretary. There is created a department of state government to be known as the department of corrections. The executive head of the department shall be the secretary of corrections who shall be appointed by the governor with the consent of the senate. The secretary shall serve at the pleasure of the governor and shall receive a salary to be fixed under RCW 43.03.040. [1981 c 136 § 3.]

72.09.040 Transfer of functions from department of social and health services. All powers, duties, and functions assigned to the secretary of social and health services and to the department of social and health services relating to adult correctional programs and institutions are hereby transferred to the secretary of corrections and to the department of corrections. Except as may be specifically provided, all functions of the department of social and health services relating to juvenile rehabilitation and the juvenile justice system shall remain in the department of social and health services. Where functions of the department of social and health services and the department of corrections overlap in the juvenile rehabilitation and/or juvenile justice area, the governor may allocate such functions between these departments. [1998 c 245 § 139; 1981 c 136 § 4.]

72.09.050 Powers and duties of secretary. The secretary shall manage the department of corrections and shall be responsible for the administration of adult correctional programs, including but not limited to the operation of all state correctional institutions or facilities used for the confinement of convicted felons. In addition, the secretary shall have broad powers to enter into agreements with any federal agency, or any other state, or any Washington state agency or local government providing for the operation of any correctional facility or program for persons convicted of felonies or misdemeanors or for juvenile offenders. Such agreements for counties with local law and justice councils shall be required in the local law and justice plan pursuant to RCW 72.09.300. The agreements may provide for joint operation or operation by the department of corrections, alone, for by any of the

(2004 Ed.)

other governmental entities, alone. Beginning February 1, 1999, the secretary may expend funds appropriated for the 1997-1999 biennium to enter into agreements with any local government or private organization in any other state, providing for the operation of any correctional facility or program for persons convicted of felonies. Between July 1, 1999, and June 30, 2001, the secretary may expend funds appropriated for the 1999-01 biennium to enter into agreements with any local government or private organization in any other state, providing for the operation of any correctional facility or program for persons convicted of felonies. The secretary may employ persons to aid in performing the functions and duties of the department. The secretary may delegate any of his or her functions or duties to department employees, including the authority to certify and maintain custody of records and documents on file with the department. The secretary is authorized to promulgate standards for the department of corrections within appropriation levels authorized by the legislature.

Pursuant to the authority granted in chapter 34.05 RCW, the secretary shall adopt rules providing for inmate restitution when restitution is determined appropriate as a result of a disciplinary action. [1999 c 309 § 1902; 1999 c 309 § 924; 1995 c 189 § 1; 1991 c 363 § 149; 1987 c 312 § 4; 1986 c 19 § 1; 1981 c 136 § 5.]

Reviser's note: This section was amended by 1999 c 309 § 924 and by 1999 c 309 § 1902, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective dates—1999 c 309 §§ 927-929, 931, and 1101-1902: See note following RCW 43.79.480.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

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

72.09.055 Affordable housing—Inventory of suitable property. (1) The department shall identify and catalog real property that is no longer required for department purposes and is suitable for the development of affordable housing for very low-income, low-income, and moderate-income households as defined in RCW 43.63A.510. The inventory shall include the location, approximate size, and current zoning classification of the property. The department shall provide a copy of the inventory to the department of community, trade, and economic development by November 1, 1993, and every November 1 thereafter.

(2) By November 1 of each year, beginning in 1994, the department shall purge the inventory of real property of sites that are no longer available for the development of affordable housing. The department shall include an updated listing of real property that has become available since the last update. As used in this section, "real property" means buildings, land, or buildings and land. [1995 c 399 § 202; 1993 c 461 § 12.]

Finding—1993 c 461: See note following RCW 43.63A.510.

72.09.057 Fees for reproduction, shipment, and certification of documents and records. The department may charge reasonable fees for the reproduction, shipment, and certification of documents, records, and other materials in the files of the department. [1995 c 189 § 2.]

72.09.060 Organization of department—Program for public involvement and volunteers. The department of corrections may be organized into such divisions or offices as the secretary may determine, but shall include divisions for (1) correctional industries, (2) prisons and other custodial institutions and (3) probation, parole, community restitution, restitution, and other nonincarcerative sanctions. The secretary shall have at least one person on his or her staff who shall have the responsibility for developing a program which encourages the use of volunteers, for citizen advisory groups, and for similar public involvement programs in the corrections area. Minimum qualification for staff assigned to public involvement responsibilities shall include previous experience in working with volunteers or volunteer agencies. [2002 c 175 § 48; 1989 c 185 § 3; 1981 c 136 § 6.]

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

72.09.070 Correctional industries board of directors—Duties. (1) There is created a correctional industries board of directors which shall have the composition provided in RCW 72.09.080.

(2) Consistent with general department of corrections policies and procedures pertaining to the general administration of correctional facilities, the board shall establish and implement policy for correctional industries programs designed to:

(a) Offer inmates meaningful employment, work experience, and training in vocations that are specifically designed to reduce recidivism and thereby enhance public safety by providing opportunities for legitimate means of livelihood upon their release from custody;

(b) Provide industries which will reduce the tax burden of corrections and save taxpayers money through production of goods and services for sale and use;

(c) Operate correctional work programs in an effective and efficient manner which are as similar as possible to those provided by the private sector;

(d) Encourage the development of and provide for selection of, contracting for, and supervision of work programs with participating private enterprise firms;

(e) Develop and select correctional industries work programs that do not unfairly compete with Washington businesses;

(f) Invest available funds in correctional industries enterprises and meaningful work programs that minimize the impact on in-state jobs and businesses.

(3) The board of directors shall at least annually review the work performance of the director of correctional industries division with the secretary.

(4) The director of correctional industries division shall review and evaluate the productivity, funding, and appropriateness of all correctional work programs and report on their effectiveness to the board and to the secretary.

(5) The board of directors shall have the authority to identify and establish trade advisory or apprenticeship committees to advise them on correctional industries work programs. The secretary shall appoint the members of the committees.

Where a labor management trade advisory and apprenticeship committee has already been established by the

department pursuant to RCW 72.62.050 the existing committee shall also advise the board of directors.

(6) The board shall develop a strategic yearly marketing plan that shall be consistent with and work towards achieving the goals established in the six-year phased expansion of class I and class II correctional industries established in RCW 72.09.111. This marketing plan shall be presented to the appropriate committees of the legislature by January 17 of each calendar year until the goals set forth in RCW 72.09.111 are achieved. [2004 c 167 § 1; 1994 sp.s. c 7 § 535; 1993 sp.s. c 20 § 3; 1989 c 185 § 4; 1981 c 136 § 8.]

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

Severability—1993 sp.s. c 20: See note following RCW 43.19.534.

72.09.080 Correctional industries board of directors—Appointment of members, chair—Compensation—Support. (1) The correctional industries board of directors shall consist of nine voting members, appointed by the governor. Each member shall serve a three-year staggered term. Initially, the governor shall appoint three members to one-year terms, three members to two-year terms, and three members to three-year terms. The speaker of the house of representatives and the president of the senate shall each appoint one member from each of the two largest caucuses in their respective houses. The legislators so appointed shall be nonvoting members and shall serve two-year terms, or until they cease to be members of the house from which they were appointed, whichever occurs first. The nine members appointed by the governor shall include three representatives from labor, three representatives from business representing cross-sections of industries and all sizes of employers, and three members from the general public.

(2) The board of directors shall elect a chair and such other officers as it deems appropriate from among the voting members.

(3) The voting members of the board of directors shall serve with compensation pursuant to RCW 43.03.240 and shall be reimbursed by the department for travel expenses and per diem under RCW 43.03.050 and 43.03.060, as now or hereafter amended. Legislative members shall be reimbursed under RCW 44.04.120, as now or hereafter amended.

(4) The secretary shall provide such staff services, facilities, and equipment as the board shall require to carry out its duties. [1993 sp.s. c 20 § 4; 1989 c 185 § 5; 1981 c 136 § 9.]

Severability—1993 sp.s. c 20: See note following RCW 43.19.534.

72.09.090 Correctional industries account—Expenditure—Profits—Appropriations. The correctional industries account is established in the state treasury. The department of corrections shall deposit in the account all moneys collected and all profits that accrue from the industrial and agricultural operations of the department and any moneys appropriated to the account. Moneys in the account may be spent only for expenses arising in the correctional industries operations.

The division's net profits from correctional industries' sales and contracts shall be reinvested, without appropriation, in the expansion and improvement of correctional industries. However, the board of directors shall annually recommend

that some portion of the profits from correctional industries be returned to the state general fund.

The board and secretary shall request appropriations or increased appropriations whenever it appears that additional money is needed to provide for the establishment and operation of a comprehensive correctional industries program. [1989 c 185 § 6; 1987 c 7 § 203; 1981 c 136 § 10.]

Severability—1987 c 7: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1987 c 7 § 901.]

72.09.095 Transfer of funds to department of labor and industries for crime victims' compensation. Each year the department shall transfer twenty-five percent of the total annual revenues and receipts received in each institutional betterment fund subaccount to the department of labor and industries for the purpose of providing direct benefits to crime victims through the crime victims' compensation program as outlined in chapter 7.68 RCW. This transfer takes priority over any expenditure of betterment funds and shall be reflected on the monthly financial statements of each institution's betterment fund subaccount.

Any funds so transferred to the department of labor and industries shall be in addition to the crime victims' compensation amount provided in an omnibus appropriation bill. It is the intent of the legislature that the funds forecasted or transferred pursuant to this section shall not reduce the funding levels provided by appropriation. [1995 c 234 § 2.]

Finding—1995 c 234: "The legislature finds that the responsibility for criminal activity should fall squarely on the criminal. To the greatest extent possible society should not be expected to have to pay the price for crimes twice, once for the criminal activity and again by feeding, clothing, and housing the criminal. The corrections system should be the first place criminals are given the opportunity to be responsible for paying for their criminal act, not just through the loss of their personal freedom, but by making financial contributions to alleviate the pain and suffering of victims of crime." [1995 c 234 § 1.]

72.09.100 Inmate work program—Classes of work programs—Participation—Benefits. (Effective until July 1, 2005.) It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the correctional industries board of directors, in developing and selecting correctional industries work programs, does not encourage the development of, or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the correctional industries board of directors to protect Washington businesses from unfair competition.

For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or non-

profit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The correctional industries board of directors shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations.

(b) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit. The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to public agencies, to nonprofit organizations, and to private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization. Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c)(i) Class II correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors.

(ii) The board of directors shall conduct a yearly market review of the products and services offered under this

subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus byproducts and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

(d) Security and custody services shall be provided without charge by the department of corrections.

(e) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

(f) Subject to approval of the correctional industries board, provisions of *RCW 41.06.380 prohibiting contracting out work performed by classified employees shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class III program at its discretion.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community

at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class IV program at its discretion. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

(a) Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs. [2004 c 167 § 2; 2002 c 175 § 49; 1995 1st sp.s. c 19 § 33; 1994 c 224 § 1; 1992 c 123 § 1; 1990 c 22 § 1; 1989 c 185 § 7; 1986 c 193 § 2; 1985 c 151 § 1; 1983 c 255 § 5; 1981 c 136 § 11.]

***Reviser's note:** RCW 41.06.380 was repealed by 2002 c 354 § 403, effective July 1, 2005.

Expiration date—2004 c 167 § 2: "Section 2 of this act expires July 1, 2005." [2004 c 167 § 13.]

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

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Severability—1983 c 255: See RCW 72.74.900.

Fish and game projects in prison work programs subject to RCW 72.09.100: RCW 72.63.020.

72.09.100 Inmate work program—Classes of work programs—Participation—Benefits. (*Effective July 1, 2005.*) It is the intent of the legislature to vest in the department the power to provide for a comprehensive inmate work program and to remove statutory and other restrictions which have limited work programs in the past. It is also the intent of the legislature to ensure that the correctional industries board of directors, in developing and selecting correctional industries work programs, does not encourage the development of,

or provide for selection of or contracting for, or the significant expansion of, any new or existing class I correctional industries work programs that unfairly compete with Washington businesses. The legislature intends that the requirements relating to fair competition in the correctional industries work programs be liberally construed by the correctional industries board of directors to protect Washington businesses from unfair competition. For purposes of establishing such a comprehensive program, the legislature recommends that the department consider adopting any or all, or any variation of, the following classes of work programs:

(1) CLASS I: FREE VENTURE INDUSTRIES.

(a) The employer model industries in this class shall be operated and managed in total or in part by any profit or nonprofit organization pursuant to an agreement between the organization and the department. The organization shall produce goods or services for sale to both the public and private sector.

(b) The customer model industries in this class shall be operated and managed by the department to provide Washington state manufacturers or businesses with products or services currently produced or provided by out-of-state or foreign suppliers.

(c) The correctional industries board of directors shall review these proposed industries, including any potential new class I industries work program or the significant expansion of an existing class I industries work program, before the department contracts to provide such products or services. The review shall include the analysis required under RCW 72.09.115 to determine if the proposed correctional industries work program will compete with any Washington business. An agreement for a new class I correctional industries work program, or an agreement for a significant expansion of an existing class I correctional industries work program, that unfairly competes with any Washington business is prohibited.

(d) The department of corrections shall supply appropriate security and custody services without charge to the participating firms.

(e) Inmates who work in free venture industries shall do so at their own choice. They shall be paid a wage comparable to the wage paid for work of a similar nature in the locality in which the industry is located, as determined by the director of correctional industries. If the director cannot reasonably determine the comparable wage, then the pay shall not be less than the federal minimum wage.

(f) An inmate who is employed in the class I program of correctional industries shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged.

(2) CLASS II: TAX REDUCTION INDUSTRIES.

(a) Industries in this class shall be state-owned and operated enterprises designed to reduce the costs for goods and services for tax-supported agencies and for nonprofit organizations.

(b) The industries selected for development within this class shall, as much as possible, match the available pool of inmate work skills and aptitudes with the work opportunities in the free community. The industries shall be closely patterned after private sector industries but with the objective of reducing public support costs rather than making a profit.

The products and services of this industry, including purchased products and services necessary for a complete product line, may be sold to public agencies, to nonprofit organizations, and to private contractors when the goods purchased will be ultimately used by a public agency or a nonprofit organization. Clothing manufactured by an industry in this class may be donated to nonprofit organizations that provide clothing free of charge to low-income persons.

(c)(i) Class II correctional industries products and services shall be reviewed by the correctional industries board of directors before offering such products and services for sale to private contractors.

(ii) The board of directors shall conduct a yearly market review of the products and services offered under this subsection. Such review shall include an analysis of the potential impact of the proposed products and services on the Washington state business community. To avoid waste or spoilage and consequent loss to the state, when there is no public sector market for such goods, byproducts and surpluses of timber, agricultural, and animal husbandry enterprises may be sold to private persons, at private sale. Surplus byproducts and surpluses of timber, agricultural and animal husbandry enterprises that cannot be sold to public agencies or to private persons may be donated to nonprofit organizations. All sales of surplus products shall be carried out in accordance with rules prescribed by the secretary.

(d) Security and custody services shall be provided without charge by the department of corrections.

(e) Inmates working in this class of industries shall do so at their own choice and shall be paid for their work on a gratuity scale which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located and which is approved by the director of correctional industries.

(f) Subject to approval of the correctional industries board, provisions of RCW 41.06.142 shall not apply to contracts with Washington state businesses entered into by the department of corrections through class II industries.

(3) CLASS III: INSTITUTIONAL SUPPORT INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to accomplish the following objectives:

(i) Whenever possible, to provide basic work training and experience so that the inmate will be able to qualify for better work both within correctional industries and the free community. It is not intended that an inmate's work within this class of industries should be his or her final and total work experience as an inmate.

(ii) Whenever possible, to provide forty hours of work or work training per week.

(iii) Whenever possible, to offset tax and other public support costs.

(b) Class III correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class III program at its discretion.

(c) Supervising, management, and custody staff shall be employees of the department.

(d) All able and eligible inmates who are assigned work and who are not working in other classes of industries shall work in this class.

(e) Except for inmates who work in work training programs, inmates in this class shall be paid for their work in accordance with an inmate gratuity scale. The scale shall be adopted by the secretary of corrections.

(4) CLASS IV: COMMUNITY WORK INDUSTRIES.

(a) Industries in this class shall be operated by the department of corrections. They shall be designed and managed to provide services in the inmate's resident community at a reduced cost. The services shall be provided to public agencies, to persons who are poor or infirm, or to nonprofit organizations.

(b) Class IV correctional industries shall be reviewed by the correctional industries board of directors to set policy for work crews. The department shall present to the board of directors quarterly detail statements showing where work crews worked, what correctional industry class, and the hours worked. The board of directors may review any class IV program at its discretion. Class IV correctional industries operated in work camps established pursuant to RCW 72.64.050 are exempt from the requirements of this subsection (4)(b).

(c) Inmates in this program shall reside in facilities owned by, contracted for, or licensed by the department of corrections. A unit of local government shall provide work supervision services without charge to the state and shall pay the inmate's wage.

(d) The department of corrections shall reimburse participating units of local government for liability and workers compensation insurance costs.

(e) Inmates who work in this class of industries shall do so at their own choice and shall receive a gratuity which shall not exceed the wage paid for work of a similar nature in the locality in which the industry is located.

(5) CLASS V: COMMUNITY RESTITUTION PROGRAMS.

(a) Programs in this class shall be subject to supervision by the department of corrections. The purpose of this class of industries is to enable an inmate, placed on community supervision, to work off all or part of a community restitution order as ordered by the sentencing court.

(b) Employment shall be in a community restitution program operated by the state, local units of government, or a nonprofit agency.

(c) To the extent that funds are specifically made available for such purposes, the department of corrections shall reimburse nonprofit agencies for workers compensation insurance costs. [2004 c 167 § 3. Prior: 2002 c 354 § 238; 2002 c 175 § 49; 1995 1st sp.s. c 19 § 33; 1994 c 224 § 1; 1992 c 123 § 1; 1990 c 22 § 1; 1989 c 185 § 7; 1986 c 193 § 2; 1985 c 151 § 1; 1983 c 255 § 5; 1981 c 136 § 11.]

Effective date—2004 c 167 § 3: "Section 3 of this act takes effect July 1, 2005." [2004 c 167 § 12.]

Short title—Headings, captions not law—Severability—Effective dates—2002 c 354: See RCW 41.80.907 through 41.80.910.

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

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

Severability—1983 c 255: See RCW 72.74.900.

Fish and game projects in prison work programs subject to RCW 72.09.100: RCW 72.63.020.

72.09.101 Inmate work program—Administrators' duty. Administrators of work programs described in RCW 72.09.100 shall ensure that no inmate convicted of a sex offense as defined in chapter 9A.44 RCW obtains access to names, addresses, or telephone numbers of private individuals while performing his or her duties in an inmate work program. [1998 c 83 § 1.]

Effective date—1998 c 83: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 20, 1998]." [1998 c 83 § 2.]

72.09.104 Prison work programs to operate automated data input and retrieval systems. The department of general administration and the department of corrections shall implement prison work programs to operate automated data input and retrieval systems for appropriate departments of state government. [1983 c 296 § 3.]

Findings—1983 c 296: "The legislature finds and declares that the costs of state government automated data input and retrieval are escalating. The legislature further finds and declares that new record conversion technologies offer a promising means for coping with current records management problems." [1983 c 296 § 1.]

Policy—1983 c 296: "It is the policy of the state of Washington that state prisons shall provide prisoners with a work environment in order that, upon their release, inmates may have the skills necessary for the successful reentry into society. It is also the policy of the state to promote the establishment and growth of prison industries whose work shall benefit the state." [1983 c 296 § 2.]

72.09.106 Subcontracting of data input and microfilm capacities. Class II correctional industries may subcontract its data input and microfilm capacities to firms from the private sector. Inmates employed under these subcontracts will be paid in accordance with the Class I free venture industries procedures and wage scale. [1989 c 185 § 8; 1983 c 296 § 4.]

Findings—Policy—1983 c 296: See notes following RCW 72.09.104.

72.09.110 Inmates' wages—Supporting cost of corrections—Crime victims' compensation and family support. All inmates working in prison industries shall participate in the cost of corrections, including costs to develop and implement correctional industries programs, by means of deductions from their gross wages. The secretary may direct the state treasurer to deposit a portion of these moneys in the crime victims compensation account. The secretary shall direct that all moneys received by an inmate for testifying in any judicial proceeding shall be deposited into the crime victims compensation account.

When the secretary finds it appropriate and not unduly destructive of the work incentive, the secretary may also provide deductions for savings and family support. [1993 sp.s. c 20 § 5; 1991 c 133 § 1; 1989 c 185 § 9; 1986 c 162 § 1; 1981 c 136 § 12.]

Severability—1993 sp.s. c 20: See note following RCW 43.19.534.

72.09.111 Inmate wages—Deductions—Availability of savings—Employment goals—Recovery of cost of

incarceration. (1) The secretary shall deduct taxes and legal financial obligations from the gross wages, gratuities, or workers' compensation benefits payable directly to the inmate under chapter 51.32 RCW, of each inmate working in correctional industries work programs, or otherwise receiving such wages, gratuities, or benefits. The secretary shall also deduct child support payments from the gratuities of each inmate working in class II through class IV correctional industries work programs. The secretary shall develop a formula for the distribution of offender wages, gratuities, and benefits. The formula shall not reduce the inmate account below the indigency level, as defined in RCW 72.09.015.

(a) The formula shall include the following minimum deductions from class I gross wages and from all others earning at least minimum wage:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court.

(b) The formula shall include the following minimum deductions from class II gross gratuities:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Fifteen percent to the department to contribute to the cost of incarceration;

(iv) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(v) Fifteen percent for any child support owed under a support order.

(c) The formula shall include the following minimum deductions from any workers' compensation benefits paid pursuant to RCW 51.32.080:

(i) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(ii) Ten percent to a department personal inmate savings account;

(iii) Twenty percent to the department to contribute to the cost of incarceration; and

(iv) An amount equal to any legal financial obligations owed by the inmate established by an order of any Washington state superior court up to the total amount of the award.

(d) The formula shall include the following minimum deductions from class III gratuities:

(i) Five percent for the purpose of crime victims' compensation; and

(ii) Fifteen percent for any child support owed under a support order.

(e) The formula shall include the following minimum deduction from class IV gross gratuities:

(i) Five percent to the department to contribute to the cost of incarceration; and

(ii) Fifteen percent for any child support owed under a support order.

(2) Any person sentenced to life imprisonment without possibility of release or parole under chapter 10.95 RCW or sentenced to death shall be exempt from the requirement under subsection (1)(a)(ii), (b)(ii), or (c)(ii).

(3) The department personal inmate savings account, together with any accrued interest, shall only be available to an inmate at the time of his or her release from confinement, unless the secretary determines that an emergency exists for the inmate, at which time the funds can be made available to the inmate in an amount determined by the secretary. The management of classes I, II, and IV correctional industries may establish an incentive payment for offender workers based on productivity criteria. This incentive shall be paid separately from the hourly wage/gratuity rate and shall not be subject to the specified deduction for cost of incarceration.

(4)(a) Subject to availability of funds for the correctional industries program, the expansion of inmate employment in class I and class II correctional industries shall be implemented according to the following schedule:

(i) Not later than June 30, 2005, the secretary shall achieve a net increase of at least two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(ii) Not later than June 30, 2006, the secretary shall achieve a net increase of at least four hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iii) Not later than June 30, 2007, the secretary shall achieve a net increase of at least six hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(iv) Not later than June 30, 2008, the secretary shall achieve a net increase of at least nine hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(v) Not later than June 30, 2009, the secretary shall achieve a net increase of at least one thousand two hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003;

(vi) Not later than June 30, 2010, the secretary shall achieve a net increase of at least one thousand five hundred in the number of inmates employed in class I or class II correctional industries work programs above the number so employed on June 30, 2003.

(b) Failure to comply with the schedule in this subsection does not create a private right of action.

(5) In the event that the offender worker's wages, gratuity, or workers' compensation benefit is subject to garnishment for support enforcement, the crime victims' compensation, savings, and cost of incarceration deductions shall be calculated on the net wages after taxes, legal financial obligations, and garnishment.

(6) The department shall explore other methods of recovering a portion of the cost of the inmate's incarceration and for encouraging participation in work programs, including development of incentive programs that offer inmates bene-

fits and amenities paid for only from wages earned while working in a correctional industries work program.

(7) The department shall develop the necessary administrative structure to recover inmates' wages and keep records of the amount inmates pay for the costs of incarceration and amenities. All funds deducted from inmate wages under subsection (1) of this section for the purpose of contributions to the cost of incarceration shall be deposited in a dedicated fund with the department and shall be used only for the purpose of enhancing and maintaining correctional industries work programs.

(8) It shall be in the discretion of the secretary to apportion the inmates between class I and class II depending on available contracts and resources.

(9) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW. [2004 c 167 § 7. Prior: 2003 c 379 § 25; 2003 c 271 § 2; 2002 c 126 § 2; 1999 c 325 § 2; 1994 sp.s. c 7 § 534; 1993 sp.s. c 20 § 2.]

Severability—Effective dates—2003 c 379: See notes following RCW 9.94A.728.

Intent—Purpose—2003 c 379 §§ 13-27: See note following RCW 9.94A.760.

Effective date—1994 sp.s. c 7 § 534: "Section 534 of this act shall take effect June 30, 1994." [1994 sp.s. c 7 § 536.]

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

Effective date—1993 sp.s. c 20 § 2: "Section 2 of this act shall take effect June 30, 1994." [1993 sp.s. c 20 § 10.]

Severability—1993 sp.s. c 20: See note following RCW 43.19.534.

72.09.115 Proposed new class I correctional industries work program—Threshold analysis—Business impact analysis—Public hearing—Finding. (1) The department must prepare a threshold analysis for any proposed new class I correctional industries work program or the significant expansion of an existing class I correctional industries work program before the department enters into an agreement to provide such products or services. The analysis must state whether the proposed new or expanded program will impact any Washington business and must be based on information sufficient to evaluate the impact on Washington business.

(2) If the threshold analysis determines that a proposed new or expanded class I correctional industries work program will impact a Washington business, the department must complete a business impact analysis before the department enters into an agreement to provide such products or services. The business impact analysis must include:

(a) A detailed statement identifying the scope and types of impacts caused by the proposed new or expanded correctional industries work program on Washington businesses; and

(b) A detailed statement of the business costs of the proposed correctional industries work program compared to the business costs of the Washington businesses that may be impacted by the proposed class I correctional industries work program. Business costs of the proposed correctional industries work program include rent, water, sewer, electricity, dis-

posal, labor costs, and any other quantifiable expense unique to operating in a prison. Business costs of the impacted Washington business include rent, water, sewer, electricity, disposal, property taxes, and labor costs including employee taxes, unemployment insurance, and workers' compensation.

(3) The completed threshold analysis and any completed business impact analysis with all supporting documents must be shared in a meaningful and timely manner with local chambers of commerce, trade or business associations, local and state labor union organizations, and government entities before a finding required under subsection (4) of this section is made on the proposed new or expanded class I correctional industries work program.

(4) If a business impact analysis is completed, the department must conduct a public hearing to take public testimony on the business impact analysis. The department must, at a minimum, establish a publicly accessible web site containing information reasonably calculated to provide notice to each Washington business assigned the same three-digit standard industrial classification code, or the corresponding North American industry classification system code, as the organization seeking the class I correctional industries work program agreement of the date, time, and place of the hearing. Notice of the hearing shall be posted at least thirty days prior to the hearing.

(5) Following the public hearing, the department shall adopt a finding that the proposed new or expanded class I correctional industries work program: (a) Will not compete with any Washington business; (b) will not compete unfairly with any Washington business; or (c) will compete unfairly with any Washington business and is therefore prohibited under chapter 167, Laws of 2004. [2004 c 167 § 4.]

72.09.116 Information obtained under RCW 72.09.115 exempt from public disclosure. All records, documents, data, and other materials obtained under the requirements of RCW 72.09.115 from an existing correctional industries class I work program participant or an applicant for a proposed new or expanded class I correctional industries work program are exempt from public disclosure under chapter 42.17 RCW. [2004 c 167 § 8.]

72.09.120 Distribution of list of inmate job opportunities. In order to assist inmates in finding work within prison industries, the department shall periodically prepare and distribute a list of prison industries' job opportunities, which shall include job descriptions and the educational and skill requirements for each job. [1981 c 136 § 16.]

72.09.130 Incentive system for participation in education and work programs—Rules—Dissemination. (1) The department shall adopt, by rule, a system that clearly links an inmate's behavior and participation in available education and work programs with the receipt or denial of earned early release days and other privileges. The system shall include increases or decreases in the degree of liberty granted the inmate within the programs operated by the department, access to or withholding of privileges available within correctional institutions, and recommended increases or

decreases in the number of earned early release days that an inmate can earn for good conduct and good performance.

(2) Earned early release days shall be recommended by the department as a reward for accomplishment. The system shall be fair, measurable, and understandable to offenders, staff, and the public. At least once in each twelve-month period, the department shall inform the offender in writing as to his or her conduct and performance. This written evaluation shall include reasons for awarding or not awarding recommended earned early release days for good conduct and good performance. An inmate is not eligible to receive earned early release days during any time in which he or she refuses to participate in an available education or work program into which he or she has been placed under RCW 72.09.460.

(3) The department shall provide each offender in its custody a written description of the system created under this section. [1995 1st sp.s. c 19 § 6; 1981 c 136 § 17.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.135 Adoption of standards for correctional facilities. The department of corrections shall, no later than July 1, 1987, adopt standards for the operation of state adult correctional facilities. These standards shall be the minimums necessary to meet federal and state constitutional requirements relating to health, safety, and welfare of inmates and staff, and specific state and federal statutory requirements, and to provide for the public's health, safety, and welfare. The need for each standard shall be documented. [1987 c 462 § 15.]

Effective dates—1987 c 462: See note following RCW 13.04.116.

72.09.160 *Corrections standards board—Responsibilities, powers, support.

Reviser's note: *(1) The corrections standards board no longer exists. See 1987 c 462 § 21.

(2) RCW 72.09.160 was amended by 1987 c 505 § 67 without reference to its repeal by 1987 c 462 § 22, effective January 1, 1988. It has been decodified for publication purposes pursuant to RCW 1.12.025.

72.09.190 Legal services for inmates. (1) It is the intent of the legislature that reasonable legal services be provided to persons committed to the custody of the department of corrections. The department shall contract with persons or organizations to provide legal services. The secretary shall adopt procedures designed to minimize any conflict of interest, or appearance thereof, in respect to the provision of legal services and the department's administration of such contracts.

(2) Persons who contract to provide legal services are expressly forbidden to solicit plaintiffs or promote litigation which has not been pursued initially by a person entitled to such services under this section.

(3) Persons who contract to provide legal services shall exhaust all informal means of resolving a legal complaint or dispute prior to the filing of any court proceeding.

(4) Nothing in this section forbids the secretary to supplement contracted legal services with any of the following: (a) Law libraries, (b) law student interns, and (c) volunteer attorneys.

(2004 Ed.)

(5) The total due a contractor as compensation, fees, or reimbursement under the terms of the contract shall be reduced by the total of any other compensation, fees, or reimbursement received by or due the contractor for the performance of any legal service to inmates during the contract period. Any amount received by a contractor under contract which is not due under this section shall be immediately returned by the contractor. [1981 c 136 § 23.]

72.09.200 Transfer of files, property, and appropriations. All reports, documents, surveys, books, records, files, papers, and other writings in the possession of the department of social and health services pertaining to the functions transferred by RCW 72.09.040 shall be delivered to the custody of the department of corrections. All cabinets, furniture, office equipment, motor vehicles, and other tangible property employed exclusively in carrying out the powers and duties transferred by RCW 72.09.040 shall be made available to the department of corrections. All funds, credits, or other assets held in connection with the functions transferred by RCW 72.09.040 shall be assigned to the department of corrections.

Any appropriations made to the department of social and health services for the purpose of carrying out the powers, duties, and functions transferred by RCW 72.09.040 shall on July 1, 1981, be transferred and credited to the department of corrections for the purpose of carrying out the transferred powers, duties, and functions.

Whenever any question arises as to the transfer of any funds including unexpended balances within any accounts, books, documents, records, papers, files, equipment, or other tangible property used or held in the exercise of the powers and the performance of the duties and functions transferred under RCW 72.09.040, the director of financial management shall make a determination as to the proper allocation and certify the same to the state agencies concerned.

If apportionments of budgeted funds are required because of the transfers authorized in this section, the director of financial management shall certify the apportionments to the agencies affected, the state auditor, and the state treasurer. Each of these shall make the appropriate transfer and adjustments in funds and appropriation accounts and equipment records in accordance with the certification. [1981 c 136 § 31.]

72.09.210 Transfer of employees. All employees of the department of social and health services who are directly employed in connection with the exercise of the powers and performance of the duties and functions transferred to the department of corrections by RCW 72.09.040 shall be transferred on July 1, 1981, to the jurisdiction of the department of corrections.

All such employees classified under chapter 41.06 RCW, the state civil service law, shall be assigned to the department of corrections. Except as otherwise provided, such employees shall be assigned without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law. [1981 c 136 § 32.]

72.09.220 Employee rights under collective bargaining. Nothing contained in RCW 72.09.010 through 72.09.190, 72.09.901, and section 13, chapter 136, Laws of 1981 may be construed to downgrade any rights of any employee under any existing collective bargaining unit or the provisions of any existing collective bargaining agreement until the agreement has expired or until the bargaining unit has been modified by action of the Washington personnel resources board as provided by law. [1993 c 281 § 64; 1981 c 136 § 33.]

Effective date—1993 c 281: See note following RCW 41.06.022.

72.09.225 Sexual misconduct by state employees, contractors. (1) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between an employee and an inmate has occurred, notwithstanding any rule adopted under chapter 41.06 RCW the secretary shall immediately suspend the employee.

(2) The secretary shall immediately institute proceedings to terminate the employment of any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(3) When the secretary has reasonable cause to believe that sexual intercourse or sexual contact between the employee of a contractor and an inmate has occurred, the secretary shall require the employee of a contractor to be immediately removed from any employment position which would permit the employee to have any access to any inmate.

(4) The secretary shall disqualify for employment with a contractor in any position with access to an inmate, any person:

(a) Who is found by the department, based on a preponderance of the evidence, to have had sexual intercourse or sexual contact with the inmate; or

(b) Upon a guilty plea or conviction for any crime specified in chapter 9A.44 RCW when the victim was an inmate.

(5) The secretary, when considering the renewal of a contract with a contractor who has taken action under subsection (3) or (4) of this section, shall require the contractor to demonstrate that there has been significant progress made in reducing the likelihood that any of its employees will have sexual intercourse or sexual contact with an inmate. The secretary shall examine whether the contractor has taken steps to improve hiring, training, and monitoring practices and whether the employee remains with the contractor. The secretary shall not renew a contract unless he or she determines that significant progress has been made.

(6)(a) For the purposes of RCW 50.20.060, a person terminated under this section shall be considered discharged for misconduct.

(b)(i) The department may, within its discretion or upon request of any member of the public, release information to an individual or to the public regarding any person or contract terminated under this section.

(ii) An appointed or elected public official, public employee, or public agency as defined in RCW 4.24.470 is immune from civil liability for damages for any discretionary release of relevant and necessary information, unless it is

shown that the official, employee, or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant and necessary information to other public officials, public employees, or public agencies, and to the public.

(iii) Except as provided in chapter 42.17 RCW, or elsewhere, nothing in this section shall impose any liability upon a public official, public employee, or public agency for failing to release information authorized under this section. Nothing in this section implies that information regarding persons designated in subsection (2) of this section is confidential except as may otherwise be provided by law.

(7) The department shall adopt rules to implement this section. The rules shall reflect the legislative intent that this section prohibits individuals who are employed by the department or a contractor of the department from having sexual intercourse or sexual contact with inmates. The rules shall also reflect the legislative intent that when a person is employed by the department or a contractor of the department, and has sexual intercourse or sexual contact with an inmate against the employed person's will, the termination provisions of this section shall not be invoked.

(8) As used in this section:

(a) "Contractor" includes all subcontractors of a contractor;

(b) "Inmate" means an inmate as defined in RCW 72.09.015 or a person under the supervision of the department; and

(c) "Sexual intercourse" and "sexual contact" have the meanings provided in RCW 9A.44.010. [1999 c 72 § 2.]

Application—1999 c 72: See note following RCW 13.40.570.

72.09.230 Duties continued during transition. All state officials required to maintain contact with or provide services to the department or secretary of social and health services relating to adult corrections shall continue to perform the services for the department of corrections.

In order to ease the transition of adult corrections to the department of corrections, the governor may require an inter-agency agreement between the department and the department of social and health services under which the department of social and health services would, on a temporary basis, continue to perform all or part of any specified function of the department of corrections. [1981 c 136 § 34.]

72.09.240 Reimbursement of employees for offender assaults. (1) In recognition of prison overcrowding and the hazardous nature of employment in state correctional institutions and offices, the legislature hereby provides a supplementary program to reimburse employees of the department of corrections and the department of natural resources for some of their costs attributable to their being the victims of offender assaults. This program shall be limited to the reimbursement provided in this section.

(2) An employee is only entitled to receive the reimbursement provided in this section if the secretary of corrections or the commissioner of public lands, or the secretary's or commissioner's designee, finds that each of the following has occurred:

(a) An offender has assaulted the employee while the employee is performing the employee's official duties and as a result thereof the employee has sustained injuries which have required the employee to miss days of work; and

(b) The assault cannot be attributable to any extent to the employee's negligence, misconduct, or failure to comply with any rules or conditions of employment.

(3) The reimbursement authorized under this section shall be as follows:

(a) The employee's accumulated sick leave days shall not be reduced for the workdays missed;

(b) For each workday missed for which the employee is not eligible to receive compensation under chapter 51.32 RCW, the employee shall receive full pay; and

(c) In respect to workdays missed for which the employee will receive or has received compensation under chapter 51.32 RCW, the employee shall be reimbursed in an amount which, when added to that compensation, will result in the employee receiving full pay for the workdays missed.

(4) Reimbursement under this section may not last longer than three hundred sixty-five consecutive days after the date of the injury.

(5) The employee shall not be entitled to the reimbursement provided in subsection (3) of this section for any workday for which the secretary or the commissioner of public lands, or the secretary's or commissioner's designee, finds that the employee has not diligently pursued his or her compensation remedies under chapter 51.32 RCW.

(6) The reimbursement shall only be made for absences which the secretary or the commissioner of public lands, or the secretary's or commissioner's designee, believes are justified.

(7) While the employee is receiving reimbursement under this section, he or she shall continue to be classified as a state employee and the reimbursement amount shall be considered as salary or wages.

(8) All reimbursement payments required to be made to employees under this section shall be made by the department of corrections or the department of natural resources. The payments shall be considered as a salary or wage expense and shall be paid by the department of corrections or the department of natural resources in the same manner and from the same appropriations as other salary and wage expenses of the department of corrections or the department of natural resources.

(9) Should the legislature revoke the reimbursement authorized under this section or repeal this section, no affected employee is entitled thereafter to receive the reimbursement as a matter of contractual right.

(10) For the purposes of this section, "offender" means: (a) Offender as defined in RCW 9.94A.030; and (b) any other person in the custody of or subject to the jurisdiction of the department of corrections. [2002 c 77 § 2; 1988 c 149 § 1; 1984 c 246 § 9.]

Severability—1984 c 246: See note following RCW 9.94A.870.

72.09.251 Communicable disease prevention guidelines. (1) The department shall develop and implement policies and procedures for the uniform distribution of communicable disease prevention guidelines to all corrections staff

(2004 Ed.)

who, in the course of their regularly assigned job responsibilities, may come within close physical proximity to offenders with communicable diseases.

(2) The guidelines shall identify special precautions necessary to reduce the risk of transmission of communicable diseases.

(3) For the purposes of this section, "communicable disease" means sexually transmitted diseases, as defined in RCW 70.24.017, diseases caused by bloodborne pathogens, or any other illness caused by an infectious agent that can be transmitted from one person, animal, or object to another person by direct or indirect means including transmission via an intermediate host or vector, food, water, or air. [1997 c 345 § 4.]

Findings—Intent—1997 c 345: See note following RCW 70.24.105.

72.09.260 Litter cleanup programs—Requirements.

(1) The department shall assist local units of government in establishing community restitution programs for litter cleanup. Community restitution litter cleanup programs must include the following: (a) Procedures for documenting the number of community restitution hours worked in litter cleanup by each offender; (b) plans to coordinate litter cleanup activities with local governmental entities responsible for roadside and park maintenance; (c) insurance coverage for offenders during litter cleanup activities pursuant to RCW 51.12.045; (d) provision of adequate safety equipment and, if needed, weather protection gear; and (e) provision for including felons and misdemeanants in the program.

(2) Community restitution programs established under this section shall involve, but not be limited to, persons convicted of nonviolent, drug-related offenses.

(3) Nothing in this section shall diminish the department's authority to place offenders in community restitution programs or to determine the suitability of offenders for specific programs.

(4) As used in this section, "litter cleanup" includes cleanup and removal of solid waste that is illegally dumped. [2002 c 175 § 50; 1990 c 66 § 2.]

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

Findings—Intent—1990 c 66: "The legislature finds that the amount of litter along the state's roadways is increasing at an alarming rate and that local governments often lack the human and fiscal resources to remove litter from public roads. The legislature also finds that persons committing nonviolent, drug-related offenses can often be productively engaged through programs to remove litter from county and municipal roads. It is therefore the intent of the legislature to assist local units of government in establishing community restitution programs for litter cleanup and to establish a funding source for such programs." [2002 c 175 § 51; 1990 c 66 § 1.]

72.09.300 Local law and justice council, plan—Rules—Base level of services—Juvenile justice services.

(1) Every county legislative authority shall by resolution or ordinance establish a local law and justice council. The county legislative authority shall determine the size and composition of the council, which shall include the county sheriff and a representative of the municipal police departments within the county, the county prosecutor and a representative of the municipal prosecutors within the county, a representative of the city legislative authorities within the county, a representative of the county's superior, juvenile, district, and municipal courts, the county jail administrator, the county

clerk, the county risk manager, and the secretary of corrections. Officials designated may appoint representatives.

(2) A combination of counties may establish a local law and justice council by intergovernmental agreement. The agreement shall comply with the requirements of this section.

(3) The local law and justice council shall develop a local law and justice plan for the county. The council shall design the elements and scope of the plan, subject to final approval by the county legislative authority. The general intent of the plan shall include seeking means to maximize local resources including personnel and facilities, reduce duplication of services, and share resources between local and state government in order to accomplish local efficiencies without diminishing effectiveness. The plan shall also include a section on jail management. This section may include the following elements:

(a) A description of current jail conditions, including whether the jail is overcrowded;

(b) A description of potential alternatives to incarceration;

(c) A description of current jail resources;

(d) A description of the jail population as it presently exists and how it is projected to change in the future;

(e) A description of projected future resource requirements;

(f) A proposed action plan, which shall include recommendations to maximize resources, maximize the use of intermediate sanctions, minimize overcrowding, avoid duplication of services, and effectively manage the jail and the offender population;

(g) A list of proposed advisory jail standards and methods to effect periodic quality assurance inspections of the jail;

(h) A proposed plan to collect, synthesize, and disseminate technical information concerning local criminal justice activities, facilities, and procedures;

(i) A description of existing and potential services for offenders including employment services, substance abuse treatment, mental health services, and housing referral services.

(4) The council may propose other elements of the plan, which shall be subject to review and approval by the county legislative authority, prior to their inclusion into the plan.

(5) The county legislative authority may request technical assistance in developing or implementing the plan from other units or agencies of state or local government, which shall include the department, the office of financial management, and the Washington association of sheriffs and police chiefs.

(6) Upon receiving a request for assistance from a county, the department may provide the requested assistance.

(7) The secretary may adopt rules for the submittal, review, and approval of all requests for assistance made to the department. The secretary may also appoint an advisory committee of local and state government officials to recommend policies and procedures relating to the state and local correctional systems and to assist the department in providing technical assistance to local governments. The committee shall include representatives of the county sheriffs, the police chiefs, the county prosecuting attorneys, the county and city legislative authorities, and the jail administrators. The secretary may contract with other state and local agencies and pro-

vide funding in order to provide the assistance requested by counties.

(8) The department shall establish a base level of state correctional services, which shall be determined and distributed in a consistent manner statewide. The department's contributions to any local government, approved pursuant to this section, shall not operate to reduce this base level of services.

(9) The council shall establish an advisory committee on juvenile justice proportionality. The council shall appoint the county juvenile court administrator and at least five citizens as advisory committee members. The citizen advisory committee members shall be representative of the county's ethnic and geographic diversity. The advisory committee members shall serve two-year terms and may be reappointed. The duties of the advisory committee include:

(a) Monitoring and reporting to the sentencing guidelines commission on the proportionality, effectiveness, and cultural relevance of:

(i) The rehabilitative services offered by county and state institutions to juvenile offenders; and

(ii) The rehabilitative services offered in conjunction with diversions, deferred dispositions, community supervision, and parole;

(b) Reviewing citizen complaints regarding bias or disproportionality in that county's juvenile justice system;

(c) By September 1 of each year, beginning with 1995, submit to the sentencing guidelines commission a report summarizing the advisory committee's findings under (a) and (b) of this subsection. [1996 c 232 § 7; 1994 sp.s. c 7 § 542; 1993 sp.s. c 21 § 8; 1991 c 363 § 148; 1987 c 312 § 3.]

Effective dates—1996 c 232: See note following RCW 9.94A.850.

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

Application—1994 sp.s. c 7 §§ 540-545: See note following RCW 13.50.010.

Effective dates—1993 sp.s. c 21: See note following RCW 82.14.310.

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

Purpose—1987 c 312 § 3: "It is the purpose of RCW 72.09.300 to encourage local and state government to join in partnerships for the sharing of resources regarding the management of offenders in the correctional system. The formation of partnerships between local and state government is intended to reduce duplication while assuring better accountability and offender management through the most efficient use of resources at both the local and state level." [1987 c 312 § 1.]

72.09.310 Community custody violator. An inmate in community custody who willfully discontinues making himself or herself available to the department for supervision by making his or her whereabouts unknown or by failing to maintain contact with the department as directed by the community corrections officer shall be deemed an escapee and fugitive from justice, and upon conviction shall be guilty of a class C felony under chapter 9A.20 RCW. [1992 c 75 § 6; 1988 c 153 § 6.]

Effective date—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

72.09.315 Court-ordered treatment—Violations—Required notifications. (1) When an offender is under court-ordered mental health or chemical dependency treatment in the community and the supervision of the department

of corrections, and the community corrections officer becomes aware that the person is in violation of the terms of the court's treatment order, the community corrections officer shall notify the county designated mental health professional or the designated chemical dependency specialist, as appropriate, of the violation and request an evaluation for purposes of revocation of the less restrictive alternative or conditional release.

(2) When a county designated mental health professional or the designated chemical dependency specialist notifies the department that an offender in a state correctional facility is the subject of a petition for involuntary treatment under chapter 71.05 or 70.96A RCW, the department shall provide documentation of its risk assessment or other concerns to the petitioner and the court if the department classified the offender as a high risk or high needs offender. [2004 c 166 § 17.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

72.09.320 Community placement—Liability. The state of Washington, the department and its employees, community corrections officers, their staff, and volunteers who assist community corrections officers in the community placement program are not liable for civil damages resulting from any act or omission in the rendering of community placement activities unless the act or omission constitutes gross negligence. For purposes of this section, "volunteers" is defined according to RCW 51.12.035. [1988 c 153 § 10.]

Effective date—Application of increased sanctions—1988 c 153: See notes following RCW 9.94A.030.

72.09.330 Sex offenders and kidnapping offenders—Registration—Notice to persons convicted of sex offenses and kidnapping offenses. (1) The department shall provide written notification to an inmate convicted of a sex offense or kidnapping offense of the registration requirements of RCW 9A.44.130 at the time of the inmate's release from confinement and shall receive and retain a signed acknowledgement of receipt.

(2) The department shall provide written notification to an individual convicted of a sex offense or kidnapping offense from another state of the registration requirements of RCW 9A.44.130 at the time the department accepts supervision and has legal authority of the individual under the terms and conditions of the interstate compact agreement under RCW 9.95.270. [1997 c 113 § 8; 1990 c 3 § 405.]

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

Index, part headings not law—Severability—Effective dates—Application—1990 c 3: See RCW 18.155.900 through 18.155.902.
Sex offense and kidnapping offense defined: RCW 9A.44.130.

72.09.333 Sex offenders—Facilities on McNeil Island. The secretary is authorized to operate a correctional facility on McNeil Island for the confinement of sex offenders and other offenders sentenced by the courts, and to make necessary repairs, renovations, additions, and improvements to state property for that purpose, notwithstanding any local comprehensive plans, development regulations, permitting requirements, or any other local laws. Operation of the correctional facility and other state facilities authorized by this

(2004 Ed.)

section and other law includes access to adequate docking facilities on state-owned tidelands at the town of Steilacoom. [2001 2nd sp.s. c 12 § 202.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

72.09.335 Sex offenders—Treatment opportunity. The department shall provide offenders sentenced under RCW 9.94A.712 with the opportunity for sex offender treatment during incarceration. [2001 2nd sp.s. c 12 § 305.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

72.09.337 Sex offenders—Rules regarding. The secretary of corrections, the secretary of social and health services, and the indeterminate sentence review board may adopt rules to implement chapter 12, Laws of 2001 2nd sp. sess. [2001 2nd sp.s. c 12 § 502.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

72.09.340 Supervision of sex offenders—Public safety—Policy for release plan evaluation and approval—Implementation, publicizing, notice—Rejection of residence locations of felony sex offenders of minor victims—Supervised visitation considerations. (1) In making all discretionary decisions regarding release plans for and supervision of sex offenders, the department shall set priorities and make decisions based on an assessment of public safety risks.

(2) The department shall, no later than September 1, 1996, implement a policy governing the department's evaluation and approval of release plans for sex offenders. The policy shall include, at a minimum, a formal process by which victims, witnesses, and other interested people may provide information and comments to the department on potential safety risks to specific individuals or classes of individuals posed by a specific sex offender. The department shall make all reasonable efforts to publicize the availability of this process through currently existing mechanisms and shall seek the assistance of courts, prosecutors, law enforcement, and victims' advocacy groups in doing so. Notice of an offender's proposed residence shall be provided to all people registered to receive notice of an offender's release under RCW 9.94A.612(2), except that in no case may this notification requirement be construed to require an extension of an offender's release date.

(3) For any offender convicted of a felony sex offense against a minor victim after June 6, 1996, the department shall not approve a residence location if the proposed residence: (a) Includes a minor victim or child of similar age or circumstance as a previous victim who the department determines may be put at substantial risk of harm by the offender's residence in the household; or (b) is within close proximity of the current residence of a minor victim, unless the whereabouts of the minor victim cannot be determined or unless such a restriction would impede family reunification efforts ordered by the court or directed by the department of social and health services. The department is further authorized to reject a residence location if the proposed residence is within

close proximity to schools, child care centers, playgrounds, or other grounds or facilities where children of similar age or circumstance as a previous victim are present who the department determines may be put at substantial risk of harm by the sex offender's residence at that location.

(4) When the department requires supervised visitation as a term or condition of a sex offender's community placement under RCW 9.94A.700(6), the department shall, prior to approving a supervisor, consider the following:

(a) The relationships between the proposed supervisor, the offender, and the minor; (b) the proposed supervisor's acknowledgment and understanding of the offender's prior criminal conduct, general knowledge of the dynamics of child sexual abuse, and willingness and ability to protect the minor from the potential risks posed by contact with the offender; and (c) recommendations made by the department of social and health services about the best interests of the child. [1996 c 215 § 3; 1990 c 3 § 708.]

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

72.09.345 Sex offenders—Release of information to protect public—End-of-sentence review committee—Assessment—Records access—Review, classification, referral of offenders—Issuance of narrative notices. (1) In addition to any other information required to be released under this chapter, the department is authorized, pursuant to RCW 4.24.550, to release relevant information that is necessary to protect the public concerning offenders convicted of sex offenses.

(2) In order for public agencies to have the information necessary to notify the public as authorized in RCW 4.24.550, the secretary shall establish and administer an end-of-sentence review committee for the purposes of assigning risk levels, reviewing available release plans, and making appropriate referrals for sex offenders. The committee shall assess, on a case-by-case basis, the public risk posed by sex offenders who are: (a) Preparing for their release from confinement for sex offenses committed on or after July 1, 1984; and (b) accepted from another state under a reciprocal agreement under the interstate compact authorized in chapter 72.74 RCW.

(3) Notwithstanding any other provision of law, the committee shall have access to all relevant records and information in the possession of public agencies relating to the offenders under review, including police reports; prosecutors' statements of probable cause; presentence investigations and reports; complete judgments and sentences; current classification referrals; criminal history summaries; violation and disciplinary reports; all psychological evaluations and psychiatric hospital reports; sex offender treatment program reports; and juvenile records. Records and information obtained under this subsection shall not be disclosed outside the committee unless otherwise authorized by law.

(4) The committee shall review each sex offender under its authority before the offender's release from confinement or start of the offender's term of community placement or community custody in order to: (a) Classify the offender into a risk level for the purposes of public notification under RCW 4.24.550; (b) where available, review the offender's proposed

release plan in accordance with the requirements of RCW 72.09.340; and (c) make appropriate referrals.

(5) The committee shall classify as risk level I those sex offenders whose risk assessments indicate a low risk of reoffense within the community at large. The committee shall classify as risk level II those offenders whose risk assessments indicate a moderate risk of reoffense within the community at large. The committee shall classify as risk level III those offenders whose risk assessments indicate a high risk of reoffense within the community at large.

(6) The committee shall issue to appropriate law enforcement agencies, for their use in making public notifications under RCW 4.24.550, narrative notices regarding the pending release of sex offenders from the department's facilities. The narrative notices shall, at a minimum, describe the identity and criminal history behavior of the offender and shall include the department's risk level classification for the offender. For sex offenders classified as either risk level II or III, the narrative notices shall also include the reasons underlying the classification. [1997 c 364 § 4.]

Severability—1997 c 364: See note following RCW 4.24.550.

72.09.350 Corrections mental health center—Collaborative arrangement with University of Washington—Services for mentally ill offenders—Annual report to the legislature. (1) The department of corrections and the University of Washington may enter into a collaborative arrangement to provide improved services for mentally ill offenders with a focus on prevention, treatment, and reintegration into society. The participants in the collaborative arrangement may develop a strategic plan within sixty days after May 17, 1993, to address the management of mentally ill offenders within the correctional system, facilitating their reentry into the community and the mental health system, and preventing the inappropriate incarceration of mentally ill individuals. The collaborative arrangement may also specify the establishment and maintenance of a corrections mental health center located at McNeil Island corrections center. The collaborative arrangement shall require that an advisory panel of key stakeholders be established and consulted throughout the development and implementation of the center. The stakeholders advisory panel shall include a broad array of interest groups drawn from representatives of mental health, criminal justice, and correctional systems. The stakeholders advisory panel shall include, but is not limited to, membership from: The department of corrections, the department of social and health services mental health division and division of juvenile rehabilitation, regional support networks, local and regional law enforcement agencies, the sentencing guidelines commission, county and city jails, mental health advocacy groups for the mentally ill, developmentally disabled, and traumatically brain-injured, and the general public. The center established by the department of corrections and University of Washington, in consultation with the stakeholder advisory groups, shall have the authority to:

(a) Develop new and innovative treatment approaches for corrections mental health clients;

(b) Improve the quality of mental health services within the department and throughout the corrections system;

(c) Facilitate mental health staff recruitment and training to meet departmental, county, and municipal needs;

(d) Expand research activities within the department in the area of treatment services, the design of delivery systems, the development of organizational models, and training for corrections mental health care professionals;

(e) Improve the work environment for correctional employees by developing the skills, knowledge, and understanding of how to work with offenders with special chronic mental health challenges;

(f) Establish a more positive rehabilitative environment for offenders;

(g) Strengthen multidisciplinary mental health collaboration between the University of Washington, other groups committed to the intent of this section, and the department of corrections;

(h) Strengthen department linkages between institutions of higher education, public sector mental health systems, and county and municipal corrections;

(i) Assist in the continued formulation of corrections mental health policies;

(j) Develop innovative and effective recruitment and training programs for correctional personnel working with mentally ill offenders;

(k) Assist in the development of a coordinated continuum of mental health care capable of providing services from corrections entry to community return; and

(l) Evaluate all current and innovative approaches developed within this center in terms of their effective and efficient achievement of improved mental health of inmates, development and utilization of personnel, the impact of these approaches on the functioning of correctional institutions, and the relationship of the corrections system to mental health and criminal justice systems. Specific attention should be paid to evaluating the effects of programs on the reintegration of mentally ill offenders into the community and the prevention of inappropriate incarceration of mentally ill persons.

(2) The corrections mental health center may conduct research, training, and treatment activities for the mentally ill offender within selected sites operated by the department. The department shall provide support services for the center such as food services, maintenance, perimeter security, classification, offender supervision, and living unit functions. The University of Washington may develop, implement, and evaluate the clinical, treatment, research, and evaluation components of the mentally ill offender center. The institute of public policy and management may be consulted regarding the development of the center and in the recommendations regarding public policy. As resources permit, training within the center shall be available to state, county, and municipal agencies requiring the services. Other state colleges, state universities, and mental health providers may be involved in activities as required on a subcontract basis. Community mental health organizations, research groups, and community advocacy groups may be critical components of the center's operations and involved as appropriate to annual objectives. Mentally ill clients may be drawn from throughout the department's population and transferred to the center as clinical need, available services, and department jurisdiction permits.

(2004 Ed.)

(3) The department shall prepare a report of the center's progress toward the attainment of stated goals and provide the report to the legislature annually. [1993 c 459 § 1.]

Effective date—1993 c 459: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]." [1993 c 459 § 2.]

72.09.370 Dangerous mentally ill offenders—Plan for postrelease treatment and support services—Rules.

(1) The secretary shall identify offenders in confinement or partial confinement who: (a) Are reasonably believed to be dangerous to themselves or others; and (b) have a mental disorder. In determining an offender's dangerousness, the secretary shall consider behavior known to the department and factors, based on research, that are linked to an increased risk for dangerousness of mentally ill offenders and shall include consideration of an offender's chemical dependency or abuse.

(2) Prior to release of an offender identified under this section, a team consisting of representatives of the department of corrections, the division of mental health, and, as necessary, the indeterminate sentence review board, other divisions or administrations within the department of social and health services, specifically including the division of alcohol and substance abuse and the division of developmental disabilities, the appropriate regional support network, and the providers, as appropriate, shall develop a plan, as determined necessary by the team, for delivery of treatment and support services to the offender upon release. The team may include a school district representative for offenders under the age of twenty-one. The team shall consult with the offender's counsel, if any, and, as appropriate, the offender's family and community. The team shall notify the crime victim/witness program, which shall provide notice to all people registered to receive notice under RCW 9.94A.612 of the proposed release plan developed by the team. Victims, witnesses, and other interested people notified by the department may provide information and comments to the department on potential safety risk to specific individuals or classes of individuals posed by the specific offender. The team may recommend: (a) That the offender be evaluated by the county designated mental health professional, as defined in chapter 71.05 RCW; (b) department-supervised community treatment; or (c) voluntary community mental health or chemical dependency or abuse treatment.

(3) Prior to release of an offender identified under this section, the team shall determine whether or not an evaluation by a county designated mental health professional is needed. If an evaluation is recommended, the supporting documentation shall be immediately forwarded to the appropriate county designated mental health professional. The supporting documentation shall include the offender's criminal history, history of judicially required or administratively ordered involuntary antipsychotic medication while in confinement, and any known history of involuntary civil commitment.

(4) If an evaluation by a county designated mental health professional is recommended by the team, such evaluation shall occur not more than ten days, nor less than five days, prior to release.

(5) A second evaluation by a county designated mental health professional shall occur on the day of release if requested by the team, based upon new information or a change in the offender's mental condition, and the initial evaluation did not result in an emergency detention or a summons under chapter 71.05 RCW.

(6) If the county designated mental health professional determines an emergency detention under chapter 71.05 RCW is necessary, the department shall release the offender only to a state hospital or to a consenting evaluation and treatment facility. The department shall arrange transportation of the offender to the hospital or facility.

(7) If the county designated mental health professional believes that a less restrictive alternative treatment is appropriate, he or she shall seek a summons, pursuant to the provisions of chapter 71.05 RCW, to require the offender to appear at an evaluation and treatment facility. If a summons is issued, the offender shall remain within the corrections facility until completion of his or her term of confinement and be transported, by corrections personnel on the day of completion, directly to the identified evaluation and treatment facility.

(8) The secretary shall adopt rules to implement this section. [2001 2nd sp.s. c 12 § 362; 1999 c 214 § 2.]

Intent—Severability—Effective dates—2001 2nd sp.s. c 12: See notes following RCW 71.09.250.

Application—2001 2nd sp.s. c 12 §§ 301-363: See note following RCW 9.94A.030.

Intent—1999 c 214: "The legislature intends to improve the process of identifying, and providing additional mental health treatment for, persons: (1) Determined to be dangerous to themselves or others as a result of a mental disorder or a combination of a mental disorder and chemical dependency or abuse; and (2) under, or being released from, confinement or partial confinement of the department of corrections.

The legislature does not create a presumption that any person subject to the provisions of this act is dangerous as a result of a mental disorder or chemical dependency or abuse. The legislature intends that every person subject to the provisions of this act retain the amount of liberty consistent with his or her condition, behavior, and legal status and that any restraint of liberty be done solely on the basis of forensic and clinical practices and standards." [1999 c 214 § 1.]

Effective date—1999 c 214: "Sections 1, 2, and 4 through 9 of this act take effect March 15, 2000." [1999 c 214 § 12.]

72.09.380 Rule making—Medicaid—Secretary of corrections—Secretary of social and health services. The secretaries of the department of corrections and the department of social and health services shall adopt rules and develop working agreements which will ensure that offenders identified under RCW 72.09.370(1) will be assisted in making application for medicaid to facilitate a decision regarding their eligibility for such entitlements prior to the end of their term of confinement in a correctional facility. [1999 c 214 § 3.]

Intent—1999 c 214: See note following RCW 72.09.370.

72.09.381 Rule making—Chapter 214, Laws of 1999—Secretary of corrections—Secretary of social and health services. The secretary of the department of corrections and the secretary of the department of social and health services shall, in consultation with the regional support networks and provider representatives, each adopt rules as nec-

essary to implement chapter 214, Laws of 1999. [1999 c 214 § 11.]

Intent—1999 c 214: See note following RCW 72.09.370.

72.09.400 Work ethic camp program—Findings—Intent. The legislature finds that high crime rates and a heightened sense of vulnerability have led to increased public pressure on criminal justice officials to increase offender punishment and remove the most dangerous criminals from the streets. As a result, there is unprecedented growth in the corrections populations and overcrowding of prisons and local jails. Skyrocketing costs and high rates of recidivism have become issues of major public concern. Attention must be directed towards implementing a long-range corrections strategy that focuses on inmate responsibility through intensive work ethic training.

The legislature finds that many offenders lack basic life skills and have been largely unaffected by traditional correctional philosophies and programs. In addition, many first-time offenders who enter the prison system learn more about how to be criminals than the important qualities, values, and skills needed to successfully adapt to a life without crime.

The legislature finds that opportunities for offenders to improve themselves are extremely limited and there has not been adequate emphasis on alternatives to total confinement for nonviolent offenders.

The legislature finds that the explosion of drug crimes since the inception of the sentencing reform act and the response of the criminal justice system have resulted in a much higher proportion of substance abuse-affected offenders in the state's prisons and jails. The needs of this population differ from those of other offenders and present a great challenge to the system. The problems are exacerbated by the shortage of drug treatment and counseling programs both in and outside of prisons.

The legislature finds that the concept of a work ethic camp that requires the offender to complete an appropriate and balanced combination of highly structured and goal-oriented work programs such as correctional industries based work camps and/or class I and class II work projects, drug rehabilitation, and intensive life management work ethic training, can successfully reduce offender recidivism and lower the overall cost of incarceration.

It is the purpose and intent of RCW 72.09.400 through *72.09.420, 9.94A.690, and **section 5, chapter 338, Laws of 1993 to implement a regimented work ethic camp that is designed to directly address the high rate of recidivism, reduce upwardly spiraling prison costs, preserve scarce and high cost prison space for the most dangerous offenders, and provide judges with a tough and sound alternative to traditional incarceration without compromising public safety. [1993 c 338 § 1.]

Reviser's note: *(1) RCW 72.09.420 was repealed by 1998 c 273 § 1. ***(2) 1993 c 338 § 5 was vetoed by the governor.

Severability—1993 c 338: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 338 § 8.]

Effective date—1993 c 338: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 c 338 § 9.]

Sentencing: RCW 9.94A.690.

72.09.410 Work ethic camp program—Generally.

The department of corrections shall establish one work ethic camp. The secretary shall locate the work ethic camp within an already existing department compound or facility, or in a facility that is scheduled to come on line within the initial implementation date outlined in this section. The facility selected for the camp shall appropriately accommodate the logistical and cost-effective objectives contained in RCW 72.09.400 through *72.09.420, 9.94A.690, and **section 5, chapter 338, Laws of 1993. The department shall be ready to assign inmates to the camp one hundred twenty days after July 1, 1993. The department shall establish the work ethic camp program cycle to last from one hundred twenty to one hundred eighty days. The department shall develop all aspects of the work ethic camp program including, but not limited to, program standards, conduct standards, educational components including general education development test achievement, offender incentives, drug rehabilitation program parameters, individual and team work goals, techniques for improving the offender's self-esteem, citizenship skills for successful living in the community, measures to hold the offender accountable for his or her behavior, and the successful completion of the work ethic camp program granted to the offender based on successful attendance, participation, and performance as defined by the secretary. The work ethic camp shall be designed and implemented so that offenders are continually engaged in meaningful activities and unstructured time is kept to a minimum. In addition, the department is encouraged to explore the integration and overlay of a military style approach to the work ethic camp. [1993 c 338 § 3.]

Reviser's note: *(1) RCW 72.09.420 was repealed by 1998 c 273 § 1.
 **(2) 1993 c 338 § 5 was vetoed by the governor.

Severability—Effective date—1993 c 338: See notes following RCW 72.09.400.

72.09.450 Limitation on denial of access to services and supplies—Recoupment of assessments—Collections.

(1) An inmate shall not be denied access to services or supplies required by state or federal law solely on the basis of his or her inability to pay for them.

(2) The department shall record all lawfully authorized assessments for services or supplies as a debt to the department. The department shall recoup the assessments when the inmate's institutional account exceeds the indigency standard, and may pursue other remedies to recoup the assessments after the period of incarceration.

(3) The department shall record as a debt any costs assessed by a court against an inmate plaintiff where the state is providing defense pursuant to chapter 4.92 RCW. The department shall recoup the debt when the inmate's institutional account exceeds the indigency standard and may pursue other remedies to recoup the debt after the period of incarceration.

(4) In order to maximize the cost-efficient collection of unpaid offender debt existing after the period of an offender's incarceration, the department is authorized to use the following nonexclusive options: (a) Use the collection services available through the department of general administration, or (b) notwithstanding any provision of chapter 41.06 RCW,

(2004 Ed.)

contract with collection agencies for collection of the debts. The costs for general administration or collection agency services shall be paid by the debtor. Any contract with a collection agency shall only be awarded after competitive bidding. Factors the department shall consider in awarding a collection contract include but are not limited to a collection agency's history and reputation in the community; and the agency's access to a local data base that may increase the efficiency of its collections. The servicing of an unpaid obligation to the department does not constitute assignment of a debt, and no contract with a collection agency may remove the department's control over unpaid obligations owed to the department. [1996 c 277 § 1; 1995 1st sp.s. c 19 § 4.]

Findings—Purpose—1995 1st sp.s. c 19: "The legislature finds the increasing number of inmates incarcerated in state correctional institutions, and the expenses associated with their incarceration, require expanded efforts to contain corrections costs. Cost containment requires improved planning and oversight, and increased accountability and responsibility on the part of inmates and the department.

The legislature further finds motivating inmates to participate in meaningful education and work programs in order to learn transferable skills and earn basic privileges is an effective and efficient way to meet the penological objectives of the corrections system.

The purpose of this act is to assure that the department fulfills its mission to reduce offender recidivism, to mirror the values of the community by clearly linking inmate behavior to receipt of privileges, and to prudently manage the resources it receives through tax dollars. This purpose is accomplished through the implementation of specific cost-control measures and creation of a planning and oversight process that will improve the department's effectiveness and efficiencies." [1995 1st sp.s. c 19 § 1.]

Short title—1995 1st sp.s. c 19: "This act shall be known as the department of corrections cost-efficiency and inmate responsibility omnibus act." [1995 1st sp.s. c 19 § 37.]

Severability—1995 1st sp.s. c 19: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 1st sp.s. c 19 § 38.]

Effective date—1995 1st sp.s. c 19: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [June 15, 1995]." [1995 1st sp.s. c 19 § 40.]

72.09.460 Inmate participation in education and work programs—Legislative intent—Priorities—Rules—Department coordination and plans.

(1) The legislature intends that all inmates be required to participate in department-approved education programs, work programs, or both, unless exempted under subsection (4) of this section. Eligible inmates who refuse to participate in available education or work programs available at no charge to the inmates shall lose privileges according to the system established under RCW 72.09.130. Eligible inmates who are required to contribute financially to an education or work program and refuse to contribute shall be placed in another work program. Refusal to contribute shall not result in a loss of privileges. The legislature recognizes more inmates may agree to participate in education and work programs than are available. The department must make every effort to achieve maximum public benefit by placing inmates in available and appropriate education and work programs.

(2) The department shall provide access to a program of education to all offenders who are under the age of eighteen and who have not met high school graduation or general equivalency diploma requirements in accordance with chapter 28A.193 RCW. The program of education established by

the department and education provider under RCW 28A.193.020 for offenders under the age of eighteen must provide each offender a choice of curriculum that will assist the inmate in achieving a high school diploma or general equivalency diploma. The program of education may include but not be limited to basic education, prevocational training, work ethic skills, conflict resolution counseling, substance abuse intervention, and anger management counseling. The curriculum may balance these and other rehabilitation, work, and training components.

(3) The department shall, to the extent possible and considering all available funds, prioritize its resources to meet the following goals for inmates in the order listed:

(a) Achievement of basic academic skills through obtaining a high school diploma or its equivalent and achievement of vocational skills necessary for purposes of work programs and for an inmate to qualify for work upon release;

(b) Additional work and education programs based on assessments and placements under subsection (5) of this section; and

(c) Other work and education programs as appropriate.

(4) The department shall establish, by rule, objective medical standards to determine when an inmate is physically or mentally unable to participate in available education or work programs. When the department determines an inmate is permanently unable to participate in any available education or work program due to a medical condition, the inmate is exempt from the requirement under subsection (1) of this section. When the department determines an inmate is temporarily unable to participate in an education or work program due to a medical condition, the inmate is exempt from the requirement of subsection (1) of this section for the period of time he or she is temporarily disabled. The department shall periodically review the medical condition of all temporarily disabled inmates to ensure the earliest possible entry or reentry by inmates into available programming.

(5) The department shall establish, by rule, standards for participation in department-approved education and work programs. The standards shall address the following areas:

(a) Assessment. The department shall assess all inmates for their basic academic skill levels using a professionally accepted method of scoring reading, math, and language skills as grade level equivalents. The department shall determine an inmate's education history, work history, and vocational or work skills. The initial assessment shall be conducted, whenever possible, within the first thirty days of an inmate's entry into the correctional system, except that initial assessments are not required for inmates who are sentenced to life without the possibility of release, assigned to an intensive management unit within the first thirty days after entry into the correctional system, are returning to the correctional system within one year of a prior release, or whose physical or mental condition renders them unable to complete the assessment process. The department shall track and record changes in the basic academic skill levels of all inmates reflected in any testing or assessment performed as part of their education programming;

(b) Placement. The department shall follow the policies set forth in subsection (1) of this section in establishing criteria for placing inmates in education and work programs. The

department shall, to the extent possible, place all inmates whose composite grade level score for basic academic skills is below the eighth grade level in a combined education and work program. The placement criteria shall include at least the following factors:

(i) An inmate's release date and custody level. An inmate shall not be precluded from participating in an education or work program solely on the basis of his or her release date, except that inmates with a release date of more than one hundred twenty months in the future shall not comprise more than ten percent of inmates participating in a new class I correctional industry not in existence on June 10, 2004;

(ii) An inmate's education history and basic academic skills;

(iii) An inmate's work history and vocational or work skills;

(iv) An inmate's economic circumstances, including but not limited to an inmate's family support obligations; and

(v) Where applicable, an inmate's prior performance in department-approved education or work programs;

(c) Performance and goals. The department shall establish, and periodically review, inmate behavior standards and program goals for all education and work programs. Inmates shall be notified of applicable behavior standards and program goals prior to placement in an education or work program and shall be removed from the education or work program if they consistently fail to meet the standards or goals;

(d) Financial responsibility. (i) The department shall establish a formula by which inmates, based on their ability to pay, shall pay all or a portion of the costs or tuition of certain programs. Inmates shall, based on the formula, pay a portion of the costs or tuition of participation in:

(A) Second and subsequent vocational programs associated with an inmate's work programs; and

(B) An associate of arts or baccalaureate degree program when placement in a degree program is the result of a placement made under this subsection;

(ii) Inmates shall pay all costs and tuition for participation in:

(A) Any postsecondary academic degree program which is entered independently of a placement decision made under this subsection; and

(B) Second and subsequent vocational programs not associated with an inmate's work program.

Enrollment in any program specified in (d)(ii) of this subsection shall only be allowed by correspondence or if there is an opening in an education or work program at the institution where an inmate is incarcerated and no other inmate who is placed in a program under this subsection will be displaced; and

(e) Notwithstanding any other provision in this section, an inmate sentenced to life without the possibility of release:

(i) Shall not be required to participate in education programming; and

(ii) May receive not more than one postsecondary academic degree in a program offered by the department or its contracted providers.

If an inmate sentenced to life without the possibility of release requires prevocational or vocational training for a work program, he or she may participate in the training subject to this section.

(6) The department shall coordinate education and work programs among its institutions, to the greatest extent possible, to facilitate continuity of programming among inmates transferred between institutions. Before transferring an inmate enrolled in a program, the department shall consider the effect the transfer will have on the inmate's ability to continue or complete a program. This subsection shall not be used to delay or prohibit a transfer necessary for legitimate safety or security concerns.

(7) Before construction of a new correctional institution or expansion of an existing correctional institution, the department shall adopt a plan demonstrating how cable, closed-circuit, and satellite television will be used for education and training purposes in the institution. The plan shall specify how the use of television in the education and training programs will improve inmates' preparedness for available work programs and job opportunities for which inmates may qualify upon release.

(8) The department shall adopt a plan to reduce the per-pupil cost of instruction by, among other methods, increasing the use of volunteer instructors and implementing technological efficiencies. The plan shall be adopted by December 1996 and shall be transmitted to the legislature upon adoption. The department shall, in adoption of the plan, consider distance learning, satellite instruction, video tape usage, computer-aided instruction, and flexible scheduling of offender instruction.

(9) Following completion of the review required by section 27(3), chapter 19, Laws of 1995 1st sp. sess. the department shall take all necessary steps to assure the vocation and education programs are relevant to work programs and skills necessary to enhance the employability of inmates upon release. [2004 c 167 § 5; 1998 c 244 § 10; 1997 c 338 § 43; 1995 1st sp.s. c 19 § 5.]

Effective date—1998 c 244 § 10: "Section 10 of this act takes effect September 1, 1998." [1998 c 244 § 18.]

Severability—1998 c 244: See RCW 28A.193.901.

Finding—Evaluation—Report—1997 c 338: See note following RCW 13.40.0357.

Severability—Effective dates—1997 c 338: See notes following RCW 5.60.060.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.470 Inmate contributions for cost of privileges—Standards. To the greatest extent practical, all inmates shall contribute to the cost of privileges. The department shall establish standards by which inmates shall contribute a portion of the department's capital costs of providing privileges, including television cable access, extended family visitation, weight lifting, and other recreational sports equipment and supplies. The standards shall also require inmates to contribute a significant portion of the department's operating costs directly associated with providing privileges, including staff and supplies. Inmate contributions may be in the form of individual user fees assessed against an inmate's institution account, deductions from an inmate's gross wages or gratuities, or inmates' collective contributions to the institutional welfare/betterment fund. The department shall make every effort to maximize individual inmate contributions to payment for privileges. The department shall not limit inmates'

financial support for privileges to contributions from the institutional welfare/betterment fund. The standards shall consider the assets available to the inmates, the cost of administering compliance with the contribution requirements, and shall promote a responsible work ethic. [1995 1st sp.s. c 19 § 7.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.480 Inmate funds subject to deductions—Definitions—Exceptions—Child support collection actions.

(1) Unless the context clearly requires otherwise, the definitions in this section apply to this section.

(a) "Cost of incarceration" means the cost of providing an inmate with shelter, food, clothing, transportation, supervision, and other services and supplies as may be necessary for the maintenance and support of the inmate while in the custody of the department, based on the average per inmate costs established by the department and the office of financial management.

(b) "Minimum term of confinement" means the minimum amount of time an inmate will be confined in the custody of the department, considering the sentence imposed and adjusted for the total potential earned early release time available to the inmate.

(c) "Program" means any series of courses or classes necessary to achieve a proficiency standard, certificate, or postsecondary degree.

(2) When an inmate, except as provided in subsection (7) of this section, receives any funds in addition to his or her wages or gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to the following deductions and the priorities established in chapter 72.11 RCW:

(a) Five percent to the public safety and education account for the purpose of crime victims' compensation;

(b) Ten percent to a department personal inmate savings account;

(c) Twenty percent to the department to contribute to the cost of incarceration;

(d) Twenty percent for payment of legal financial obligations for all inmates who have legal financial obligations owing in any Washington state superior court; and

(e) Fifteen percent for any child support owed under a support order.

(3) When an inmate, except as provided in subsection (7) of this section, receives any funds from a settlement or award resulting from a legal action, the additional funds shall be subject to the deductions in RCW 72.09.111(1)(a) and the priorities established in chapter 72.11 RCW.

(4) The amount deducted from an inmate's funds under subsection (2) of this section shall not exceed the department's total cost of incarceration for the inmate incurred during the inmate's minimum or actual term of confinement, whichever is longer.

(5) The deductions required under subsection (2) of this section shall not apply to funds received by the department on behalf of an offender for payment of one fee-based education or vocational program that is associated with an inmate's work program or a placement decision made by the depart-

ment under RCW 72.09.460 to prepare an inmate for work upon release.

An inmate may, prior to the completion of the fee-based education or vocational program authorized under this subsection, apply to a person designated by the secretary for permission to make a change in his or her program. The secretary, or his or her designee, may approve the application based solely on the following criteria: (a) The inmate has been transferred to another institution by the department for reasons unrelated to education or a change to a higher security classification and the offender's current program is unavailable in the offender's new placement; (b) the inmate entered an academic program as an undeclared major and wishes to declare a major. No inmate may apply for more than one change to his or her major and receive the exemption from deductions specified in this subsection; (c) the educational or vocational institution is terminating the inmate's current program; or (d) the offender's training or education has demonstrated that the current program is not the appropriate program to assist the offender to achieve a placement decision made by the department under RCW 72.09.460 to prepare the inmate for work upon release.

(6) The deductions required under subsection (2) of this section shall not apply to any money received by the department, on behalf of an inmate, from family or other outside sources for the payment of postage expenses. Money received under this subsection may only be used for the payment of postage expenses and may not be transferred to any other account or purpose. Money that remains unused in the inmate's postage fund at the time of release shall be subject to the deductions outlined in subsection (2) of this section.

(7) When an inmate sentenced to life imprisonment without possibility of release or parole, or to death under chapter 10.95 RCW, receives any funds in addition to his or her gratuities, except settlements or awards resulting from legal action, the additional funds shall be subject to: Deductions of five percent to the public safety and education account for the purpose of crime victims' compensation, twenty percent to the department to contribute to the cost of incarceration, and fifteen percent to child support payments.

(8) When an inmate sentenced to life imprisonment without possibility of release or parole, or to death under chapter 10.95 RCW, receives any funds from a settlement or award resulting from a legal action in addition to his or her gratuities, the additional funds shall be subject to: Deductions of five percent to the public safety and education account for the purpose of crime victims' compensation and twenty percent to the department to contribute to the cost of incarceration.

(9) The interest earned on an inmate savings account created as a result of the *plan in section 4, chapter 325, Laws of 1999 shall be exempt from the mandatory deductions under this section and RCW 72.09.111.

(10) Nothing in this section shall limit the authority of the department of social and health services division of child support from taking collection action against an inmate's moneys, assets, or property pursuant to chapter 26.23, 74.20, or 74.20A RCW including, but not limited to, the collection of moneys received by the inmate from settlements or awards resulting from legal action. [2003 c 271 § 3; 1999 c 325 § 1; 1998 c 261 § 2; 1997 c 165 § 1; 1995 1st sp.s. c 19 § 8.]

***Reviser's note:** 1999 c 325 § 4 requires the secretary of corrections to prepare and submit a plan to the governor and legislature by December 1, 1999.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.490 Policy on extended family visitation. (1)

The department shall establish a uniform policy on the privilege of extended family visitation. Not fewer than sixty days before making any changes in any policy on extended family visitation, the department shall: (a) Notify the appropriate legislative committees of the proposed change; and (b) notify the committee created under *RCW 72.09.570 of the proposed change. The department shall seek the advice of the committee established under *RCW 72.09.570 and other appropriate committees on all proposed changes and shall, before the effective date of any change, offer the committees an opportunity to provide input on proposed changes.

(2) In addition to its duties under chapter 34.05 RCW, the department shall provide the committee established under *RCW 72.09.570 and other appropriate committees of the legislature a written copy of any proposed adoption, revision, or repeal of any rule relating to extended family visitation. Except for adoption, revision, or repeal of a rule on an emergency basis, the copy shall be provided not fewer than thirty days before any public hearing scheduled on the rule. [1995 1st sp.s. c 19 § 9.]

***Reviser's note:** RCW 72.09.570 expired July 1, 1997.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.500 Prohibition on weight-lifting. An inmate found by the superintendent in the institution in which the inmate is incarcerated to have committed an aggravated assault against another person, under rules adopted by the department, is prohibited from participating in weight lifting for a period of two years from the date the finding is made. At the conclusion of the two-year period the superintendent shall review the inmate's infraction record to determine if additional weight-lifting prohibitions are appropriate. If, based on the review, it is determined by the superintendent that the inmate poses a threat to the safety of others or the order of the facility, or otherwise does not meet requirements for the weight-lifting privilege, the superintendent may impose an additional reasonable restriction period. [1995 1st sp.s. c 19 § 10.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.510 Limitation on purchasing recreational equipment and dietary supplements that increase muscle mass. Purchases of recreational equipment following June 15, 1995, shall be cost-effective and, to the extent possible, minimize an inmate's ability to substantially increase muscle mass. Dietary supplements made for the sole purpose of increasing muscle mass shall not be available for purchase by inmates unless prescribed by a physician for medical purposes or for inmates officially competing in department-sanctioned competitive weight lifting. [1995 1st sp.s. c 19 § 11.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.520 Limitation on purchase of televisions. No inmate may acquire or possess a television for personal use for at least sixty days following completion of his or her intake and evaluation process at the Washington Corrections Center or the Washington Corrections Center for Women. [1995 1st sp.s. c 19 § 12.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.530 Prohibition on receipt or possession of contraband—Rules. The secretary shall, in consultation with the attorney general, adopt by rule a uniform policy that prohibits receipt or possession of anything that is determined to be contraband. The rule shall provide consistent maximum protection of legitimate penological interests, including prison security and order and deterrence of criminal activity. The rule shall protect the legitimate interests of the public and inmates in the exchange of ideas. The secretary shall establish a method of reviewing all incoming and outgoing material, consistent with constitutional constraints, for the purpose of confiscating anything determined to be contraband. The secretary shall consult regularly with the committee created under *RCW 72.09.570 on the development of the policy and implementation of the rule. [1995 1st sp.s. c 19 § 13.]

***Reviser's note:** RCW 72.09.570 expired July 1, 1997.

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.540 Inmate name change—Limitations on use—Penalty. The department may require an offender who obtains an order under RCW 4.24.130 to use the name under which he or she was committed to the department during all official communications with department personnel and in all matters relating to the offender's incarceration or community supervision. An offender officially communicating with the department may also use his or her new name in addition to the name under which he or she was committed. Violation of this section is a misdemeanor. [1995 1st sp.s. c 19 § 15.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.560 Camp for alien offenders. The department is authorized to establish a camp for alien offenders and shall be ready to assign offenders to the camp not later than January 1, 1997. The secretary shall locate the camp within the boundaries of an existing department facility. [1998 c 245 § 140; 1995 1st sp.s. c 19 § 21.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.09.580 Offender records and reports. Except as specifically prohibited by other law, and for purposes of determining, modifying, or monitoring compliance with conditions of community custody, community placement, or community supervision as authorized under *RCW 9.94A.505 and 9.94A.545, the department:

(1) Shall have access to all relevant records and information in the possession of public agencies relating to offenders, including police reports, prosecutors' statements of probable cause, complete criminal history information, psychological

evaluations and psychiatric hospital reports, sex offender treatment program reports, and juvenile records; and

(2) May require periodic reports from providers of treatment or other services required by the court or the department, including progress reports, evaluations and assessments, and reports of violations of conditions imposed by the court or the department. [1999 c 196 § 12.]

***Reviser's note:** Effective July 1, 2001, conditions of community custody, community placement, and community supervision are also contained in various sections of chapter 9.94A RCW.

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

72.09.585 Mental health services information—Required inquiries and disclosures—Release to court, individuals, indeterminate sentence review board, state and local agencies. (1) When the department is determining an offender's risk management level, the department shall inquire of the offender and shall be told whether the offender is subject to court-ordered treatment for mental health services or chemical dependency services. The department shall request and the offender shall provide an authorization to release information form that meets applicable state and federal requirements and shall provide the offender with written notice that the department will request the offender's mental health and substance abuse treatment information. An offender's failure to inform the department of court-ordered treatment is a violation of the conditions of supervision if the offender is in the community and an infraction if the offender is in confinement, and the violation or infraction is subject to sanctions.

(2) When an offender discloses that he or she is subject to court-ordered mental health services or chemical dependency treatment, the department shall provide the mental health services provider or chemical dependency treatment provider with a written request for information and any necessary authorization to release information forms. The written request shall comply with rules adopted by the department of social and health services or protocols developed jointly by the department and the department of social and health services. A single request shall be valid for the duration of the offender's supervision in the community. Disclosures of information related to mental health services made pursuant to a department request shall not require consent of the offender.

(3) The information received by the department under RCW 71.05.445 or 71.34.225 may be released to the indeterminate sentence review board as relevant to carry out its responsibility of planning and ensuring community protection with respect to persons under its jurisdiction. Further disclosure by the indeterminate sentence review board is subject to the limitations set forth in subsections (5) and (6) of this section and must be consistent with the written policy of the indeterminate sentence review board. The decision to disclose or not shall not result in civil liability for the indeterminate sentence review board or its employees provided that the decision was reached in good faith and without gross negligence.

(4) The information received by the department under RCW 71.05.445 or 71.34.225 may be used to meet the statu-

tory duties of the department to provide evidence or report to the court. Disclosure to the public of information provided to the court by the department related to mental health services shall be limited in accordance with RCW 9.94A.500 or this section.

(5) The information received by the department under RCW 71.05.445 or 71.34.225 may be disclosed by the department to other state and local agencies as relevant to plan for and provide offenders transition, treatment, and supervision services, or as relevant and necessary to protect the public and counteract the danger created by a particular offender, and in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. The information received by a state or local agency from the department shall remain confidential and subject to the limitations on disclosure set forth in chapters 70.02, 71.05, and 71.34 RCW and, subject to these limitations, may be released only as relevant and necessary to counteract the danger created by a particular offender.

(6) The information received by the department under RCW 71.05.445 or 71.34.225 may be disclosed by the department to individuals only with respect to offenders who have been determined by the department to have a high risk of reoffending by a risk assessment, as defined in RCW 9.94A.030, only as relevant and necessary for those individuals to take reasonable steps for the purpose of self-protection, or as provided in RCW 72.09.370(2). The information may not be disclosed for the purpose of engaging the public in a system of supervision, monitoring, and reporting offender behavior to the department. The department must limit the disclosure of information related to mental health services to the public to descriptions of an offender's behavior, risk he or she may present to the community, and need for mental health treatment, including medications, and shall not disclose or release to the public copies of treatment documents or records, except as otherwise provided by law. All disclosure of information to the public must be done in a manner consistent with the written policy established by the secretary. The decision to disclose or not shall not result in civil liability for the department or its employees so long as the decision was reached in good faith and without gross negligence. Nothing in this subsection prevents any person from reporting to law enforcement or the department behavior that he or she believes creates a public safety risk. [2004 c 166 § 5; 2000 c 75 § 4.]

Severability—Effective dates—2004 c 166: See notes following RCW 71.05.040.

Intent—2000 c 75: See note following RCW 71.05.445.

72.09.590 Community safety. To the extent practicable, the department shall deploy community corrections staff on the basis of geographic areas in which offenders under the department's jurisdiction are located, and shall establish a systematic means of assessing risk to the safety of those communities. [1999 c 196 § 13.]

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

72.09.600 Rules—Chapter 196, Laws of 1999. The secretary of corrections may adopt rules to implement sections 1 through 13, chapter 196, Laws of 1999. [1999 c 196 § 14.]

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

72.09.610 Community custody study. (Expires December 31, 2010.) (1) The Washington state institute for public policy shall conduct a study of the effect of the use of community custody under chapter 196, Laws of 1999. The study shall include the effect of chapter 196, Laws of 1999 on recidivism and other outcomes. In its study the institute shall consider:

(a) Recidivism, according to the definition adopted by the institute pursuant to section 59, chapter 338, Laws of 1997;

(b) The number and seriousness level of violations of conditions;

(c) The application of the graduated sanctions by the department;

(d) Unauthorized absences from supervision;

(e) Payment of legal financial obligations;

(f) Unlawful use of controlled substances;

(g) Use of alcohol when abstention or treatment for alcoholism is a condition of supervision;

(h) Effects on the number of offenders who are employed or participate in vocational rehabilitation;

(i) Participation in vocational and education programs; and

(j) Impact on the receipt of public assistance.

(2) By January 1, 2000, the institute shall report to the legislature on the design for the study. By January 1st of each year thereafter, the institute shall report to the legislature on the progress and findings of the study and make recommendations based on its findings. By January 1, 2010, the institute shall provide to the legislature a final report on the findings of the study.

(3) Subsections (1) and (2) of this section expire December 31, 2010. [1999 c 196 § 16.]

Construction—Short title—1999 c 196: See RCW 72.09.904 and 72.09.905.

Severability—1999 c 196: See note following RCW 9.94A.010.

72.09.620 Extraordinary medical placement—Reports. The secretary shall report annually to the legislature on the number of offenders considered for an extraordinary medical placement, the number of offenders who were granted such a placement, the number of offenders who were denied such a placement, the length of time between initial consideration and the placement decision for each offender who was granted an extraordinary medical placement, the number of offenders granted an extraordinary medical placement who were later returned to total confinement, and the cost savings realized by the state. [1999 c 324 § 7.]

72.09.630 Custodial sexual misconduct—Investigation of allegations. The department shall investigate any alleged violations of RCW 9A.44.160 or 9A.44.170 that are alleged to have been committed by an employee or contract

personnel of the department, to determine whether there is probable cause to believe that the allegation is true before reporting the alleged violation to a prosecuting attorney. [1999 c 45 § 7.]

72.09.650 Use of force by limited authority Washington peace officers—Detention of persons. (1) An employee of the department who is a limited authority Washington peace officer under RCW 10.93.020 may use reasonable force to detain, search, or remove persons who enter or remain without permission within a correctional facility or institutional grounds or whenever, upon probable cause, it appears to such employee that a person has committed or is attempting to commit a crime, or possesses contraband within a correctional facility or institutional grounds. Should any person be detained, the department shall immediately notify a local law enforcement agency having jurisdiction over the correctional facility or institutional grounds of the detainment. The department is authorized to detain the person for a reasonable time to search the person and confiscate any contraband, and until custody of the person and any illegal contraband can be transferred to a law enforcement officer when appropriate. An employee of the department who is a limited authority Washington peace officer under RCW 10.93.020 may use that force necessary in the protection of persons and properties located within the confines of the correctional facility or institutional grounds.

(2) The rights granted in subsection (1) of this section are in addition to any others that may exist by law including, but not limited to, the rights granted in RCW 9A.16.020. [2001 c 11 § 1.]

Effective date—2001 c 11: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 13, 2001]." [2001 c 11 § 2.]

72.09.900 Effective date—1981 c 136. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981. [1981 c 136 § 124.]

72.09.901 Short title. This chapter may be known and cited as the corrections reform act of 1981. [1981 c 136 § 1.]

72.09.902 Construction—1981 c 136. All references to the department or secretary of social and health services in other chapters of the Revised Code of Washington shall be construed as meaning the department or secretary of corrections when referring to the functions established by this chapter. [1981 c 136 § 29.]

72.09.903 Savings—1981 c 136. All rules and all pending business before the secretary of social and health services and the department of social and health services pertaining to matters transferred by RCW 72.09.040 shall be continued and acted upon by the department of corrections.

All existing contracts and obligations pertaining to the powers, duties, and functions transferred shall remain in full force and effect and shall be performed by the department of corrections.

(2004 Ed.)

The transfer of powers, duties, and functions under RCW 72.09.040 shall not affect the validity of any act performed prior to July 1, 1981, by the department of social and health services or its secretary and, except as otherwise specifically provided, shall not affect the validity of any rights existing on July 1, 1981.

If questions arise regarding whether any sort of obligation is properly that of the department of social and health services or the department of corrections, such questions shall be resolved by the director of financial management. [1981 c 136 § 30.]

72.09.904 Construction—1999 c 196. Nothing in chapter 196, Laws of 1999 shall be construed to create an immunity or defense from liability for personal injury or wrongful death based solely on availability of funds. [1999 c 196 § 17.]

72.09.905 Short title—1999 c 196. This act may be known and cited as the offender accountability act. [1999 c 196 § 18.]

Chapter 72.10 RCW

HEALTH CARE SERVICES— DEPARTMENT OF CORRECTIONS

Sections

| | |
|-----------|--|
| 72.10.005 | Intent—Application. |
| 72.10.010 | Definitions. |
| 72.10.020 | Health services delivery plan—Reports to the legislature— Policy for distribution of personal hygiene items—Expiration of subsection. |
| 72.10.030 | Contracts for services. |
| 72.10.040 | Rules. |
| 72.10.050 | Rules to implement RCW 72.10.020. |
| 72.10.060 | Inmates who have received mental health treatment—Notification to treatment provider at time of release. |

72.10.005 Intent—Application. It is the intent of the legislature that inmates in the custody of the department of corrections receive such basic medical services as may be mandated by the federal Constitution and the Constitution of the state of Washington. Notwithstanding any other laws, it is the further intent of the legislature that the department of corrections may contract directly with any persons, firms, agencies, or corporations qualified to provide such services. Nothing in this chapter is to be construed to authorize a reduction in state employment in service component areas presently rendering such services or to preclude work typically and historically performed by department employees. [1989 c 157 § 1.]

72.10.010 Definitions. As used in this chapter:

- (1) "Department" means the department of corrections.
- (2) "Health care practitioner" means an individual or firm licensed or certified to actively engage in a regulated health profession.
- (3) "Health profession" means those licensed or regulated professions set forth in RCW 18.120.020(4).
- (4) "Health care facility" means any hospital, hospice care center, licensed or certified health care facility, health maintenance organization regulated under chapter 48.46

RCW, federally qualified health maintenance organization, federally approved renal dialysis center or facility, or federally approved blood bank.

(5) "Health care services" means medical, dental, and mental health care services.

(6) "Secretary" means the secretary of the department.

(7) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the department, or his or her designee. [1995 1st sp.s. c 19 § 16; 1989 c 157 § 2.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.10.020 Health services delivery plan—Reports to the legislature—Policy for distribution of personal hygiene items—Expiration of subsection. (1) Upon entry into the correctional system, offenders shall receive an initial medical examination. The department shall prepare a health profile for each offender that includes at least the following information: (a) An identification of the offender's serious medical and dental needs; (b) an evaluation of the offender's capacity for work and recreation; and (c) a financial assessment of the offender's ability to pay for all or a portion of his or her health care services from personal resources or private insurance.

(2)(a) The department may develop and implement a plan for the delivery of health care services and personal hygiene items to offenders in the department's correctional facilities, at the discretion of the secretary, and in conformity with federal law.

(b) To discourage unwarranted use of health care services caused by unnecessary visits to health care providers, offenders shall participate in the costs of their health care services by paying a nominal amount of no less than three dollars per visit, as determined by the secretary. Under the authority granted in RCW 72.01.050(2), the secretary may authorize the superintendent to collect this amount directly from an offender's institution account. All copayments collected from offenders' institution accounts shall be deposited into the general fund.

(c) Offenders are required to make copayments for initial health care visits that are offender initiated and, by rule adopted by the department, may be charged a copayment for subsequent visits related to the medical condition which caused the initial visit. Offenders are not required to pay for emergency treatment or for visits initiated by health care staff or treatment of those conditions that constitute a serious health care need.

(d) No offender may be refused any health care service because of indigence.

(e) At no time shall the withdrawal of funds for the payment of a medical service copayment result in reducing an offender's institution account to an amount less than the level of indigency as defined in chapter 72.09 RCW.

(3)(a) The department shall report annually to the legislature the following information for the fiscal year preceding the report: (i) The total number of health care visits made by offenders; (ii) the total number of copayments assessed; (iii) the total dollar amount of copayments collected; (iv) the total number of copayments not collected due to an offender's indigency; and (v) the total number of copayments not assessed due to the serious or emergent nature of the health

care treatment or because the health care visit was not offender initiated.

(b) The first report required under this section shall be submitted not later than October 1, 1996, and shall include, at a minimum, all available information collected through the second half of fiscal year 1996. This subsection (3)(b) shall expire December 1, 1996.

(4)(a) The secretary shall adopt, by rule, a uniform policy relating to the distribution and replenishment of personal hygiene items for inmates incarcerated in all department institutions. The policy shall provide for the initial distribution of adequate personal hygiene items to inmates upon their arrival at an institution.

(b) The acquisition of replenishment personal hygiene items is the responsibility of inmates, except that indigent inmates shall not be denied adequate personal hygiene items based on their inability to pay for them.

(c) The policy shall provide that the replenishment personal hygiene items be distributed to inmates only in authorized quantities and at intervals that reflect prudent use and customary wear and consumption of the items.

(5) The following become a debt and are subject to RCW 72.09.450:

(a) All copayments under subsection (2) of this section that are not collected when the visit occurs; and

(b) All charges for replenishment personal hygiene items that are not collected when the item is distributed. [1995 1st sp.s. c 19 § 17; 1989 c 157 § 3.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.10.030 Contracts for services. (1) Notwithstanding any other provisions of law, the secretary may enter into contracts with health care practitioners, health care facilities, and other entities or agents as may be necessary to provide basic medical care to inmates. The contracts shall not cause the termination of classified employees of the department rendering the services at the time the contract is executed.

(2) In contracting for services, the secretary is authorized to provide for indemnification of health care practitioners who cannot obtain professional liability insurance through reasonable effort, from liability on any action, claim, or proceeding instituted against them arising out of the good faith performance or failure of performance of services on behalf of the department. The contracts may provide that for the purposes of chapter 4.92 RCW only, those health care practitioners with whom the department has contracted shall be considered state employees. [1989 c 157 § 4.]

72.10.040 Rules. The secretary shall have the power to make rules necessary to carry out the intent of this chapter. [1989 c 157 § 5.]

72.10.050 Rules to implement RCW 72.10.020. The department shall adopt rules to implement RCW 72.10.020. [1995 1st sp.s. c 19 § 18.]

Findings—Purpose—Short title—Severability—Effective date—1995 1st sp.s. c 19: See notes following RCW 72.09.450.

72.10.060 Inmates who have received mental health treatment—Notification to treatment provider at time of

release. The secretary shall, for any person committed to a state correctional facility after July 1, 1998, inquire at the time of commitment whether the person had received outpatient mental health treatment within the two years preceding confinement and the name of the person providing the treatment.

The secretary shall inquire of the treatment provider if he or she wishes to be notified of the release of the person from confinement, for purposes of offering treatment upon the inmate's release. If the treatment provider wishes to be notified of the inmate's release, the secretary shall attempt to provide such notice at least seven days prior to release.

At the time of an inmate's release if the secretary is unable to locate the treatment provider, the secretary shall notify the regional support network in the county the inmate will most likely reside following release.

If the secretary has, prior to the release from the facility, evaluated the inmate and determined he or she requires post-release mental health treatment, a copy of relevant records and reports relating to the inmate's mental health treatment or status shall be promptly made available to the offender's present or future treatment provider. The secretary shall determine which records and reports are relevant and may provide a summary in lieu of copies of the records. [1998 c 297 § 48.]

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

Chapter 72.11 RCW

OFFENDERS' RESPONSIBILITY FOR LEGAL FINANCIAL OBLIGATIONS

Sections

| | |
|-----------|--|
| 72.11.010 | Definitions. |
| 72.11.020 | Inmate funds—Legal financial obligations—Disbursal by secretary. |
| 72.11.030 | Inmate accounts—Legal financial obligations—Priority—Deductions. |
| 72.11.040 | Cost of supervision fund. |

72.11.010 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereafter used in this chapter shall have the following meanings:

- (1) "Court-ordered legal financial obligation" means a sum of money that is ordered by a superior court of the state of Washington for payment of restitution to a victim, statutorily imposed crime victims compensation fee, court costs, a county or interlocal drug fund, court-appointed attorneys' fees and costs of defense, fines, and any other legal financial obligation that is assessed as a result of a felony conviction.
- (2) "Department" means the department of corrections.
- (3) "Offender" means an individual who is currently under the jurisdiction of the Washington state department of corrections, and who also has a court-ordered legal financial obligation as a result of a felony conviction.
- (4) "Secretary" means the secretary of the department of corrections or the secretary's designee.
- (5) "Superintendent" means the superintendent of a correctional facility under the jurisdiction of the Washington state department of corrections. [1989 c 252 § 22.]

(2004 Ed.)

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

72.11.020 Inmate funds—Legal financial obligations—Disbursal by secretary. The secretary shall be custodian of all funds of a convicted person that are in his or her possession upon admission to a state institution, or that are sent or brought to the person, or earned by the person while in custody, or that are forwarded to the superintendent on behalf of a convicted person. All such funds shall be deposited in the personal account of the convicted person within the institutional resident deposit account as established by the office of financial management pursuant to RCW 43.88.195, and the secretary shall have authority to disburse money from such person's personal account for the purposes of satisfying a court-ordered legal financial obligation to the court. Legal financial obligation deductions shall be made as stated in RCW 72.09.111(1) and 72.65.050 without exception. Unless specifically granted authority herein, at no time shall the withdrawal of funds for the payment of a legal financial obligation result in reducing the inmate's account to an amount less than the defined level of indigency to be determined by the department.

Further, unless specifically altered herein, court-ordered legal financial obligations shall be paid. [2002 c 126 § 1; 1989 c 252 § 23.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

72.11.030 Inmate accounts—Legal financial obligations—Priority—Deductions. (1) Except as otherwise provided herein, all court-ordered legal financial obligations shall take priority over any other statutorily imposed mandatory withdrawals from inmate's accounts.

(2) For those inmates who are on work release pursuant to chapter 72.65 RCW, before any legal financial obligations are withdrawn from the inmate's account, the inmate is entitled to payroll deductions that are required by law, or such payroll deductions as may reasonably be required by the nature of the employment unless any such amount which his or her work release plan specifies should be retained to help meet the inmate's needs, including costs necessary for his or her participation in the work release plan such as travel, meals, clothing, tools, and other incidentals.

(3) Before the payment of any court-ordered legal financial obligation is required, the department is entitled to reimbursement for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), for expenses incident to a work release plan pursuant to RCW 72.65.090, payments for board and room charges for the work release participant, and payments that are necessary for the support of the work release participant's dependents, if any. [1989 c 252 § 24.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

72.11.040 Cost of supervision fund. The cost of supervision fund is created in the custody of the state treasurer. All receipts from assessments made under RCW 9.94A.780 and 72.04A.120 shall be deposited into the fund. Expenditures from the fund may be used only to support the collection of legal financial obligations. During the 2003-2005 biennium,

funds from the account may also be used for costs associated with the department's supervision of the offenders in the community. Only the secretary of the department of corrections or the secretary's designee may authorize expenditures from the fund. The fund is subject to allotment procedures under chapter 43.88 RCW, but no appropriation is required for expenditures. [2003 1st sp.s. c 25 § 936; 2001 2nd sp.s. c 7 § 919; 2000 2nd sp.s. c 1 § 914; 1999 c 309 § 921; 1989 c 252 § 26.]

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

Severability—Effective date—2001 2nd sp.s. c 7: See notes following RCW 43.320.110.

Severability—Effective date—2000 2nd sp.s. c 1: See notes following RCW 41.05.143.

Severability—Effective date—1999 c 309: See notes following RCW 41.06.152.

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

Chapter 72.16 RCW GREEN HILL SCHOOL

Sections

- 72.16.010 School established.
72.16.020 Purpose of school.

Basic juvenile court act: Chapter 13.04 RCW.

Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders: RCW 72.01.410.

Commitment: Chapter 13.04 RCW.

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

Disturbances at state penal facilities

development of contingency plans—Scope—Local participation: RCW 72.02.150.

reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.

utilization of outside law enforcement personnel—Scope: RCW 72.02.160.

Educational programs for residential school residents: RCW 28A.190.020 through 28A.190.060.

Financial responsibility for cost of detention of minor: RCW 13.16.085.

Fugitives of this state: Chapter 10.34 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.16.010 School established. There is established at Chehalis, Lewis county, an institution which shall be known as the Green Hill school. [1959 c 28 § 72.16.010. Prior: 1955 c 230 § 1. (i) 1909 c 97 p 256 § 1; RRS § 4624. (ii) 1907 c 90 § 1; 1890 p 271 § 1; RRS § 10299.]

72.16.020 Purpose of school. The said school shall be for the keeping and training of all boys between the ages of eight and eighteen years who are residents of the state of Washington and who are lawfully committed to said institution. [1959 c 28 § 72.16.020. Prior: (i) 1909 c 97 p 256 § 2; RRS § 4625. (ii) 1890 p 272 § 2; RRS § 10300.]

[Title 72 RCW—page 46]

Chapter 72.19 RCW

JUVENILE CORRECTIONAL INSTITUTION IN KING COUNTY

Sections

- 72.19.010 Institution established—Location.
72.19.020 Rules and regulations.
72.19.030 Superintendent—Appointment.
72.19.040 Associate superintendents—Appointment—Acting superintendent.
72.19.050 Powers and duties of superintendent.
72.19.060 Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination.
72.19.070 General obligation bond issue to provide buildings—Authorized—Form, terms, etc.
72.19.100 General obligation bond issue to provide buildings—Bond redemption fund—Payment from sales tax.
72.19.110 General obligation bond issue to provide buildings—Legislature may provide additional means of revenue.
72.19.120 General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds.
72.19.130 Referral to electorate.

Disturbances at state penal facilities

development of contingency plans—Scope—Local participation: RCW 72.02.150.

reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.

utilization of outside law enforcement personnel—Scope: RCW 72.02.160.

Educational programs for residential school residents: RCW 28A.190.020 through 28A.190.060.

72.19.010 Institution established—Location. There is hereby established under the supervision and control of the secretary of social and health services a correctional institution for the confinement and rehabilitation of juveniles committed by the juvenile courts to the department of social and health services. Such institution shall be situated upon publicly owned lands within King county, under the supervision of the department of natural resources, which land is located in the vicinity of Echo Lake and more particularly situated in Section 34, Township 24 North, Range 7 East W.M. and that portion of Section 3, Township 23 North, Range 7 East W.M. lying north of U.S. Highway 10, together with necessary access routes thereto, all of which tract is leased by the department of natural resources to the department of social and health services for the establishment and construction of the correctional institution authorized and provided for in this chapter. [1979 c 141 § 222; 1963 c 165 § 1; 1961 c 183 § 1.]

72.19.020 Rules and regulations. The secretary may make, amend and repeal rules and regulations for the administration of the juvenile correctional institution established by this chapter in furtherance of the provisions of this chapter and not inconsistent with law. [1979 c 141 § 223; 1961 c 183 § 4.]

72.19.030 Superintendent—Appointment. The superintendent of the correctional institution established by this chapter shall be appointed by the secretary. [1983 1st ex.s. c 41 § 27; 1979 c 141 § 224; 1963 c 165 § 3.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

72.19.040 Associate superintendents—Appointment—Acting superintendent. The superintendent, subject to the approval of the secretary, shall appoint such associate

(2004 Ed.)

superintendents as shall be deemed necessary. In the event the superintendent shall be absent from the institution, or during periods of illness or other situations incapacitating the superintendent from properly performing his duties, one of the associate superintendents of such institution shall act as superintendent during such period of absence, illness or incapacity as may be designated by the secretary. [1979 c 141 § 225; 1963 c 165 § 4.]

72.19.050 Powers and duties of superintendent. The superintendent shall have the following powers, duties and responsibilities:

(1) Subject to the rules of the department, the superintendent shall have the supervision and management of the institution, of the grounds and buildings, the subordinate officers and employees, and of the juveniles received at such institution and the custody of such persons until released or transferred as provided by law.

(2) Subject to the rules of the department and the Washington personnel resources board, appoint all subordinate officers and employees.

(3) The superintendent shall be the custodian of the personal property of all juveniles in the institution and shall make rules governing the accounting and disposition of all moneys received by such juveniles, not inconsistent with the law, and subject to the approval of the secretary. [1993 c 281 § 65; 1979 c 141 § 226; 1963 c 165 § 5.]

Effective date—1993 c 281: See note following RCW 41.06.022.

72.19.060 Male, female, juveniles—Residential housing, separation—Correctional programs, separation, combination. The plans and construction of the juvenile correctional institution established by this chapter shall provide for adequate separation of the residential housing of the male juvenile from the female juvenile. In all other respects, the juvenile correctional programs for both boys and girls may be combined or separated as the secretary deems most reasonable and effective to accomplish the reformation, training and rehabilitation of the juvenile offender, realizing all possible economies from the lack of necessity for duplication of facilities. [1979 c 141 § 227; 1963 c 165 § 7.]

72.19.070 General obligation bond issue to provide buildings—Authorized—Form, terms, etc. For the purpose of providing needful buildings at the correctional institution for the confinement and rehabilitation of juveniles situated in King county in the vicinity of Echo Lake which institution was established by the provisions of this chapter, the state finance committee is hereby authorized to issue, at any time prior to January 1, 1970, general obligation bonds of the state of Washington in the sum of four million six hundred thousand dollars, or so much thereof as shall be required to finance the program above set forth, to be paid and discharged within twenty years of the date of issuance.

The state finance committee is authorized to prescribe the form of such bonds, and the time of sale of all or any portion or portions of such bonds, and the conditions of sale and issuance thereof: PROVIDED, That none of the bonds herein authorized shall be sold for less than the par value thereof,

nor shall they bear interest at a rate in excess of four percent per annum.

The bonds shall pledge the full faith and credit of the state of Washington and contain an unconditional promise to pay the principal and interest when due. The committee may provide that the bonds, or any of them, may be called prior to the due date thereof under such terms and conditions as it may determine. The state finance committee may authorize the use of facsimile signatures in the issuance of the bonds. [1963 ex.s. c 27 § 1.]

72.19.100 General obligation bond issue to provide buildings—Bond redemption fund—Payment from sales tax. The juvenile correctional institution building bond redemption fund is hereby created in the state treasury, which fund shall be exclusively devoted to the payment of interest on and retirement of the bonds authorized by RCW 72.19.070 through 72.19.130. The state finance committee shall, on or before June 30th of each year, certify to the state treasurer the amount needed in the ensuing twelve months to meet bond retirement and interest requirements and the state treasurer shall thereupon deposit such amount in said juvenile correctional institution building bond redemption fund from moneys transmitted to the state treasurer by the department of revenue and certified by the department of revenue to be sales tax collections and such amount certified by the state finance committee to the state treasurer shall be a prior charge against all retail sales tax revenues of the state of Washington, except that portion thereof heretofore pledged for the payment of bond principal and interest.

The owner and holder of each of said bonds or the trustee for any of the bonds may by mandamus or other appropriate proceeding require and compel the transfer and payment of funds as directed herein. [1975 1st ex.s. c 278 § 35; 1963 ex.s. c 27 § 4.]

Construction—Severability—1975 1st ex.s. c 278: See notes following RCW 11.08.160.

72.19.110 General obligation bond issue to provide buildings—Legislature may provide additional means of revenue. The legislature may provide additional means for raising moneys for the payment of the interest and principal of the bonds authorized herein and RCW 72.19.070 through 72.19.130 shall not be deemed to provide an exclusive method for such payment. [1963 ex.s. c 27 § 5.]

72.19.120 General obligation bond issue to provide buildings—Bonds legal investment for state and municipal corporation funds. The bonds herein authorized shall be a legal investment for all state funds or for funds under state control and all funds of municipal corporations. [1963 ex.s. c 27 § 6.]

72.19.130 Referral to electorate. This act shall be submitted to the people for their adoption and ratification, or rejection, at the general election to be held in this state on the Tuesday next succeeding the first Monday in November, 1964, in accordance with the provisions of section 3, Article VIII of the state Constitution; and in accordance with the provisions of section 1, Article II of the state Constitution, as

amended, and the laws adopted to facilitate the operation thereof. [1963 ex.s. c 27 § 7.]

Chapter 72.20 RCW MAPLE LANE SCHOOL

Sections

| | |
|-----------|---|
| 72.20.001 | Definitions. |
| 72.20.010 | School established. |
| 72.20.020 | Management—Superintendent. |
| 72.20.040 | Duties of superintendent. |
| 72.20.050 | Parole or discharge—Behavior credits. |
| 72.20.060 | Conditional parole—Apprehension on escape or violation of parole. |
| 72.20.065 | Intrusion—Enticement away of girls—Interference—Penalty. |
| 72.20.070 | Eligibility restricted. |
| 72.20.090 | Hiring out—Apprenticeships—Compensation. |

Basic juvenile court act: Chapter 13.04 RCW.

Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders: RCW 72.01.410.

Commitment: Chapter 13.04 RCW.

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

Disturbances at state penal facilities development of contingency plans—Scope—Local participation: RCW 72.02.150.

reimbursement to cities and counties for certain expenses incurred: RCW 72.72.050, 72.72.060.

utilization of outside law enforcement personnel—Scope: RCW 72.02.160.

Educational programs for residential school residents: RCW 28A.190.020 through 28A.190.060.

Financial responsibility for cost of detention of minor: RCW 13.16.085.

Fugitives of this state: Chapter 10.34 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.20.001 Definitions. As used in this chapter:

"Department" means the department of social and health services; and

"Secretary" means the secretary of social and health services. [1981 c 136 § 98.]

Effective date—1981 c 136: See RCW 72.09.900.

72.20.010 School established. There is established at Grand Mound, Thurston county, an institution which shall be known as the Maple Lane school. [1959 c 28 § 72.20.010. Prior: 1955 c 230 § 2; 1913 c 157 § 1; RRS § 4631.]

72.20.020 Management—Superintendent. The government, control and business management of such school shall be vested in the secretary. The secretary shall, with the approval of the governor, appoint a suitable superintendent of said school, and shall designate the number of subordinate officers and employees to be employed, and fix their respective salaries, and have power, with the like approval, to make and enforce all such rules and regulations for the administration, government and discipline of the school as the secretary may deem just and proper, not inconsistent with this chapter. [1979 c 141 § 228; 1959 c 39 § 1; 1959 c 28 § 72.20.020. Prior: 1913 c 157 § 3; RRS § 4633.]

Appointment of chief executive officers and subordinate employees, general provisions: RCW 72.01.060.

72.20.040 Duties of superintendent. The superintendent, subject to the direction and approval of the secretary shall:

(1) Have general supervision and control of the grounds and buildings of the institution, the subordinate officers and employees, and the inmates thereof, and all matters relating to their government and discipline.

(2) Make such rules, regulations and orders, not inconsistent with law or with the rules, regulations or directions of the secretary, as may seem to him proper or necessary for the government of such institution and for the employment, discipline and education of the inmates, except for the program of education provided pursuant to RCW 28A.190.030 through 28A.190.050 which shall be governed by the school district conducting the program.

(3) Exercise such other powers, and perform such other duties as the secretary may prescribe. [1990 c 33 § 593; 1979 ex.s. c 217 § 10; 1979 c 141 § 229; 1959 c 39 § 2; 1959 c 28 § 72.20.040. Prior: 1913 c 157 § 5; RRS § 4635.]

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Effective date—Severability—1979 ex.s. c 217: See notes following RCW 28A.190.020.

72.20.050 Parole or discharge—Behavior credits. The department, acting with the superintendent, shall, under a system of marks, or otherwise, fix upon a uniform plan by which girls may be paroled or discharged from the school, which system shall be subject to revision from time to time. Each girl shall be credited for personal demeanor, diligence in labor or study and for the results accomplished, and charged for derelictions, negligence or offense. The standing of each girl shall be made known to her as often as once a month. [1959 c 28 § 72.20.050. Prior: 1913 c 157 § 8; RRS § 4638.]

72.20.060 Conditional parole—Apprehension on escape or violation of parole. Every girl shall be entitled to a trial on parole before reaching the age of twenty years, such parole to continue for at least one year unless violated. The superintendent and resident physician, with the approval of the secretary, shall determine whether such parole has been violated. Any girl committed to the school who shall escape therefrom, or who shall violate a parole, may be apprehended and returned to the school by any officer or citizen on written order or request of the superintendent. [1979 c 141 § 230; 1959 c 28 § 72.20.060. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

72.20.065 Intrusion—Enticement away of girls—Interference—Penalty. Any person who shall go upon the school grounds except on lawful business, or by consent of the superintendent, or who shall entice any girl away from the school, or who shall in any way interfere with its management or discipline, shall be guilty of a misdemeanor. [1959 c 28 § 72.20.065. Prior: 1913 c 157 § 9, part; RRS § 4639, part.]

72.20.070 Eligibility restricted. No girl shall be received in the Maple Lane school who is not of sound mind, or who is subject to epileptic or other fits, or is not possessed

of that degree of bodily health which should render her a fit subject for the discipline of the school. It shall be the duty of the court committing her to cause such girl to be examined by a reputable physician to be appointed by the court, who will certify to the above facts, which certificate shall be forwarded to the school with the commitment. Any girl who may have been committed to the school, not complying with the above requirements, may be returned by the superintendent to the court making the commitment, or to the officer or institution last having her in charge. The department shall arrange for the transportation of all girls to and from the school. [1959 c 28 § 72.20.070. Prior: 1913 c 157 § 10; RRS § 4640.]

72.20.090 Hiring out—Apprenticeships—Compensation. The superintendent shall have power to place any girl under the age of eighteen years at any employment for account of the institution or the girl employed, and receive and hold the whole or any part of her wages for the benefit of the girl less the amount necessary for her board and keep, and may also, with the consent of any girl over fourteen years of age, and the approval of the secretary endorsed thereon, execute indentures of apprenticeship, which shall be binding on all parties thereto. In case any girl so apprenticed shall prove untrustworthy or unsatisfactory, the superintendent may permit her to be returned to the school, and the indenture may thereupon be canceled. If such girl shall have an unsuitable employer, the superintendent may, with the approval of the secretary, take her back to the school, and cancel the indenture of apprenticeship. All indentures so made shall be filed and kept in the school. A system may also be established, providing for compensation to girls for services rendered, and payments may be made from time to time, not to exceed in the aggregate to any one girl the sum of twenty-five dollars for each year of service. [1979 c 141 § 232; 1959 c 28 § 72.20.090. Prior: 1913 c 157 § 12; RRS § 4642.]

Chapter 72.23 RCW

PUBLIC AND PRIVATE FACILITIES FOR MENTALLY ILL

Sections

| | |
|-----------|---|
| 72.23.010 | Definitions. |
| 72.23.020 | State hospitals designated. |
| 72.23.025 | Eastern and western state hospital boards established—Primary diagnosis of mental disorder—Duties—Institutes for the study and treatment of mental disorders established. |
| 72.23.027 | Integrated service delivery—Incentives to discourage inappropriate placement—Specialized care programs. |
| 72.23.030 | Superintendent—Powers—Direction of clinical care, exception. |
| 72.23.035 | Background checks of prospective employees. |
| 72.23.040 | Seal of hospital. |
| 72.23.050 | Superintendent as witness—Exemptions from military duty. |
| 72.23.060 | Gifts—Record—Use. |
| 72.23.080 | Voluntary patients—Legal competency—Record. |
| 72.23.100 | Voluntary patients—Policy—Duration. |
| 72.23.110 | Voluntary patients—Limitation as to number. |
| 72.23.120 | Voluntary patients—Charges for hospitalization. |
| 72.23.125 | Temporary residential observation and evaluation of persons requesting treatment. |
| 72.23.130 | History of patient. |
| 72.23.160 | Escape—Apprehension and return. |
| 72.23.170 | Escape of patient—Penalty for assisting. |
| 72.23.180 | Discharge, parole, death, escape—Notice—Certificate of discharge. |
| 72.23.190 | Death—Report to coroner. |
| 72.23.200 | Persons under eighteen—Confinement in adult wards. |
| 72.23.210 | Persons under eighteen—Special wards and attendants. |

| | |
|-----------|--|
| 72.23.230 | Patient's property—Superintendent as custodian—Management and accounting. |
| 72.23.240 | Patient's property—Delivery to superintendent as acquittance—Defense, indemnity. |
| 72.23.250 | Funds donated to patients. |
| 72.23.260 | Federal patients—Agreements authorized. |
| 72.23.280 | Nonresidents—Hospitalization. |
| 72.23.290 | Transfer of patients—Authority of transferee. |
| 72.23.300 | Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—Penalty. |
| 72.23.400 | Workplace safety plan. |
| 72.23.410 | Violence prevention training. |
| 72.23.420 | Record of violent acts. |
| 72.23.430 | Noncompliance—Citation under chapter 49.17 RCW. |
| 72.23.440 | Technical assistance and training. |
| 72.23.900 | Construction—Purpose—1959 c 28. |
| 72.23.910 | Construction—Effect on laws relating to the criminally insane—"Insane" as used in other statutes. |

Commitment to veterans' administration or other federal agency: RCW 73.36.165.

County hospitals: Chapter 36.62 RCW.

Division of mental health: Chapter 43.20A RCW.

Mental illness, commitment procedures, rights, etc.: Chapter 71.05 RCW.

Minors—Mental health services, commitment: Chapter 71.34 RCW.

Out-of-state physicians, conditional license to practice in conjunction with institutions: RCW 18.71.095.

Private mental establishments: Chapter 71.12 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Sexual psychopaths: Chapter 71.06 RCW.

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

(1) "Court" means the superior court of the state of Washington.

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

(3) "Employee" means an employee as defined in RCW 49.17.020.

(4) "Licensed physician" means an individual permitted to practice as a physician under the laws of the state, or a medical officer, similarly qualified, of the government of the United States while in this state in performance of his or her official duties.

(5) "Mentally ill person" means any person who, pursuant to the definitions contained in RCW 71.05.020, as a result of a mental disorder presents a likelihood of serious harm to others or himself or herself or is gravely disabled.

(6) "Patient" means a person under observation, care, or treatment in a state hospital, or a person found mentally ill by the court, and not discharged from a state hospital, or other facility, to which such person had been ordered hospitalized.

(7) "Resident" means a resident of the state of Washington.

(8) "Secretary" means the secretary of social and health services.

(9) "State hospital" means any hospital, including a child study and treatment center, operated and maintained by the state of Washington for the care of the mentally ill.

(10) "Superintendent" means the superintendent of a state hospital.

(11) "Violence" or "violent act" means any physical assault or attempted physical assault against an employee or patient of a state hospital.

Wherever used in this chapter, the masculine shall include the feminine and the singular shall include the plural. [2000 c 22 § 2; 1981 c 136 § 99; 1974 ex.s. c 145 § 2; 1973 1st ex.s. c 142 § 3; 1959 c 28 § 72.23.010. Prior: 1951 c 139 § 2. Formerly RCW 71.02.010.]

Findings—2000 c 22: See note following RCW 72.23.400.

Effective date—1981 c 136: See RCW 72.09.900.

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900 through 71.05.930.

72.23.020 State hospitals designated. There are hereby permanently located and established the following state hospitals: Western state hospital at Fort Steilacoom, Pierce county; eastern state hospital at Medical Lake, Spokane county; and northern state hospital near Sedro Woolley, Skagit county. [1959 c 28 § 72.23.020. Prior: 1951 c 139 § 6. Formerly RCW 71.02.440.]

72.23.025 Eastern and western state hospital boards established—Primary diagnosis of mental disorder—Duties—Institutes for the study and treatment of mental disorders established. (1) It is the intent of the legislature to improve the quality of service at state hospitals, eliminate overcrowding, and more specifically define the role of the state hospitals. The legislature intends that eastern and western state hospitals shall become clinical centers for handling the most complicated long-term care needs of patients with a primary diagnosis of mental disorder. Over the next six years, their involvement in providing short-term, acute care, and less complicated long-term care shall be diminished in accordance with the revised responsibilities for mental health care under chapter 71.24 RCW. To this end, the legislature intends that funds appropriated for mental health programs, including funds for regional support networks and the state hospitals be used for persons with primary diagnosis of mental disorder. The legislature finds that establishment of the eastern state hospital board, the western state hospital board, and institutes for the study and treatment of mental disorders at both eastern state hospital and western state hospital will be instrumental in implementing the legislative intent.

(2)(a) The eastern state hospital board and the western state hospital board are each established. Members of the boards shall be appointed by the governor with the consent of the senate. Each board shall include:

- (i) The director of the institute for the study and treatment of mental disorders established at the hospital;
 - (ii) One family member of a current or recent hospital resident;
 - (iii) One consumer of services;
 - (iv) One community mental health service provider;
 - (v) Two citizens with no financial or professional interest in mental health services;
 - (vi) One representative of the regional support network in which the hospital is located;
 - (vii) One representative from the staff who is a physician;
 - (viii) One representative from the nursing staff;
 - (ix) One representative from the other professional staff;
 - (x) One representative from the nonprofessional staff;
- and

- (xi) One representative of a minority community.
- (b) At least one representative listed in (a)(viii), (ix), or (x) of this subsection shall be a union member.

(c) Members shall serve four-year terms. Members of the board shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060 and shall receive compensation as provided in RCW 43.03.240.

(3) The boards established under this section shall:

- (a) Monitor the operation and activities of the hospital;
- (b) Review and advise on the hospital budget;
- (c) Make recommendations to the governor and the legislature for improving the quality of service provided by the hospital;

(d) Monitor and review the activities of the hospital in implementing the intent of the legislature set forth in this section; and

(e) Consult with the secretary regarding persons the secretary may select as the superintendent of the hospital whenever a vacancy occurs.

(4)(a) There is established at eastern state hospital and western state hospital, institutes for the study and treatment of mental disorders. The institutes shall be operated by joint operating agreements between state colleges and universities and the department of social and health services. The institutes are intended to conduct training, research, and clinical program development activities that will directly benefit mentally ill persons receiving treatment in Washington state by performing the following activities:

(i) Promote recruitment and retention of highly qualified professionals at the state hospitals and community mental health programs;

(ii) Improve clinical care by exploring new, innovative, and scientifically based treatment models for persons presenting particularly difficult and complicated clinical syndromes;

(iii) Provide expanded training opportunities for existing staff at the state hospitals and community mental health programs;

(iv) Promote bilateral understanding of treatment orientation, possibilities, and challenges between state hospital professionals and community mental health professionals.

(b) To accomplish these purposes the institutes may, within funds appropriated for this purpose:

(i) Enter joint operating agreements with state universities or other institutions of higher education to accomplish the placement and training of students and faculty in psychiatry, psychology, social work, occupational therapy, nursing, and other relevant professions at the state hospitals and community mental health programs;

(ii) Design and implement clinical research projects to improve the quality and effectiveness of state hospital services and operations;

(iii) Enter into agreements with community mental health service providers to accomplish the exchange of professional staff between the state hospitals and community mental health service providers;

(iv) Establish a student loan forgiveness and conditional scholarship program to retain qualified professionals at the state hospitals and community mental health providers when the secretary has determined a shortage of such professionals exists.

(c) Notwithstanding any other provisions of law to the contrary, the institutes may enter into agreements with the department or the state hospitals which may involve changes in staffing necessary to implement improved patient care programs contemplated by this section.

(d) The institutes are authorized to seek and accept public or private gifts, grants, contracts, or donations to accomplish their purposes under this section. [1998 c 245 § 141; 1992 c 230 § 1; 1989 c 205 § 21.]

Intent—1992 c 230: "It is the intent of this act to:

(1) Focus, restate, and emphasize the legislature's commitment to the mental health reform embodied in chapter 111 [205], Laws of 1989 (SB 5400);

(2) Eliminate, or schedule for repeal, statutes that are no longer relevant to the regulation of the state's mental health program; and

(3) Reaffirm the state's commitment to provide incentives that reduce reliance on inappropriate state hospital or other inpatient care." [1992 c 230 § 3.]

Evaluation of transition to regional systems—1989 c 205: See note following RCW 71.24.015.

72.23.027 Integrated service delivery—Incentives to discourage inappropriate placement—Specialized care programs. The secretary shall develop a system of more integrated service delivery, including incentives to discourage the inappropriate placement of persons with developmental disabilities, head injury, and substance abuse, at state mental hospitals and encourage their care in community settings. By December 1, 1992, the department shall submit an implementation strategy, including budget proposals, to the appropriate committees of the legislature for this system.

Under the system, state, local, or community agencies may be given financial or other incentives to develop appropriate crisis intervention and community care arrangements.

The secretary may establish specialized care programs for persons described in this section on the grounds of the state hospitals. Such programs may operate according to professional standards that do not conform to existing federal or private hospital accreditation standards. [1992 c 230 § 2.]

Intent—1992 c 230: See note following RCW 72.23.025.

72.23.030 Superintendent—Powers—Direction of clinical care, exception. The superintendent of a state hospital subject to rules of the department, shall have control of the internal government and economy of a state hospital and shall appoint and direct all subordinate officers and employees. If the superintendent is not a psychiatrist, clinical care shall be under the direction of a qualified psychiatrist. [1983 1st ex.s. c 41 § 28; 1969 c 56 § 2; 1959 c 28 § 72.23.030. Prior: 1951 c 139 § 7. Formerly RCW 71.02.510.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060. *Appointment of chief executive officers:* RCW 72.01.060.

72.23.035 Background checks of prospective employees. In consultation with law enforcement personnel, the secretary shall have the power and duty to investigate the conviction record and the protection proceeding record information under chapter 43.43 RCW of each prospective employee of a state hospital. [1989 c 334 § 12.]

72.23.040 Seal of hospital. The superintendent shall provide an official seal upon which shall be inscribed the stat-

utory name of the hospital under his charge and the name of the state. He shall affix the seal of the hospital to any notice, order of discharge, or other paper required to be given by him or issued. [1959 c 28 § 72.23.040. Prior: 1951 c 139 § 8. Formerly RCW 71.02.540.]

72.23.050 Superintendent as witness—Exemptions from military duty. The superintendent shall not be required to attend any court as a witness in a civil or juvenile court proceedings, but parties desiring his testimony can take and use his deposition; nor shall he be required to attend as a witness in any criminal case, unless the court before which his testimony shall be desired shall, upon being satisfied of the materiality of his testimony require his attendance; and, in time of peace, he and all other persons employed at the hospital shall be exempt from performing military duty; and the certificate of the superintendent shall be evidence of such employment. [1979 ex.s. c 135 § 5; 1959 c 28 § 72.23.050. Prior: 1951 c 139 § 9. Formerly RCW 71.02.520.]

Severability—1979 ex.s. c 135: See note following RCW 2.36.080.

72.23.060 Gifts—Record—Use. The superintendent is authorized to accept and receive from any person or organization gifts of money or personal property on behalf of the state hospital under his charge, or on behalf of the patients therein. The superintendent is authorized to use such money or personal property for the purposes specified by the donor where such purpose is consistent with law. In the absence of a specified use the superintendent may use such money or personal property for the benefit of the state hospital under his charge or for the general benefit of the patients therein. The superintendent shall keep an accurate record of the amount or kind of gift, the date received, and the name and address of the donor. The superintendent may deposit any money received as he sees fit upon the giving of adequate security. Any increase resulting from such gift may be used for the same purpose as the original gift. Gratuities received for services rendered by a state hospital staff in their official capacity shall be used for the purposes specified in this section. [1959 c 28 § 72.23.060. Prior: 1951 c 139 § 10. Formerly RCW 71.02.600.]

72.23.080 Voluntary patients—Legal competency—Record. Any person received and detained in a state hospital under chapter 71.34 RCW is deemed a voluntary patient and, except as chapter 9.41 RCW may limit the right of a person to purchase or possess a firearm or to qualify for a concealed pistol license, shall not suffer a loss of legal competency by reason of his or her application and admission. Upon the admission of a voluntary patient to a state hospital the superintendent shall immediately forward to the department the record of such patient showing the name, address, sex, date of birth, place of birth, occupation, social security number, date of admission, name of nearest relative, and such other information as the department may from time to time require. [1994 sp.s. c 7 § 442; 1959 c 28 § 72.23.080. Prior: 1951 c 139 § 12; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.040.]

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

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

72.23.100 Voluntary patients—Policy—Duration. It shall be the policy of the department to permit liberal use of the foregoing sections for the admission of those cases that can be benefited by treatment and returned to normal life and mental condition, in the opinion of the superintendent, within a period of six months. No person shall be carried as a voluntary patient for a period of more than one year. [1973 1st ex.s. c 142 § 5; 1959 c 28 § 72.23.100. Prior: 1951 c 139 § 14; 1949 c 198 § 19, part; Rem. Supp. 1949 § 6953-19, part. Formerly RCW 71.02.060.]

Severability—Construction—Effective date—1973 1st ex.s. c 142: See RCW 71.05.900 through 71.05.930.

72.23.110 Voluntary patients—Limitation as to number. If it becomes necessary because of inadequate facilities or staff, the department may limit applicants for voluntary admission in accordance with such rules and regulations as it may establish. The department may refuse all applicants for voluntary admission where lack of adequate facilities or staff make such action necessary. [1959 c 28 § 72.23.110. Prior: 1951 c 139 § 15. Formerly RCW 71.02.070.]

72.23.120 Voluntary patients—Charges for hospitalization. Payment of hospitalization charges shall not be a necessary requirement for voluntary admission: PROVIDED, HOWEVER, The department may request payment of hospitalization charges, or any portion thereof, from the patient or relatives of the patient within the following classifications: Spouse, parents, or children. Where the patient or relatives within the above classifications refuse to make the payments requested, the department shall have the right to discharge such patient or initiate proceedings for involuntary hospitalization. The maximum charge shall be the same for voluntary and involuntary hospitalization. [1959 c 28 § 72.23.120. Prior: 1951 c 139 § 16. Formerly RCW 71.02.080.]

72.23.125 Temporary residential observation and evaluation of persons requesting treatment. The department is directed to establish at each state hospital a procedure, including the necessary resources, to provide temporary residential observation and evaluation of persons who request treatment, unless admitted under *RCW 72.23.070. Temporary residential observation and evaluation under this section shall be for a period of not less than twenty-four hours nor more than forty-eight hours and may be provided informally without complying with the admission procedure set forth in *RCW 72.23.070 or the rules and regulations established thereunder.

It is the intent of the legislature that temporary observation and evaluation as described in this section be provided in all cases except where an alternative such as: (1) Delivery to treatment outside the hospital, or (2) no need for treatment is clearly indicated. [1979 ex.s. c 215 § 18.]

***Reviser's note:** RCW 72.23.070 was repealed by 1985 c 354 § 34, effective January 1, 1986. Later enactment, see chapter 71.34 RCW.

72.23.130 History of patient. It shall be the duty of the superintendent to ascertain by diligent inquiry and correspondence, the history of each and every patient admitted to his hospital. [1959 c 28 § 72.23.130. Prior: 1951 c 139 § 40. Formerly RCW 71.02.530.]

72.23.160 Escape—Apprehension and return. If a patient shall escape from a state hospital the superintendent shall cause immediate search to be made for him and return him to said hospital wherever found. Notice of such escape shall be given to the committing court who may issue an order of apprehension and return directed to any peace officer within the state. Notice may be given to any sheriff or peace officer, who, when requested by the superintendent, may apprehend and detain such escapee or return him to the state hospital without warrant. [1959 c 28 § 72.23.160. Prior: 1951 c 139 § 43. Formerly RCW 71.02.630.]

72.23.170 Escape of patient—Penalty for assisting. Any person who procures the escape of any patient of any state hospital for the mentally ill, or institutions for psychopaths to which such patient has been lawfully committed, or who advises, connives at, aids, or assists in such escape or conceals any such escape, is guilty of a class C felony and shall be punished by imprisonment in a state correctional institution for a term of not more than five years or by a fine of not more than five hundred dollars or by both imprisonment and fine. [2003 c 53 § 364; 1959 c 28 § 72.23.170. Prior: 1957 c 225 § 1, part; 1949 c 198 § 20, part; Rem. Supp. 1949 § 6953-20, part. Formerly RCW 71.12.620, part.]

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

72.23.180 Discharge, parole, death, escape—Notice—Certificate of discharge. Whenever a patient dies, escapes, or is paroled or discharged from a state hospital, the superintendent shall immediately notify the clerk of the court which ordered such patient's hospitalization. A copy of such notice shall be given to the next of kin or next friend of such patient if their names or addresses are known or can, with reasonable diligence, be ascertained. Whenever a patient is discharged the superintendent shall issue such patient a certificate of discharge. Such notice or certificate shall give the date of parole, discharge, or death of said patient, and shall state the reasons for parole or discharge, or the cause of death, and shall be signed by the superintendent. [1959 c 28 § 72.23.180. Prior: 1951 c 139 § 44. Formerly RCW 71.02.640.]

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

72.23.190 Death—Report to coroner. In the event of the sudden or mysterious death of any patient at a state hospital, not on parole or escape therefrom, such fact shall be reported by the superintendent thereof to the coroner of the county in which the death occurs. [1959 c 28 § 72.23.190. Prior: 1951 c 139 § 45. Formerly RCW 71.02.660.]

72.23.200 Persons under eighteen—Confinement in adult wards. No mentally ill person under the age of sixteen years shall be regularly confined in any ward in any state hos-

pital which ward is designed and operated for the care of the mentally ill eighteen years of age or over. No person of the ages of sixteen and seventeen shall be placed in any such ward, when in the opinion of the superintendent such placement would be detrimental to the mental condition of such a person or would impede his recovery or treatment. [1971 ex.s. c 292 § 52; 1959 c 28 § 72.23.200. Prior: 1951 c 139 § 46; 1949 c 198 § 17; Rem. Supp. 1949 § 6953-17. Formerly RCW 71.02.550.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

72.23.210 Persons under eighteen—Special wards and attendants. The department may designate one or more wards at one or more state hospitals as may be deemed necessary for the sole care and treatment of persons under eighteen years of age admitted thereto. Nurses and attendants for such ward or wards shall be selected for their special aptitude and sympathy with such young people, and occupational therapy and recreation shall be provided as may be deemed necessary for their particular age requirements and mental improvement. [1971 ex.s. c 292 § 53; 1959 c 28 § 72.23.210. Prior: 1951 c 139 § 47; 1949 c 198 § 18; Rem. Supp. 1949 § 6953-18. Formerly RCW 71.02.560.]

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

72.23.230 Patient's property—Superintendent as custodian—Management and accounting. The superintendent of a state hospital shall be the custodian without compensation of such personal property of a patient involuntarily hospitalized therein as may come into the superintendent's possession while the patient is under the jurisdiction of the hospital. As such custodian, the superintendent shall have authority to disburse moneys from the patients' funds for the following purposes only and subject to the following limitations:

(1) The superintendent may disburse any of the funds in his possession belonging to a patient for such personal needs of that patient as may be deemed necessary by the superintendent; and

(2) Whenever the funds belonging to any one patient exceed the sum of one thousand dollars or a greater sum as established by rules and regulations of the department, the superintendent may apply the excess to reimbursement for state hospitalization and/or outpatient charges of such patient to the extent of a notice and finding of responsibility issued under RCW 43.20B.340; and

(3) When a patient is paroled, the superintendent shall deliver unto the said patient all or such portion of the funds or other property belonging to the patient as the superintendent may deem necessary and proper in the interests of the patient's welfare, and the superintendent may during the parole period deliver to the patient such additional property or funds belonging to the patient as the superintendent may from time to time determine necessary and proper. When a patient is discharged from the jurisdiction of the hospital, the superintendent shall deliver to such patient all funds or other property belonging to the patient, subject to the conditions of subsection (2) of this section.

All funds held by the superintendent as custodian may be deposited in a single fund. Annual reports of receipts and

(2004 Ed.)

expenditures shall be forwarded to the department, and shall be open to inspection by interested parties: PROVIDED, That all interest accruing from, or as a result of the deposit of such moneys in a single fund shall be used by the superintendent for the general welfare of all the patients of such institution: PROVIDED, FURTHER, That when the personal accounts of patients exceed three hundred dollars, the interest accruing from such excess shall be credited to the personal accounts of such patients. All such expenditures shall be accounted for by the superintendent.

The appointment of a guardian for the estate of such patient shall terminate the superintendent's authority to pay state hospitalization charges from funds subject to the control of the guardianship upon the superintendent's receipt of a certified copy of letters of guardianship. Upon the guardian's request, the superintendent shall forward to such guardian any funds subject to the control of the guardianship or other property of the patient remaining in the superintendent's possession, together with a final accounting of receipts and expenditures. [1987 c 75 § 21; 1985 c 245 § 4; 1971 c 82 § 1; 1959 c 60 § 1; 1959 c 28 § 72.23.230. Prior: 1953 c 217 § 2; 1951 c 139 § 49. Formerly RCW 71.02.570.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

Guardianship of estate: Chapters 11.88 and 11.92 RCW.

72.23.240 Patient's property—Delivery to superintendent as acquittance—Defense, indemnity. Upon receipt of a written request signed by the superintendent stating that a designated patient of such hospital is involuntarily hospitalized therein, and that no guardian of his estate has been appointed, any person, bank, firm or corporation having possession of any money, bank accounts, or choses in action owned by such patient, may, if the balance due does not exceed one thousand dollars, deliver the same to the superintendent and mail written notice thereof to such patient at such hospital. The receipt of the superintendent shall be full and complete acquittance for such payment and the person, bank, firm or corporation making such payment shall not be liable to the patient or his legal representatives. All funds so received by the superintendent shall be deposited in such patient's personal account at such hospital and be administered in accordance with this chapter.

If any proceeding is brought in any court to recover property so delivered, the attorney general shall defend the same without cost to the person, bank, firm or corporation effecting such delivery, and the state shall indemnify such person, bank, firm or corporation against any judgment rendered as a result of such proceeding. [1959 c 28 § 72.23.240. Prior: 1953 c 217 § 1. Formerly RCW 71.02.575.]

72.23.250 Funds donated to patients. The superintendent shall also have authority to receive funds for the benefit of individual patients and may disburse such funds according to the instructions of the donor of such funds. [1959 c 28 § 72.23.250. Prior: 1951 c 139 § 50. Formerly RCW 71.02.580.]

72.23.260 Federal patients—Agreements authorized. The department shall have the power, in the name of the state,

to enter into contracts with any duly authorized representative of the United States government, providing for the admission to, and the separate or joint observation, maintenance, care, treatment and custody in, state hospitals of persons entitled to or requiring the same, at the expense of the United States, and contracts providing for the separate or joint maintenance, care, treatment or custody of such persons hospitalized in the manner provided by law, and to perform such contracts, which contracts shall provide that all payments due the state of Washington from the United States for services rendered under said contracts shall be paid to the department. [1959 c 28 § 72.23.260. Prior: 1951 c 139 § 65. Formerly RCW 71.02.460.]

72.23.280 Nonresidents—Hospitalization. Nonresidents of this state conveyed or coming herein while mentally ill shall not be hospitalized in a state hospital, but this prohibition shall not prevent the hospitalization and temporary care in said hospitals of such persons stricken with mental illness while traveling or temporarily sojourning in this state, or sailors attacked with mental illness upon the high seas and first arriving thereafter in some port within this state. [1959 c 28 § 72.23.280. Prior: 1951 c 139 § 67. Formerly RCW 71.02.470.]

72.23.290 Transfer of patients—Authority of transferee. Whenever it appears to be to the best interests of the patients concerned, the department shall have the authority to transfer such patients among the various state hospitals pursuant to rules and regulations established by said department. The superintendent of a state hospital shall also have authority to transfer patients eligible for treatment to the veterans administration or other United States government agency where such transfer is satisfactory to such agency. Such agency shall possess the same authority over such patients as the superintendent would have possessed had the patient remained in a state hospital. [1959 c 28 § 72.23.290. Prior: 1951 c 139 § 68. Formerly RCW 71.02.480.]

Commitment to veterans' administration or other federal agency: RCW 73.36.165.

72.23.300 Bringing narcotics, intoxicating liquors, weapons, etc., into institution or its grounds prohibited—Penalty. Any person not authorized by law so to do, who brings into any state institution for the care and treatment of mental illness or within the grounds thereof, any opium, morphine, cocaine or other narcotic, or any intoxicating liquor of any kind whatever, except for medicinal or mechanical purposes, or any firearms, weapons, or explosives of any kind is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 365; 1959 c 28 § 72.23.300. Prior: 1949 c 198 § 52; Rem. Supp. 1949 § 6932-52. Formerly RCW 71.12.630.]

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

Uniform controlled substances act: Chapter 69.50 RCW.

72.23.400 Workplace safety plan. (1) By November 1, 2000, each state hospital shall develop a plan, for implementation by January 1, 2001, to reasonably prevent and protect

employees from violence at the state hospital. The plan shall be developed with input from the state hospital's safety committee, which includes representation from management, unions, nursing, psychiatry, and key function staff as appropriate. The plan shall address security considerations related to the following items, as appropriate to the particular state hospital, based upon the hazards identified in the assessment required under subsection (2) of this section:

- (a) The physical attributes of the state hospital including access control, egress control, door locks, lighting, and alarm systems;
- (b) Staffing, including security staffing;
- (c) Personnel policies;
- (d) First aid and emergency procedures;
- (e) Reporting violent acts, taking appropriate action in response to violent acts, and follow-up procedures after violent acts;
- (f) Development of criteria for determining and reporting verbal threats;
- (g) Employee education and training; and
- (h) Clinical and patient policies and procedures including those related to smoking; activity, leisure, and therapeutic programs; communication between shifts; and restraint and seclusion.

(2) Before the development of the plan required under subsection (1) of this section, each state hospital shall conduct a security and safety assessment to identify existing or potential hazards for violence and determine the appropriate preventive action to be taken. The assessment shall include, but is not limited to analysis of data on violence and worker's compensation claims during at least the preceding year, input from staff and patients such as surveys, and information relevant to subsection (1)(a) through (h) of this section.

(3) In developing the plan required by subsection (1) of this section, the state hospital may consider any guidelines on violence in the workplace or in the state hospital issued by the department of health, the department of social and health services, the department of labor and industries, the federal occupational safety and health administration, medicare, and state hospital accrediting organizations.

(4) The plan must be evaluated, reviewed, and amended as necessary, at least annually. [2000 c 22 § 3.]

Findings—2000 c 22: "The legislature finds that:

- (1) Workplace safety is of paramount importance in state hospitals for patients and the staff that treat them;
- (2) Based on an analysis of workers' compensation claims, the department of labor and industries reports that state hospital employees face high rates of workplace violence in Washington state;
- (3) State hospital violence is often related to the nature of the patients served, people who are both mentally ill and too dangerous for treatment in their home community, and people whose behavior is driven by elements of mental illness including desperation, confusion, delusion, or hallucination;
- (4) Patients and employees should be assured a reasonably safe and secure environment in state hospitals;
- (5) The state hospitals have undertaken efforts to assure that patients and employees are safe from violence, but additional personnel training and appropriate safeguards may be needed to prevent workplace violence and minimize the risk and dangers affecting people in state hospitals; and
- (6) Duplication and redundancy should be avoided so as to maximize resources available for patient care." [2000 c 22 § 1.]

72.23.410 Violence prevention training. By July 1, 2001, and at least annually thereafter, as set forth in the plan developed under RCW 72.23.400, each state hospital shall

provide violence prevention training to all its affected employees as determined by the plan. Initial training shall occur prior to assignment to a patient unit, and in addition to his or her ongoing training as determined by the plan. The training may vary by the plan and may include, but is not limited to, classes, videotapes, brochures, verbal training, or other verbal or written training that is determined to be appropriate under the plan. The training shall address the following topics, as appropriate to the particular setting and to the duties and responsibilities of the particular employee being trained, based upon the hazards identified in the assessment required under RCW 72.23.400:

- (1) General safety procedures;
- (2) Personal safety procedures and equipment;
- (3) The violence escalation cycle;
- (4) Violence-predicting factors;
- (5) Obtaining patient history for patients with violent behavior or a history of violent acts;
- (6) Verbal and physical techniques to de-escalate and minimize violent behavior;
- (7) Strategies to avoid physical harm;
- (8) Restraining techniques;
- (9) Documenting and reporting incidents;
- (10) The process whereby employees affected by a violent act may debrief;
- (11) Any resources available to employees for coping with violence;
- (12) The state hospital's workplace violence prevention plan;
- (13) Use of the intershift reporting process to communicate between shifts regarding patients who are agitated; and
- (14) Use of the multidisciplinary treatment process or other methods for clinicians to communicate with staff regarding patient treatment plans and how they can collaborate to prevent violence. [2000 c 22 § 4.]

Findings—2000 c 22: See note following RCW 72.23.400.

72.23.420 Record of violent acts. Beginning no later than July 1, 2000, each state hospital shall keep a record of any violent act against an employee or a patient occurring at the state hospital. Each record shall be kept for at least five years following the act reported during which time it shall be available for inspection by the department of labor and industries upon request. At a minimum, the record shall include:

- (1) Necessary information for the state hospital to comply with the requirements of chapter 49.17 RCW related to employees that may include:
 - (a) A full description of the violent act;
 - (b) When the violent act occurred;
 - (c) Where the violent act occurred;
 - (d) To whom the violent act occurred;
 - (e) Who perpetrated the violent act;
 - (f) The nature of the injury;
 - (g) Weapons used;
 - (h) Number of witnesses; and
 - (i) Action taken by the state hospital in response to the violence; and
- (2) Necessary information for the state hospital to comply with current and future expectations of the joint commis-

(2004 Ed.)

sion on hospital accreditation related to violence perpetrated upon patients which may include:

- (a) The nature of the violent act;
- (b) When the violent act occurred;
- (c) To whom it occurred; and
- (d) The nature and severity of any injury. [2000 c 22 § 5.]

Findings—2000 c 22: See note following RCW 72.23.400.

72.23.430 Noncompliance—Citation under chapter 49.17 RCW. Failure of a state hospital to comply with this chapter shall subject the hospital to citation under chapter 49.17 RCW. [2000 c 22 § 6.]

Findings—2000 c 22: See note following RCW 72.23.400.

72.23.440 Technical assistance and training. A state hospital needing assistance to comply with RCW 72.23.400 through 72.23.420 may contact the department of labor and industries for assistance. The state departments of labor and industries, social and health services, and health shall collaborate with representatives of state hospitals to develop technical assistance and training seminars on plan development and implementation, and shall coordinate their assistance to state hospitals. [2000 c 22 § 7.]

Findings—2000 c 22: See note following RCW 72.23.400.

72.23.900 Construction—Purpose—1959 c 28. The provisions of this chapter shall be liberally construed so that persons who are in need of care and treatment for mental illness shall receive humane care and treatment and be restored to normal mental condition as rapidly as possible with an avoidance of loss of civil rights where not necessary, and with as little formality as possible, still preserving all rights and all privileges of the person as guaranteed by the Constitution. [1959 c 28 § 72.23.900. Prior: 1951 c 139 § 1.]

Civil rights

loss of: State Constitution Art. 6 § 3, RCW 29A.08.520.

restoration of: RCW 9.92.066, 9.94A.637, 9.94A.885, 9.95.260, chapter 9.96 RCW.

72.23.910 Construction—Effect on laws relating to the criminally insane—"Insane" as used in other statutes. Nothing in this chapter shall be construed as affecting the laws of this state relating to the criminally insane or insane inmates of penal institutions. Where the term "insane" is used in other statutes of this state its meaning shall be synonymous with mental illness as defined in this chapter. [1959 c 28 § 72.23.910. Prior: 1951 c 139 § 4; 1949 c 198 § 15; Rem. Supp. 1949 § 6953-15. Formerly RCW 71.02.020.]

Chapter 72.25 RCW

NONRESIDENT MENTALLY ILL, SEXUAL PSYCHOPATHS, AND PSYCHOPATHIC DELINQUENTS—DEPORTATION, TRANSPORTATION

Sections

- | | |
|-----------|--|
| 72.25.010 | Deportation of aliens—Return of residents. |
| 72.25.020 | Return of nonresidents—Reciprocity—Expense—Resident of this state defined. |
| 72.25.030 | Assistance—Payment of expenses. |

Council for the prevention of child abuse and neglect: Chapter 43.121 RCW.

72.25.010 Deportation of aliens—Return of residents. It shall be the duty of the secretary of the department of social and health services, in cooperation with the United States bureau of immigration and/or the United States department of the interior, to arrange for the deportation of all alien sexual psychopaths, psychopathic delinquents, or mentally ill persons who are now confined in, or who may hereafter be committed to, any state hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in this state; to transport such alien sexual psychopaths, psychopathic delinquents, or mentally ill persons to such point or points as may be designated by the United States bureau of immigration or by the United States department of the interior; and to give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in a territory of the United States or in a foreign country. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 49; 1965 c 78 § 1; 1959 c 28 § 72.25.010. Prior: 1957 c 29 § 1; 1953 c 232 § 1. Formerly RCW 71.04.270.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Minors—Mental health services, commitment: Chapter 71.34 RCW.

Sexual psychopaths: Chapter 71.06 RCW.

72.25.020 Return of nonresidents—Reciprocity—Expense—Resident of this state defined. The secretary shall also return all nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons who are now confined in or who may hereafter be committed to a state hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in this state to the states or state in which they may have a legal residence. For the purpose of facilitating the return of such persons the secretary may enter into a reciprocal agreement with any other state for the mutual exchange of sexual psychopaths, psychopathic delinquents, or mentally ill persons now confined in or hereafter committed to any hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in one state whose legal residence is in the other, and he may give written permission for the return of any resident of Washington now or hereafter confined in a hospital for the sexual psychopath, psychopathic delinquent, or the mentally ill in another state. Such residents may be returned directly to the proper Washington state institution without further court proceedings: PROVIDED, That if the superintendent of such institution is of the opinion that the returned person is not a sexual psychopath, a psychopathic delinquent, or mentally ill person he may discharge said patient: PROVIDED FURTHER, That if such superintendent deems such person a sexual psychopath, a psychopathic delinquent, or mentally ill person, he shall file an application for commitment within ninety days of arrival at the Washington institution.

A person shall be deemed to be a resident of this state within the meaning of this chapter who has maintained his domiciliary residence in this state for a period of one year

preceding commitment to a state institution without receiving assistance from any tax supported organization and who has not subsequently acquired a domicile in another state: PROVIDED, That any period of time spent by such person while an inmate of a state hospital or state institution or while on parole, escape, or leave of absence therefrom shall not be counted in determining the time of residence in this or another state.

All expenses incurred in returning sexual psychopaths, psychopathic delinquents, or mentally ill persons from this to another state may be paid by this state, but the expense of returning residents of this state shall be borne by the state making the return. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 50; 1965 c 78 § 2; 1959 c 28 § 72.25.020. Prior: 1957 c 29 § 2; 1953 c 232 § 2. Formerly RCW 71.04.280.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.25.030 Assistance—Payment of expenses. For the purpose of carrying out the provisions of this chapter the secretary may employ all help necessary in arranging for and transporting such alien and nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons, and the cost and expense of providing such assistance, and all expenses incurred in effecting the transportation of such alien and nonresident sexual psychopaths, psychopathic delinquents, or mentally ill persons, shall be paid from the funds appropriated for that purpose upon vouchers approved by the department. Mentally ill person for the purposes of this section shall be any person defined as mentally ill under RCW 72.23.010, as now or hereafter amended. [1977 ex.s. c 80 § 51; 1965 c 78 § 3; 1959 c 28 § 72.25.030. Prior: 1957 c 29 § 3; 1953 c 232 § 3. Formerly RCW 71.04.290.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Chapter 72.27 RCW

INTERSTATE COMPACT ON MENTAL HEALTH

Sections

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| 72.27.010 | Compact enacted. |
| 72.27.020 | Secretary is compact administrator—Rules and regulations—Cooperation with other agencies. |
| 72.27.030 | Supplementary agreements. |
| 72.27.040 | Financial arrangements. |
| 72.27.050 | Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable. |
| 72.27.060 | Transmittal of copies of chapter. |
| 72.27.070 | Right to deport aliens and return residents of nonparty states preserved. |

72.27.010 Compact enacted. The Interstate Compact on Mental Health is hereby enacted into law and entered into by this state with all other states legally joining therein in the form substantially as follows:

The contracting states solemnly agree that:

ARTICLE I

The party states find that the proper and expeditious treatment of the mentally ill and mentally deficient can be facilitated by cooperative action, to the benefit of the

patients, their families, and society as a whole. Further, the party states find that the necessity of and desirability for furnishing such care and treatment bears no primary relation to the residence or citizenship of the patient but that, on the contrary, the controlling factors of community safety and humanitarianism require that facilities and services be made available for all who are in need of them. Consequently, it is the purpose of this compact and of the party states to provide the necessary legal basis for the institutionalization or other appropriate care and treatment of the mentally ill and mentally deficient under a system that recognizes the paramount importance of patient welfare and to establish the responsibilities of the party states in terms of such welfare.

ARTICLE II

As used in this compact:

(a) "Sending state" shall mean a party state from which a patient is transported pursuant to the provisions of the compact or from which it is contemplated that a patient may be so sent.

(b) "Receiving state" shall mean a party state to which a patient is transported pursuant to the provisions of the compact or to which it is contemplated that a patient may be so sent.

(c) "Institution" shall mean any hospital or other facility maintained by a party state or political subdivision thereof for the care and treatment of mental illness or mental deficiency.

(d) "Patient" shall mean any person subject to or eligible as determined by the laws of the sending state, for institutionalization or other care, treatment, or supervision pursuant to the provisions of this compact.

(e) "After-care" shall mean care, treatment and services provided a patient, as defined herein, on convalescent status or conditional release.

(f) "Mental illness" shall mean mental disease to such extent that a person so afflicted requires care and treatment for his own welfare, or the welfare of others, or of the community.

(g) "Mental deficiency" shall mean mental deficiency as defined by appropriate clinical authorities to such extent that a person so afflicted is incapable of managing himself and his affairs, but shall not include mental illness as defined herein.

(h) "State" shall mean any state, territory or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

ARTICLE III

(a) Whenever a person physically present in any party state shall be in need of institutionalization by reason of mental illness or mental deficiency, he shall be eligible for care and treatment in an institution in that state irrespective of his residence, settlement or citizenship qualifications.

(b) The provisions of paragraph (a) of this article to the contrary notwithstanding, any patient may be transferred to an institution in another state whenever there are factors based upon clinical determinations indicating that the care and treatment of said patient would be facilitated or improved thereby. Any such institutionalization may be for the entire period of care and treatment or for any portion or portions thereof. The factors referred to in this paragraph shall include the patient's full record with due regard for the location of the

patient's family, character of the illness and probable duration thereof, and such other factors as shall be considered appropriate.

(c) No state shall be obliged to receive any patient pursuant to the provisions of paragraph (b) of this article unless the sending state has given advance notice of its intention to send the patient; furnished all available medical and other pertinent records concerning the patient; given the qualified medical or other appropriate clinical authorities of the receiving state an opportunity to examine the patient if said authorities so wish; and unless the receiving state shall agree to accept the patient.

(d) In the event that the laws of the receiving state establish a system of priorities for the admission of patients, an interstate patient under this compact shall receive the same priority as a local patient and shall be taken in the same order and at the same time that he would be taken if he were a local patient.

(e) Pursuant to this compact, the determination as to the suitable place of institutionalization for a patient may be reviewed at any time and such further transfer of the patient may be made as seems likely to be in the best interest of the patient.

ARTICLE IV

(a) Whenever, pursuant to the laws of the state in which a patient is physically present, it shall be determined that the patient should receive after-care or supervision, such care or supervision may be provided in a receiving state. If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state shall have reason to believe that after-care in another state would be in the best interest of the patient and would not jeopardize the public safety, they shall request the appropriate authorities in the receiving state to investigate the desirability of affording the patient such after-care in said receiving state, and such investigation shall be made with all reasonable speed. The request for investigation shall be accompanied by complete information concerning the patient's intended place of residence and the identity of the person in whose charge it is proposed to place the patient, the complete medical history of the patient, and such other documents as may be pertinent.

(b) If the medical or other appropriate clinical authorities having responsibility for the care and treatment of the patient in the sending state and the appropriate authorities in the receiving state find that the best interest of the patient would be served thereby, and if the public safety would not be jeopardized thereby, the patient may receive after-care or supervision in the receiving state.

(c) In supervising, treating, or caring for a patient on after-care pursuant to the terms of this article, a receiving state shall employ the same standards of visitation, examination, care, and treatment that it employs for similar local patients.

ARTICLE V

Whenever a dangerous or potentially dangerous patient escapes from an institution in any party state, that state shall promptly notify all appropriate authorities within and without the jurisdiction of the escape in a manner reasonably calcu-

lated to facilitate the speedy apprehension of the escapee. Immediately upon the apprehension and identification of any such dangerous or potentially dangerous patient, he shall be detained in the state where found pending disposition in accordance with law.

ARTICLE VI

The duly accredited officers of any state party to this compact, upon the establishment of their authority and the identity of the patient, shall be permitted to transport any patient being moved pursuant to this compact through any and all states party to this compact, without interference.

ARTICLE VII

(a) No person shall be deemed a patient of more than one institution at any given time. Completion of transfer of any patient to an institution in a receiving state shall have the effect of making the person a patient of the institution in the receiving state.

(b) The sending state shall pay all costs of and incidental to the transportation of any patient pursuant to this compact, but any two or more party states may, by making a specific agreement for that purpose, arrange for a different allocation of costs as among themselves.

(c) No provision of this compact shall be construed to alter or affect any internal relationships among the departments, agencies and officers of and in the government of a party state, or between a party state and its subdivisions, as to the payment of costs, or responsibilities therefor.

(d) Nothing in this compact shall be construed to prevent any party state or subdivision thereof from asserting any right against any person, agency or other entity in regard to costs for which such party state or subdivision thereof may be responsible pursuant to any provision of this compact.

(e) Nothing in this compact shall be construed to invalidate any reciprocal agreement between a party state and a nonparty state relating to institutionalization, care or treatment of the mentally ill or mentally deficient, or any statutory authority pursuant to which such agreements may be made.

ARTICLE VIII

(a) Nothing in this compact shall be construed to abridge, diminish, or in any way impair the rights, duties, and responsibilities of any patient's guardian on his own behalf or in respect of any patient for whom he may serve, except that where the transfer of any patient to another jurisdiction makes advisable the appointment of a supplemental or substitute guardian, any court of competent jurisdiction in the receiving state may make such supplemental or substitute appointment and the court which appointed the previous guardian shall upon being duly advised of the new appointment, and upon the satisfactory completion of such accounting and other acts as such court may by law require, relieve the previous guardian of power and responsibility to whatever extent shall be appropriate in the circumstances: PROVIDED, HOWEVER, That in the case of any patient having settlement in the sending state, the court of competent jurisdiction in the sending state shall have the sole discretion to relieve a guardian appointed by it or continue his power and responsibility, whichever it shall deem advisable. The court

in the receiving state may, in its discretion, confirm or reappoint the person or persons previously serving as guardian in the sending state in lieu of making a supplemental or substitute appointment.

(b) The term "guardian" as used in paragraph (a) of this article shall include any guardian, trustee, legal committee, conservator, or other person or agency however denominated who is charged by law with power to act for or responsibility for the person or property of a patient.

ARTICLE IX

(a) No provision of this compact except Article V shall apply to any person institutionalized while under sentence in a penal or correctional institution or while subject to trial on a criminal charge, or whose institutionalization is due to the commission of an offense for which, in the absence of mental illness or mental deficiency, said person would be subject to incarceration in a penal or correctional institution.

(b) To every extent possible, it shall be the policy of states party to this compact that no patient shall be placed or detained in any prison, jail or lockup, but such patient shall, with all expedition, be taken to a suitable institutional facility for mental illness or mental deficiency.

ARTICLE X

(a) Each party state shall appoint a "compact administrator" who, on behalf of his state, shall act as general coordinator of activities under the compact in his state and who shall receive copies of all reports, correspondence, and other documents relating to any patient processed under the compact by his state either in the capacity of sending or receiving state. The compact administrator or his duly designated representative shall be the official with whom other party states shall deal in any matter relating to the compact or any patient processed thereunder.

(b) The compact administrators of the respective party states shall have power to promulgate reasonable rules and regulations to carry out more effectively the terms and provisions of this compact.

ARTICLE XI

The duly constituted administrative authorities of any two or more party states may enter into supplementary agreements for the provision of any service or facility or for the maintenance of any institution on a joint or cooperative basis whenever the states concerned shall find that such agreements will improve services, facilities, or institutional care and treatment in the fields of mental illness or mental deficiency. No such supplementary agreement shall be construed so as to relieve any party state of any obligation which it otherwise would have under other provisions of this compact.

ARTICLE XII

This compact shall enter into full force and effect as to any state when enacted by it into law and such state shall thereafter be a party thereto with any and all states legally joining therein.

ARTICLE XIII

(a) A state party to this compact may withdraw therefrom by enacting a statute repealing the same. Such withdrawal shall take effect one year after notice thereof has been communicated officially and in writing to the governors and compact administrators of all other party states. However, the withdrawal of any state shall not change the status of any patient who has been sent to said state or sent out of said state pursuant to the provisions of the compact.

(b) Withdrawal from any agreement permitted by Article VII(b) as to costs or from any supplementary agreement made pursuant to Article XI shall be in accordance with the terms of such agreement.

ARTICLE XIV

This compact shall be liberally construed so as to effectuate the purposes thereof. The provisions of this compact shall be severable and if any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any party state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state party thereto, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1965 ex.s. c 26 § 1.]

Chapter added: "The foregoing provisions of this act are added to chapter 28, Laws of 1959 and to Title 72 RCW, and shall constitute a new chapter therein." [1965 ex.s. c 26 § 8.]

Effective date—1965 ex.s. c 26: "This act shall take effect upon July 1, 1965." [1965 ex.s. c 26 § 9.]

72.27.020 Secretary is compact administrator—Rules and regulations—Cooperation with other agencies. Pursuant to said compact provided in RCW 72.27.010, the secretary of social and health services shall be the compact administrator and who, acting jointly with like officers of other party states, shall have power to promulgate rules and regulations to carry out more effectively the terms of the compact. The compact administrator is hereby authorized, empowered and directed to cooperate with all departments, agencies and officers of and in the government of this state and its subdivisions in facilitating the proper administration of the compact or any supplementary agreement or agreements entered into by this state thereunder. [1979 c 141 § 233; 1965 ex.s. c 26 § 2.]

72.27.030 Supplementary agreements. The compact administrator is hereby authorized and empowered to enter into supplementary agreements with appropriate officials of other states pursuant to Articles VII and XI of the compact. In the event that such supplementary agreements shall require or contemplate the use of any institution or facility of this state or require or contemplate the provision of any service by this state, no such agreement shall have force or effect until approved by the head of the department or agency under whose jurisdiction said institution or facility is operated or

(2004 Ed.)

whose department or agency will be charged with the rendering of such service. [1965 ex.s. c 26 § 3.]

72.27.040 Financial arrangements. The compact administrator, subject to the moneys available therefor, may make or arrange for any payments necessary to discharge any financial obligations imposed upon this state by the compact or by any supplementary agreement entered into thereunder. [1965 ex.s. c 26 § 4.]

72.27.050 Prerequisites for transfer of person to another party state—Release or return of residents, jurisdiction, laws applicable. No person shall be transferred to another party state pursuant to this chapter unless the compact administrator first shall have obtained either:

(a) The written consent to such transfer by the proposed transferee or by others on his behalf, which consent shall be executed in accordance with the requirements of *RCW 72.23.070, and if such person was originally committed involuntarily, such consent also shall be approved by the committing court; or

(b) An order of the superior court approving such transfer, which order shall be obtained from the committing court, if such person was committed involuntarily, otherwise from the superior court of the county where such person resided at the time of such commitment; and such order shall be issued only after notice and hearing in the manner provided for the involuntary commitment of mentally ill or mentally deficient persons as the case may be.

The courts of this state shall have concurrent jurisdiction with the appropriate courts of other party states to hear and determine petitions seeking the release or return of residents of this state who have been transferred from this state under this chapter to the same extent as if such persons were hospitalized in this state; and the laws of this state relating to the release of such persons shall govern the disposition of any such proceeding. [1965 ex.s. c 26 § 5.]

***Reviser's note:** RCW 72.23.070 was repealed by 1985 c 354 § 34, effective January 1, 1986. Later enactment, see chapter 71.34 RCW.

72.27.060 Transmittal of copies of chapter. Duly authorized copies of this chapter shall, upon its approval be transmitted by the secretary of state to the governor of each state, the attorney general and the administrator of general services of the United States, and the council of state governments. [1965 ex.s. c 26 § 6.]

72.27.070 Right to deport aliens and return residents of nonparty states preserved. Nothing in this chapter shall affect the right of the secretary of social and health services to deport aliens and return residents of nonparty states as provided in chapter 72.25 RCW. [1979 c 141 § 234; 1965 ex.s. c 26 § 7.]

Chapter 72.29 RCW

MULTI-USE FACILITIES FOR THE MENTALLY
OR PHYSICALLY HANDICAPPED OR
THE MENTALLY ILL

Sections

72.29.010 Harrison Memorial Hospital property and facilities (Olympic Center for Mental Health and Mental Retardation).

72.29.010 Harrison Memorial Hospital property and facilities (Olympic Center for Mental Health and Mental Retardation). After the acquisition of Harrison Memorial Hospital, the department of social and health services is authorized to enter into contracts for the repair or remodeling of the hospital to the extent they are necessary and reasonable, in order to establish a multi-use facility for the mentally or physically handicapped or the mentally ill. The secretary of the department of social and health services is authorized to determine the most feasible and desirable use of the facility and to operate the facility in the manner he deems most beneficial to the mentally and physically handicapped, or the mentally ill, and is authorized, but not limited to programs for out-patient, diagnostic and referral, day care, vocational and educational services to the community which he determines are in the best interest of the state. [1977 ex.s. c 80 § 52; 1965 c 11 § 3.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Declaration of purpose—1965 c 11: "The state facilities to provide community services to the mentally and physically deficient and the mentally ill are inadequate to meet the present demand. Great savings to the taxpayers can be achieved while helping to meet these worthwhile needs. It is therefore the purpose of this act to provide for acquisition or lease of Harrison Memorial Hospital property and facilities and the operation thereof as a multi-use facility for the mentally and physically deficient and the mentally ill." [1965 c 11 § 1.]

Department created—Powers and duties transferred to: RCW 43.20A.030.

Use of Harrison Memorial Hospital property for services for persons with developmental disabilities: RCW 71A.20.040.

Chapter 72.36 RCW

SOLDIERS' AND VETERANS' HOMES

Sections

72.36.010 Establishment of soldiers' home.
72.36.020 Superintendents—Licensed nursing home administrator.
72.36.030 Admission—Applicants must apply for federal and state benefits.
72.36.035 Definitions.
72.36.037 Resident rights.
72.36.040 Colony established—Who may be admitted.
72.36.045 State veterans' homes—Maintenance defined.
72.36.050 Regulations of home applicable—Rations, medical attendance, clothing.
72.36.055 Domiciliary and nursing care to be provided.
72.36.060 Federal funds.
72.36.070 Washington veterans' home.
72.36.075 Eastern Washington veterans' home.
72.36.077 Eastern Washington veterans' home—Funding—Intent.
72.36.090 Hobby promotion.
72.36.100 Purchase of equipment, materials for therapy, hobbies.
72.36.110 Burial of deceased member or deceased spouse.
72.36.120 Deposit of veteran income—Expenditures and revenue control.
72.36.140 Medicaid qualifying operations.
72.36.145 Reduction in allowable income—Certification of qualifying operations.
72.36.150 Resident council—Generally.
72.36.160 Personal needs allowance.
72.36.1601 Findings.

Charitable organizations—Application for registration—Contents—Fee—Veterans' affairs—Notice, advice: RCW 19.09.075.

Commitment to veterans administration or other federal agency: RCW 73.36.165.

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

Employment of dental hygienist without supervision of dentist authorized in state institutions: RCW 18.29.056.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

72.36.010 Establishment of soldiers' home. There is established at Orting, Pierce county, an institution which shall be known as the Washington soldiers' home. [1959 c 28 § 72.36.010. Prior: 1901 c 167 § 1; 1890 p 269 § 1; RRS § 10727.]

72.36.020 Superintendents—Licensed nursing home administrator. The director of the department of veterans affairs shall appoint a superintendent for each state veterans' home. The superintendent shall exercise management and control of the institution in accordance with either policies or procedures promulgated by the director of the department of veterans affairs, or both, and rules and regulations of the department. In accordance with chapter 18.52 RCW, the individual appointed as superintendent for either state veterans' home shall be a licensed nursing home administrator. The department may request a waiver to, or seek an alternate method of compliance with, the federal requirement for a licensed on-site administrator during a transition phase from July 1, 1993, to June 30, 1994. [1993 sp.s. c 3 § 4; 1977 c 31 § 2; 1959 c 28 § 72.36.020. Prior: 1890 p 271 § 7; RRS § 10728.]

Effective date—1993 sp.s. c 3: See note following RCW 72.36.140.

Findings—1993 sp.s. c 3: See RCW 72.36.1601.

Chief executive officers, general provisions: RCW 72.01.060.

72.36.030 Admission—Applicants must apply for federal and state benefits. All of the following persons who have been actual bona fide residents of this state at the time of their application, and who are indigent and unable to support themselves and their families may be admitted to a state veterans' home under rules as may be adopted by the director of the department, unless sufficient facilities and resources are not available to accommodate these people:

(1)(a) All honorably discharged veterans of a branch of the armed forces of the United States or merchant marines; (b) members of the state militia disabled while in the line of duty; (c) Filipino World War II veterans who swore an oath to American authority and who participated in military engagements with American soldiers; and (d) the spouses of these veterans, merchant marines, and members of the state militia. However, it is required that the spouse was married to and living with the veteran three years prior to the date of application for admittance, or, if married to him or her since that date, was also a resident of a state veterans' home in this state or entitled to admission thereto;

(2)(a) The spouses of: (i) All honorably discharged veterans of the United States armed forces; (ii) merchant marines; and (iii) members of the state militia who were disabled while in the line of duty and who were residents of a

state veterans' home in this state or were entitled to admission to one of this state's state veteran homes at the time of death; (b) the spouses of: (i) All honorably discharged veterans of a branch of the United States armed forces; (ii) merchant marines; and (iii) members of the state militia who would have been entitled to admission to one of this state's state veterans' homes at the time of death, but for the fact that the spouse was not indigent, but has since become indigent and unable to support himself or herself and his or her family. However, the included spouse shall be at least fifty years old and have been married to and living with their husband or wife for three years prior to the date of their application. The included spouse shall not have been married since the death of his or her husband or wife to a person who is not a resident of one of this state's state veterans' homes or entitled to admission to one of this state's state veterans' homes; and

(3) All applicants for admission to a state veterans' home shall apply for all federal and state benefits for which they may be eligible, including medical assistance under chapter 74.09 RCW. [1998 c 322 § 49; 1993 sp.s. c 3 § 5; 1977 ex.s. c 186 § 1; 1975 c 13 § 1; 1959 c 28 § 72.36.030. Prior: 1915 c 106 § 1; 1911 c 124 § 1; 1905 c 152 § 1; 1901 c 167 § 2; 1890 p 270 § 2; RRS § 10729.]

Effective date—1998 c 322 §§ 1-37, 40-49, and 52-54: See RCW 74.46.906.

Severability—1998 c 322: See RCW 74.46.907.

Effective date—1993 sp.s. c 3: See note following RCW 72.36.140.

Findings—1993 sp.s. c 3: See RCW 72.36.1601.

Severability—1977 ex.s. c 186: "If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 186 § 12.]

72.36.035 Definitions. For purposes of this chapter, unless the context clearly indicates otherwise:

(1) "Actual bona fide residents of this state" means persons who have a domicile in the state of Washington immediately prior to application for admission to a state veterans' home.

(2) "Department" means the Washington state department of veterans affairs.

(3) "Domicile" means a person's true, fixed, and permanent home and place of habitation, and shall be the place where the person intends to remain, and to which the person expects to return when the person leaves without intending to establish a new domicile elsewhere.

(4) "State veterans' homes" means the Washington soldiers' home and colony in Orting, the Washington veterans' home in Retsil, and the eastern Washington veterans' home.

(5) "Veteran" has the same meaning established in RCW 41.04.007. [2002 c 292 § 5; 2001 2nd sp.s. c 4 § 2; 1993 sp.s. c 3 § 6; 1991 c 240 § 2; 1977 ex.s. c 186 § 11.]

Effective date—1993 sp.s. c 3: See note following RCW 72.36.140.

Findings—1993 sp.s. c 3: See RCW 72.36.1601.

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.037 Resident rights. Chapter 70.129 RCW applies to this chapter and persons regulated under this chapter. [1994 c 214 § 23.]

Severability—Conflict with federal requirements—Captions not law—1994 c 214: See RCW 70.129.900 through 70.129.902.

(2004 Ed.)

72.36.040 Colony established—Who may be admitted. There is hereby established what shall be known as the "Colony of the State Soldiers' Home." All of the following persons who reside within the limits of Orting school district and have been actual bona fide residents of this state at the time of their application and who have personal property of less than one thousand five hundred dollars and/or a monthly income insufficient to meet their needs outside of residence in such colony and soldiers' home as determined by standards of the department of veterans' affairs, may be admitted to membership in said colony under such rules and regulations as may be adopted by the department.

(1) All honorably discharged veterans who have served in the armed forces of the United States during wartime, members of the state militia disabled while in the line of duty, and their respective spouses with whom they have lived for three years prior to application for membership in said colony. Also, the spouse of any such veteran or disabled member of the state militia is eligible for membership in said colony, if such spouse is the widow or widower of a veteran who was a member of a soldiers' home or colony in this state or entitled to admission thereto at the time of death: PROVIDED, That such veterans and members of the state militia shall, while they are members of said colony, be living with their said spouses.

(2) The spouses of all veterans who were members of a soldiers' home or colony in this state or entitled to admission thereto at the time of death, and the spouses of all veterans who would have been entitled to admission to a soldiers' home or colony in this state at the time of death but for the fact that they were not indigent and unable to support themselves and families, which spouses have since the death of their said husbands or wives become indigent and unable to earn a support for themselves: PROVIDED, That such spouses are not less than fifty years of age and have not been married since the decease of their said husbands or wives to any person not a member of a soldiers' home or colony in this state or entitled to admission thereto. Any resident of said colony may be admitted to the state soldiers' home for temporary care when requiring treatment. [1977 ex.s. c 186 § 2. Prior: 1973 1st ex.s. c 154 § 102; 1973 c 101 § 1; 1959 c 235 § 1; 1959 c 28 § 72.36.040; prior: 1947 c 190 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 2; Rem. Supp. 1947 § 10730.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.045 State veterans' homes—Maintenance defined. In the maintenance of the state veterans' homes by the state through the department of veterans' affairs, such maintenance shall include, but not be limited to, the provision of members' room and board, medical and dental care, physical and occupational therapy, and recreational activities, with the necessary implementing transportation, equipment, and personnel therefor. [2001 2nd sp.s. c 4 § 3; 1977 ex.s. c 186 § 10.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.050 Regulations of home applicable—Rations, medical attendance, clothing. The members of the colony established in RCW 72.36.040 as now or hereafter amended shall, to all intents and purposes, be members of the state sol-

[Title 72 RCW—page 61]

diers' home and subject to all the rules and regulations thereof, except the requirements of fatigue duty, and each member shall, in accordance with rules and regulations adopted by the director, be supplied with medical attendance and supplies from the home dispensary, rations, and clothing for a member and spouse, or for a spouse admitted under RCW 72.36.040 as now or hereafter amended. The value of the supplies, rations, and clothing furnished such persons shall be determined by the director of veterans affairs and be included in the biennial budget. [1979 c 65 § 1; 1973 1st ex.s. c 154 § 103; 1967 c 112 § 1; 1959 c 28 § 72.36.050. Prior: 1947 c 190 § 2; 1939 c 161 § 1; 1927 c 276 § 1; 1925 ex.s. c 74 § 1; 1915 c 106 § 3; Rem. Supp. 1947 § 10731.]

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

72.36.055 Domiciliary and nursing care to be provided. The state veterans' homes shall provide both domiciliary and nursing care. The level of domiciliary members shall remain consistent with the facilities available to accommodate those members: PROVIDED, That nothing in this section shall preclude the department from moving residents between nursing and domiciliary care in order to better utilize facilities and maintain the appropriate care for the members. [2001 2nd sp.s. c 4 § 4; 1977 ex.s. c 186 § 6.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.060 Federal funds. The state treasurer is authorized to receive any and all moneys appropriated or paid by the United States under the act of congress entitled "An Act to provide aid to state or territorial homes for disabled soldiers and sailors of the United States," approved August 27, 1888, or under any other act or acts of congress for the benefit of such homes. Such moneys shall be deposited in the general fund and shall be expended for the maintenance of the state veterans' homes. [2001 2nd sp.s. c 4 § 5; 1977 ex.s. c 186 § 3; 1959 c 28 § 72.36.060. Prior: 1897 c 67 § 1; RRS § 10735.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.070 Washington veterans' home. There shall be established and maintained in this state a branch of the state soldiers' home, under the name of the "Washington veterans' home," which branch shall be a home for honorably discharged veterans who have served the United States government in any of its wars, members of the state militia disabled while in the line of duty, and who are bona fide citizens of the state, and also the spouses of such veterans. [1977 ex.s. c 186 § 4; 1959 c 28 § 72.36.070. Prior: 1907 c 156 § 1; RRS § 10733.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.075 Eastern Washington veterans' home. There shall be established and maintained in this state a branch of the state soldiers' home, under the name of the "eastern Washington veterans' home," which branch shall be a home for veterans and their spouses who meet admission requirements contained in RCW 72.36.030. [2001 2nd sp.s. c 4 § 6.]

72.36.077 Eastern Washington veterans' home—Funding—Intent. The department of veterans affairs indicates that it may acquire and staff an existing one-hundred-bed skilled nursing facility in Spokane and reopen it as an eastern Washington veterans' home by using a combination of funding sources. Funding sources include federal per diem payments, contributions from residents' incomes, and federal and state medicaid payments. In authorizing the establishment of an eastern Washington veterans' home, it is the intent of the legislature that the state general fund shall not provide support in future biennia for the eastern Washington veterans' home except for amounts required to pay the state share of medicaid costs. [2001 2nd sp.s. c 4 § 1.]

72.36.090 Hobby promotion. The superintendents of the state veterans' homes are hereby authorized to:

(1) Institute programs of hobby promotion designed to improve the general welfare and mental condition of the persons under their supervision;

(2) Provide for the financing of these programs by grants from funds in the superintendent's custody through operation of canteens and exchanges at such institutions;

(3) Limit the hobbies sponsored to projects which will, in their judgment, be self-liquidating or self-sustaining. [2001 2nd sp.s. c 4 § 8; 1977 ex.s. c 186 § 9; 1959 c 28 § 72.36.090. Prior: 1949 c 114 § 1; Rem. Supp. 1949 § 10736-1.]

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.100 Purchase of equipment, materials for therapy, hobbies. The superintendent of each institution referred to in RCW 72.36.090 may purchase, from the appropriation to the institution, for operations, equipment or materials designed to initiate the programs authorized by RCW 72.36.090. [1959 c 28 § 72.36.100. Prior: 1949 c 114 § 2; Rem. Supp. 1949 § 10736-2.]

Division of purchasing: RCW 43.19.190.

72.36.110 Burial of deceased member or deceased spouse. The superintendent of the Washington veterans' home and the superintendent of the Washington soldiers' home and colony are hereby authorized to provide for the burial of deceased members in the cemeteries provided at the Washington veterans' home and Washington soldiers' home: PROVIDED, That this section shall not be construed to prevent any relative from assuming jurisdiction of such deceased persons: PROVIDED FURTHER, That the superintendent of the Washington soldiers' home and colony is hereby authorized to provide for the burial of husbands and wives of members of the colony of the Washington soldiers' home. [1959 c 120 § 1; 1959 c 28 § 72.36.110. Prior: 1955 c 247 § 7.]

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

72.36.120 Deposit of veteran income—Expenditures and revenue control. All income of residents of a state veterans' home, other than the personal needs allowance and income from therapeutic employment, shall be deposited in the state general fund—local and be available to apply against the cost of care provided by the state veterans' homes.

The resident council created under RCW 72.36.150 may make recommendations on expenditures under this section. All expenditures and revenue control shall be subject to chapter 43.88 RCW. [1993 sp.s. c 3 § 7; 1977 ex.s. c 186 § 7.]

Effective date—1993 sp.s. c 3: See note following RCW 72.36.140.

Findings—1993 sp.s. c 3: See RCW 72.36.1601.

Severability—1977 ex.s. c 186: See note following RCW 72.36.030.

72.36.140 Medicaid qualifying operations. Qualifying operations at state veterans' homes operated by the department of veterans affairs, may be provided under the state's medicaid reimbursement system as administered by the department of social and health services.

The department of veterans affairs may contract with the department of social and health services under the authority of RCW 74.09.120 but shall be exempt from RCW 74.46.660(6), and the provisions of *RCW 74.46.420 through 74.46.590 shall not apply to the medicaid rate-setting and reimbursement systems. The nursing care operations at the state veterans' homes shall be subject to inspection by the department of social and health services. This includes every part of the state veterans' home's premises, an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs, methods of supply, and any other records the department of social and health services deems relevant. [1993 sp.s. c 3 § 2.]

***Reviser's note:** RCW 74.46.420 through 74.46.590 were repealed by 1995 1st sp.s. c 18 § 98, effective June 30, 1998.

Effective date—1993 sp.s. c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 3 § 12.]

Findings—1993 sp.s. c 3: See RCW 72.36.1601.

72.36.145 Reduction in allowable income—Certification of qualifying operations. No reduction in the allowable income provided for in current department rules may take effect until the effective date of certification of qualifying operations at state veterans' homes for participation in the state's medicaid reimbursement system. [1993 sp.s. c 3 § 10.]

Effective date—1993 sp.s. c 3: See note following RCW 72.36.140.

Findings—1993 sp.s. c 3: See RCW 72.36.1601.

72.36.150 Resident council—Generally. The department of veterans affairs shall provide by rule for the annual election of a resident council for each state veterans' home. The council shall annually elect a chair from among its members, who shall call and preside at council meetings. The resident council shall serve in an advisory capacity to the director of the department of veterans affairs and to the superintendent in all matters related to policy and operational decisions affecting resident care and life in the home.

By October 31, 1993, the department shall adopt rules that provide for specific duties and procedures of the resident council which create an appropriate and effective relationship between residents and the administration. These rules shall be adopted after consultation with the resident councils and the state long-term care ombuds, and shall include, but not be limited to the following:

- (1) Provision of staff technical assistance to the councils;

- (2) Provision of an active role for residents in developing choices regarding activities, foods, living arrangements, personal care, and other aspects of resident life;

- (3) A procedure for resolving resident grievances; and

- (4) The role of the councils in assuring that resident rights are observed.

The development of these rules should include consultation with all residents through the use of both questionnaires and group discussions.

The resident council for each state veterans' home shall annually review the proposed expenditures from the benefit fund that shall contain all private donations to the home, all bequests, and gifts. Disbursements from each benefit fund shall be for the benefit and welfare of the residents of the state veterans' homes. Disbursements from the benefits funds shall be on the authorization of the superintendent or his or her authorized representative after approval has been received from the home's resident council.

The superintendent or his or her designated representative shall meet with the resident council at least monthly. The director of the department of veterans affairs shall meet with each resident council at least three times each year. [1993 sp.s. c 3 § 3.]

Effective date—1993 sp.s. c 3: See note following RCW 72.36.140.

Findings—1993 sp.s. c 3: See RCW 72.36.1601.

72.36.160 Personal needs allowance. The legislature finds that to meet the objectives of RCW 72.36.1601, the personal needs allowance for all nursing care residents of the state veterans' homes shall be an amount approved by the federal health care financing authority, but not less than ninety dollars or more than one hundred sixty dollars per month during periods of residency. For all domiciliary residents, the personal needs allowance shall be one hundred sixty dollars per month, or a higher amount defined in rules adopted by the department. [1993 sp.s. c 3 § 9.]

Effective date—1993 sp.s. c 3: See note following RCW 72.36.140.

Findings—1993 sp.s. c 3: See RCW 72.36.1601.

72.36.1601 Findings. The legislature finds that continued operation of state veterans' homes is necessary to meet the needs of eligible veterans for shelter, personal and nursing care, and related services; that certain residents of veterans' homes or services provided to them may be eligible for participation in the state's medicaid reimbursement system; and that authorizing medicaid participation is appropriate to address the homes' long-term funding needs. The legislature also finds that it is important to maintain the dignity and self-respect of residents of veterans' homes, by providing for continued resident involvement in the homes' operation, and through retention of current law guaranteeing a minimum amount of allowable personal income necessary to meet the greater costs for these residents of transportation, communication, and participation in family and community activities that are vitally important to their maintenance and rehabilitation. [1993 sp.s. c 3 § 1.]

Effective date—1993 sp.s. c 3: See note following RCW 72.36.140.

Chapter 72.40 RCW

STATE SCHOOLS FOR BLIND, DEAF,
SENSORY HANDICAPPED

Sections

| | |
|-----------|---|
| 72.40.010 | Schools established—Purpose—Direction. |
| 72.40.019 | State school for the deaf—Appointment of superintendent—Qualifications. |
| 72.40.020 | State school for the blind—Appointment of superintendent—Qualifications. |
| 72.40.022 | Superintendent of the state school for the blind—Powers and duties. |
| 72.40.023 | Superintendent of the state school for the deaf—Powers and duties. |
| 72.40.024 | Superintendents—Additional powers and duties. |
| 72.40.028 | Teachers' qualifications—Salaries—Provisional certification. |
| 72.40.031 | School year—School term—Legal holidays—Use of schools. |
| 72.40.040 | Who may be admitted. |
| 72.40.050 | Admission of nonresidents. |
| 72.40.060 | Duty of school districts. |
| 72.40.070 | Duty of educational service districts. |
| 72.40.080 | Duty of parents. |
| 72.40.090 | Weekend transportation—Expense. |
| 72.40.100 | Penalty. |
| 72.40.110 | Employees' hours of labor. |
| 72.40.120 | School for the deaf—School for the blind—Appropriations. |
| 72.40.200 | Safety of students and protection from child abuse and neglect. |
| 72.40.210 | Reports to parents—Requirement. |
| 72.40.220 | Behavior management policies, procedures, and techniques. |
| 72.40.230 | Staff orientation and training. |
| 72.40.240 | Residential staffing requirement. |
| 72.40.250 | Protection from child abuse and neglect—Supervision of employees and volunteers—Procedures. |
| 72.40.260 | Protection from child abuse and neglect—Student instruction. |
| 72.40.270 | Protection from sexual victimization—Policy. |
| 72.40.280 | Monitoring of residential program by department of social and health services—Recommendations—Comprehensive child health and safety reviews—Access to records and documents—Safety standards. |

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

Employment of dental hygienist without supervision of dentist authorized in state institutions: RCW 18.29.056.

Handicapped children, parental responsibility, commitment: Chapter 26.40 RCW.

Record as to patients or inmates for purposes of vital statistics: RCW 70.58.270.

Teachers' qualifications at state schools for the deaf and blind: RCW 72.40.028.

72.40.010 Schools established—Purpose—Direction.

There are established at Vancouver, Clark county, a school which shall be known as the state school for the blind, and a separate school which shall be known as the state school for the deaf. The primary purpose of the state school for the blind and the state school for the deaf is to educate and train hearing and visually impaired children.

The school for the blind shall be under the direction of the superintendent with the advice of the board of trustees. The school for the deaf shall be under the direction of the superintendent and the board of trustees. [2002 c 209 § 1; 1985 c 378 § 11; 1959 c 28 § 72.40.010. Prior: 1913 c 10 § 1; 1886 p 136 § 1; RRS § 4645.]

Effective date—2002 c 209: See note following RCW 72.42.021.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.019 State school for the deaf—Appointment of superintendent—Qualifications. The governor shall appoint a superintendent for the state school for the deaf. The superintendent shall have a masters degree from an accredited

college or university in school administration or deaf education, five years of experience teaching deaf students in the classroom, and three years administrative or supervisory experience in programs for deaf students. [1985 c 378 § 14.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.020 State school for the blind—Appointment of superintendent—Qualifications. The governor shall appoint a superintendent for the state school for the blind. The superintendent shall have a masters degree from an accredited college or university in school administration or blind education, five years of experience teaching blind students in the classroom, and three years administrative or supervisory experience in programs for blind students. [1985 c 378 § 13; 1979 c 141 § 247; 1959 c 28 § 72.40.020. Prior: 1909 c 97 p 258 § 5; RRS § 4649.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.022 Superintendent of the state school for the blind—Powers and duties. In addition to any other powers and duties prescribed by law, the superintendent of the state school for the blind:

(1) Shall have full control of the school and the property of various kinds.

(2) May establish criteria, in addition to state certification, for teachers at the school.

(3) Shall employ members of the faculty, administrative officers, and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law.

(4) Shall establish the course of study including vocational training, with the assistance of the faculty and the advice of the board of trustees.

(5) May establish new facilities as needs demand.

(6) May adopt rules, under chapter 34.05 RCW, as deemed necessary for the government, management, and operation of the housing facilities.

(7) Shall control the use of the facilities and authorize the use of the facilities for night school, summer school, public meetings, or other purposes consistent with the purposes of the school.

(8) May adopt rules for pedestrian and vehicular traffic on property owned, operated, and maintained by the school.

(9) Shall purchase all supplies and lease or purchase equipment and other personal property needed for the operation or maintenance of the school.

(10) Except as otherwise provided by law, may enter into contracts as the superintendent deems essential to the purpose of the school.

(11) May receive gifts, grants, conveyances, devises, and bequests of real or personal property from whatever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions will aid in carrying out the programs of the school; sell, lease or exchange, invest, or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof.

(12) May, except as otherwise provided by law, enter into contracts the superintendent deems essential for the operation of the school.

(13) May adopt rules providing for the transferability of employees between the school for the deaf and the school for the blind consistent with collective bargaining agreements in effect.

(14) Shall prepare and administer the school's budget consistent with RCW 43.88.160 and the budget and accounting act, chapter 43.88 RCW generally, as applicable.

(15) May adopt rules under chapter 34.05 RCW and perform all other acts not forbidden by law as the superintendent deems necessary or appropriate to the administration of the school. [2002 c 209 § 2; 1993 c 147 § 1; 1985 c 378 § 15.]

Effective date—2002 c 209: See note following RCW 72.42.021.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.023 Superintendent of the state school for the deaf—Powers and duties. In addition to any other powers and duties prescribed by law, the superintendent of the state school for the deaf:

(1) Shall have the responsibility for the supervision and management of the school and the property of various kinds.

(2) May establish criteria, in addition to state certification, for the teachers at the school.

(3) Shall employ members of the faculty, administrative officers, and other employees, who shall all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law.

(4) Shall establish the course of study including vocational training, with the assistance of the faculty and the approval of the board of trustees.

(5) May establish, with the approval of the board of trustees, new facilities as needs demand.

(6) May adopt rules, under chapter 34.05 RCW, as approved by the board of trustees, as deemed necessary for the governance, management, and operation of the housing facilities.

(7) Shall, as approved by the board of trustees, control the use of the facilities and authorize the use of the facilities for night school, summer school, public meetings, or other purposes consistent with the purposes of the school.

(8) May adopt rules, as approved by the board of trustees, for pedestrian and vehicular traffic on property owned, operated, and maintained by the school.

(9) Shall purchase all supplies and lease or purchase equipment and other personal property needed for the operation or maintenance of the school.

(10) Except as otherwise provided by law, may enter into contracts as the superintendent deems essential to the purpose of the school.

(11) May receive gifts, grants, conveyances, devises, and bequests of real or personal property from whatever source, as may be made from time to time, in trust or otherwise, whenever the terms and conditions will aid in carrying out the programs of the school; sell, lease or exchange, invest, or expend the same or the proceeds, rents, profits, and income thereof except as limited by the terms and conditions thereof; and adopt rules to govern the receipt and expenditure of the proceeds, rents, profits, and income thereof.

(2004 Ed.)

(12) May adopt rules, as approved by the board of trustees, providing for the transferability of employees between the school for the deaf and the school for the blind consistent with collective bargaining agreements in effect.

(13) Shall prepare, submit to the board of trustees for approval, and administer the budget consistent with RCW 43.88.160 and the budget and accounting act, chapter 43.88 RCW generally, as applicable.

(14) May adopt rules under chapter 34.05 RCW, as approved by the board of trustees, and perform all other acts not forbidden by law as the superintendent deems necessary or appropriate to the administration of the school. [2002 c 209 § 3.]

Effective date—2002 c 209: See note following RCW 72.42.021.

72.40.024 Superintendents—Additional powers and duties. In addition to the powers and duties under RCW 72.40.022 and 72.40.023, the superintendent of each school shall:

(1) Monitor the location and educational placement of each student reported to the superintendents by the educational service district superintendents;

(2) Provide information about educational programs, instructional techniques, materials, equipment, and resources available to students with visual or auditory impairments to the parent or guardian, educational service district superintendent, and the superintendent of the school district where the student resides; and

(3) Serve as a consultant to the office of the superintendent of public instruction, provide instructional leadership, and assist school districts in improving their instructional programs for students with visual or hearing impairments. [2002 c 209 § 4; 1993 c 147 § 2; 1985 c 378 § 17.]

Effective date—2002 c 209: See note following RCW 72.42.021.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.028 Teachers' qualifications—Salaries—Provisional certification. All teachers at the state school for the deaf and the state school for the blind shall meet all certification requirements and the programs shall meet all accreditation requirements and conform to the standards defined by law or by rule of the state board of education or the office of the state superintendent of public instruction. The superintendents, by rule, may adopt additional educational standards for their respective schools. Salaries of all certificated employees shall be set so as to conform to and be contemporary with salaries paid to other certificated employees of similar background and experience in the school district in which the program or facility is located. The superintendents may provide for provisional certification for teachers in their respective schools including certification for emergency, temporary, substitute, or provisional duty. [1985 c 378 § 18.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.031 School year—School term—Legal holidays—Use of schools. The school year for the state school for the blind and the state school for the deaf shall commence on the first day of July of each year and shall terminate on the

30th day of June of the succeeding year. The regular school term shall be for a period of nine months and shall commence as near as reasonably practical at the time of the commencement of regular terms in the public schools, with the equivalent number of days as are now required by law, and the regulations of the superintendent of public instruction as now or hereafter amended, during the school year in the public schools. The school shall observe all legal holidays, in the same manner as other agencies of state government, and the schools will not be in session on such days and such other days as may be approved by the respective superintendents. During the period when the schools are not in session during the regular school term, schools may be operated, subject to the approval of the respective superintendents, for the instruction of students or for such other reasons which are in furtherance of the objects and purposes of such schools. [1985 c 378 § 16; 1979 c 141 § 248; 1970 ex.s. c 50 § 6.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.040 Who may be admitted. (1) The schools shall be free to residents of the state between the ages of three and twenty-one years, who are blind/visually impaired or deaf/hearing impaired, or with other disabilities where a vision or hearing disability is the major need for services.

(2) The schools may provide nonresidential services to children ages birth through three who meet the eligibility criteria in this section, subject to available funding.

(3) Each school shall admit and retain students on a space available basis according to criteria developed and published by each school superintendent in consultation with each board of trustees and school faculty: PROVIDED, That students over the age of twenty-one years, who are otherwise qualified may be retained at the school, if in the discretion of the superintendent in consultation with the faculty they are proper persons to receive further training given at the school and the facilities are adequate for proper care, education, and training.

(4) The admission and retention criteria developed and published by each school superintendent shall contain a provision allowing the schools to refuse to admit or retain a student who is an adjudicated sex offender except that the schools shall not admit or retain a student who is an adjudicated level III sex offender as provided in RCW 13.40.217(3). [2000 c 125 § 8; 1993 c 147 § 3; 1985 c 378 § 19; 1984 c 160 § 4; 1977 ex.s. c 80 § 68; 1969 c 39 § 1; 1959 c 28 § 72.40.040. Prior: 1955 c 260 § 1; 1909 c 97 p 258 § 3; 1903 c 140 § 1; 1897 c 118 § 229; 1886 p 136 § 2; RRS § 4647.]

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Severability—1984 c 160: See note following RCW 28A.155.020.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.40.050 Admission of nonresidents. (1) The superintendents may admit to their respective schools visually or hearing impaired children from other states as appropriate, but the parents or guardians of such children or other state

will be required to pay annually or quarterly in advance a sufficient amount to cover the cost of maintaining and educating such children as set by the applicable superintendent.

(2) The admission and retention criteria developed and published by each school superintendent shall contain a provision allowing the schools to refuse to admit or retain a nonresident student who is an adjudicated sex offender, or the equivalent under the laws of the state in which the student resides, except that the schools shall not admit or retain a nonresident student who is an adjudicated level III sex offender or the equivalent under the laws of the state in which the student resides. [2000 c 125 § 9; 1985 c 378 § 20; 1979 c 141 § 249; 1959 c 28 § 72.40.050. Prior: 1909 c 97 p 258 § 4; 1897 c 118 § 251; 1886 p 141 § 32; RRS § 4648.]

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.060 Duty of school districts. It shall be the duty of all school districts in the state, to report to their respective educational service districts the names of all visually or hearing impaired youth residing within their respective school districts who are between the ages of three and twenty-one years. [1985 c 378 § 21; 1975 1st ex.s. c 275 § 151; 1969 ex.s. c 176 § 97; 1959 c 28 § 72.40.060. Prior: 1909 c 97 p 258 § 6; 1897 c 118 § 252; 1890 p 497 § 1; RRS § 4650.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—1969 ex.s. c 176: The effective date of this section, RCW 72.40.070, 72.40.080, and 72.40.100 was April 25, 1969.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

Superintendent's duties: RCW 28A.400.030.

72.40.070 Duty of educational service districts. It shall be the duty of each educational service district to make a full and specific report of visually or hearing impaired youth to the superintendent of the school for the blind or the school for the deaf, as the case may be and the superintendent of public instruction, annually. The superintendent of public instruction shall report about the hearing or visually impaired youth to the school for the blind and the school for the deaf, as the case may be, annually. [1985 c 378 § 22; 1979 c 141 § 250; 1975 1st ex.s. c 275 § 152; 1969 ex.s. c 176 § 98; 1959 c 28 § 72.40.070. Prior: 1909 c 97 p 259 § 7; 1897 c 118 § 253; 1890 p 497 § 2; RRS § 4651.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

Educational service districts—Superintendents—Boards: Chapter 28A.310 RCW.

72.40.080 Duty of parents. It shall be the duty of the parents or the guardians of all such visually or hearing impaired youth to send them each year to the proper school. Full and due consideration shall be given to the parent's or guardian's preference as to which program the child should attend. The educational service district superintendent shall

take all action necessary to enforce this section. [1993 c 147 § 4; 1985 c 378 § 23; 1975 1st ex.s. c 275 § 153; 1969 ex.s. c 176 § 99; 1959 c 28 § 72.40.080. Prior: 1909 c 97 p 259 § 8; 1897 c 118 § 254; 1890 p 498 § 3; RRS § 4652.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

Handicapped children, parental responsibility, commitment: Chapter 26.40 RCW.

72.40.090 Weekend transportation—Expense. Notwithstanding any other provision of law, the state school for the blind and the school for the deaf may arrange and provide for weekend transportation to and from schools. This transportation shall be at no cost to students and parents, as allowed within the appropriations allocated to the schools. [1993 c 147 § 5; 1985 c 378 § 24; 1975 c 51 § 1; 1959 c 28 § 72.40.090. Prior: 1909 c 97 p 259 § 9; 1899 c 142 § 28; 1899 c 81 § 2; 1897 c 118 § 255; RRS § 4653.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.100 Penalty. Any parent, guardian, or educational service district superintendent who, without proper cause, fails to carry into effect the provisions of this chapter shall be guilty of a misdemeanor, and upon conviction thereof, upon the complaint of any officer or citizen of the county or state, before any district or superior court, shall be fined in any sum not less than fifty nor more than two hundred dollars. [1987 c 202 § 229; 1985 c 378 § 25; 1975 1st ex.s. c 275 § 154; 1969 ex.s. c 176 § 100; 1959 c 28 § 72.40.100. Prior: 1909 c 97 p 259 § 10; 1897 c 118 § 256; 1890 p 498 § 5; RRS § 4654.]

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

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

Effective date—1969 ex.s. c 176: See note following RCW 72.40.060.

Rights preserved—Severability—1969 ex.s. c 176: See notes following RCW 28A.310.010.

72.40.110 Employees' hours of labor. Employees' hours of labor shall follow all state merit rules as they pertain to various work classifications and current collective bargaining agreements. [1993 c 147 § 6; 1985 c 378 § 12.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.40.120 School for the deaf—School for the blind—Appropriations. Any appropriation for the school for the deaf or the school for the blind shall be made directly to the school for the deaf or the school for the blind. [1991 c 65 § 1.]

Effective date—1991 c 65: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 65 § 3.]

72.40.200 Safety of students and protection from child abuse and neglect. The state school for the deaf and

the state school for the blind shall promote the personal safety of students and protect the children who attend from child abuse and neglect as defined in RCW 26.44.020. [2000 c 125 § 1.]

Conflict with federal requirements—2000 c 125: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2000 c 125 § 11.]

72.40.210 Reports to parents—Requirement. The superintendents of the state school for the deaf and the state school for the blind or their designees shall immediately report to the persons indicated the following events:

- (1) To the child's parent, custodian, or guardian:
 - (a) The death of the child;
 - (b) Hospitalization of a child in attendance or residence at the school;
 - (c) Allegations of child abuse or neglect in which the parent's child in attendance or residence at the school is the alleged victim;
 - (d) Allegations of physical or sexual abuse in which the parent's child in attendance or residence at the school is the alleged perpetrator;
 - (e) Life-threatening illness;
 - (f) The attendance at the school of any child who is a registered sex offender under RCW 9A.44.130 as permitted by RCW 4.24.550.
- (2) Notification to the parent shall be made by the means most likely to be received by the parent. If initial notification is made by telephone, such notification shall be followed by notification in writing within forty-eight hours after the initial oral contact is made. [2000 c 125 § 2.]

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

72.40.220 Behavior management policies, procedures, and techniques. (1) The superintendents of the state school for the deaf and the state school for the blind shall maintain in writing and implement behavior management policies and procedures that accomplish the following:

- (a) Support the child's appropriate social behavior, self-control, and the rights of others;
- (b) Foster dignity and self-respect for the child;
- (c) Reflect the ages and developmental levels of children in care.
- (2) The state school for the deaf and the state school for the blind shall use proactive, positive behavior support techniques to manage potential child behavior problems. These techniques shall include but not be limited to:
 - (a) Organization of the physical environment and staffing patterns to reduce factors leading to behavior incidents;
 - (b) Intervention before behavior becomes disruptive, in the least invasive and least restrictive manner available;
 - (c) Emphasis on verbal deescalation to calm the upset child;
 - (d) Redirection strategies to present the child with alternative resolution choices. [2000 c 125 § 3.]

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

72.40.230 Staff orientation and training. (1) The state school for the deaf and the state school for the blind shall ensure that all staff, within two months of beginning employment, complete a minimum of fifteen hours of job orientation which shall include, but is not limited to, presentation of the standard operating procedures manual for each school, describing all policies and procedures specific to the school.

(2) The state school for the deaf and the state school for the blind shall ensure that all new staff receive thirty-two hours of job specific training within ninety days of employment which shall include, but is not limited to, promoting and protecting student personal safety. All staff shall receive thirty-two hours of ongoing training in these areas every two years. [2000 c 125 § 4.]

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

72.40.240 Residential staffing requirement. The residential program at the state school for the deaf and the state school for the blind shall employ residential staff in sufficient numbers to ensure the physical and emotional needs of the residents are met. Residential staff shall be on duty in sufficient numbers to ensure the safety of the children residing there.

For purposes of this section, "residential staff" means staff in charge of supervising the day-to-day living situation of the children in the residential portion of the schools. [2000 c 125 § 5.]

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

72.40.250 Protection from child abuse and neglect—Supervision of employees and volunteers—Procedures. In addition to the powers and duties under RCW 72.40.022 and 72.40.024, the superintendents of the state school for the deaf and the state school for the blind shall:

(1) Develop written procedures for the supervision of employees and volunteers who have the potential for contact with students. Such procedures shall be designed to prevent child abuse and neglect by providing for adequate supervision of such employees and volunteers, taking into consideration such factors as the student population served, architectural factors, and the size of the facility. Such procedures shall include, but need not be limited to, the following:

- (a) Staffing patterns and the rationale for such;
- (b) Responsibilities of supervisors;
- (c) The method by which staff and volunteers are made aware of the identity of all supervisors, including designated on-site supervisors;
- (d) Provision of written supervisory guidelines to employees and volunteers;
- (e) Periodic supervisory conferences for employees and volunteers; and
- (f) Written performance evaluations of staff to be conducted by supervisors in a manner consistent with applicable provisions of the civil service law.

(2) Develop written procedures for the protection of students when there is reason to believe an incident has occurred

which would render a child student an abused or neglected child within the meaning of RCW 26.44.020. Such procedures shall include, but need not be limited to, the following:

(a) Investigation. Immediately upon notification that a report of child abuse or neglect has been made to the department of social and health services or a law enforcement agency, the superintendent shall:

(i) Preserve any potential evidence through such actions as securing the area where suspected abuse or neglect occurred;

(ii) Obtain proper and prompt medical evaluation and treatment, as needed, with documentation of any evidence of abuse or neglect; and

(iii) Provide necessary assistance to the department of social and health services and local law enforcement in their investigations;

(b) Safety. Upon notification that a report of suspected child abuse or neglect has been made to the department of social and health services or a law enforcement agency, the superintendent or his or her designee, with consideration for causing as little disruption as possible to the daily routines of the students, shall evaluate the situation and immediately take appropriate action to assure the health and safety of the students involved in the report and of any other students similarly situated, and take such additional action as is necessary to prevent future acts of abuse or neglect. Such action may include:

(i) Consistent with federal and state law:

(A) Removing the alleged perpetrator from the school;

(B) Increasing the degree of supervision of the alleged perpetrator; and

(C) Initiating appropriate disciplinary action against the alleged perpetrator;

(ii) Provision of increased training and increased supervision to volunteers and staff pertinent to the prevention and remediation of abuse and neglect;

(iii) Temporary removal of the students from a program and reassignment of the students within the school, as an emergency measure, if it is determined that there is a risk to the health or safety of such students in remaining in that program. Whenever a student is removed, pursuant to this subsection (2)(b)(iii), from a special education program or service specified in his or her individualized education program, the action shall be reviewed in an individualized education program meeting; and

(iv) Provision of counseling to the students involved in the report or any other students, as appropriate;

(c) Corrective action plans. Upon receipt of the results of an investigation by the department of social and health services pursuant to a report of suspected child abuse or neglect, the superintendent, after consideration of any recommendations by the department of social and health services for preventive and remedial action, shall implement a written plan of action designed to assure the continued health and safety of students and to provide for the prevention of future acts of abuse or neglect. [2000 c 125 § 6.]

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

72.40.260 Protection from child abuse and neglect—Student instruction. In consideration of the needs and cir-

cumstances of the program, the state school for the deaf and the state school for the blind shall provide instruction to all students in techniques and procedures which will enable the students to protect themselves from abuse and neglect. Such instruction shall be described in a written plan to be submitted to the board of trustees for review and approval, and shall be:

(1) Appropriate for the age, individual needs, and particular circumstances of students, including the existence of mental, physical, emotional, or sensory disabilities;

(2) Provided at different times throughout the year in a manner which will ensure that all students receive such instruction; and

(3) Provided by individuals who possess appropriate knowledge and training, documentation of which shall be maintained by the school. [2000 c 125 § 7.]

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

72.40.270 Protection from sexual victimization—Policy. (1) The schools shall implement a policy for the children who reside at the schools protecting those who are vulnerable to sexual victimization by other children who are sexually aggressive and residing at the schools. The policy shall include, at a minimum, the following elements:

(a) Development and use of an assessment process for identifying children, within thirty days of beginning residence at the schools, who present a moderate or high risk of sexually aggressive behavior for the purposes of this section. The assessment process need not require that every child who is adjudicated or convicted of a sex offense as defined in RCW 9.94A.030 be determined to be sexually aggressive, nor shall a sex offense adjudication or conviction be required in order to determine a child is sexually aggressive. Instead, the assessment process shall consider the individual circumstances of the child, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to sexual aggressiveness. The definition of "sexually aggressive youth" in RCW 74.13.075 does not apply to this section to the extent that it conflicts with this section;

(b) Development and use of an assessment process for identifying children, within thirty days of beginning residence at the schools, who may be vulnerable to victimization by children identified under (a) of this subsection as presenting a moderate or high risk of sexually aggressive behavior. The assessment process shall consider the individual circumstances of the child, including his or her age, physical size, sexual abuse history, mental and emotional condition, and other factors relevant to vulnerability;

(c) Development and use of placement criteria to avoid assigning children who present a moderate or high risk of sexually aggressive behavior to the same sleeping quarters as children assessed as vulnerable to sexual victimization, except that they may be assigned to the same multiple-person sleeping quarters if those sleeping quarters are regularly monitored by visual surveillance equipment or staff checks;

(d) Development and use of procedures for minimizing, within available funds, unsupervised contact in the residential facilities of the schools between children presenting moderate to high risk of sexually aggressive behavior and chil-

dren assessed as vulnerable to sexual victimization. The procedures shall include taking reasonable steps to prohibit any child residing at the schools who present a moderate to high risk of sexually aggressive behavior from entering any sleeping quarters other than the one to which they are assigned, unless accompanied by an authorized adult.

(2) For the purposes of this section, the following terms have the following meanings:

(a) "Sleeping quarters" means the bedrooms or other rooms within a residential facility where children are assigned to sleep.

(b) "Unsupervised contact" means contact occurring outside the sight or hearing of a responsible adult for more than a reasonable period of time under the circumstances. [2000 c 125 § 10.]

Conflict with federal requirements—2000 c 125: See note following RCW 72.40.200.

72.40.280 Monitoring of residential program by department of social and health services—Recommendations—Comprehensive child health and safety reviews—Access to records and documents—Safety standards. (1) The department of social and health services must periodically monitor the residential program at the state school for the deaf, including but not limited to examining the residential-related policies and procedures as well as the residential facilities. The department of social and health services must make recommendations to the school's superintendent and the board of trustees or its successor board on health and safety improvements related to child safety and well-being. The department of social and health services must conduct the monitoring reviews at least quarterly until December 1, 2006.

(2) The department of social and health services must conduct a comprehensive child health and safety review, as defined in rule, of the residential program at the state school for the deaf every three years. The department of social and health services must deliver the first health and safety review to the governor, the legislature, the school's superintendent, and the school's board of trustees or successor board by December 1, 2004.

(3) The state school for the deaf must provide the department of social and health services' staff with full and complete access to all records and documents that the department staff may request to carry out the requirements of this section. The department of social and health services must have full and complete access to all students and staff of the state school for the deaf to conduct interviews to carry out the requirements of this section.

(4) For the purposes of this section, the department of social and health services must use the safety standards established in this chapter when conducting the reviews. [2002 c 208 § 2.]

Chapter 72.41 RCW

BOARD OF TRUSTEES—SCHOOL FOR THE BLIND

Sections

72.41.010 Intention—Purpose.
72.41.015 "Superintendent" defined.

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| 72.41.020 | Board of trustees—Membership—Terms—Vacancies—Officers—Rules and regulations. |
| 72.41.025 | Membership, effect of creation of new congressional districts or boundaries. |
| 72.41.030 | Bylaws—Rules and regulations—Officers. |
| 72.41.040 | Powers and duties. |
| 72.41.060 | Travel expenses. |
| 72.41.070 | Meetings. |

72.41.010 Intention—Purpose. It is the intention of the legislature in creating a board of trustees for the state school for the blind to perform the duties set forth in this chapter, that the board of trustees perform needed advisory services to the legislature and to the superintendent of the Washington state school for the blind, in the development of programs for the visually impaired, and in the operation of the Washington state school for the blind. [1985 c 378 § 28; 1973 c 118 § 1.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.41.015 "Superintendent" defined. Unless the context clearly requires otherwise, as used in this chapter "superintendent" means superintendent of the state school for the blind. [1985 c 378 § 27.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.41.020 Board of trustees—Membership—Terms—Vacancies—Officers—Rules and regulations. There is hereby created a board of trustees for the state school for the blind to be composed of a resident from each of the state's congressional districts now or hereafter existing. Trustees with voting privileges shall be appointed by the governor with the consent of the senate. A representative of the parent-teachers association of the Washington state school for the blind, a representative of the Washington council of the blind, a representative of the national federation of the blind of Washington, one representative designated by the teacher association of the Washington state school for the blind, and a representative of the classified staff designated by his or her exclusive bargaining representative shall each be ex officio and nonvoting members of the board of trustees and shall serve during their respective tenures in such positions.

Trustees shall be appointed by the governor to serve for a term of five years except that any person appointed to fill a vacancy occurring prior to the expiration of any term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term.

One trustee shall be a resident and qualified elector from each of the state's congressional districts. The board shall not be deemed to be unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. No voting trustee may be an employee of the state school for the blind, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, a school district or educational service district administrator, appointed after July 1, 1986, or an elected officer or member of the legislative authority or any municipal corporation.

The board of trustees shall organize itself by electing a chairman from its members. The board shall adopt a seal and may adopt such bylaws, rules, and regulations as it deems necessary for its own government. A majority of the voting members of the board in office shall constitute a quorum, but a lesser number may convene from time to time and may compel the attendance of absent members in such manner as prescribed in its bylaws, rules, or regulations. The superintendent of the state school for the blind shall serve as, or may designate another person to serve as, the secretary of the board, who shall not be deemed to be a member of the board. [1993 c 147 § 7; 1985 c 378 § 29; 1982 1st ex.s. c 30 § 13; 1973 c 118 § 2.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.41.025 Membership, effect of creation of new congressional districts or boundaries. The terms of office of trustees on the board for the state school for the blind who are appointed from the various congressional districts shall not be affected by the creation of either new boundaries for congressional districts or additional districts. In such an event, each trustee may continue to serve in office for the balance of the term for which he or she was appointed: PROVIDED, That the trustee continues to reside within the boundaries of the congressional district as they existed at the time of his or her appointment. Vacancies which occur in a trustee position during the balance of any such term shall be filled pursuant to RCW 72.41.020, as now or hereafter amended, by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was appointed as they existed at the time of his or her election. At the completion of such term, and thereafter, a successor shall be appointed from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed. [1982 1st ex.s. c 30 § 14.]

72.41.030 Bylaws—Rules and regulations—Officers. Within thirty days of their appointment or July 1, 1973, whichever is sooner, the board of trustees shall organize, adopt bylaws for its own government, and make such rules and regulations not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified. [1973 c 118 § 3.]

72.41.040 Powers and duties. The board of trustees of the state school for the blind:

(1) Shall monitor and inspect all existing facilities of the state school for the blind, and report its findings to the superintendent;

(2) Shall study and recommend comprehensive programs of education and training and review the admission policy as set forth in RCW 72.40.040 and 72.40.050, and make appropriate recommendations to the superintendent;

(3) Shall submit a list of three qualified candidates for superintendent to the governor and shall advise the superin-

tendent about the criteria and policy to be used in the selection of members of the faculty and such other administrative officers and other employees, who shall with the exception of the superintendent all be subject to chapter 41.06 RCW, the state civil service law, unless specifically exempted by other provisions of law. All employees and personnel classified under chapter 41.06 RCW shall continue, after July 1, 1986, to perform their usual duties upon the same terms as formerly, without any loss of rights, subject to any action that may be appropriate thereafter in accordance with the laws and rules governing the state civil service law;

(4) Shall submit an evaluation of the superintendent to the governor by July 1 of each odd-numbered year and may recommend to the governor that the superintendent be removed for misfeasance, malfeasance, or wilful neglect of duty;

(5) May recommend to the superintendent the establishment of new facilities as needs demand;

(6) May recommend to the superintendent rules and regulations for the government, management, and operation of such housing facilities deemed necessary or advisable;

(7) May make recommendations to the superintendent concerning classrooms and other facilities to be used for summer or night schools, or for public meetings and for any other uses consistent with the use of such classrooms or facilities for the school for the blind;

(8) May make recommendations to the superintendent for adoption of rules and regulations for pedestrian and vehicular traffic on property owned, operated, or maintained by the school for the blind;

(9) Shall recommend to the superintendent, with the assistance of the faculty, the course of study including vocational training in the school for the blind, in accordance with other applicable provisions of law and rules and regulations;

(10) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate;

(11) Shall participate in the development of, and monitor the enforcement of the rules and regulations pertaining to the school for the blind;

(12) Shall perform any other duties and responsibilities prescribed by the superintendent. [1985 c 378 § 30; 1973 c 118 § 4.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.41.060 Travel expenses. Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the state school for the blind. [1975-'76 2nd ex.s. c 34 § 167; 1973 c 118 § 6.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

72.41.070 Meetings. The board of trustees shall meet at least quarterly. [1993 c 147 § 8; 1973 c 118 § 7.]

(2004 Ed.)

Chapter 72.42 RCW

BOARD OF TRUSTEES—SCHOOL FOR THE DEAF

Sections

| | |
|-----------|---|
| 72.42.010 | Intention—Purpose. |
| 72.42.015 | "Superintendent" defined. |
| 72.42.016 | "School" defined. |
| 72.42.021 | Board of trustees—Membership—Terms—Effect of new or revised boundaries for congressional districts—Vacancies. |
| 72.42.031 | Bylaws—Rules—Officers—Quorum. |
| 72.42.041 | Powers and duties. |
| 72.42.060 | Travel expenses. |
| 72.42.070 | Meetings. |

72.42.010 Intention—Purpose. It is the intention of the legislature, in creating a board of trustees for the state school for the deaf to perform the duties set forth in this chapter, that the board of trustees perform needed oversight services to the governor and the legislature of the Washington state school for the deaf in the development of programs for the hearing impaired, and in the operation of the Washington state school for the deaf. [2002 c 209 § 5; 1985 c 378 § 31; 1972 ex.s. c 96 § 1.]

Effective date—2002 c 209: See note following RCW 72.42.021.

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.42.015 "Superintendent" defined. Unless the context clearly requires otherwise as used in this chapter "superintendent" means superintendent of the Washington state school for the deaf. [1985 c 378 § 32.]

Severability—Effective date—1985 c 378: See notes following RCW 72.01.050.

72.42.016 "School" defined. Unless the context clearly requires otherwise, as used in this chapter "school" means the Washington state school for the deaf. [2002 c 209 § 6.]

Effective date—2002 c 209: See note following RCW 72.42.021.

72.42.021 Board of trustees—Membership—Terms—Effect of new or revised boundaries for congressional districts—Vacancies. (1) The governance of the school shall be vested in a board of trustees. The board shall consist of nine members appointed by the governor, with the consent of the senate. The board shall be composed of a resident from each of the state's congressional districts and may include:

- (a) One member who is deaf or hearing impaired;
- (b) Two members who are experienced educational professionals;
- (c) One member who is experienced in providing residential services to youth; and
- (d) One member who is the parent of a child who is deaf or hearing impaired and who is receiving or has received educational services related to deafness or hearing impairment from a public educational institution.

(2) No voting trustee may be an employee of the school, a member of the board of directors of any school district, a member of the governing board of any public or private educational institution, a school district or educational service district administrator appointed after July 1, 1986, or an

elected officer or member of the legislative authority of any municipal corporation.

(3) Trustees shall be appointed by the governor to serve a term of five years, except that any person appointed to fill a vacancy occurring prior to the expiration of a term shall be appointed within sixty days of the vacancy and appointed only for the remainder of the term. Of the initial members, three must be appointed for two-year terms, three must be appointed for three-year terms, and the remainder must be appointed for five-year terms.

(4) The board shall not be deemed unlawfully constituted and a trustee shall not be deemed ineligible to serve the remainder of the trustee's unexpired term on the board solely by reason of the establishment of new or revised boundaries for congressional districts. In such an event, each trustee may continue to serve in office for the balance of the term for which he or she was appointed so long as the trustee continues to reside within the boundaries of the congressional district as they existed at the time of his or her appointment. Vacancies which occur in a trustee position during the balance of any term shall be filled pursuant to subsection (3) of this section by a successor who resides within the boundaries of the congressional district from which the member whose office was vacated was appointed as they existed at the time of his or her appointment. At the completion of such term, and thereafter, a successor shall be appointed from the congressional district which corresponds in number with the congressional district from which the incumbent was appointed. [2002 c 209 § 7.]

Effective date—2002 c 209: "This act takes effect July 1, 2002, except that the governor may appoint the members of the board of trustees under section 7 of this act prior to the beginning of their terms of office on July 1, 2002." [2002 c 209 § 12.]

72.42.031 Bylaws—Rules—Officers—Quorum. (1)

The board of trustees shall organize, adopt bylaws for its own governance, and adopt rules not inconsistent with this chapter as they deem necessary. At such organizational meeting it shall elect from among its members a chairman and a vice-chairman, each to serve for one year, and annually thereafter shall elect such officers to serve until their successors are appointed or qualified.

(2) A majority of the voting members of the board in office constitutes a quorum, but a lesser number may adjourn from time to time and may compel the attendance of absent members in such manner as prescribed by its bylaws, rules, or regulations. [2002 c 209 § 9.]

Effective date—2002 c 209: See note following RCW 72.42.021.

72.42.041 Powers and duties. The board of trustees of the school:

(1) Shall adopt rules and regulations for its own governance;

(2) Shall direct the development of, approve, and monitor the enforcement of policies, rules, and regulations pertaining to the school, including but not limited to:

(a) The use of classrooms and other facilities for summer or night schools or for public meetings and any other uses;

(b) Pedestrian and vehicular traffic on property owned, operated, or maintained by the school;

(c) Governance, management, and operation of the residential facilities;

(d) Transferability of employees between the school for the deaf and the school for the blind consistent with collective bargaining agreements in effect; and

(e) Compliance with state and federal education civil rights laws at the school;

(3) Shall develop a process for recommending candidates for the position of superintendent and upon a vacancy shall submit a list of three qualified candidates for superintendent to the governor;

(4) Shall submit an evaluation of the superintendent to the governor by July 1st of each odd-numbered year that includes a recommendation regarding the retention of the superintendent;

(5) May recommend to the governor at any time that the superintendent be removed for conduct deemed by the board to be detrimental to the interests of the school;

(6) Shall prepare and submit by July 1st of each even-numbered year a report to the governor and the appropriate committees of the legislature which contains a detailed summary of the school's progress on performance objectives and the school's work, facility conditions, and revenues and costs of the school for the previous year and which contains those recommendations it deems necessary and advisable for the governor and the legislature to act on;

(7) Shall approve the school's budget and all funding requests, both operating and capital, submitted to the governor;

(8) Shall direct and approve the development and implementation of comprehensive programs of education, training, and as needed residential living, such that students served by the school receive a challenging and quality education in a safe school environment;

(9) Shall direct, monitor, and approve the implementation of a comprehensive continuous quality improvement system for the school;

(10) Shall monitor and inspect all existing facilities of the school and report its findings in its biennial report to the governor and appropriate committees of the legislature; and

(11) May grant to every student, upon graduation or completion of a program or course of study, a suitable diploma, nonbaccalaureate degree, or certificate. [2002 c 209 § 8.]

Effective date—2002 c 209: See note following RCW 72.42.021.

72.42.060 Travel expenses. Each member of the board of trustees shall receive travel expenses as provided in RCW 43.03.050 and 43.03.060 as now existing or hereafter amended, and such payments shall be a proper charge to any funds appropriated or allocated for the support of the state school for the deaf. [1975-'76 2nd ex.s. c 34 § 168; 1972 ex.s. c 96 § 6.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

72.42.070 Meetings. The board of trustees shall meet at least quarterly but may meet more frequently at such times as the board by resolution determines or the bylaws of the board prescribe. [2002 c 209 § 10; 1993 c 147 § 10; 1972 ex.s. c 96 § 7.]

Effective date—2002 c 209: See note following RCW 72.42.021.

Chapter 72.49 RCW

NARCOTIC OR DANGEROUS DRUGS— TREATMENT AND REHABILITATION

Sections

- 72.49.010 Purpose.
72.49.020 Treatment and rehabilitation programs authorized—Rules and regulations.

72.49.010 Purpose. The purpose of this chapter is to provide additional programs for the treatment and rehabilitation of persons suffering from narcotic and dangerous drug abuse. [1969 ex.s. c 123 § 1.]

Effective date—1969 ex.s. c 123: "The effective date of this act shall be July 1, 1969." [1969 ex.s. c 123 § 3.]

72.49.020 Treatment and rehabilitation programs authorized—Rules and regulations. There may be established at an institution, or portion thereof, to be designated by the secretary of the department of social and health services, programs for treatment and rehabilitation of persons in need of medical care and treatment due to narcotic abuse or dangerous drug abuse. Such programs may include facilities for both residential and outpatient treatment. The secretary of the department of social and health services shall promulgate rules and regulations governing the voluntary admission, treatment, and release of such patients, and all other matters incident to the proper administration of this section. [1975-'76 2nd ex.s. c 103 § 2; 1969 ex.s. c 123 § 2.]

Effective date—1969 ex.s. c 123: See note following RCW 72.49.010.

Chapter 72.60 RCW

CORRECTIONAL INDUSTRIES

(Formerly: Institutional industries)

Sections

- 72.60.100 Civil rights of inmates not restored—Other laws inapplicable.
72.60.102 Industrial insurance—Application to certain inmates.
72.60.110 Employment of inmates according to needs of state.
72.60.160 State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions.
72.60.220 List of goods to be supplied to all departments, institutions, agencies.
72.60.235 Implementation plan for prison industries.

Correctional industries administered by department of corrections: RCW 72.09.070 through 72.09.120.

72.60.100 Civil rights of inmates not restored—Other laws inapplicable. Nothing in this chapter is intended to restore, in whole or in part, the civil rights of any inmate. No inmate compensated for work in correctional industries shall be considered as an employee or to be employed by the state or the department, nor shall any such inmate, except those provided for in RCW 72.60.102 and 72.64.065, come within any of the provisions of the workers' compensation act, or be entitled to any benefits thereunder whether on behalf of himself or of any other person. [1989 c 185 § 10; 1987 c 185 § 38; 1981 c 136 § 101; 1972 ex.s. c 40 § 1; 1959 c 28 § 72.60.100. Prior: 1955 c 314 § 10. Formerly RCW 43.95.090.]

(2004 Ed.)

Intent—Severability—1987 c 185: See notes following RCW 51.12.130.

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—1972 ex.s. c 40: "This act shall be effective July 1, 1973." [1972 ex.s. c 40 § 4.]

Restoration of civil rights: Chapter 9.96 RCW.

72.60.102 Industrial insurance—Application to certain inmates. From and after July 1, 1973, any inmate employed in classes I, II, and IV of correctional industries as defined in RCW 72.09.100 is eligible for industrial insurance benefits as provided by Title 51 RCW. However, eligibility for benefits for either the inmate or the inmate's dependents or beneficiaries for temporary disability or permanent total disability as provided in RCW 51.32.090 or 51.32.060, respectively, shall not take effect until the inmate is released pursuant to an order of parole by the indeterminate sentence review board, or discharged from custody upon expiration of the sentence, or discharged from custody by order of a court of appropriate jurisdiction. Nothing in this section shall be construed to confer eligibility for any industrial insurance benefits to any inmate who is employed in class III or V of correctional industries as defined in RCW 72.09.100. [1989 c 185 § 11; 1983 1st ex.s. c 52 § 7; 1981 c 136 § 102; 1979 ex.s. c 160 § 3; 1972 ex.s. c 40 § 2.]

Severability—1983 1st ex.s. c 52: See RCW 63.42.900.

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—1972 ex.s. c 40: See note following RCW 72.60.100.

72.60.110 Employment of inmates according to needs of state. The department is hereby authorized and empowered to cause the inmates in the state institutions of this state to be employed in the rendering of such services and in the production and manufacture of such articles, materials, and supplies as are now, or may hereafter be, needed by the state, or any political subdivision thereof, or that may be needed by any public institution of the state or of any political subdivision thereof. [1959 c 28 § 72.60.110. Prior: 1955 c 314 § 11. Formerly RCW 43.95.100.]

72.60.160 State agencies and subdivisions may purchase goods—Purchasing preference required of certain institutions. All articles, materials, and supplies herein authorized to be produced or manufactured in correctional institutions may be purchased from the institution producing or manufacturing the same by any state agency or political subdivision of the state, and the secretary shall require those institutions under his direction to give preference to the purchasing of their needs of such articles as are so produced. [1981 c 136 § 103; 1979 c 141 § 260; 1959 c 28 § 72.60.160. Prior: 1955 c 314 § 16. Formerly RCW 43.95.150.]

Effective date—1981 c 136: See RCW 72.09.900.

72.60.220 List of goods to be supplied to all departments, institutions, agencies. The department may cause to be prepared annually, at such times as it may determine, lists containing the descriptions of all articles and supplies manufactured and produced in state correctional institutions; copies of such list shall be sent to the supervisor of purchasing and to all departments, institutions and agencies of the state

[Title 72 RCW—page 73]

of Washington. [1981 c 136 § 105; 1959 c 28 § 72.60.220. Prior: 1957 c 30 § 6. Formerly RCW 43.95.210.]

Effective date—1981 c 136: See RCW 72.09.900.

72.60.235 Implementation plan for prison industries.

(1) The department of corrections shall develop, in accordance with RCW 72.09.010, a site-specific implementation plan for prison industries space at Clallam Bay corrections center, McNeil Island corrections center, and the one thousand twenty-four bed medium security prison as appropriated for and authorized by the legislature.

(2) Each implementation plan shall include, but not be limited to, sufficient space and design elements that try to achieve a target of twenty-five percent of the total inmates in class I employment programs and twenty-five percent of the total inmates in class II employment programs or as much of the target as possible without jeopardizing the efficient and necessary day-to-day operation of the prison. The implementation plan shall also include educational opportunities and employment, wage, and other incentives. The department shall include in the implementation plans an incentive program based on wages, and the opportunity to contribute all or a portion of their wages towards an array of incentives. The funds recovered from the sale, lease, or rental of incentives should be considered as a possible source of revenue to cover the capitalized cost of the additional space necessary to accommodate the increased class I and class II industries programs.

(3) The incentive program shall be developed so that inmates can earn higher wages based on performance and production. Only those inmates employed in class I and class II jobs may participate in the incentive program. The department shall develop special program criteria for inmates with physical or mental handicaps so that they can participate in the incentive program.

(4) The department shall propose rules specifying that inmate wages, other than the amount an inmate owes for taxes, legal financial obligations, and to the victim restitution fund, shall be returned to the department to pay for the cost of prison operations, including room and board.

(5) The plan shall identify actual or potential legal or operational obstacles, or both, in implementing the components of the plan as specified in this section, and recommend strategies to remove the obstacles.

(6) The department shall submit the plan to the appropriate committees of the legislature and to the governor by October 1, 1991. [1991 c 256 § 2.]

Finding—1991 c 256: "The legislature finds that the rehabilitation program may be enhanced by participation in training, education, and employment-related incentive programs and may be a consideration in reducing time in confinement." [1991 c 256 § 1.]

Application to prison construction—1991 c 256: "The overall prison design plans for new construction at Clallam Bay corrections center, McNeil Island corrections center, and the one thousand twenty-four bed medium security prison as appropriated for and authorized by the legislature shall not be inconsistent with the implementation plan outlined in this act. No provision under this act shall require the department of corrections to redesign, postpone, or delay the construction of any of the facilities outlined in RCW 72.60.235." [1991 c 256 § 3.]

Severability—1991 c 256: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 256 § 4.]

Chapter 72.62 RCW

VOCATIONAL EDUCATION PROGRAMS

Sections

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|-----------|---|
| 72.62.010 | Purpose. |
| 72.62.020 | "Vocational education" defined. |
| 72.62.030 | Sale of products—Recovery of costs. |
| 72.62.040 | Crediting of proceeds of sales. |
| 72.62.050 | Trade advisory and apprenticeship committees. |

72.62.010 Purpose. The legislature declares that programs of vocational education are essential to the habilitation and rehabilitation of residents of state correctional institutions and facilities. It is the purpose of this chapter to provide for greater reality and relevance in the vocational education programs within the correctional institutions of the state. [1972 ex.s. c 7 § 1.]

72.62.020 "Vocational education" defined. When used in this chapter, unless the context otherwise requires:

The term "vocational education" means a planned series of learning experiences, the specific objective of which is to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals in recognized occupations and in new and emerging occupations, but shall not mean programs the primary characteristic of which is repetitive work for the purpose of production, including the correctional industries program. Nothing in this section shall be construed to prohibit the correctional industries board of directors from identifying and establishing trade advisory or apprenticeship committees to advise them on correctional industries work programs. [1989 c 185 § 12; 1972 ex.s. c 7 § 2.]

72.62.030 Sale of products—Recovery of costs. Products goods, wares, articles, or merchandise manufactured or produced by residents of state correctional institutions or facilities within or in conjunction with vocational education programs for the training, habilitation, and rehabilitation of inmates may be sold on the open market. When services are performed by residents within or in conjunction with such vocational education programs, the cost of materials used and the value of depreciation of equipment used may be recovered. [1983 c 255 § 6; 1972 ex.s. c 7 § 3.]

Severability—1983 c 255: See RCW 72.74.900.

72.62.040 Crediting of proceeds of sales. The secretary of the department of social and health services or the secretary of corrections, as the case may be, shall credit the proceeds derived from the sale of such products, goods, wares, articles, or merchandise manufactured or produced by inmates of state correctional institutions within or in conjunction with vocational education programs to the institution where manufactured or produced to be deposited in a revolving fund to be expended for the purchase of supplies, materials and equipment for use in vocational education. [1981 c 136 § 107; 1972 ex.s. c 7 § 4.]

Effective date—1981 c 136: See RCW 72.09.900.

72.62.050 Trade advisory and apprenticeship committees. Labor-management trade advisory and apprenticeship committees shall be constituted by the department for

each vocation taught within the vocational education programs in the state correctional system. [1972 ex.s. c 7 § 5.]

Chapter 72.63 RCW

PRISON WORK PROGRAMS—FISH AND GAME

Sections

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| 72.63.010 | Legislative finding. |
| 72.63.020 | Prison work programs for fish and game projects. |
| 72.63.030 | Department of fish and wildlife to provide professional assistance—Identification of projects—Loan of facilities and property—Resources to be provided. |
| 72.63.040 | Available funds to support costs of implementation. |

72.63.010 Legislative finding. The legislature finds and declares that the establishment of prison work programs that allow prisoners to undertake food fish, shellfish, and game fish rearing projects and game bird and game animal improvement, restoration, and protection projects is needed to reduce idleness, promote the growth of prison industries, and provide prisoners with skills necessary for their successful reentry into society. [1985 c 286 § 1.]

72.63.020 Prison work programs for fish and game projects. The departments of corrections and fish and wildlife shall establish at or near appropriate state institutions, as defined in RCW 72.65.010, prison work programs that use prisoners to undertake state food fish, shellfish, and game fish rearing projects and state game bird and game animal improvement, restoration, and protection projects and that meet the requirements of RCW 72.09.100.

The department of corrections shall seek to identify a group of prisoners at each appropriate state institution, as defined by RCW 72.65.010, that are interested in participating in prison work programs established by this chapter.

If the department of corrections is unable to identify a group of prisoners to participate in work programs authorized by this chapter, it may enter into an agreement with the department of fish and wildlife for the purpose of designing projects for any institution. Costs under this section shall be borne by the department of corrections.

The departments of corrections and fish and wildlife shall use prisoners, where appropriate, to perform work in state projects that may include the following types:

(1) Food fish, shellfish, and game fish rearing projects, including but not limited to egg planting, egg boxes, juvenile planting, pen rearing, pond rearing, raceway rearing, and egg taking;

(2) Game bird and game animal projects, including but not limited to habitat improvement and restoration, replanting and transplanting, nest box installation, pen rearing, game protection, and supplemental feeding: PROVIDED, That no project shall be established at the department of fish and wildlife's south Tacoma game farm;

(3) Manufacturing of equipment for use in fish and game volunteer cooperative projects permitted by the department of fish and wildlife, or for use in prison work programs with fish and game; and

(4) Maintenance, repair, restoration, and redevelopment of facilities operated by the department of fish and wildlife. [1994 c 264 § 43; 1988 c 36 § 29; 1985 c 286 § 2.]

(2004 Ed.)

72.63.030 Department of fish and wildlife to provide professional assistance—Identification of projects—Loan of facilities and property—Resources to be provided. (1) The department of fish and wildlife shall provide professional assistance from biologists, fish culturists, pathologists, engineers, habitat managers, and other departmental staff to assist the development and productivity of prison work programs under RCW 72.63.020, upon agreement with the department of corrections.

(2) The department of fish and wildlife shall identify and describe potential and pilot projects that are compatible with the goals of the various departments involved and that are particularly suitable for prison work programs.

(3) The department of fish and wildlife may make available surplus hatchery rearing space, net pens, egg boxes, portable rearing containers, incubators, and any other departmental facilities or property that are available for loan to the department of corrections to carry out prison work programs under RCW 72.63.020.

(4) The department of fish and wildlife shall provide live fish eggs, bird eggs, juvenile fish, game animals, or other appropriate seed stock, juveniles, or brood stock of acceptable disease history and genetic composition for the prison work projects at no cost to the department of corrections, to the extent that such resources are available. Fish food, bird food, or animal food may be provided by the department of fish and wildlife to the extent that funding is available.

(5) The department of natural resources shall assist in the implementation of the program where project sites are located on public beaches or state owned aquatic lands. [1994 c 264 § 44; 1988 c 36 § 30; 1985 c 286 § 3.]

72.63.040 Available funds to support costs of implementation. The costs of implementation of the projects prescribed by this chapter shall be supported to the extent that funds are available under the provisions of chapter 77.100 RCW, and from correctional industries funds. [2003 c 39 § 31; 1989 c 185 § 13; 1985 c 286 § 4.]

Chapter 72.64 RCW

LABOR AND EMPLOYMENT OF PRISONERS

Sections

| | |
|-----------|---|
| 72.64.001 | Definitions. |
| 72.64.010 | Useful employment of prisoners—Contract system barred. |
| 72.64.020 | Rules and regulations. |
| 72.64.030 | Prisoners required to work—Private benefit of enforcement officer prohibited. |
| 72.64.040 | Crediting of earnings—Payment. |
| 72.64.050 | Branch institutions—Work camps for certain purposes. |
| 72.64.060 | Labor camps authorized—Type of work permitted—Contracts. |
| 72.64.065 | Industrial insurance—Application to certain inmates—Payment of premiums and assessments. |
| 72.64.070 | Industrial insurance—Eligibility for employment—Procedure—Return. |
| 72.64.080 | Industrial insurance—Duties of employing agency—Costs—Supervision. |
| 72.64.090 | Industrial insurance—Department's jurisdiction. |
| 72.64.100 | Regional jail camps—Authorized—Purposes—Rules. |
| 72.64.110 | Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner. |
| 72.64.150 | Interstate forest fire suppression compact. |
| 72.64.160 | Inmate forest fire suppression crews—Classification. |

Contract system barred: State Constitution Art. 2 § 29.

Correctional industries: Chapter 72.60 RCW.

Labor prescribed by the indeterminate sentence review board: RCW 9.95.090.

72.64.001 Definitions. As used in this chapter:

"Department" means the department of corrections; and

"Secretary" means the secretary of corrections. [1981 c 136 § 108.]

Effective date—1981 c 136: See RCW 72.09.900.

72.64.010 Useful employment of prisoners—Contract system barred. The secretary shall have the power and it shall be his duty to provide for the useful employment of prisoners in the adult correctional institutions: PROVIDED, That no prisoners shall be employed in what is known as the contract system of labor. [1979 c 141 § 265; 1959 c 28 § 72.64.010. Prior: 1943 c 175 § 1; Rem. Supp. 1943 § 10279-1. Formerly RCW 72.08.220.]

72.64.020 Rules and regulations. The secretary shall make the necessary rules and regulations governing the employment of prisoners, the conduct of all such operations, and the disposal of the products thereof, under such restrictions as provided by law. [1979 c 141 § 266; 1959 c 28 § 72.64.020. Prior: 1943 c 175 § 2; Rem. Supp. 1943 § 10279-2. Formerly RCW 72.08.230.]

72.64.030 Prisoners required to work—Private benefit of enforcement officer prohibited. Every prisoner in a state correctional facility shall be required to work in such manner as may be prescribed by the secretary, other than for the private financial benefit of any enforcement officer. [1992 c 7 § 54; 1979 c 141 § 267; 1961 c 171 § 1; 1959 c 28 § 72.64.030. Prior: 1927 c 305 § 1; RRS § 10223-1.]

72.64.040 Crediting of earnings—Payment. Where a prisoner is employed at any occupation for which pay is allowed or permitted, or at any gainful occupation from which the state derives an income, the department shall credit the prisoner with the total amount of his earnings.

The amount of earnings credited but unpaid to a prisoner may be paid to the prisoner's spouse, children, mother, father, brother, or sister as the inmate may direct upon approval of the superintendent. Upon release, parole, or discharge, all unpaid earnings of the prisoner shall be paid to him. [1973 1st ex.s. c 154 § 105; 1959 c 28 § 72.64.040. Prior: 1957 c 19 § 1; 1927 c 305 § 3; RRS § 10223-3. Formerly RCW 72.08.250.]

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

72.64.050 Branch institutions—Work camps for certain purposes. The secretary shall also have the power to establish temporary branch institutions for state correctional facilities in the form of camps for the employment of prisoners therein in farming, reforestation, wood-cutting, land clearing, processing of foods in state canneries, forest fire fighting, forest fire suppression and prevention, stream clearance, watershed improvement, development of parks and recreational areas, and other work to conserve the natural resources and protect and improve the public domain and

construction of water supply facilities to state institutions. [1992 c 7 § 55; 1979 c 141 § 268; 1961 c 171 § 2; 1959 c 28 § 72.64.050. Prior: 1943 c 175 § 3; Rem. Supp. 1943 § 10279-3. Formerly RCW 72.08.240.]

Leaves of absence for inmates: RCW 72.01.365 through 72.01.380.

72.64.060 Labor camps authorized—Type of work permitted—Contracts. Any department, division, bureau, commission, or other agency of the state of Washington or any agency of any political subdivision thereof or the federal government may use, or cause to be used, prisoners confined in state penal or correctional institutions to perform work necessary and proper, to be done by them at camps to be established pursuant to the authority granted by RCW 72.64.060 through 72.64.090: PROVIDED, That such prisoners shall not be authorized to perform work on any public road, other than access roads to forestry lands. The secretary may enter into contracts for the purposes of RCW 72.64.060 through 72.64.090. [1979 c 141 § 269; 1961 c 171 § 3; 1959 c 28 § 72.64.060. Prior: 1955 c 128 § 1. Formerly RCW 43.28.500.]

72.64.065 Industrial insurance—Application to certain inmates—Payment of premiums and assessments. From and after July 1, 1973, any inmate working in a department of natural resources adult honor camp established and operated pursuant to RCW 72.64.050, 72.64.060, and 72.64.100 shall be eligible for the benefits provided by Title 51 RCW, as now or hereafter amended, relating to industrial insurance, with the exceptions herein provided.

No inmate as herein described, until released upon an order of parole by the state *board of prison terms and paroles, or discharged from custody upon expiration of sentence, or discharged from custody by order of a court of appropriate jurisdiction, or his dependents or beneficiaries, shall be entitled to any payment for temporary disability or permanent total disability as provided for in RCW 51.32.090 or 51.32.060 respectively, as now or hereafter enacted, or to the benefits of chapter 51.36 RCW relating to medical aid.

Any and all premiums or assessments as may arise under this section pursuant to the provisions of Title 51 RCW shall be the obligation of and be paid by the state department of natural resources. [1972 ex.s. c 40 § 3.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1972 ex.s. c 40: See note following RCW 72.60.100.

72.64.070 Industrial insurance—Eligibility for employment—Procedure—Return. The department shall determine which prisoners shall be eligible for employment under RCW 72.64.060, and shall establish and modify lists of prisoners eligible for such employment, upon the requisition of an agency mentioned in RCW 72.64.060. The secretary may send to the place, and at the time designated, the number of prisoners requisitioned, or such number thereof as have been determined to be eligible for such employment and are available. No prisoner shall be eligible or shall be released for such employment until his eligibility therefor has been determined by the department.

The secretary may return to prison any prisoner transferred to camp pursuant to this section, when the need for such prisoner's labor has ceased or when the prisoner is guilty of any violation of the rules and regulations of the prison or camp. [1979 c 141 § 270; 1959 c 28 § 72.64.070. Prior: 1955 c 128 § 2. Formerly RCW 43.28.510.]

72.64.080 Industrial insurance—Duties of employing agency—Costs—Supervision. The agency providing for prisoners under RCW 72.64.060 through 72.64.090 shall designate and supervise all work done under the provisions thereof. The agency shall provide, erect and maintain any necessary camps, except that where no funds are available to the agency, the department may provide, erect and maintain the necessary camps. The secretary shall supervise and manage the necessary camps and commissaries. [1979 c 141 § 271; 1959 c 28 § 72.64.080. Prior: 1955 c 128 § 3. Formerly RCW 43.28.520.]

72.64.090 Industrial insurance—Department's jurisdiction. The department shall have full jurisdiction at all times over the discipline and control of the prisoners performing work under RCW 72.64.060 through 72.64.090. [1959 c 28 § 72.64.090. Prior: 1955 c 128 § 4. Formerly RCW 43.28.530.]

72.64.100 Regional jail camps—Authorized—Purposes—Rules. The secretary is authorized to establish and operate regional jail camps for the confinement, treatment, and care of persons sentenced to jail terms in excess of thirty days, including persons so imprisoned as a condition of probation. The secretary shall make rules and regulations governing the eligibility for commitment or transfer to such camps and rules and regulations for the government of such camps. Subject to the rules and regulations of the secretary, and if there is in effect a contract entered into pursuant to RCW 72.64.110, a county prisoner may be committed to a regional jail camp in lieu of commitment to a county jail or other county detention facility. [1979 c 141 § 272; 1961 c 171 § 4.]

72.64.110 Contracts to furnish county prisoners confinement, care, and employment—Reimbursement by county—Sheriff's order—Return of prisoner. (1) The secretary may enter into a contract with any county of the state, upon the request of the sheriff thereof, wherein the secretary agrees to furnish confinement, care, treatment, and employment of county prisoners. The county shall reimburse the state for the cost of such services. Each county shall pay to the state treasurer the amounts found to be due.

(2) The secretary shall accept such county prisoner if he believes that the prisoner can be materially benefited by such confinement, care, treatment and employment, and if adequate facilities to provide such care are available. No such person shall be transported to any facility under the jurisdiction of the secretary until the secretary has notified the referring court of the place to which said person is to be transmitted and the time at which he can be received.

(3) The sheriff of the county in which such an order is made placing a misdemeanant in a jail camp pursuant to this

chapter, or any other peace officer designated by the court, shall execute an order placing such county prisoner in the jail camp or returning him therefrom to the court.

(4) The secretary may return to the committing authority, or to confinement according to his sentence, any person committed or transferred to a regional jail camp pursuant to this chapter when there is no suitable employment or when such person is guilty of any violation of rules and regulations of the regional jail camp. [1980 c 17 § 1. Prior: 1979 c 147 § 1; 1979 c 141 § 273; 1961 c 171 § 5.]

72.64.150 Interstate forest fire suppression compact. The Interstate Forest Fire Suppression Compact as set forth in this section is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

INTERSTATE FOREST FIRE SUPPRESSION COMPACT

ARTICLE I—Purpose

The purpose of this compact is to provide for the development and execution of programs to facilitate the use of offenders in the forest fire suppression efforts of the party states for the ultimate protection of life, property, and natural resources in the party states. The purpose of this compact is also to, in emergent situations, allow a sending state to cross state lines with an inmate when, due to weather or road conditions, it is necessary to cross state lines to facilitate the transport of an inmate.

ARTICLE II—Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "Sending state" means a state party to this compact from which a fire suppression unit is traveling.

(b) "Receiving state" means a state party to this compact to which a fire suppression unit is traveling.

(c) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(d) "Institution" means any prison, reformatory, honor camp, or other correctional facility, except facilities for the mentally ill or mentally handicapped, in which inmates may lawfully be confined.

(e) "Fire suppression unit" means a group of inmates selected by the sending states, corrections personnel, and any other persons deemed necessary for the transportation, supervision, care, security, and discipline of inmates to be used in forest fire suppression efforts in the receiving state.

(f) "Forest fire" means any fire burning in any land designated by a party state or federal land management agencies as forest land.

ARTICLE III—Contracts

Each party state may make one or more contracts with any one or more of the other party states for the assistance of one or more fire suppression units in forest fire suppression efforts. Any such contract shall provide for matters as may be necessary and appropriate to fix the obligations, responsibilities, and rights of the sending and receiving state.

The terms and provisions of this compact shall be part of any contract entered into by the authority of, or pursuant to, this compact. Nothing in any such contract may be inconsistent with this compact.

ARTICLE IV—Procedures and Rights

(a) Each party state shall appoint a liaison for the coordination and deployment of the fire suppression units of each party state.

(b) Whenever the duly constituted judicial or administrative authorities in a state party to this compact that has entered into a contract pursuant to this compact decides that the assistance of a fire suppression unit of a party state is required for forest fire suppression efforts, such authorities may request the assistance of one or more fire suppression units of any state party to this compact through an appointed liaison.

(c) Inmates who are members of a fire suppression unit shall at all times be subject to the jurisdiction of the sending state, and at all times shall be under the ultimate custody of corrections officers duly accredited by the sending state.

(d) The receiving state shall make adequate arrangements for the confinement of inmates who are members of a fire suppression unit of a sending state in the event corrections officers duly accredited by the sending state make a discretionary determination that an inmate requires institutional confinement.

(e) Cooperative efforts shall be made by corrections officers and personnel of the receiving state located at a fire camp with the corrections officers and other personnel of the sending state in the establishment and maintenance of fire suppression unit base camps.

(f) All inmates who are members of a fire suppression unit of a sending state shall be cared for and treated equally with such similar inmates of the receiving state.

(g) Further, in emergent situations a sending state shall be granted authority and all the protections of this compact to cross state lines with an inmate when, due to weather or road conditions, it is necessary to facilitate the transport of an inmate.

ARTICLE V—Acts Not Reviewable in Receiving State; Extradition

(a) If while located within the territory of a receiving state there occurs against the inmate within such state any criminal charge or if the inmate is suspected of committing within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment, or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate member of a fire suppression unit of the sending state who is deemed to have escaped by a duly accredited corrections officer of a sending state shall be under the jurisdiction of both the sending state and the receiving state. Nothing contained in this compact shall be construed to prevent or affect the activities of officers and guards of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI—Entry into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states from among the states of Idaho, Oregon, and Washington.

ARTICLE VII—Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it has enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states.

ARTICLE VIII—Other Arrangements Unaffected

Nothing contained in this compact may be construed to abrogate or impair any agreement that a party state may have with a nonparty state for the confinement, rehabilitation, or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE IX—Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person, or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person, or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1991 c 131 § 1.]

Severability—1991 c 131: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 c 131 § 3.]

72.64.160 Inmate forest fire suppression crews—Classification. For the purposes of RCW 72.64.150, inmate forest fire suppression crews may be considered a class I free venture industry, as defined in RCW 72.09.100, when fighting fires on federal lands. [1991 c 131 § 2.]

Severability—1991 c 131: See note following RCW 72.64.150.

Chapter 72.65 RCW WORK RELEASE PROGRAM

Sections

| | |
|-----------|---|
| 72.65.010 | Definitions. |
| 72.65.020 | Places of confinement—Extension of limits authorized, conditions—Application of section. |
| 72.65.030 | Application of prisoner to participate in program, contents—Application of section. |
| 72.65.040 | Approval or denial of application—Adoption of work release plan—Terms and conditions—Revocation—Reapplication—Application of section. |
| 72.65.050 | Disposition of earnings. |
| 72.65.060 | Earnings not subject to legal process. |
| 72.65.080 | Contracts with authorities for payment of expenses for housing participants—Procurement of housing facilities. |

- 72.65.090 Transportation, clothing, supplies for participants.
 72.65.100 Powers and duties of secretary—Rules and regulations—
 Cooperation of other state agencies directed.
 72.65.110 Earnings to be deposited in personal funds—Disbursements.
 72.65.120 Participants not considered agents or employees of the state—
 Contracting with persons, companies, etc., for labor of par-
 ticipants prohibited—Employee benefits and privileges
 extended to.
 72.65.130 Authority of board of prison terms and paroles not impaired.
 72.65.200 Participation in work release plan or program must be autho-
 rized by sentence or RCW 9.94A.728.
 72.65.210 Inmate participation eligibility standards—Department to con-
 duct overall review of work release program.
 72.65.220 Facility siting process.
 72.65.900 Effective date—1967 c 17.

Victims of crimes, reimbursement by convicted person as condition of work release or parole: RCW 7.68.120.

72.65.010 Definitions. As used in this chapter, the following terms shall have the following meanings:

- (1) "Department" shall mean the department of corrections.
- (2) "Secretary" shall mean the secretary of corrections.
- (3) "State correctional institutions" shall mean and include all state adult correctional facilities established pursuant to law under the jurisdiction of the department for the treatment of convicted felons sentenced to a term of confinement.
- (4) "Prisoner" shall mean a person either male or female, convicted of a felony and sentenced by the superior court to a term of confinement and treatment in a state correctional institution under the jurisdiction of the department.
- (5) "Superintendent" shall mean the superintendent of a state correctional institution, camp or other facility now or hereafter established under the jurisdiction of the department pursuant to law. [1992 c 7 § 56; 1985 c 350 § 4; 1981 c 136 § 110; 1979 c 141 § 274; 1967 c 17 § 1.]

Effective date—1981 c 136: See RCW 72.09.900.

Administrative departments and agencies—General provisions: RCW 43.17.010, 43.17.020.

72.65.020 Places of confinement—Extension of limits authorized, conditions—Application of section. (1) The secretary is authorized to extend the limits of the place of confinement and treatment within the state of any prisoner convicted of a felony, sentenced to a term of confinement and treatment by the superior court, and serving such sentence in a state correctional institution under the jurisdiction of the department, by authorizing a work release plan for such prisoner, permitting him, under prescribed conditions, to do any of the following:

- (a) Work at paid employment.
- (b) Participate in a vocational training program: **PROVIDED**, That the tuition and other expenses of such a vocational training program shall be paid by the prisoner, by someone in his behalf, or by the department: **PROVIDED FURTHER**, That any expenses paid by the department shall be recovered by the department pursuant to the terms of RCW 72.65.050.
- (c) Interview or make application to a prospective employer or employers, or enroll in a suitable vocational training program.

Such work release plan of any prison shall require that he be confined during the hours not reasonably necessary to implement the plan, in (1) a state correctional institution, (2)

a county or city jail, which jail has been approved after inspection pursuant to *RCW 70.48.050, or (3) any other appropriate, supervised facility, after an agreement has been entered into between the department and the appropriate authorities of the facility for the housing of work release prisoners.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 28; 1979 ex.s. c 160 § 1; 1979 c 141 § 275; 1967 c 17 § 2.]

***Reviser's note:** RCW 70.48.050 was repealed by 1987 c 462 § 23, effective January 1, 1988.

Effective dates—1984 c 209: See note following RCW 9.94A.030.

72.65.030 Application of prisoner to participate in program, contents—Application of section. (1) Any prisoner serving a sentence in a state correctional institution may make application to participate in the work release program to the superintendent of the institution in which he is confined. Such application shall set forth the name and address of his proposed employer or employers or shall specify the vocational training program, if any, in which he is enrolled. It shall include a statement to be executed by such prisoner that if his application be approved he agrees to abide faithfully by all terms and conditions of the particular work release plan adopted for him. It shall further set forth such additional information as the department or the secretary shall require.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 29; 1979 c 141 § 276; 1967 c 17 § 3.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

72.65.040 Approval or denial of application—Adoption of work release plan—Terms and conditions—Revocation—Reapplication—Application of section. (1) The superintendent of the state correctional institution in which a prisoner who has made application to participate in the work release program is confined, after careful study of the prisoner's conduct, attitude and behavior within the institutions under the jurisdiction of the department, his criminal history and all other pertinent case history material, shall determine whether or not there is reasonable cause to believe that the prisoner will honor his trust as a work release participant. After having made such determination, the superintendent, in his discretion, may deny the prisoner's application, or recommend to the secretary, or such officer of the department as the secretary may designate, that the prisoner be permitted to participate in the work release program. The secretary or his designee, may approve, reject, modify, or defer action on such recommendation. In the event of approval, the secretary or his designee, shall adopt a work release plan for the prisoner, which shall constitute an extension of the limits of confinement and treatment of the prisoner when released pursuant thereto, and which shall include such terms and conditions as may be deemed necessary and proper under the particular circumstances. The plan shall be signed by the prisoner under oath that he will faithfully abide by all terms and conditions thereof. Further, as a condition, the plan shall specify where such prisoner shall be confined when not released for the purpose of the work release plan. At any time after approval has been granted to any prisoner to participate in the work release

program, such approval may be revoked, and if the prisoner has been released on a work release plan, he may be returned to a state correctional institution, or the plan may be modified, in the sole discretion of the secretary or his designee. Any prisoner who has been initially rejected either by the superintendent or the secretary or his designee, may reapply for permission to participate in a work release program after a period of time has elapsed from the date of such rejection. This period of time shall be determined by the secretary or his designee, according to the individual circumstances in each case.

(2) This section applies only to persons sentenced for crimes that were committed before July 1, 1984. [1984 c 209 § 30; 1979 c 141 § 277; 1967 c 17 § 4.]

Effective dates—1984 c 209: See note following RCW 9.94A.030.

72.65.050 Disposition of earnings. A prisoner employed under a work release plan shall surrender to the secretary, or to the superintendent of such state correctional institution as shall be designated by the secretary in the plan, his or her total earnings, less payroll deductions required by law, or such payroll deductions as may reasonably be required by the nature of the employment and less such amount which his or her work release plan specifies he or she should retain to help meet his or her personal needs, including costs necessary for his or her participation in the work release plan such as expenses for travel, meals, clothing, tools and other incidentals. The secretary, or the superintendent of the state correctional institution designated in the work release plan shall deduct from such earnings, and make payments from such work release participant's earnings in the following order of priority:

(1) Reimbursement to the department for any expenses advanced for vocational training pursuant to RCW 72.65.020(2), or for expenses incident to a work release plan pursuant to RCW 72.65.090.

(2) Payment of board and room charges for the work release participant: **PROVIDED**, That if the participant is housed at a state correctional institution, the average daily per capita cost for the operation of such correctional institution, excluding capital outlay expenditures, shall be paid from the work release participant's earnings to the general fund of the state treasury: **PROVIDED FURTHER**, That if such work release participant is housed in another facility pursuant to agreement, then the charges agreed to between the department and the appropriate authorities of such facility shall be paid from the participant's earnings to such appropriate authorities.

(3) Payments for the necessary support of the work release participant's dependents, if any.

(4) Ten percent for payment of legal financial obligations for all work release participants who have legal financial obligations owing in any Washington state superior court.

(5) Payments to creditors of the work release participant, which may be made at his or her discretion and request, upon proper proof of personal indebtedness.

(6) Payments to the work release participant himself or herself upon parole or discharge, or for deposit in his or her personal account if returned to a state correctional institution

for confinement and treatment. [2002 c 126 § 3; 1979 c 141 § 278; 1967 c 17 § 5.]

72.65.060 Earnings not subject to legal process. The earnings of a work release participant shall not be subject to garnishment, attachment, or execution while such earnings are either in the possession of the employer or any state officer authorized to hold such funds, except for payment of a court-ordered legal financial obligation as that term is defined in RCW 72.11.010. [1989 c 252 § 21; 1967 c 17 § 6.]

Purpose—Prospective application—Effective dates—Severability—1989 c 252: See notes following RCW 9.94A.030.

72.65.080 Contracts with authorities for payment of expenses for housing participants—Procurement of housing facilities. The secretary may enter into contracts with the appropriate authorities for the payment of the cost of feeding and lodging and other expenses of housing work release participants. Such contracts may include any other terms and conditions as may be appropriate for the implementation of the work release program. In addition the secretary is authorized to acquire, by lease or contract, appropriate facilities for the housing of work release participants and providing for their subsistence and supervision. Such work release participants placed in leased or contracted facilities shall be required to reimburse the department the per capita cost of subsistence and lodging in accordance with the provisions and in the priority established by RCW 72.65.050(2). The location of such facilities shall be subject to the zoning laws of the city or county in which they may be situated. [1982 1st ex.s. c 48 § 18; 1981 c 136 § 111; 1979 c 141 § 279; 1969 c 109 § 1; 1967 c 17 § 8.]

Severability—1982 1st ex.s. c 48: See note following RCW 28B.14G.900.

Effective date—1981 c 136: See RCW 72.09.900.

Effective date—1969 c 109: "This act shall become effective on July 1, 1969." [1969 c 109 § 2.]

72.65.090 Transportation, clothing, supplies for participants. The department may provide transportation for work release participants to the designated places of housing under the work release plan, and may supply suitable clothing and such other equipment, supplies and other necessities as may be reasonably needed for the implementation of the plans adopted for such participation from the community services revolving fund as established in RCW 9.95.360: **PROVIDED**, That costs and expenditures incurred for this purpose may be deducted by the department from the earnings of the participants and deposited in the community services revolving fund. [1986 c 125 § 6; 1967 c 17 § 9.]

72.65.100 Powers and duties of secretary—Rules and regulations—Cooperation of other state agencies directed. The secretary is authorized to make rules and regulations for the administration of the provisions of this chapter to administer the work release program. In addition, the department shall:

- (1) Supervise and consult with work release participants;
- (2) Locate available employment or vocational training opportunities for qualified work release participants;

(3) Effect placement of work release participants under the program;

(4) Collect, account for and make disbursement from earnings of work release participants under the provisions of this chapter, including accounting for all inmate debt in the community services revolving fund. RCW 9.95.370 applies to inmates assigned to work/training release facilities who receive assistance as provided in RCW 9.95.310, 9.95.320, 72.65.050, and 72.65.090;

(5) Promote public understanding and acceptance of the work release program.

All state agencies shall cooperate with the department in the administration of the work release program as provided by this chapter. [1986 c 125 § 7; 1981 c 136 § 112; 1979 c 141 § 280; 1967 c 17 § 10.]

Effective date—1981 c 136: See RCW 72.09.900.

72.65.110 Earnings to be deposited in personal funds—Disbursements. All earnings of work release participants shall be deposited by the secretary, or the superintendent of a state correctional institution designated by the secretary in the work release plan, in personal funds. All disbursements from such funds shall be made only in accordance with the work release plans of such participants and in accordance with the provisions of this chapter. [1979 c 141 § 281; 1967 c 17 § 11.]

72.65.120 Participants not considered agents or employees of the state—Contracting with persons, companies, etc., for labor of participants prohibited—Employee benefits and privileges extended to. All participants who become engaged in employment or training under the work release program shall not be considered as agents, employees or involuntary servants of state and the department is prohibited from entering into a contract with any person, co-partnership, company or corporation for the labor of any participant under its jurisdiction: PROVIDED, That such work release participants shall be entitled to all benefits and privileges in their employment under the provisions of this chapter to the same extent as other employees of their employer, except that such work release participants shall not be eligible for unemployment compensation benefits pursuant to any of the provisions of Title 50 RCW until released on parole or discharged on expiration of their maximum sentences. [1967 c 17 § 12.]

72.65.130 Authority of board of prison terms and paroles not impaired. This chapter shall not be construed as affecting the authority of the *board of prison terms and paroles pursuant to the provisions of chapter 9.95 RCW over any person who has been approved for participation in the work release program. [1971 ex.s. c 58 § 1; 1967 c 17 § 13.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1971 ex.s. c 58: See note following RCW 72.66.010.

72.65.200 Participation in work release plan or program must be authorized by sentence or RCW 9.94A.728. The secretary may permit a prisoner to participate in any

(2004 Ed.)

work release plan or program but only if the participation is authorized pursuant to the prisoner's sentence or pursuant to RCW 9.94A.728. This section shall become effective July 1, 1984. [1981 c 137 § 35.]

Severability—1981 c 137: See RCW 9.94A.910.

72.65.210 Inmate participation eligibility standards—Department to conduct overall review of work release program. (1) The department shall establish, by rule, inmate eligibility standards for participation in the work release program.

(2) The department shall:

(a) Conduct an annual examination of each work release facility and its security procedures;

(b) Investigate and set standards for the inmate supervision policies of each work release facility;

(c) Establish physical standards for future work release structures to ensure the safety of inmates, employees, and the surrounding communities;

(d) Evaluate its recordkeeping of serious infractions to determine if infractions are properly and consistently assessed against inmates eligible for work release;

(e) The department shall establish a written treatment plan best suited to the inmate's needs, cost, and the relationship of community placement and community corrections officers to a system of case management;

(f) Adopt a policy to encourage businesses employing work release inmates to contact the appropriate work release facility whenever an inmate is absent from his or her work schedule. The department of corrections shall provide each employer with written information and instructions on who should be called if a work release employee is absent from work or leaves the job site without authorization; and

(g) Develop a siting policy, in conjunction with cities, counties, community groups, and the department of community, trade, and economic development for the establishment of additional work release facilities. Such policy shall include at least the following elements: (i) Guidelines for appropriate site selection of work-release facilities; (ii) notification requirements to local government and community groups of intent to site a work release facility; and (iii) guidelines for effective community relations by the work release program operator.

The department shall comply with the requirements of this section by July 1, 1990. [1998 c 245 § 142; 1995 c 399 § 203; 1989 c 89 § 1.]

72.65.220 Facility siting process. (1) The department or a private or public entity under contract with the department may establish or relocate for the operation of a work release or other community-based facility only after public notifications and local public meetings have been completed consistent with this section.

(2) The department and other state agencies responsible for siting department-owned, operated, or contracted facilities shall establish a process for early and continuous public participation in establishing or relocating work release or other community-based facilities. This process shall include public meetings in the local communities affected, opportuni-

ties for written and oral comments, and wide dissemination of proposals and alternatives, including at least the following:

(a) When the department or a private or public entity under contract with the department has selected three or fewer sites for final consideration of a department-owned, operated, or contracted work release or other community-based facility, the department or contracting organization shall make public notification and conduct public hearings in the local communities of the final three or fewer proposed sites. An additional public hearing after public notification shall also be conducted in the local community selected as the final proposed site.

(b) Notifications required under this section shall be provided to the following:

(i) All newspapers of general circulation in the local area and all local radio stations, television stations, and cable networks;

(ii) Appropriate school districts, private schools, kindergartens, city and county libraries, and all other local government offices within a one-half mile radius of the proposed site or sites;

(iii) The local chamber of commerce, local economic development agencies, and any other local organizations that request such notification from the department; and

(iv) In writing to all residents and/or property owners within a one-half mile radius of the proposed site or sites.

(3) When the department contracts for the operation of a work release or other community-based facility that is not owned or operated by the department, the department shall require as part of its contract that the contracting entity comply with all the public notification and public hearing requirements as provided in this section for each located and relocated work release or other community-based facility. [1997 c 348 § 1; 1994 c 271 § 1001.]

Effective date—1994 c 271 § 1001: "Section 1001 of this act shall take effect July 1, 1994." [1994 c 271 § 1101.]

Purpose—Severability—1994 c 271: See notes following RCW 9A.28.020.

72.65.900 Effective date—1967 c 17. This act shall become effective on July 1, 1967. [1967 c 17 § 14.]

Chapter 72.66 RCW

FURLOUGHS FOR PRISONERS

Sections

| | |
|-----------|--|
| 72.66.010 | Definitions. |
| 72.66.012 | Granting of furloughs authorized. |
| 72.66.014 | Ineligibility. |
| 72.66.016 | Minimum time served requirement. |
| 72.66.018 | Grounds for granting furlough. |
| 72.66.022 | Application—Contents. |
| 72.66.024 | Sponsor. |
| 72.66.026 | Furlough terms and conditions. |
| 72.66.028 | Furlough order—Contents. |
| 72.66.032 | Furlough identification card. |
| 72.66.034 | Applicant's personality and conduct—Examination. |
| 72.66.036 | Furlough duration—Extension. |
| 72.66.038 | Furlough infractions—Reporting—Regaining custody. |
| 72.66.042 | Emergency furlough—Waiver of certain requirements. |
| 72.66.044 | Application proceeding not deemed adjudicative proceeding. |
| 72.66.050 | Revocation or modification of furlough plan—Reapplication. |
| 72.66.070 | Transportation, clothing and funds for furloughed prisoners. |
| 72.66.080 | Powers and duties of secretary—Certain agreements—Rules and regulations. |

72.66.090 Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough.

Reviser's note: Throughout this chapter "this act" has been changed to "this chapter." "This act" [1971 ex.s. c 58] consists of this chapter and the 1971 amendment to RCW 72.65.130.

Leaves of absence for inmates: RCW 72.01.365 through 72.01.380.

72.66.010 Definitions. As used in this chapter the following words shall have the following meanings:

(1) "Department" means the department of corrections.

(2) "Furlough" means an authorized leave of absence for an eligible resident, without any requirement that the resident be accompanied by, or be in the custody of, any law enforcement or corrections official while on such leave.

(3) "Emergency furlough" means a specially expedited furlough granted to a resident to enable him to meet an emergency situation, such as the death or critical illness of a member of his family.

(4) "Resident" means a person convicted of a felony and serving a sentence for a term of confinement in a state correctional institution or facility, or a state approved work or training release facility.

(5) "Secretary" means the secretary of corrections, or his designee or designees. [1981 c 136 § 113; 1973 c 20 § 2; 1971 ex.s. c 58 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

Construction—Prior rules and regulations—1973 c 20: "The provisions of this 1973 amendatory act shall not affect the validity of any rule or regulation adopted prior to the effective date of this 1973 amendatory act [June 7, 1973], if such rule or regulation is not in conflict with any provision of this 1973 amendatory act." [1973 c 20 § 17.]

Effective date—1971 ex.s. c 58: "This act shall become effective on July 1, 1971." [1971 ex.s. c 58 § 11.]

72.66.012 Granting of furloughs authorized. The secretary may grant a furlough but only if not precluded from doing so under RCW 72.66.014, 72.66.016, 72.66.018, 72.66.024, 72.66.034, or 72.66.036. [1973 c 20 § 3.]

72.66.014 Ineligibility. A resident may apply for a furlough if he is not precluded from doing so under this section. A resident shall be ineligible to apply for a furlough if:

(1) He is not classified by the secretary as eligible for or on minimum security status; or

(2) His minimum term of imprisonment has not been set; or

(3) He has a valid detainer pending and the agency holding the detainer has not provided written approval for him to be placed on a furlough-eligible status. Such written approval may include either specific approval for a particular resident or general approval for a class or group of residents. [1973 c 20 § 4.]

72.66.016 Minimum time served requirement. (1) A furlough shall not be granted to a resident if the furlough would commence prior to the time the resident has served the minimum amounts of time provided under this section:

(a) If his minimum term of imprisonment is longer than twelve months, he shall have served at least six months of the term;

(b) If his minimum term of imprisonment is less than twelve months, he shall have served at least ninety days and shall have no longer than six months left to serve on his minimum term;

(c) If he is serving a mandatory minimum term of confinement, he shall have served all but the last six months of such term.

(2) A person convicted and sentenced for a violent offense as defined in RCW 9.94A.030 is not eligible for furlough until the person has served at least one-half of the minimum term as established by the *board of prison terms and paroles or the sentencing guidelines commission. [1983 c 255 § 8; 1973 c 20 § 5.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

Severability—1983 c 255: See RCW 72.74.900.

72.66.018 Grounds for granting furlough. A furlough may only be granted to enable the resident:

(1) To meet an emergency situation, such as death or critical illness of a member of his family;

(2) To obtain medical care not available in a facility maintained by the department;

(3) To seek employment or training opportunities, but only when:

(a) There are scheduled specific work interviews to take place during the furlough;

(b) The resident has been approved for work or training release but his work or training placement has not occurred or been concluded; or

(c) When necessary for the resident to prepare a parole plan for a parole meeting scheduled to take place within one hundred and twenty days of the commencement of the furlough;

(4) To make residential plans for parole which require his personal appearance in the community;

(5) To care for business affairs in person when the inability to do so could deplete the assets or resources of the resident so seriously as to affect his family or his future economic security;

(6) To visit his family for the purpose of strengthening or preserving relationships, exercising parental responsibilities, or preventing family division or disintegration; or

(7) For any other purpose deemed to be consistent with plans for rehabilitation of the resident. [1973 c 20 § 6.]

72.66.022 Application—Contents. Each resident applying for a furlough shall include in his application for the furlough:

(1) A furlough plan which shall specify in detail the purpose of the furlough and how it is to be achieved, the address at which the applicant would reside, the names of all persons residing at such address and their relationships to the applicant;

(2) A statement from the applicant's proposed sponsor that he agrees to undertake the responsibilities provided in RCW 72.66.024; and

(3) Such other information as the secretary shall require in order to protect the public or further the rehabilitation of the applicant. [1973 c 20 § 7.]

(2004 Ed.)

72.66.024 Sponsor. No furlough shall be granted unless the applicant for the furlough has procured a person to act as his sponsor. No person shall qualify as a sponsor unless he satisfies the secretary that he knows the applicant's furlough plan, is familiar with the furlough conditions prescribed pursuant to RCW 72.66.026, and submits a statement that he agrees to:

(1) See to it that the furloughed person is provided with appropriate living quarters for the duration of the furlough;

(2) Notify the secretary immediately if the furloughed person does not appear as scheduled, departs from the furlough plan at any time, becomes involved in serious difficulty during the furlough, or experiences problems that affect his ability to function appropriately;

(3) Assist the furloughed person in other appropriate ways, such as discussing problems and providing transportation to job interviews; and

(4) Take reasonable measures to assist the resident to return from furlough. [1973 c 20 § 8.]

72.66.026 Furlough terms and conditions. The terms and conditions prescribed under this section shall apply to each furlough, and each resident granted a furlough shall agree to abide by them.

(1) The furloughed person shall abide by the terms of his furlough plan.

(2) Upon arrival at the destination indicated in his furlough plan, the furloughed person shall, when so required, report to a state probation and parole officer in accordance with instructions given by the secretary prior to release on furlough. He shall report as frequently as may be required by the state probation and parole officer.

(3) The furloughed person shall abide by all local, state and federal laws.

(4) With approval of the state probation and parole officer designated by the secretary, the furloughed person may accept temporary employment during a period of furlough.

(5) The furloughed person shall not leave the state at any time while on furlough.

(6) Other limitations on movement within the state may be imposed as a condition of furlough.

(7) The furloughed person shall not, in any public place, drink intoxicating beverages or be in an intoxicated condition. A furloughed person shall not enter any tavern, bar, or cocktail lounge.

(8) A furloughed person who drives a motor vehicle shall:

(a) have a valid Washington driver's license in his possession,

(b) have the owner's written permission to drive any vehicle not his own or his spouse's,

(c) have at least minimum personal injury and property damage liability coverage on the vehicle he is driving, and

(d) observe all traffic laws.

(9) Each furloughed person shall carry with him at all times while on furlough a copy of his furlough order prescribed pursuant to RCW 72.66.028 and a copy of the identification card issued to him pursuant to RCW 72.66.032.

(10) The furloughed person shall comply with any other terms or conditions which the secretary may prescribe. [1973 c 20 § 9.]

72.66.028 Furlough order—Contents. Whenever the secretary grants a furlough, he shall do so by a special order which order shall contain each condition and term of furlough prescribed pursuant to RCW 72.66.026 and each additional condition and term which the secretary may prescribe as being appropriate for the particular person to be furloughed. [1973 c 20 § 10.]

72.66.032 Furlough identification card. The secretary shall issue a furlough identification card to each resident granted a furlough. The card shall contain the name of the resident and shall disclose the fact that he has been granted a furlough and the time period covered by the furlough. [1973 c 20 § 11.]

72.66.034 Applicant's personality and conduct—Examination. Prior to the granting of any furlough, the secretary shall examine the applicant's personality and past conduct and determine whether or not he represents a satisfactory risk for furlough. The secretary shall not grant a furlough to any person whom he believes represents an unsatisfactory risk. [1973 c 20 § 12.]

72.66.036 Furlough duration—Extension. (1) The furlough or furloughs granted to any one resident, excluding furloughs for medical care, may not exceed thirty consecutive days or a total of sixty days during a calendar year.

(2) Absent unusual circumstances, each first furlough and each second furlough granted to a resident shall not exceed a period of five days and each emergency furlough shall not exceed forty-eight hours plus travel time.

(3) A furlough may be extended within the maximum time periods prescribed under this section. [1983 c 255 § 7; 1973 c 20 § 13.]

Severability—1983 c 255: See RCW 72.74.900.

72.66.038 Furlough infractions—Reporting—Regaining custody. Any employee of the department having knowledge of a furlough infraction shall report the facts to the secretary. Upon verification, the secretary shall cause the custody of the furloughed person to be regained, and for this purpose may cause a warrant to be issued. [1973 c 20 § 14.]

72.66.042 Emergency furlough—Waiver of certain requirements. In the event of an emergency furlough, the secretary may waive all or any portion of RCW 72.66.014(2), 72.66.016, 72.66.022, 72.66.024, and 72.66.026. [1973 c 20 § 15.]

72.66.044 Application proceeding not deemed adjudicative proceeding. Any proceeding involving an application for a furlough shall not be deemed an adjudicative proceeding under the provisions of chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 144; 1973 c 20 § 16.]

Effective date—1989 c 175: See note following RCW 34.05.010.

72.66.050 Revocation or modification of furlough plan—Reapplication. At any time after approval has been granted for a furlough to any prisoner, such approval or order of furlough may be revoked, and if the prisoner has been released on an order of furlough, he may be returned to a state correctional institution, or the plan may be modified, in the discretion of the secretary. Any prisoner whose furlough application is rejected may reapply for a furlough after such period of time has elapsed as shall be determined at the time of rejection by the superintendent or secretary, whichever person initially rejected the application for furlough, such time period being subject to modification. [1971 ex.s. c 58 § 6.]

72.66.070 Transportation, clothing and funds for furloughed prisoners. The department may provide or arrange for transportation for furloughed prisoners to the designated place of residence within the state and may, in addition, supply funds not to exceed forty dollars and suitable clothing, such clothing to be returned to the institution on the expiration of furlough. [1971 ex.s. c 58 § 8.]

72.66.080 Powers and duties of secretary—Certain agreements—Rules and regulations. The secretary may enter into agreements with any agency of the state, a county, a municipal corporation or any person, corporation or association for the purpose of implementing furlough plans, and, in addition, may make such rules and regulations in furtherance of this chapter as he may deem necessary. [1971 ex.s. c 58 § 9.]

72.66.090 Violation or revocation of furlough—Authority of secretary to issue arrest warrants—Enforcement of warrants by law enforcement officers—Authority of probation and parole officer to suspend furlough. The secretary may issue warrants for the arrest of any prisoner granted a furlough, at the time of the revocation of such furlough, or upon the failure of the prisoner to report as designated in the order of furlough. Such arrest warrants shall authorize any law enforcement, probation and parole or peace officer of this state, or any other state where such prisoner may be located, to arrest such prisoner and to place him in physical custody pending his return to confinement in a state correctional institution. Any state probation and parole officer, if he has reasonable cause to believe that a person granted a furlough has violated a condition of his furlough, may suspend such person's furlough and arrest or cause the arrest and detention in physical custody of the furloughed prisoner, pending the determination of the secretary whether the furlough should be revoked. The probation and parole officer shall report to the secretary all facts and circumstances and the reasons for the action of suspending such furlough. Upon the basis of the report and such other information as the secretary may obtain, he may revoke, reinstate or modify the conditions of furlough, which shall be by written order of the secretary. If the furlough is revoked, the secretary shall issue a warrant for the arrest of the furloughed prisoner and his return to a state correctional institution. [1971 ex.s. c 58 § 10.]

Chapter 72.68 RCW

TRANSFER, REMOVAL, TRANSPORTATION—
DETENTION CONTRACTS

Sections

| | |
|-----------|--|
| 72.68.001 | Definitions. |
| 72.68.010 | Transfer of prisoners. |
| 72.68.012 | Transfer to private institutions—Intent—Authority. |
| 72.68.020 | Transportation of prisoners. |
| 72.68.031 | Transfer or removal of person in correctional institution to institution for mentally ill. |
| 72.68.032 | Transfer or removal of person in institution for mentally ill to other institution. |
| 72.68.035 | Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined. |
| 72.68.037 | Transfer or removal of committed or confined persons—Record—Notice. |
| 72.68.040 | Contracts for detention of felons convicted in this state. |
| 72.68.045 | Transfer to out-of-state institution—Notice to victims. |
| 72.68.050 | Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner. |
| 72.68.060 | Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings. |
| 72.68.070 | Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires. |
| 72.68.075 | Contracts with other states or territories for care, confinement or rehabilitation of female prisoners. |
| 72.68.080 | Federal prisoners, or from other state—Authority to receive. |
| 72.68.090 | Federal prisoners, or from other state—Per diem rate for keep. |
| 72.68.100 | Federal prisoners, or from other state—Space must be available. |

Child under eighteen convicted of crime amounting to felony—Placement—Segregation from adult offenders: RCW 72.01.410.

Correctional employees: RCW 9.94.050.

Western interstate corrections compact: Chapter 72.70 RCW.

72.68.001 Definitions. As used in this chapter:

"Department" means the department of corrections; and

"Secretary" means the secretary of corrections. [1981 c 136 § 114.]

Effective date—1981 c 136: See RCW 72.09.900.

72.68.010 Transfer of prisoners. (1) Whenever in its judgment the best interests of the state or the welfare of any prisoner confined in any penal institution will be better served by his or her transfer to another institution or to a foreign country of which the prisoner is a citizen or national, the secretary may effect such transfer consistent with applicable federal laws and treaties. The secretary has the authority to transfer offenders out-of-state to private or governmental institutions if the secretary determines that transfer is in the best interest of the state or the offender. The determination of what is in the best interest of the state or offender may include but is not limited to considerations of overcrowding, emergency conditions, or hardship to the offender. In determining whether the transfer will impose a hardship on the offender, the secretary shall consider: (a) The location of the offender's family and whether the offender has maintained contact with members of his or her family; (b) whether, if the offender has maintained contact, the contact will be significantly disrupted by the transfer due to the family's inability to maintain the contact as a result of the transfer; and (c) whether the offender is enrolled in a vocational or educational program that cannot reasonably be resumed if the offender is returned to the state.

(2004 Ed.)

(2) If directed by the governor, the secretary shall, in carrying out this section and RCW 43.06.350, adopt rules under chapter 34.05 RCW to effect the transfer of prisoners requesting transfer to foreign countries. [2000 c 62 § 2; 1983 c 255 § 10; 1979 c 141 § 282; 1959 c 28 § 72.68.010. Prior: 1955 c 245 § 2; 1935 c 114 § 5; RRS § 10249-5. Formerly RCW 9.95.180.]

Effective date—2000 c 62: See note following RCW 72.68.012.

Severability—1983 c 255: See RCW 72.74.900.

72.68.012 Transfer to private institutions—Intent—Authority. The legislature has in the past allowed funding for transfer of convicted felons to a private institution in another state. It is the legislature's intent to clarify the law to reflect that the secretary of corrections has authority to contract with private corporations to house felons out-of-state and has had that authority since before February 1, 1999, when specific authority to expend funds during specified bienniums was granted under RCW 72.09.050. The secretary has the authority to expend funds between February 1, 1999, and June 30, 2001, for contracts with private corporations to house felons out-of-state. [2000 c 62 § 1.]

Effective date—2000 c 62: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2000]." [2000 c 62 § 5.]

72.68.020 Transportation of prisoners. (1) The secretary shall transport prisoners under supervision:

(a) To and between state correctional facilities under the jurisdiction of the secretary;

(b) From a county, city, or municipal jail to an institution mentioned in (a) of this subsection and to a county, city, or municipal jail from an institution mentioned in (a) of this subsection.

(2) The secretary may employ necessary persons for such purpose. [1992 c 7 § 57; 1979 c 141 § 283; 1959 c 28 § 72.68.020. Prior: 1955 c 245 § 1. Formerly RCW 9.95.181.]

Correctional employees: RCW 9.94.050.

72.68.031 Transfer or removal of person in correctional institution to institution for mentally ill. When, in the judgment of the secretary, the welfare of any person committed to or confined in any state correctional institution or facility necessitates that such person be transferred or moved for observation, diagnosis or treatment to any state institution or facility for the care of the mentally ill, the secretary, with the consent of the secretary of social and health services, is authorized to order and effect such move or transfer: PROVIDED, That the sentence of such person shall continue to run as if he remained confined in a correctional institution or facility, and that such person shall not continue so detained or confined beyond the maximum term to which he was sentenced: PROVIDED, FURTHER, That the secretary and the *board of prison terms and paroles shall adopt and implement procedures to assure that persons so transferred shall, while detained or confined at such institution or facility for the care of the mentally ill, be provided with substantially similar opportunities for parole or early release evaluation and determination as persons detained or confined in the state correc-

tional institutions or facilities. [1981 c 136 § 115; 1972 ex.s. c 59 § 1.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indefinite sentence review board" by 1986 c 224, effective July 1, 1986.

Effective date—1981 c 136: See RCW 72.09.900.

72.68.032 Transfer or removal of person in institution for mentally ill to other institution. When, in the judgment of the secretary of the department of social and health services, the welfare of any person committed to or confined in any state institution or facility for the care of the mentally ill necessitates that such person be transferred or moved for observation, diagnosis, or treatment, or for different security status while being observed, diagnosed or treated to any other state institution or facility for the care of the mentally ill, the secretary of social and health services is authorized to order and effect such move or transfer. [1981 c 136 § 116; 1972 ex.s. c 59 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

72.68.035 Transfer or removal of committed or confined persons—State institution or facility for the care of the mentally ill, defined. As used in RCW 72.68.031 and 72.68.032, the phrase "state institution or facility for the care of the mentally ill" shall mean any hospital, institution or facility operated and maintained by the state of Washington which has as its principal purpose the care of the mentally ill, whether such hospital, institution or facility is physically located within or outside the geographical or structural confines of a state correctional institution or facility: PROVIDED, That whether a state institution or facility for the care of the mentally ill be physically located within or outside the geographical or structural confines of a state correctional institution or facility, it shall be administered separately from the state correctional institution or facility, and in conformity with its principal purpose. [1972 ex.s. c 59 § 3.]

72.68.037 Transfer or removal of committed or confined persons—Record—Notice. Whenever a move or transfer is made pursuant to RCW 72.68.031 or 72.68.032, a record shall be made and the relatives, attorney, if any, and guardian, if any, of the person moved shall be notified of the move or transfer. [1972 ex.s. c 59 § 4.]

72.68.040 Contracts for detention of felons convicted in this state. The secretary may contract with the authorities of the federal government, or the authorities of any state of the United States, private companies in other states, or any county or city in this state providing for the detention in an institution or jail operated by such entity, for prisoners convicted of a felony in the courts of this state and sentenced to a term of imprisonment therefor in a state correctional institution for convicted felons under the jurisdiction of the department. After the making of a contract under this section, prisoners sentenced to a term of imprisonment in a state correctional institution for convicted felons may be conveyed by the superintendent or his assistants to the institution or jail named in the contract. The prisoners shall be delivered to the authorities of the institution or jail, there to be confined until

their sentences have expired or they are otherwise discharged by law, paroled or until they are returned to a state correctional institution for convicted felons for further confinement. [2000 c 62 § 3; 1981 c 136 § 117; 1979 c 141 § 284; 1967 c 60 § 1; 1959 c 47 § 1; 1959 c 28 § 72.68.040. Prior: 1957 c 27 § 1. Formerly RCW 9.95.184.]

Effective date—2000 c 62: See note following RCW 72.68.012.

Effective date—1981 c 136: See RCW 72.09.900.

72.68.045 Transfer to out-of-state institution—Notice to victims. (1) If the secretary transfers any offender to an institution in another state after March 22, 2000, the secretary shall, prior to the transfer, review the records of victims registered with the department. If any registered victim of the offender resides: (a) In the state to which the offender is to be transferred; or (b) in close proximity to the institution to which the offender is to be transferred, the secretary shall notify the victim prior to the transfer and consider the victim's concerns about the transfer.

(2) Any victim notified under subsection (1) of this section shall also be notified of the return of the offender to a facility in Washington, prior to the return.

(3) The secretary shall develop a written policy to define "close proximity" for purposes of this section. [2000 c 62 § 4.]

Effective date—2000 c 62: See note following RCW 72.68.012.

72.68.050 Contracts with other governmental units for detention of felons convicted in this state—Notice of transfer of prisoner. Whenever a prisoner who is serving a sentence imposed by a court of this state is transferred from a state correctional institution for convicted felons under RCW 72.68.040 through 72.68.070, the superintendent shall send to the clerk of the court pursuant to whose order or judgment the prisoner was committed to a state correctional institution for convicted felons a notice of transfer, disclosing the name of the prisoner transferred and giving the name and location of the institution to which the prisoner was transferred. The superintendent shall keep a copy of all notices of transfer on file as a public record open to inspection; and the clerk of the court shall file with the judgment roll in the appropriate case a copy of each notice of transfer which he receives from the superintendent. [1967 c 60 § 2; 1959 c 47 § 2; 1959 c 28 § 72.68.050. Prior: 1957 c 27 § 2. Formerly RCW 9.95.185.]

72.68.060 Contracts with other governmental units for detention of felons convicted in this state—Procedure when transferred prisoner's presence required in judicial proceedings. Should the presence of any prisoner confined, under authority of RCW 72.68.040 through 72.68.070, in an institution of another state or the federal government or in a county or city jail, be required in any judicial proceeding of this state, the superintendent of a state correctional institution for convicted felons or his assistants shall, upon being so directed by the secretary, or upon the written order of any court of competent jurisdiction, or of a judge thereof, procure such prisoner, bring him to the place directed in such order and hold him in custody subject to the further order and direction of the secretary, or of the court or of a judge thereof, until he is lawfully discharged from such custody. The superinten-

dent or his assistants may, by direction of the secretary or of the court, or a judge thereof, deliver such prisoner into the custody of the sheriff of the county in which he was convicted, or may, by like order, return such prisoner to a state correctional institution for convicted felons or the institution from which he was taken. [1979 c 141 § 285; 1967 c 60 § 3; 1959 c 47 § 3; 1959 c 28 § 72.68.060. Prior: 1957 c 27 § 3. Formerly RCW 9.95.186.]

72.68.070 Contracts with other governmental units for detention of felons convicted in this state—Procedure regarding prisoner when contract expires. Upon the expiration of any contract entered into under RCW 72.68.040 through 72.68.070, all prisoners of this state confined in such institution or jail shall be returned by the superintendent or his assistants to a state correctional institution for convicted felons of this state, or delivered to such other institution as the secretary has contracted with under RCW 72.68.040 through 72.68.070. [1979 c 141 § 286; 1967 c 60 § 4; 1959 c 47 § 4; 1959 c 28 § 72.68.070. Prior: 1957 c 27 § 4. Formerly RCW 9.95.187.]

72.68.075 Contracts with other states or territories for care, confinement or rehabilitation of female prisoners. The secretary is hereby authorized to contract for the care, confinement and rehabilitation of female prisoners of other states or territories of the United States, as more specifically provided in the Western Interstate Corrections Compact, as contained in chapter 72.70 RCW as now or hereafter amended. [1979 c 141 § 287; 1967 ex.s. c 122 § 12.]

72.68.080 Federal prisoners, or from other state—Authority to receive. All persons sentenced to prison by the authority of the United States or of any state or territory of the United States may be received by the department and imprisoned in a state correctional institution as defined in RCW 72.65.010 in accordance with the sentence of the court by which they were tried. The prisoners so confined shall be subject in all respects to discipline and treatment as though committed under the laws of this state. [1983 c 255 § 11; 1967 ex.s. c 122 § 10; 1959 c 28 § 72.68.080. Prior: 1951 c 135 § 1. Formerly RCW 72.08.350.]

Severability—1983 c 255: See RCW 72.74.900.

72.68.090 Federal prisoners, or from other state—Per diem rate for keep. The secretary is authorized to enter into contracts with the proper officers or agencies of the United States and of other states and territories of the United States relative to the per diem rate to be paid the state of Washington for the conditions of the keep of each prisoner. [1979 c 141 § 288; 1959 c 28 § 72.68.090. Prior: 1951 c 135 § 2. Formerly RCW 72.08.360.]

72.68.100 Federal prisoners, or from other state—Space must be available. The secretary shall not enter into any contract for the care or commitment of any prisoner of the federal government or any other state unless there is vacant space and unused facilities in state correctional facilities. [1992 c 7 § 58; 1979 c 141 § 289; 1967 ex.s. c 122 § 11;

(2004 Ed.)

1959 c 28 § 72.68.100. Prior: 1951 c 135 § 3. Formerly RCW 72.08.370.]

Chapter 72.70 RCW WESTERN INTERSTATE CORRECTIONS COMPACT

Sections

| | |
|-----------|--|
| 72.70.010 | Compact enacted—Provisions. |
| 72.70.020 | Secretary authorized to receive or transfer inmates pursuant to contract. |
| 72.70.030 | Responsibilities of courts, departments, agencies and officers. |
| 72.70.040 | Hearings. |
| 72.70.050 | Secretary may enter into contracts. |
| 72.70.060 | Secretary may provide clothing, etc., to inmate released in another state. |
| 72.70.900 | Severability—Liberal construction—1959 c 287. |

Compacts for out-of-state supervision of parolees or probationers: RCW 9.95.270.

Interstate compact on juveniles: Chapter 13.24 RCW.

72.70.010 Compact enacted—Provisions. The Western Interstate Corrections Compact as contained herein is hereby enacted into law and entered into on behalf of this state with any and all other states legally joining therein in a form substantially as follows:

WESTERN INTERSTATE CORRECTIONS COMPACT

ARTICLE I—Purpose and Policy

The party states, desiring by common action to improve their institutional facilities and provide programs of sufficiently high quality for the confinement, treatment and rehabilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, thereby serving the best interests of such offenders and of society. The purpose of this compact is to provide for the development and execution of such programs of cooperation for the confinement, treatment and rehabilitation of offenders.

ARTICLE II—Definitions

As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States, or, subject to the limitation contained in Article VII, Guam.

(b) "Sending state" means a state party to this compact in which conviction was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction was had.

(d) "Inmate" means a male or female offender who is under sentence to or confined in a prison or other correctional institution.

(e) "Institution" means any prison, reformatory or other correctional facility except facilities for the mentally ill or mentally handicapped in which inmates may lawfully be confined.

ARTICLE III—Contracts

(a) Each party state may make one or more contracts with any one or more of the other party states for the confine-

ment of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

1. Its duration.
2. Payments to be made to the receiving state by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance.

3. Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom.

4. Delivery and retaking of inmates.

5. Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) Prior to the construction or completion of construction of any institution or addition thereto by a party state, any other party state or states may contract therewith for the enlargement of the planned capacity of the institution or addition thereto, or for the inclusion therein of particular equipment or structures, and for the reservation of a specific percentage of the capacity of the institution to be kept available for use by inmates of the sending state or states so contracting. Any sending state so contracting may, to the extent that monies are legally available therefor, pay to the receiving state, a reasonable sum as consideration for such enlargement of capacity, or provision of equipment or structures, and reservation of capacity. Such payment may be in a lump sum or in installments as provided in the contract.

(c) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto, and nothing in any such contract shall be inconsistent therewith.

ARTICLE IV—Procedures and Rights

(a) Whenever the duly constituted judicial or administrative authorities in a state party to this compact, and which has entered into a contract pursuant to Article III, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary in order to provide adequate quarters and care or desirable in order to provide an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to con-

fine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state; provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of Article III.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact including a conduct record of each inmate and certify said record to the official designated by the sending state, in order that each inmate may have the benefit of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be cared for and treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record together with any recommendations of the hearing officials shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state. Costs of records made pursuant to this subdivision shall be borne by the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parent, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise, or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power

in respect of any inmate confined pursuant to the terms of this compact.

ARTICLE V—Acts Not Reviewable In Receiving State; Extradition

(a) Any decision of the sending state in respect of any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is suspected of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharged from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

ARTICLE VI—Federal Aid

Any state party to this compact may accept federal aid for use in connection with an institution or program, the use of which is or may be affected by this compact or any contract pursuant thereto and any inmate in a receiving state pursuant to this compact may participate in any such federally aided program or activity for which the sending and receiving states have made contractual provision; provided that if such program or activity is not part of the customary correctional regimen the express consent of the appropriate official of the sending state shall be required therefor.

ARTICLE VII—Entry Into Force

This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two contiguous states from among the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Montana, Nebraska, Nevada, New Mexico, Oregon, Utah, Washington and Wyoming. For the purposes of this article, Alaska and Hawaii shall be deemed contiguous to each other; to any and all of the states of California, Oregon and Washington; and to Guam. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states, or any other state contiguous to at least one party state upon similar action by such state. Guam may become party to this compact by taking action similar to that provided for joinder by any other eligible party state and upon the consent of Congress to such joinder. For the purposes of this article, Guam shall be deemed contiguous to Alaska, Hawaii, California, Oregon and Washington.

(2004 Ed.)

ARTICLE VIII—Withdrawal and Termination

This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate officials of all other party states. An actual withdrawal shall not take effect until two years after the notices provided in said statute have been sent. Such withdrawal shall not relieve the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

ARTICLE IX—Other Arrangements Unaffected

Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a non-party state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

ARTICLE X—Construction and Severability

The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1977 ex.s. c 80 § 69; 1959 c 287 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

72.70.020 Secretary authorized to receive or transfer inmates pursuant to contract. The secretary of corrections is authorized to receive or transfer an inmate as defined in Article II(d) of the Western Interstate Corrections Compact to any institution as defined in Article II(e) of the Western Interstate Corrections Compact within this state or without this state, if this state has entered into a contract or contracts for the confinement of inmates in such institutions pursuant to Article III of the Western Interstate Corrections Compact. [1981 c 136 § 118; 1979 c 141 § 290; 1959 c 287 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

72.70.030 Responsibilities of courts, departments, agencies and officers. The courts, departments, agencies and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact. [1959 c 287 § 3.]

72.70.040 Hearings. The secretary and members of the *board of prison terms and paroles are hereby authorized and directed to hold such hearings as may be requested by any other party state pursuant to Article IV(f) of the Western Interstate Corrections Compact. Additionally, the secretary and members of the *board of prison terms and paroles may hold out-of-state hearings in connection with the case of any inmate of this state confined in an institution of another state party to the Western Interstate Corrections Compact. [1979 c 141 § 291; 1959 c 287 § 4.]

***Reviser's note:** The "board of prison terms and paroles" was redesignated the "indeterminate sentence review board" by 1986 c 224, effective July 1, 1986.

72.70.050 Secretary may enter into contracts. The secretary of corrections is hereby empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Western Interstate Corrections Compact pursuant to Article III thereof. No such contract shall be of any force or effect until approved by the attorney general. [1981 c 136 § 119; 1979 c 141 § 292; 1959 c 287 § 5.]

Effective date—1981 c 136: See RCW 72.09.900.

72.70.060 Secretary may provide clothing, etc., to inmate released in another state. If any agreement between this state and any other state party to the Western Interstate Corrections Compact enables the release of an inmate of this state confined in an institution of another state to be released in such other state in accordance with Article IV(g) of this compact, then the secretary is authorized to provide clothing, transportation and funds to such inmate in accordance with the provisions of chapter 72.02 RCW. [1983 c 3 § 186; 1979 c 141 § 293; 1959 c 287 § 6.]

72.70.900 Severability—Liberal construction—1959 c 287. The provisions of this act shall be severable and if any phrase, clause, sentence, or provision of this act is declared to be unconstitutional or the applicability thereof to any state, agency, person or circumstance is held invalid, the constitutionality of this act and the applicability thereof to any other state, agency, person or circumstance shall, with respect to all severable matters, not be affected thereby. It is the legislative intent that the provisions of this act be reasonably and liberally construed. [1959 c 287 § 7.]

Chapter 72.72 RCW

CRIMINAL BEHAVIOR OF RESIDENTS OF INSTITUTIONS

Sections

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| 72.72.010 | Legislative intent. |
| 72.72.020 | Definitions. |
| 72.72.030 | Institutional impact account—Reimbursement to political subdivisions—Limitations. |
| 72.72.040 | Reimbursement—Rules. |
| 72.72.050 | Disturbances at state penal facilities—Reimbursement to cities and counties for certain expenses incurred—Funding. |
| 72.72.060 | Disturbances at state penal facilities—Reimbursement to cities and counties for physical injury benefit costs—Limitations. |

Reviser's note: 1979 ex.s. c 108 was to be added to chapter 72.06 RCW but has been codified as chapter 72.72 RCW.

72.72.010 Legislative intent. The legislature finds that political subdivisions in which state institutions are located incur a disproportionate share of the criminal justice costs due to criminal behavior of the residents of such institutions. To redress this inequity, it shall be the policy of the state of Washington to reimburse political subdivisions which have incurred such costs. [1979 ex.s. c 108 § 1.]

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

(1) "Political subdivisions" means counties, cities, and towns.

(2) "Institution" means any state institution for the confinement of adult offenders committed pursuant to chapters 10.64, 10.77, and 71.06 RCW or juvenile offenders committed pursuant to chapter 13.40 RCW. [1983 c 279 § 1; 1981 c 136 § 120; 1979 ex.s. c 108 § 2.]

Effective date—1981 c 136: See RCW 72.09.900.

72.72.030 Institutional impact account—Reimbursement to political subdivisions—Limitations. (1) There is hereby created, in the state treasury, an institutional impact account. The secretary of social and health services may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein under the jurisdiction of the secretary of social and health services. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender.

(2) The secretary of corrections may reimburse political subdivisions for criminal justice costs incurred directly as a result of crimes committed by offenders residing in an institution as defined herein under the jurisdiction of the secretary of corrections. Such reimbursement shall be made to the extent funds are available from the institutional impact account. Reimbursements shall be limited to law enforcement, prosecutorial, judicial, and jail facilities costs which are documented to be strictly related to the criminal activities of the offender. [1991 sp.s. c 13 § 10; 1985 c 57 § 71; 1983 c 279 § 2; 1979 ex.s. c 108 § 3.]

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

72.72.040 Reimbursement—Rules. (1) The secretary of social and health services and the secretary of corrections shall each promulgate rules pursuant to chapter 34.05 RCW regarding the reimbursement process for their respective agencies.

(2) Reimbursement shall not be made if otherwise provided pursuant to other provisions of state law. [1983 c 279 § 3; 1979 ex.s. c 108 § 4.]

72.72.050 Disturbances at state penal facilities—Reimbursement to cities and counties for certain expenses incurred—Funding. The state shall reimburse cities and

counties for their expenses incurred directly as a result of their providing personnel and material pursuant to a contingency plan adopted under RCW 72.02.150. Reimbursement to cities and counties shall be expended solely from the institutional impact account within funds available in that account. If the costs of reimbursements to cities and counties exceed available funds, the secretary of corrections shall request the legislature to appropriate sufficient funds to enable the secretary of corrections to make full reimbursement. [1983 c 279 § 4; 1982 c 49 § 3.]

72.72.060 Disturbances at state penal facilities—Reimbursement to cities and counties for physical injury benefit costs—Limitations. The state shall reimburse cities and counties for their costs incurred under chapter 41.26 RCW if the costs are the direct result of physical injuries sustained in the implementation of a contingency plan adopted under RCW 72.02.150 and if reimbursement is not precluded by the following provisions: If the secretary of corrections identifies in the contingency plan the prison walls or other perimeter of the secured area, then reimbursement will not be made unless the injuries occur within the walls or other perimeter of the secured area. If the secretary of corrections does not identify prison walls or other perimeter of the secured area, then reimbursement shall not be made unless the injuries result from providing assistance, requested by the secretary of corrections or the secretary's designee, which is beyond the description of the assistance contained in the contingency plan. In no case shall reimbursement be made when the injuries result from conduct which either is not requested by the secretary of corrections or the secretary's designee, or is in violation of orders by superiors of the local law enforcement agency. [1983 c 279 § 5; 1982 c 49 § 4.]

Chapter 72.74 RCW

INTERSTATE CORRECTIONS COMPACT

Sections

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| 72.74.010 | Short title. |
| 72.74.020 | Authority to execute, terms of compact. |
| 72.74.030 | Authority to receive or transfer inmates. |
| 72.74.040 | Enforcement. |
| 72.74.050 | Hearings. |
| 72.74.060 | Contracts for implementation. |
| 72.74.070 | Clothing, transportation, and funds for state inmates released in other states. |
| 72.74.900 | Severability—1983 c 255. |

72.74.010 Short title. This chapter shall be known and may be cited as the Interstate Corrections Compact. [1983 c 255 § 12.]

72.74.020 Authority to execute, terms of compact. The secretary of the department of corrections is hereby authorized and requested to execute, on behalf of the state of Washington, with any other state or states legally joining therein a compact which shall be in form substantially as follows:

The contracting states solemnly agree that:

(1) The party states, desiring by common action to fully utilize and improve their institutional facilities and provide adequate programs for the confinement, treatment, and reha-

bilitation of various types of offenders, declare that it is the policy of each of the party states to provide such facilities and programs on a basis of cooperation with one another, and with the federal government, thereby serving the best interest of such offenders and of society and effecting economies in capital expenditures and operational costs. The purpose of this compact is to provide for the mutual development and execution of such programs of cooperation for the confinement, treatment, and rehabilitation of offenders with the most economical use of human and material resources.

(2) As used in this compact, unless the context clearly requires otherwise:

(a) "State" means a state of the United States; the United States of America; a territory or possession of the United States; the District of Columbia; and the Commonwealth of Puerto Rico.

(b) "Sending state" means a state party to this compact in which conviction or court commitment was had.

(c) "Receiving state" means a state party to this compact to which an inmate is sent for confinement other than a state in which conviction or court commitment was had.

(d) "Inmate" means a male or female offender who is committed, under sentence to, or confined in a penal or correctional institution.

(e) "Institution" means any penal or correctional facility, including but not limited to a facility for the mentally ill or mentally defective, in which inmates as defined in subsection (2)(d) of this section may lawfully be confined.

(3)(a) Each party state may make one or more contracts with any one or more of the other party states, or with the federal government, for the confinement of inmates on behalf of a sending state in institutions situated within receiving states. Any such contract shall provide for:

(i) Its duration;

(ii) Payments to be made to the receiving state or to the federal government, by the sending state for inmate maintenance, extraordinary medical and dental expenses, and any participation in or receipt by inmates of rehabilitative or correctional services, facilities, programs or treatment not reasonably included as part of normal maintenance;

(iii) Participation in programs of inmate employment, if any; the disposition or crediting of any payments received by inmates on account thereof; and the crediting of proceeds from or disposal of any products resulting therefrom;

(iv) Delivery and retaking of inmates;

(v) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving states.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursuant thereto and nothing in any such contract shall be inconsistent therewith.

(4)(a) Whenever the duly constituted authorities in a state party to this compact, and which has entered into a contract pursuant to subsection (3)(a) of this section, shall decide that confinement in, or transfer of an inmate to, an institution within the territory of another party state is necessary or desirable in order to provide adequate quarters and care or an appropriate program of rehabilitation or treatment, said officials may direct that the confinement be within an institution

within the territory of said other party state, the receiving state to act in that regard solely as agent for the sending state.

(b) The appropriate officials of any state party to this compact shall have access, at all reasonable times, to any institution in which it has a contractual right to confine inmates for the purpose of inspecting the facilities thereof and visiting such of its inmates as may be confined in the institution.

(c) Inmates confined in an institution pursuant to the terms of this compact shall at all times be subject to the jurisdiction of the sending state and may at any time be removed therefrom for transfer to a prison or other institution within the sending state, for transfer to another institution in which the sending state may have a contractual or other right to confine inmates, for release on probation or parole, for discharge, or for any other purpose permitted by the laws of the sending state, provided that the sending state shall continue to be obligated to such payments as may be required pursuant to the terms of any contract entered into under the terms of subsection (3)(a) of this section.

(d) Each receiving state shall provide regular reports to each sending state on the inmates of that sending state in institutions pursuant to this compact, including a conduct record of each inmate, and certify said record to the official designated by the sending state, in order that each inmate may have official review of his or her record in determining and altering the disposition of said inmate in accordance with the law which may obtain in the sending state and in order that the same may be a source of information for the sending state.

(e) All inmates who may be confined in an institution pursuant to the provisions of this compact shall be treated in a reasonable and humane manner and shall be treated equally with such similar inmates of the receiving state as may be confined in the same institution. The fact of confinement in a receiving state shall not deprive any inmate so confined of any legal rights which said inmate would have had if confined in an appropriate institution of the sending state.

(f) Any hearing or hearings to which an inmate confined pursuant to this compact may be entitled by the laws of the sending state may be had before the appropriate authorities of the sending state, or of the receiving state if authorized by the sending state. The receiving state shall provide adequate facilities for such hearings as may be conducted by the appropriate officials of a sending state. In the event such hearing or hearings are had before officials of the receiving state, the governing law shall be that of the sending state and a record of the hearing or hearings as prescribed by the sending state shall be made. Said record, together with any recommendations of the hearing officials, shall be transmitted forthwith to the official or officials before whom the hearing would have been had if it had taken place in the sending state. In any and all proceedings had pursuant to the provisions of this subdivision, the officials of the receiving state shall act solely as agents of the sending state and no final determination shall be made in any matter except by the appropriate officials of the sending state.

(g) Any inmate confined pursuant to this compact shall be released within the territory of the sending state unless the inmate, and the sending and receiving states, shall agree upon

release in some other place. The sending state shall bear the cost of such return to its territory.

(h) Any inmate confined pursuant to the terms of this compact shall have any and all rights to participate in and derive any benefits or incur or be relieved of any obligations or have such obligations modified or his status changed on account of any action or proceeding in which he could have participated if confined in any appropriate institution of the sending state located within such state.

(i) The parents, guardian, trustee, or other person or persons entitled under the laws of the sending state to act for, advise or otherwise function with respect to any inmate shall not be deprived of or restricted in his exercise of any power in respect of any inmate confined pursuant to the terms of this compact.

(5)(a) Any decision of the sending state in respect to any matter over which it retains jurisdiction pursuant to this compact shall be conclusive upon and not reviewable within the receiving state, but if at the time the sending state seeks to remove an inmate from an institution in the receiving state there is pending against the inmate within such state any criminal charge or if the inmate is formally accused of having committed within such state a criminal offense, the inmate shall not be returned without the consent of the receiving state until discharge from prosecution or other form of proceeding, imprisonment or detention for such offense. The duly accredited officers of the sending state shall be permitted to transport inmates pursuant to this compact through any and all states party to this compact without interference.

(b) An inmate who escapes from an institution in which he is confined pursuant to this compact shall be deemed a fugitive from the sending state and from the state in which the institution is situated. In the case of an escape to a jurisdiction other than the sending or receiving state, the responsibility for institution of extradition or rendition proceedings shall be that of the sending state, but nothing contained herein shall be construed to prevent or affect the activities of officers and agencies of any jurisdiction directed toward the apprehension and return of an escapee.

(6) Any state party to this compact may accept federal aid for use in connection with any institution or program, the use of which is or may be affected by this compact or any contract pursuant hereto; and any inmate in a receiving state pursuant to this compact may participate in any such federally-aided program or activity for which the sending and receiving states have made contractual provision, provided that if such program or activity is not part of the customary correctional regimen, the express consent of the appropriate official of the sending state shall be required therefor.

(7) This compact shall enter into force and become effective and binding upon the states so acting when it has been enacted into law by any two states. Thereafter, this compact shall enter into force and become effective and binding as to any other of said states upon similar action by such state.

(8) This compact shall continue in force and remain binding upon a party state until it shall have enacted a statute repealing the same and providing for the sending of formal written notice of withdrawal from the compact to the appropriate official of all other party states. An actual withdrawal shall not take effect until one year after the notice provided in said statute has been sent. Such withdrawal shall not relieve

the withdrawing state from its obligations assumed hereunder prior to the effective date of withdrawal. Before effective date of withdrawal, a withdrawing state shall remove to its territory, at its own expense, such inmates as it may have confined pursuant to the provisions of this compact.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a party state may have with a nonparty state for the confinement, rehabilitation or treatment of inmates nor to repeal any other laws of a party state authorizing the making of cooperative institutional arrangements.

(10) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence or provision of this compact is declared to be contrary to the constitution of any participating state or of the United States or the applicability thereof to any government, agency, person or circumstance is held invalid, the validity of the remainder of this compact and the applicability thereof to any government, agency, person or circumstance shall not be affected thereby. If this compact shall be held contrary to the constitution of any state participating therein, the compact shall remain in full force and effect as to the remaining states and in full force and effect as to the state affected as to all severable matters. [1983 c 255 § 13.]

72.74.030 Authority to receive or transfer inmates.

The secretary of corrections is authorized to receive or transfer an inmate as defined in the Interstate Corrections Compact to any institution as defined in the Interstate Corrections Compact within this state or without this state, if this state has entered into a contract or contracts for the confinement of inmates in such institutions pursuant to subsection (3) of the Interstate Corrections Compact. [1983 c 255 § 14.]

72.74.040 Enforcement. The courts, departments, agencies, and officers of this state and its subdivisions shall enforce this compact and shall do all things appropriate to the effectuation of its purposes and intent which may be within their respective jurisdictions including but not limited to the making and submission of such reports as are required by the compact. [1983 c 255 § 15.]

72.74.050 Hearings. The secretary is authorized and directed to hold such hearings as may be requested by any other party state pursuant to subsection (4)(f) of the Interstate Corrections Compact. Additionally, the secretary may hold out-of-state hearings in connection with the case of any inmate of this state confined in an institution of another state party to the Interstate Corrections Compact. [1983 c 255 § 16.]

72.74.060 Contracts for implementation. The secretary of corrections is empowered to enter into such contracts on behalf of this state as may be appropriate to implement the participation of this state in the Interstate Corrections Compact pursuant to subsection (3) of the compact. No such contract shall be of any force or effect until approved by the attorney general. [1983 c 255 § 17.]

(2004 Ed.)

72.74.070 Clothing, transportation, and funds for state inmates released in other states. If any agreement between this state and any other state party to the Interstate Corrections Compact enables an inmate of this state confined in an institution of another state to be released in such other state in accordance with subsection (4)(g) of this compact, then the secretary is authorized to provide clothing, transportation, and funds to such inmate in accordance with RCW 72.02.100. [1983 c 255 § 18.]

72.74.900 Severability—1983 c 255. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 255 § 20.]

Chapter 72.76 RCW

INTRASTATE CORRECTIONS COMPACT

Sections

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| 72.76.005 | Intent. |
| 72.76.010 | Compact enacted—Provisions. |
| 72.76.020 | Costs and accounting of offender days. |
| 72.76.030 | Contracts authorized for implementation of participation— Application of chapter. |
| 72.76.040 | Fiscal management. |
| 72.76.900 | Short title. |

72.76.005 Intent. It is the intent of the legislature to enable and encourage a cooperative relationship between the department of corrections and the counties of the state of Washington, and to provide adequate facilities and programs for the confinement, care, treatment, and employment of offenders through the exchange or transfer of offenders. [1989 c 177 § 2.]

72.76.010 Compact enacted—Provisions. The Washington intrastate corrections compact is enacted and entered into on behalf of this state by the department with any and all counties of this state legally joining in a form substantially as follows:

**WASHINGTON INTRASTATE
CORRECTIONS COMPACT**

A compact is entered into by and among the contracting counties and the department of corrections, signatories hereto, for the purpose of maximizing the use of existing resources and to provide adequate facilities and programs for the confinement, care, treatment, and employment of offenders.

The contracting counties and the department do solemnly agree that:

(1) As used in this compact, unless the context clearly requires otherwise:

(a) "Department" means the Washington state department of corrections.

(b) "Secretary" means the secretary of the department of corrections or designee.

(c) "Compact jurisdiction" means the department of corrections or any county of the state of Washington which has executed this compact.

(d) "Sending jurisdiction" means a county party to this agreement or the department of corrections to whom the courts have committed custody of the offender.

(e) "Receiving jurisdiction" means the department of corrections or a county party to this agreement to which an offender is sent for confinement.

(f) "Offender" means a person who has been charged with and/or convicted of an offense established by applicable statute or ordinance.

(g) "Convicted felony offender" means a person who has been convicted of a felony established by state law and is eighteen years of age or older, or who is less than eighteen years of age, but whose case has been transferred by the appropriate juvenile court to a criminal court pursuant to RCW 13.40.110 or has been tried in a criminal court pursuant to *RCW 13.04.030(1)(e)(iv).

(h) An "offender day" includes the first day an offender is delivered to the receiving jurisdiction, but ends at midnight of the day immediately preceding the day of the offender's release or return to the custody of the sending jurisdiction.

(i) "Facility" means any state correctional institution, camp, or other unit established or authorized by law under the jurisdiction of the department of corrections; any jail, holding, detention, special detention, or correctional facility operated by the county for the housing of adult offenders; or any contract facility, operated on behalf of either the county or the state for the housing of adult offenders.

(j) "Extraordinary medical expense" means any medical expense beyond that which is normally provided by contract or other health care providers at the facility of the receiving jurisdiction.

(k) "Compact" means the Washington intrastate corrections compact.

(2)(a) Any county may make one or more contracts with one or more counties, the department, or both for the exchange or transfer of offenders pursuant to this compact. Appropriate action by ordinance, resolution, or otherwise in accordance with the law of the governing bodies of the participating counties shall be necessary before the contract may take effect. The secretary is authorized and requested to execute the contracts on behalf of the department. Any such contract shall provide for:

(i) Its duration;

(ii) Payments to be made to the receiving jurisdiction by the sending jurisdiction for offender maintenance, extraordinary medical and dental expenses, and any participation in or receipt by offenders of rehabilitative or correctional services, facilities, programs, or treatment not reasonably included as part of normal maintenance;

(iii) Participation in programs of offender employment, if any; the disposition or crediting of any payments received by offenders on their accounts; and the crediting of proceeds from or the disposal of any products resulting from the employment;

(iv) Delivery and retaking of offenders;

(v) Such other matters as may be necessary and appropriate to fix the obligations, responsibilities and rights of the sending and receiving jurisdictions.

(b) The terms and provisions of this compact shall be a part of any contract entered into by the authority of or pursu-

ant to the contract. Nothing in any contract may be inconsistent with the compact.

(3)(a) Whenever the duly constituted authorities of any compact jurisdiction decide that confinement in, or transfer of an offender to a facility of another compact jurisdiction is necessary or desirable in order to provide adequate housing and care or an appropriate program of rehabilitation or treatment, the officials may direct that the confinement be within a facility of the other compact jurisdiction, the receiving jurisdiction to act in that regard solely as agent for the sending jurisdiction.

(b) The receiving jurisdiction shall be responsible for the supervision of all offenders which it accepts into its custody.

(c) The receiving jurisdiction shall be responsible to establish screening criteria for offenders it will accept for transfer. The sending jurisdiction shall be responsible for ensuring that all transferred offenders meet the screening criteria of the receiving jurisdiction.

(d) The sending jurisdiction shall notify the sentencing courts of the name, charges, cause numbers, date, and place of transfer of any offender, prior to the transfer, on a form to be provided by the department. A copy of this form shall accompany the offender at the time of transfer.

(e) The receiving jurisdiction shall be responsible for providing an orientation to each offender who is transferred. The orientation shall be provided to offenders upon arrival and shall address the following conditions at the facility of the receiving jurisdiction:

(i) Requirements to work;

(ii) Facility rules and disciplinary procedures;

(iii) Medical care availability; and

(iv) Visiting.

(f) Delivery and retaking of inmates shall be the responsibility of the sending jurisdiction. The sending jurisdiction shall deliver offenders to the facility of the receiving jurisdiction where the offender will be housed, at the dates and times specified by the receiving jurisdiction. The receiving jurisdiction retains the right to refuse or return any offender. The sending jurisdiction shall be responsible to retake any transferred offender who does not meet the screening criteria of the receiving jurisdiction, or who is refused by the receiving jurisdiction. If the receiving jurisdiction has notified the sending jurisdiction to retake an offender, but the sending jurisdiction does not do so within a seven-day period, the receiving jurisdiction may return the offender to the sending jurisdiction at the expense of the sending jurisdiction.

(g) Offenders confined in a facility under the terms of this compact shall at all times be subject to the jurisdiction of the sending jurisdiction and may at any time be removed from the facility for transfer to another facility within the sending jurisdiction, for transfer to another facility in which the sending jurisdiction may have a contractual or other right to confine offenders, for release or discharge, or for any other purpose permitted by the laws of the state of Washington.

(h) Unless otherwise agreed, the sending jurisdiction shall provide at least one set of the offender's personal clothing at the time of transfer. The sending jurisdiction shall be responsible for searching the clothing to ensure that it is free of contraband. The receiving jurisdiction shall be responsible for providing work clothing and equipment appropriate to the offender's assignment.

(i) The sending jurisdiction shall remain responsible for the storage of the offender's personal property, unless prior arrangements are made with the receiving jurisdiction. The receiving jurisdiction shall provide a list of allowable items which may be transferred with the offender.

(j) Copies or summaries of records relating to medical needs, behavior, and classification of the offender shall be transferred by the sending jurisdiction to the receiving jurisdiction at the time of transfer. At a minimum, such records shall include:

(i) A copy of the commitment order or orders legally authorizing the confinement of the offender;

(ii) A copy of the form for the notification of the sentencing courts required by subsection (3)(d) of this section;

(iii) A brief summary of any known criminal history, medical needs, behavioral problems, and other information which may be relevant to the classification of the offender; and

(iv) A standard identification card which includes the fingerprints and at least one photograph of the offender.

Disclosure of public records shall be the responsibility of the sending jurisdiction, except for those documents generated by the receiving jurisdiction.

(k) The receiving jurisdiction shall be responsible for providing regular medical care, including prescription medication, but extraordinary medical expenses shall be the responsibility of the sending jurisdiction. The costs of extraordinary medical care incurred by the receiving jurisdiction for transferred offenders shall be reimbursed by the sending jurisdiction. The receiving jurisdiction shall notify the sending jurisdiction as far in advance as practicable prior to incurring such costs. In the event emergency medical care is needed, the sending jurisdiction shall be advised as soon as practicable after the offender is treated. Offenders who are required by the medical authority of the sending jurisdiction to take prescription medication at the time of the transfer shall have at least a three-day supply of the medication transferred to the receiving jurisdiction with the offender, and at the expense of the sending jurisdiction. Costs of prescription medication incurred after the use of the supply shall be borne by the receiving jurisdiction.

(l) Convicted offenders transferred under this agreement may be required by the receiving jurisdiction to work. Transferred offenders participating in programs of offender employment shall receive the same reimbursement, if any, as other offenders performing similar work. The receiving jurisdiction shall be responsible for the disposition or crediting of any payments received by offenders, and for crediting the proceeds from or disposal of any products resulting from the employment. Other programs normally provided to offenders by the receiving jurisdiction such as education, mental health, or substance abuse treatment shall also be available to transferred offenders, provided that usual program screening criteria are met. No special or additional programs will be provided except by mutual agreement of the sending and receiving jurisdiction, with additional expenses, if any, to be borne by the sending jurisdiction.

(m) The receiving jurisdiction shall notify offenders upon arrival of the rules of the jurisdiction and the specific rules of the facility. Offenders will be required to follow all rules of the receiving jurisdiction. Disciplinary detention, if

necessary, shall be provided at the discretion of the receiving jurisdiction. The receiving jurisdiction may require the sending jurisdiction to retake any offender found guilty of a serious infraction; similarly, the receiving jurisdiction may require the sending jurisdiction to retake any offender whose behavior requires segregated or protective housing.

(n) Good-time calculations and notification of each offender's release date shall be the responsibility of the sending jurisdiction. The sending jurisdiction shall provide the receiving jurisdiction with a formal notice of the date upon which each offender is to be released from custody. If the receiving jurisdiction finds an offender guilty of a violation of its disciplinary rules, it shall notify the sending jurisdiction of the date and nature of the violation. If the sending jurisdiction resets the release date according to its good-time policies, it shall provide the receiving jurisdiction with notice of the new release date.

(o) The sending jurisdiction shall retake the offender at the receiving jurisdiction's facility on or before his or her release date, unless the sending and receiving jurisdictions shall agree upon release in some other place. The sending jurisdiction shall bear the transportation costs of the return.

(p) Each receiving jurisdiction shall provide monthly reports to each sending jurisdiction on the number of offenders of that sending jurisdiction in its facilities pursuant to this compact.

(q) Each party jurisdiction shall notify the others of its coordinator who is responsible for administering the jurisdiction's responsibilities under the compact. The coordinators shall arrange for alternate contact persons in the event of an extended absence of the coordinator.

(r) Upon reasonable notice, representatives of any party to this compact shall be allowed to visit any facility in which another party has agreed to house its offenders, for the purpose of inspecting the facilities and visiting its offenders that may be confined in the institution.

(4) This compact shall enter into force and become effective and binding upon the participating parties when it has been executed by two or more parties. Upon request, each party county shall provide any other compact jurisdiction with a copy of a duly enacted resolution or ordinance authorizing entry into this compact.

(5) A party participating may withdraw from the compact by formal resolution and by written notice to all other parties then participating. The withdrawal shall become effective, as it pertains to the party wishing to withdraw, thirty days after written notice to the other parties. However, such withdrawal shall not relieve the withdrawing party from its obligations assumed prior to the effective date of withdrawal. Before the effective date of withdrawal, a withdrawing participant shall notify the other parties to retake the offenders it has housed in its facilities and shall remove to its facilities, at its own expense, offenders it has confined under the provisions of this compact.

(6) Legal costs relating to defending actions brought by an offender challenging his or her transfer to another jurisdiction under this compact shall be borne by the sending jurisdiction. Legal costs relating to defending actions arising from events which occur while the offender is in the custody of a receiving jurisdiction shall be borne by the receiving jurisdiction.

(7) The receiving jurisdiction shall not be responsible to provide legal services to offenders placed under this agreement. Requests for legal services shall be referred to the sending jurisdiction.

(8) The provisions of this compact shall be liberally construed and shall be severable. If any phrase, clause, sentence, or provision of this compact is declared to be contrary to the Constitution or laws of the state of Washington or is held invalid, the validity of the remainder of this compact and its applicability to any county or the department shall not be affected.

(9) Nothing contained in this compact shall be construed to abrogate or impair any agreement or other arrangement which a county or the department may have with each other or with a nonparty county for the confinement, rehabilitation, or treatment of offenders. [1994 sp.s. c 7 § 539; 1989 c 177 § 3.]

***Reviser's note:** RCW 13.04.030 was amended by 1997 c 341 § 3, changing subsection (1)(e)(iv) to subsection (1)(e)(v).

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

72.76.020 Costs and accounting of offender days. (1)

The costs per offender day to the sending jurisdiction for the custody of offenders transferred according to the terms of this agreement shall be at the rate set by the state of Washington, office of financial management under RCW 70.48.440, unless the parties agree to another rate in a particular transfer. The costs may not include extraordinary medical costs, which shall be billed separately. Except in the case of prisoner exchanges, as described in subsection (2) of this section, the sending jurisdiction shall be billed on a monthly basis by the receiving jurisdiction. Payment shall be made within thirty days of receipt of the invoice.

(2) When two parties to this agreement transfer offenders to each other, there shall be an accounting of the number of "offender days." If the number is exactly equal, no payment is necessary for the affected period. The payment by the jurisdiction with the higher net number of offender days may be reduced by the amount otherwise due for the number of offender days its offenders were held by the receiving jurisdiction. Billing and reimbursement shall remain on the monthly schedule, and shall be supported by the forms and procedures provided by applicable regulations. The accounting of offender days exchanged may be reconciled on a monthly basis, but shall be at least quarterly. [1989 c 177 § 4.]

72.76.030 Contracts authorized for implementation of participation—Application of chapter. The secretary is empowered to enter into contracts on behalf of this state on the terms and conditions as may be appropriate to implement the participation of the department in the Washington intrastate corrections compact under RCW 72.76.010(2). Nothing in this chapter is intended to create any right or entitlement in any offender transferred or housed under the authority granted in this chapter. The failure of the department or the county to comply with any provision of this chapter as to any particular offender or transfer shall not invalidate the transfer nor give rise to any right for such offender. [1989 c 177 § 5.]

72.76.040 Fiscal management. Notwithstanding any other provisions of law, payments received by the department pursuant to contracts entered into under the authority of this chapter shall be treated as nonappropriated funds and shall be exempt from the allotment controls established under chapter 43.88 RCW. The secretary may use such funds, in addition to appropriated funds, to provide institutional and community corrections programs. The secretary may, in his or her discretion and in lieu of direct fiscal payment, offset the obligation of any sending jurisdiction against any obligation the department may have to the sending jurisdiction. Outstanding obligations of the sending jurisdiction may be carried forward across state fiscal periods by the department as a credit against future obligations of the department to the sending jurisdiction. [1989 c 177 § 6.]

72.76.900 Short title. This chapter shall be known and may be cited as the Washington Intrastate Corrections Compact. [1989 c 177 § 1.]

Chapter 72.98 RCW CONSTRUCTION

Sections

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| 72.98.010 | Continuation of existing law. |
| 72.98.020 | Title, chapter, section headings not part of law. |
| 72.98.030 | Invalidity of part of title not to affect remainder. |
| 72.98.040 | Repeals and saving. |
| 72.98.050 | Bonding acts exempted. |
| 72.98.060 | Emergency—1959 c 28. |

72.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 28 § 72.98.010.]

72.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 28 § 72.98.020.]

72.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to any person or circumstance is held invalid, the remainder of the title, or the application of the provision to other persons or circumstances is not affected. [1959 c 28 § 72.98.030.]

72.98.040 Repeals and saving. See 1959 c 28 § 72.98.040.

72.98.050 Bonding acts exempted. This act shall not repeal nor otherwise affect the provisions of the institutional bonding acts (chapter 230, Laws of 1949 and chapters 298 and 299, Laws of 1957). [1959 c 28 § 72.98.050.]

72.98.060 Emergency—1959 c 28. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately,

with the exception of RCW 72.01.280 the effective date of which section is July 1, 1959. [1959 c 28 § 72.98.060.]

Chapter 72.99 RCW

STATE BUILDING CONSTRUCTION ACT

Sections

- 72.99.100 Limited obligation bonds—Form, term, sale, payment, legal investment, etc.
- 72.99.120 State building construction bond redemption fund—Purpose, deposits—Priority as to sales tax revenue.

72.99.100 Limited obligation bonds—Form, term, sale, payment, legal investment, etc.

Reviser's note: RCW 72.99.100 was amended by 1983 c 3 § 187 without reference to its repeal by 1983 c 189 § 4. It has been decodified for publication purposes pursuant to RCW 1.12.025.

72.99.120 State building construction bond redemption fund—Purpose, deposits—Priority as to sales tax revenue.

Reviser's note: RCW 72.99.120 was amended by 1983 c 3 § 188 without reference to its repeal by 1983 c 189 § 4. It has been decodified for publication purposes pursuant to RCW 1.12.025.

Title 73

VETERANS AND VETERANS' AFFAIRS

Chapters

- 73.04** General provisions.
- 73.08** Veterans' relief.
- 73.16** Employment and reemployment.
- 73.20** Acknowledgments and powers of attorney.
- 73.24** Burial.
- 73.36** Uniform veterans' guardianship act.
- 73.40** Veterans' memorials.

Colony of the state soldiers' home: RCW 72.36.040.

Estates of absentees: Chapter 11.80 RCW.

Firemen's retirement, credit for military service: RCW 41.16.220, 41.18.150.

Liquor control board employment, veteran preference: RCW 66.08.016.

Mental illness, commitment: Chapter 71.05 RCW.

Militia and military affairs: Title 38 RCW.

Nuncupative wills: RCW 11.12.025.

Oaths, military personnel, who may administer: RCW 38.38.844.

Police retirement, credit for military service: RCW 41.20.050.

Professional, occupational licenses, moratorium: RCW 43.24.130.

Property taxation exemptions: RCW 84.36.030.

Public employment, veterans' scoring criteria status in examinations: RCW 41.04.010.

Public institutions of higher education, children of certain citizens missing in action or prisoners of war exempt from tuition—Limitations—Procedure: RCW 28B.10.265.

Soldiers' and veterans' homes: Chapter 72.36 RCW.

State employees' retirement credit for military service: RCW 41.40.170.

exception from membership: RCW 41.40.023(6).

State hospitals for insane, war veterans: RCW 73.36.165.

Statewide city employees' retirement, prior service credit: RCW 41.44.120(4).

Teachers' retirement, credit for military service: RCW 41.32.260.

Veterans' rehabilitation council: Chapter 43.61 RCW.

Wills

proof when witness in war service: RCW 11.20.040.
who may make: RCW 11.12.010.

- 73.04.110 Free license plates for disabled veterans, prisoners of war—Penalty.
- 73.04.115 Free license plates for surviving spouses of deceased prisoners of war.
- 73.04.120 Certificate stating marital status available free.
- 73.04.130 Veteran estate management program—Director authority—Criteria.
- 73.04.131 Veteran estate management program—Definitions.
- 73.04.135 Veteran estate management program—Claims against veteran's estate—Fees to support program.
- 73.04.140 Guardians—Department officers and employees prohibited.
- 73.04.150 Joint committee on veterans' and military affairs.
- 73.04.160 Veterans' history awareness month—Commemoration of contributions of veterans.

Department of veterans affairs: Chapter 43.60A RCW.

Veterans classified as resident students: RCW 28B.15.014.

Vietnam veterans' exemption from tuition and fee increases at institutions of higher education: RCW 28B.15.620.

73.04.010 Pension papers—Fees not to be charged.

No judge, or clerk of court, county clerk, county auditor, or any other county officer, shall be allowed to charge any honorably discharged soldier or seaman, or the spouse, orphan, or legal representative thereof, any fee for administering any oath, or giving any official certificate for the procuring of any pension, bounty, or back pay, nor for administering any oath or oaths and giving the certificate required upon any voucher for collection of periodical dues from the pension agent, nor any fee for services rendered in perfecting any voucher. [1973 1st ex.s. c 154 § 106; 1891 c 14 § 1; RRS § 4232.]

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

73.04.020 Pension papers—Fees not to be charged—Penalty. Any such officer who may require and accept fees for such services shall be deemed guilty of a misdemeanor, and on conviction thereof shall be fined in any sum not less than ten dollars nor more than fifty dollars. [1891 c 14 § 2; RRS § 4233.]

73.04.030 Discharges recorded without charge—Exemption from public disclosure—Fee. Each county auditor of the several counties of the state of Washington shall record upon presentation without expense, in a suitable permanent record the discharge of any veteran of the armed forces of the United States who is residing in the state of Washington.

The department of veterans affairs, in consultation with the association of county auditors, shall develop and distribute to county auditors the form referred to in RCW 42.17.310(1)(aaa) entitled "request for exemption from public disclosure of discharge papers."

The county auditor may charge a basic recording fee and preservation fee that together shall not exceed a total of seven dollars for the recording of the "request for exemption from public disclosure of discharge papers."

County auditors shall develop a form for requestors of military discharge papers (form DD214) to verify that the

Chapter 73.04 RCW GENERAL PROVISIONS

Sections

- 73.04.010 Pension papers—Fees not to be charged.
- 73.04.020 Pension papers—Fees not to be charged—Penalty.
- 73.04.030 Discharges recorded without charge—Exemption from public disclosure—Fee.
- 73.04.040 Discharges recorded without charge—Certified copy as proof.
- 73.04.042 Honorable discharge recorded—Veterans of Spanish-American War and World War I.
- 73.04.050 Right to peddle, vend, sell goods without license—License fee on business established under act of congress prohibited.
- 73.04.060 Right to peddle, vend, sell goods without license—Issuance of license.
- 73.04.070 Meeting hall may be furnished veterans' organizations.
- 73.04.080 Meeting place rental may be paid out of county fund.
- 73.04.090 Benefits, preferences, exemptions, etc., limited to veterans subject to full, continuous military control.

requestor is authorized to receive or view the military discharge paper. [2002 c 224 § 3; 1989 c 50 § 1; 1943 c 38 § 1; Rem. Supp. 1943 § 10758-10. FORMER PART OF SECTION: 1923 c 17 § 1 now codified as RCW 73.04.042.]

Working group on veterans' records: See note following RCW 42.17.310.

73.04.040 Discharges recorded without charge—Certified copy as proof. A certified copy of such record shall be prima facie proof for all purposes of the services rendered, citizenship, place and date of birth of such veteran. [1943 c 38 § 2; Rem. Supp. 1943 § 10758-11.]

73.04.042 Honorable discharge recorded—Veterans of Spanish-American War and World War I. It shall be the duty of county auditors to record without charge, in a book kept for that purpose, the certificate of discharge of any honorably discharged soldier, sailor or marine who served with the United States forces in the war with Germany and her allies and veterans of the Spanish-American War. [1923 c 17 § 1; 1919 c 86 § 1; RRS § 4094-1. Formerly RCW 73.04.030, part.]

73.04.050 Right to peddle, vend, sell goods without license—License fee on business established under act of congress prohibited. Every honorably discharged soldier, sailor or marine of the military or naval service of the United States, who is a resident of this state, shall have the right to peddle, hawk, vend and sell goods, other than his own manufacture and production, without paying for the license as now provided by law, by those who engage in such business; but any such soldier, sailor or marine may engage in such business by procuring a license for that purpose as provided in RCW 73.04.060.

No county, city or political subdivision in this state shall charge or collect any license fee on any business established by any veteran under the provisions of Public Law 346 of the 78th congress. [1945 c 144 § 9; 1903 c 69 § 1; Rem. Supp. 1945 § 10755. Formerly RCW 73.04.050, part and 73.04.060. FORMER PART OF SECTION: 1945 c 144 § 10 now codified as RCW 73.04.060.]

Reviser's note: 1945 c 144 §§ 9 and 10 amending 1903 c 69 §§ 1 and 2 were declared unconstitutional in *Larsen v. City of Shelton*, 37 Wn. (2d) 481.

Peddlers' and hawkers' licenses: Chapter 36.71 RCW.

73.04.060 Right to peddle, vend, sell goods without license—Issuance of license. On presentation to the county auditor or city clerk of the county in which any such soldier, sailor or marine may reside, of a certificate of honorable discharge from the army or naval service of the United States, such county auditor or city clerk, as the case may be, shall issue without cost to such soldier, sailor or marine, a license authorizing him to carry on the business of peddler, as provided in RCW 73.04.050. [1945 c 144 § 10; 1903 c 69 § 2; Rem. Supp. 1945 § 10756. Formerly RCW 73.04.050, part. FORMER PART OF SECTION: 1945 c 144 § 9, part now codified in RCW 73.04.050.]

Reviser's note: 1945 c 144 § 10 amending 1903 c 69 § 2 declared unconstitutional, see note following RCW 73.04.050.

73.04.070 Meeting hall may be furnished veterans' organizations. Counties, cities and other political subdivisions of the state of Washington are authorized to furnish free of charge a building, office and/or meeting hall for the exclusive use of the several nationally recognized veterans' organizations and their auxiliaries, subject to the direction of the committee or person in charge of such building, office and/or meeting hall. The several nationally recognized veterans' organizations shall have access at all times to said building, office and/or meeting hall. Counties, cities and other political subdivisions shall further have the right to furnish heat, light, utilities, furniture and janitor service at no cost to the veterans' organizations and their auxiliaries. [1945 c 108 § 1; Rem. Supp. 1945 § 10758-60.]

73.04.080 Meeting place rental may be paid out of county fund. Any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress which has qualified to accept relief from the veteran's assistance fund of any county may draw upon said county fund for the payment of the rent of its regular meeting place: PROVIDED, That no post, camp or chapter shall be allowed to draw on such fund for this purpose to exceed a reasonable amount approved by the county legislative authority in any one year, or in any amount for hall rental where said post, camp or chapter is furnished quarters by the state or by any municipality.

Before such claims are ordered paid by the county legislative authority, the commander or authorized disbursing officer of such posts, camps or chapters shall file a proper claim each month with the county auditor for such rental. [1985 c 181 § 1; 1947 c 180 § 7; 1945 c 144 § 8; 1921 c 41 § 8; 1915 c 69 § 1; 1909 c 64 § 1; Rem. Supp. 1947 § 10743.]

73.04.090 Benefits, preferences, exemptions, etc., limited to veterans subject to full, continuous military control. All benefits, advantages or emoluments, not available upon equal terms to all citizens, including but not being limited to preferred rights to public employment, civil service preference, exemption from license fees or other impositions, preference in purchasing state property, which by any law of this state have been made specially available to war veterans or to persons who have served in the armed forces or defense forces of the United States, shall be available only to persons who have been subject to full and continuous military control and discipline as actual members of the federal armed forces or to persons defined as "veterans" in RCW 41.04.007. Service with such forces in a civilian capacity, or in any capacity wherein a person retained the right to terminate his or her service or to refuse full obedience to military superiors, shall not be the basis for eligibility for such benefits. Service in any of the following shall not for purposes of this section be considered as military service: The office of emergency services or any component thereof; the American Red Cross; the United States Coast Guard Auxiliary; United States Coast Guard Reserve Temporary; United States Coast and Geodetic Survey; American Field Service; Civil Air Patrol; Cadet Nurse Corps, and any other similar organization. [2002 c 292 § 6; 1991 c 240 § 3; 1974 ex.s. c 171 § 45; 1947 c 142 § 1; Rem. Supp. 1947 § 10758-115.]

Emergency management: Chapter 38.52 RCW.

73.04.110 Free license plates for disabled veterans, prisoners of war—Penalty. Any person who is a veteran as defined in RCW 41.04.007 who submits to the department of licensing satisfactory proof of a service-connected disability rating from the veterans administration or the military service from which the veteran was discharged and:

(1) Has lost the use of both hands or one foot;
 (2) Was captured and incarcerated for more than twenty-nine days by an enemy of the United States during a period of war with the United States;

(3) Has become blind in both eyes as the result of military service; or

(4) Is rated by the veterans administration or the military service from which the veteran was discharged and is receiving service-connected compensation at the one hundred percent rate that is expected to exist for more than one year; is entitled to regular or special license plates issued by the department of licensing. The special license plates shall bear distinguishing marks, letters, or numerals indicating that the motor vehicle is owned by a disabled veteran or former prisoner of war. This license shall be issued annually for one personal use vehicle without payment of any license fees or excise tax thereon. Whenever any person who has been issued license plates under the provisions of this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of ten dollars shall be charged in addition to all other appropriate fees. The department may periodically verify the one hundred percent rate as provided in subsection (4) of this section.

Any person who has been issued free motor vehicle license plates under this section prior to July 1, 1983, shall continue to be eligible for the annual free license plates.

For the purposes of this section, "blind" means the definition of "blind" used by the state of Washington in determining eligibility for financial assistance to the blind under Title 74 RCW.

Any unauthorized use of a special plate is a gross misdemeanor. [2004 c 223 § 6; 2004 c 125 § 1; 1987 c 98 § 2; 1983 c 230 § 2; 1982 c 115 § 1; 1980 c 88 § 2; 1979 c 158 § 221; 1972 ex.s. c 60 § 1; 1971 ex.s. c 193 § 1; 1951 c 206 § 1; 1949 c 178 § 1; Rem. Supp. 1949 § 6360-50-1.]

Reviser's note: This section was amended by 2004 c 125 § 1 and by 2004 c 223 § 6, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1983 c 230: See note following RCW 41.04.005.

Disabled parking versions of special plates: RCW 46.16.385.

73.04.115 Free license plates for surviving spouses of deceased prisoners of war. The department shall issue to the surviving spouse of any deceased former prisoner of war described in RCW 73.04.110(2), one set of regular or special license plates for use on a personal passenger vehicle registered to that person.

The plates shall be issued without the payment of any license fees or excise tax on the vehicle. Whenever any person who has been issued license plates under this section applies to the department for transfer of the plates to a subsequently acquired motor vehicle, a transfer fee of five dollars shall be charged in addition to all other appropriate fees. If the surviving spouse remarries, he or she shall return the spe-

(2004 Ed.)

cial plates to the department within fifteen days and apply for regular license plates. [1990 c 250 § 91; 1987 c 98 § 1.]

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

Disabled parking versions of special plates: RCW 46.16.385.

73.04.120 Certificate stating marital status available free. County clerks and county auditors, respectively, are authorized and directed to furnish free of charge to the legal representative, surviving spouse, child or parent of any deceased veteran certified copies of marriage certificates, decrees of divorce or annulment, or other documents contained in their files and to record and issue, free of charge, certified copies of such documents from other states, territories, or foreign countries affecting the marital status of such veteran whenever any such document shall be required in connection with any claim pending before the United States veterans' bureau or other governmental agency administering benefits to war veterans. Where these same documents are required of service personnel of the armed forces of the United States for determining entitlement to family allowances and other benefits, they shall be provided without charge by county clerks and county auditors upon request of the person in the service or his dependents. [1985 c 44 § 19; 1984 c 84 § 1; 1967 c 89 § 1; 1949 c 16 § 1; Rem. Supp. 1949 § 10758-13b.]

73.04.130 Veteran estate management program—Director authority—Criteria. The director is authorized to implement a veteran estate management program and manage the estate of any incapacitated veteran or incapacitated veteran's dependent who:

- (1) Is a bona fide resident of the state of Washington; and
- (2) The United States department of veterans affairs or the social security administration has determined that the payment of benefits or entitlements is dependent upon the appointment of a federal fiduciary or representative payee; and
- (3) Requires the services of a fiduciary and a responsible family member is not available; or
- (4) Is deceased and has not designated an executor to dispose of the estate.

The director or any other interested person may petition the appropriate authority for the appointment as fiduciary for an incapacitated veteran or as the executor of the deceased veteran's estate. If appointed, the director may serve without bond. This section shall not affect the prior right to act as administrator of a veteran's estate of such persons as are denominated in RCW 11.28.120 (1) and (2), nor shall this section affect the appointment of executor made in the last will of any veteran. [1994 c 147 § 2; 1979 c 64 § 1; 1977 c 31 § 3; 1974 ex.s. c 63 § 1; 1972 ex.s. c 4 § 1.]

73.04.131 Veteran estate management program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this title.

- (1) "Director" means the director of the department of veterans affairs or the director's designee.
- (2) "Veteran estate management program" means the program under which the director serves as administrator or federal fiduciary of an incapacitated veteran's estate or inca-

pacitated veteran's dependent's estate, or the executor of a deceased veteran's estate. [1994 c 147 § 1.]

73.04.135 Veteran estate management program—Claims against veteran's estate—Fees to support program. (1) The director may place a claim against the estate of an incapacitated or deceased veteran who is a veteran estate management program client. The claim shall not exceed the amount allowed by rule of the United States department of veterans affairs and charges for reasonable expenses incurred in the execution or administration of the estate. The director shall waive all or any portion of the claim if the payment or a portion thereof would pose a hardship to the veteran.

(2) Any fees collected shall be deposited in the state general fund—local and shall be available for the cost of managing and supporting the veteran estate management program. All expenditures and revenue control shall be subject to chapter 43.88 RCW. [1994 c 147 § 3.]

73.04.140 Guardians—Department officers and employees prohibited. The director or any other department of veterans affairs employee shall not serve as guardian for any resident at the Washington state veterans' homes. [1994 c 147 § 5.]

73.04.150 Joint committee on veterans' and military affairs. (Expires December 31, 2005.) (1) There is hereby created a joint committee on veterans' and military affairs. The committee shall consist of: (a) Eight members of the senate appointed by the president of the senate, four of whom shall be members of the majority party and four of whom shall be members of the minority party; and (b) eight members of the house of representatives appointed by the speaker, four of whom shall be members of the majority party and four of whom shall be members of the minority party. Members of the committee shall be appointed before the close of the 2001 legislative session, and before the close of each regular session during an odd-numbered year thereafter.

(2) Each member's term of office shall run from the close of the session in which he or she was appointed until the close of the next regular session held in an odd-numbered year. If a successor is not appointed during a session, the member's term shall continue until the member is reappointed or a successor is appointed. The term of office for a committee member who does not continue as a member of the senate or house of representatives shall cease upon the convening of the next session of the legislature during an odd-numbered year after the member's appointment, or upon the member's resignation, whichever is earlier. Vacancies on the committee shall be filled by appointment in the same manner as described in subsection (1) of this section. All such vacancies shall be filled from the same political party and from the same house as the member whose seat was vacated.

(3) The committee shall establish an executive committee of four members representing the majority and minority caucuses of each house. The executive committee is responsible for performing all general administrative and personnel duties assigned to it in the rules and procedures adopted by

the joint committee, as well as other duties delegated to it by the joint committee.

(4) The joint committee on veterans' and military affairs has the following powers and duties:

(a) To study veterans' issues, active military forces issues, and national guard and reserve component issues, and make recommendations to the legislature; and

(b) To study structure and administration of the department of veterans affairs and the military department, and make recommendations to the legislature.

(5) The joint committee shall adopt rules and procedures for its orderly operation. The joint committee may create subcommittees to perform duties under this section.

(6) This section expires December 31, 2005. [2001 c 268 § 1.]

73.04.160 Veterans' history awareness month—Commemoration of contributions of veterans. The legislature declares that:

(1) November of each year will be known as veterans' history awareness month;

(2) The week in November in which veterans' day occurs is designated as a time for people of this state to celebrate the contributions to the state by veterans; and

(3) Educational institutions, public entities, and private organizations are encouraged to designate time for appropriate activities in commemoration of the contributions of America's veterans. [2003 c 161 § 1.]

Chapter 73.08 RCW VETERANS' RELIEF

Sections

| | |
|-----------|--|
| 73.08.010 | County aid to indigent veterans and families—Procedure. |
| 73.08.030 | Procedure where no veterans' organization in precinct. |
| 73.08.040 | Notice of intention to furnish relief—Annual statement. |
| 73.08.050 | Performance bond may be required. |
| 73.08.060 | Restrictions on sending veterans or families to almshouses, etc. |
| 73.08.070 | County burial of indigent deceased veterans. |
| 73.08.080 | Tax levy authorized. |

Soldiers' and veterans' homes: Chapter 72.36 RCW.

Soldiers' home: State Constitution Art. 10 § 3.

73.08.010 County aid to indigent veterans and families—Procedure. For the relief of indigent and suffering veterans as defined in RCW 41.04.007 and their families or the families of those deceased, who need assistance in any city, town or precinct in this state, the legislative authority of the county in which the city, town or precinct is situated shall provide such sum or sums of money as may be necessary, to be drawn upon by the commander and quartermaster, or commander and adjutant or commander and service officer of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress in the city or town upon recommendation of the relief committee of said post, camp or chapter: PROVIDED, Said veteran or the families of those deceased are and have been residents of the state for at least twelve months, and the orders of said commander and quartermaster, or commander and adjutant or commander and service officer shall be the proper voucher for the expenditure of said sum or sums of

money. [2002 c 292 § 7; 1983 c 295 § 1; 1947 c 180 § 1; 1945 c 144 § 1; 1921 c 41 § 1; 1919 c 83 § 1; 1907 c 64 § 1; 1893 c 37 § 1; 1888 p 208 § 1; Rem. Supp. 1947 § 10737. Cf. 1935 c 38 § 1.]

Soldiers' home and colony: Chapter 72.36 RCW.

Veterans' rehabilitation council: Chapter 43.61 RCW.

73.08.030 Procedure where no veterans' organization in precinct. If there be no post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress, in any precinct in which it should be granted, the legislative authority of the county in which said precinct is, may accept and pay the orders drawn, as hereinbefore provided by the commander and quartermaster, or commander and adjutant or commander and service officer, of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress, located in the nearest city or town, upon the recommendation of a relief committee who shall be residents of the said precinct in which the relief may be furnished. [1983 c 295 § 2; 1947 c 180 § 2; 1945 c 144 § 2; 1921 c 41 § 2; 1907 c 64 § 2; 1888 p 208 § 2; Rem. Supp. 1947 § 10738.]

73.08.040 Notice of intention to furnish relief—Annual statement. *Upon the passage of this act the commander of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress which shall undertake the relief of indigent veterans and their families, as hereinbefore provided, before the acts of said commander and quartermaster, or commander and adjutant may become operative in any city or precinct, shall file with the county auditor of such county, notice that said post, camp or chapter intends to undertake such relief as is provided by this chapter. Such notice shall contain the names of the relief committee of said post, camp or chapter in such city or precinct, and the commander of said post, camp or chapter shall annually thereafter during the month of October file a similar notice with said auditor, and also a detailed statement of the amount of relief furnished during the preceding year, with the names of all persons to whom such relief shall have been furnished, together with a brief statement in each case from the relief committee upon whose recommendations the orders were drawn. [1947 c 180 § 3; 1945 c 144 § 3; 1921 c 41 § 3; 1907 c 64 § 3; 1888 p 209 § 3; Rem. Supp. 1947 § 10739.]

***Reviser's note:** The language "Upon the passage of this act" first appears in 1888 p 209 § 3.

73.08.050 Performance bond may be required. The county legislative authority may require of the commander and quartermaster, or commander and adjutant or commander and service officer, of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress undertaking to distribute relief under this chapter a bond with sufficient and satisfactory sureties for the faithful and honest discharge of their duties under this chapter. [1983 c 295 § 3; 1947 c 180 § 4; 1945 c 144 § 4; 1921 c 41 § 4; 1907 c 64 § 4; 1888 p 209 § 4; Rem. Supp. 1947 § 10740.]

(2004 Ed.)

73.08.060 Restrictions on sending veterans or families to almshouses, etc. County legislative authorities are hereby prohibited from sending indigent or disabled veterans as defined in RCW 41.04.007 or their families or the families of the deceased to any almshouse (or orphan asylum) without the concurrence and consent of the commander and relief committee of the post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress as provided in RCW 73.08.010 and 73.08.030. Indigent veterans shall, whenever practicable, be provided for and relieved at their homes in such city, town or precinct in which they shall have a residence, in the manner provided in RCW 73.08.010 and 73.08.030. Indigent or disabled veterans as defined in RCW 41.04.007, who are not insane and have no families or friends with whom they may be domiciled, may be sent to any soldiers' home. [2002 c 292 § 8; 1983 c 295 § 4; 1947 c 180 § 5; 1945 c 144 § 5; 1919 c 83 § 5; 1907 c 64 § 5; 1888 p 209 § 5; Rem. Supp. 1947 § 10741.]

73.08.070 County burial of indigent deceased veterans. It shall be the duty of the legislative authority in each of the counties in this state to designate some proper authority other than the one designated by law for the care of paupers and the custody of criminals who shall cause to be interred at the expense of the county the body of any honorably discharged veterans as defined in RCW 41.04.007 and the wives, husbands, minor children, widows or widowers of such veterans, who shall hereafter die without leaving means sufficient to defray funeral expenses; and when requested so to do by the commanding officer of any post, camp or chapter of any national organization of veterans now, or which may hereafter be, chartered by an act of congress or the relief committee of any such posts, camps or chapters: PROVIDED, HOWEVER, That such interment shall not cost more than the limit established by the county legislative authority nor less than three hundred dollars. If the deceased has relatives or friends who desire to conduct the burial of such deceased person, then upon request of said commander or relief committee a sum not to exceed the limit established by the county legislative authority nor less than three hundred dollars shall be paid to said relatives or friends by the county treasurer, upon due proof of the death and burial of any person provided for by this section and proof of expenses incurred. [2002 c 292 § 9; 1997 c 286 § 1; 1983 c 295 § 5; 1949 c 15 § 1; 1947 c 180 § 6; 1945 c 144 § 6; 1921 c 41 § 6; 1919 c 83 § 6; 1917 c 42 § 1; 1907 c 64 § 6; 1899 c 99 § 1; 1888 p 209 § 6; Rem. Supp. 1949 § 10757. Formerly RCW 73.24.010.]

Counties, disposal of remains of indigent persons: RCW 36.39.030.

73.08.080 Tax levy authorized. The legislative authorities of the several counties in this state shall levy, in addition to the taxes now levied by law, a tax in a sum equal to the amount which would be raised by not less than one and one-eighth cents per thousand dollars of assessed value, and not greater than twenty-seven cents per thousand dollars of assessed value against the taxable property of their respective counties, to be levied and collected as now prescribed by law for the assessment and collection of taxes, for the purpose of creating the veteran's assistance fund for the relief of honorably discharged veterans as defined in RCW 41.04.005 and

the indigent wives, husbands, widows, widowers and minor children of such indigent or deceased veterans, to be disbursed for such relief by such county legislative authority: PROVIDED, That if the funds on deposit, less outstanding warrants, residing in the veteran's assistance fund on the first Tuesday in September exceed the expected yield of one and one-eighth cents per thousand dollars of assessed value against the taxable property of the county, the county legislative authority may levy a lesser amount: PROVIDED FURTHER, That the costs incurred in the administration of said veteran's assistance fund shall be computed by the county treasurer not less than annually and such amount may then be transferred from the veteran's assistance fund as herein provided for to the county current expense fund.

The amount of a levy allocated to the purposes specified in this section may be reduced in the same proportion as the regular property tax levy of the county is reduced by chapter 84.55 RCW. [1985 c 181 § 2; 1983 c 295 § 6; 1980 c 155 § 6; 1973 2nd ex.s. c 4 § 5; 1973 1st ex.s. c 195 § 86; 1970 ex.s. c 47 § 9; 1969 c 57 § 1; 1945 c 144 § 7; 1921 c 41 § 7; 1919 c 83 § 7; 1907 c 64 § 7; 1893 c 37 § 2; 1888 p 210 § 7; Rem. Supp. 1945 § 10742. Formerly RCW 73.08.020.]

Effective date—Applicability—1980 c 155: See note following RCW 84.40.030.

Emergency—Effective dates—1973 2nd ex.s. c 4: See notes following RCW 84.52.043.

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

Chapter 73.16 RCW

EMPLOYMENT AND REEMPLOYMENT

Sections

| | |
|-----------|--|
| 73.16.005 | Intent—Purpose. |
| 73.16.010 | Preference in public employment. |
| 73.16.015 | Enforcement of preference—Civil action. |
| 73.16.020 | Failure to comply—Infraction. |
| 73.16.031 | Definitions. |
| 73.16.032 | Employment rights—Prohibited actions. |
| 73.16.033 | Reemployment of returned veterans. |
| 73.16.035 | Eligibility requirements—Exceptions—Burden of proof. |
| 73.16.041 | Leaves of absence of elective and judicial officers. |
| 73.16.051 | Restoration without loss of seniority or benefits. |
| 73.16.053 | Continuation of health plan coverage during absence—Reinstatement of health plan coverage upon reemployment. |
| 73.16.055 | Determination of pension benefits and liabilities for reemployed persons. |
| 73.16.061 | Enforcement of provisions. |
| 73.16.070 | Federal act to apply in state courts. |
| 73.16.080 | Bona fide executive, administrative, and professional employees—Offset of military pay. |
| 73.16.090 | Application of chapter—Other rights and benefits preserved. |
| 73.16.100 | Legislative declaration—Other civil actions abolished. |

73.16.005 Intent—Purpose. (1) It is the intent of the legislature to guarantee employment rights of members of the reserve and national guard forces who are called to active duty. The federal uniformed services employment and reemployment rights act of 1994 protects all such federal personnel. The legislature intends that similar provisions should apply to all such state personnel. Therefore, the legislature intends for chapter 133, Laws of 2001 to ensure protections for state-activated personnel similar to those provided by federal law for federal-activated personnel.

(2) The purposes of this chapter are to:

(a) Encourage noncareer service in the uniformed services by eliminating or minimizing the disadvantages to civilian careers and employment that can result from such service;

(b) Minimize the disruption to the lives of persons performing service in the uniformed services as well as to their employers, their fellow employees, and their communities, by providing for the prompt reemployment of such persons upon their completion of such service; and

(c) Prohibit discrimination against persons because of their service in the uniformed services.

(3) Therefore, the legislature intends that the governmental agencies of the state of Washington, and all the political subdivisions thereof, should be model employers in carrying out the provisions of this chapter. [2001 c 133 § 1.]

Effective date—2001 c 133: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 2, 2001]." [2001 c 133 § 15.]

73.16.010 Preference in public employment. In every public department, and upon all public works of the state, and of any county thereof, honorably discharged soldiers, sailors, and marines who are veterans of any war of the United States, or of any military campaign for which a campaign ribbon shall have been awarded, and their widows or widowers, shall be preferred for appointment and employment. Age, loss of limb, or other physical impairment, which does not in fact incapacitate, shall not be deemed to disqualify them, provided they possess the capacity necessary to discharge the duties of the position involved: PROVIDED, That spouses of honorably discharged veterans who have a service connected permanent and total disability shall also be preferred for appointment and employment. [1975 1st ex.s. c 198 § 1; 1973 1st ex.s. c 154 § 107; 1951 c 29 § 1; 1943 c 141 § 1; 1919 c 26 § 1; 1915 c 129 § 1; 1895 c 84 § 1; Rem. Supp. 1943 § 10753.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030. *Veterans to receive scoring criteria status in competitive examinations for public employment: RCW 41.04.010.*

73.16.015 Enforcement of preference—Civil action. Any veteran entitled to the benefits of RCW 73.16.010 may enforce his or her rights hereunder by civil action in superior court. [2001 c 133 § 2; 1951 c 29 § 2.]

Effective date—2001 c 133: See note following RCW 73.16.005.

73.16.020 Failure to comply—Infraction. All officials or other persons having power to appoint to or employment in the public service set forth in RCW 73.16.010, are charged with a faithful compliance with its terms, both in letter and in spirit, and a failure therein shall be a class 1 civil infraction. [1987 c 456 § 30; 1895 c 84 § 2; RRS § 10754.]

Legislative finding—1987 c 456: See RCW 7.80.005.

Effective date—1987 c 456 §§ 9 through 31: See RCW 7.80.901.

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

(1) "Attorney general" means the attorney general of the state of Washington or any person designated by the attorney

general to carry out a responsibility of the attorney general under this chapter.

(2) "Benefit," "benefit of employment," or "rights and benefits" means any advantage, profit, privilege, gain, status, account, or interest (other than wages or salary for work performed) that accrues by reason of an employment contract or agreement or an employer policy, plan, or practice and includes rights and benefits under a pension plan, a health plan, an employee stock ownership plan, insurance coverage and awards, bonuses, severance pay, supplemental unemployment benefits, vacations, and the opportunity to select work hours or location of employment.

(3) "Employee" means a person in a position of employment.

(4) "Employer" means the person, firm, or corporation, the state, or any elected or appointed public official currently having control over the position that has been vacated.

(5) "Health plan" means an insurance policy or contract, medical or hospital service agreement, membership or subscription contract, or other arrangement under which health services for individuals are provided or the expenses of such services are paid.

(6) "Notice" means any written or verbal notification of an obligation or intention to perform service in the uniformed services provided to an employer by the employee who will perform such service or by the uniformed service in which such service is to be performed.

(7) "Position of employment" means any position (other than temporary) wherein a person is engaged for a private employer, company, corporation, or the state.

(8) "Qualified," with respect to an employment position, means having the ability to perform the essential tasks of the position.

(9) "Rejectee" means a person rejected because he or she is not, physically or otherwise, qualified to enter the uniformed service.

(10) "Resident" means any person residing in the state with the intent to remain other than on a temporary or transient basis.

(11) "Seniority" means longevity in employment together with any benefits of employment which accrue with, or are determined by, longevity in employment.

(12) "Service in the uniformed services" means the performance of duty on a voluntary or involuntary basis in a uniformed service under competent authority and includes active duty, active duty for training, initial active duty for training, inactive duty training, full-time national guard duty (including state-ordered active duty), and a period for which a person is absent from a position of employment for the purpose of an examination to determine the fitness of the person to perform any such duty.

(13) "State" means the state of Washington, including the agencies and political subdivisions thereof.

(14) "Temporary position" means a position of short duration which, after being vacated, ceases to exist and wherein the employee has been advised as to its temporary nature prior to his or her engagement.

(15) "Undue hardship," in the case of actions taken by an employer, means actions requiring significant difficulty or expense when considered in light of:

(a) The nature and cost of the action needed under this chapter;

(b) The overall financial resources of the facility or facilities involved in the provision of the action; the number of persons employed at such facility; the effect on expenses and resources; or the impact otherwise of such action upon the operation of the facility; and

(c) The type of operation or operations of the employer, including the composition, structure, and functions of the work force of such employer, the geographic separateness, administrative, or fiscal relationship of the facility or facilities in question to the employer.

(16) "Uniformed services" means the armed forces, the army national guard, and the air national guard of any state, territory, commonwealth, possession, or district when engaged in active duty for training, inactive duty training, full-time national guard duty, or state active duty, the commissioned corps of the public health service, the coast guard, and any other category of persons designated by the president of the United States in time of war or national emergency. [2001 c 133 § 3; 1953 c 212 § 1.]

Effective date—2001 c 133: See note following RCW 73.16.005.

Employment and reemployment rights of members of organized militia upon return from militia duty: RCW 38.24.060.

73.16.032 Employment rights—Prohibited actions.

(1) A person who is a member of, applies to be a member of, performs, has performed, applies to perform, or has an obligation to perform service in a uniformed service shall not be denied initial employment, retention in employment, promotion, or any benefit of employment by an employer on the basis of that membership, application for membership, performance of service, application for service, or obligation.

(2) An employer may not discriminate in employment against or take any adverse employment action against any person because such person (a) has taken an action to enforce a protection afforded any person under this chapter, (b) has testified or otherwise made a statement in or in connection with any proceeding under this chapter, (c) has assisted or otherwise participated in an investigation under this chapter, or (d) has exercised a right provided for in this chapter. The prohibition in this subsection (2) applies with respect to a person regardless of whether that person has performed service in the uniformed services.

(3) An employer shall be considered to have engaged in actions prohibited:

(a) Under subsection (1) of this section, if the person's membership, application for membership, service, application for service, or obligation for service in the uniformed services is a motivating factor in the employer's action, unless the employer can prove that the action would have been taken in the absence of such membership, application for membership, service, application for service, or obligation for service; or

(b) Under subsection (2) of this section if the person's (i) action to enforce a protection afforded any person under this chapter, (ii) testimony or making of a statement in or in connection with any proceeding under this chapter, (iii) assistance or other participation in an investigation under this chapter, or (iv) exercise of a right provided for in this chapter, is a motivating factor in the employer's action, unless the

employer can prove that the action would have been taken in the absence of such person's enforcement action, testimony, statement, assistance, participation, or exercise of a right. [2001 c 133 § 4.]

Effective date—2001 c 133: See note following RCW 73.16.005.

73.16.033 Reemployment of returned veterans. Any person who is a resident of this state or is employed within this state, and who voluntarily or upon order from competent authority, vacates a position of employment for service in the uniformed services, shall, provided he or she meets the requirements of RCW 73.16.035, be reemployed forthwith: PROVIDED, That the employer need not reemploy such person if circumstances have so changed such that reemployment would be impossible or unreasonable due to a change in the employer's circumstances, or would impose an undue hardship on the employer: PROVIDED FURTHER, That this section shall not apply to a temporary position.

If such person is still qualified to perform the duties of his or her former position, he or she shall be restored to that position or to a position of like seniority, status and pay. If he or she is not so qualified as a result of disability sustained during his or her service in the uniformed services, but is nevertheless qualified to perform the duties of another position, under the control of the same employer, he or she shall be reemployed in such other position: PROVIDED, That such position shall provide him or her with like seniority, status, and pay, or the nearest approximation thereto consistent with the circumstances of the case. [2001 c 133 § 5; 1953 c 212 § 2.]

Effective date—2001 c 133: See note following RCW 73.16.005.

73.16.035 Eligibility requirements—Exceptions—Burden of proof. (1) In order to be eligible for the benefits of this chapter, an applicant must comply with the following requirements:

(a) The applicant must notify his or her employer as to his or her membership in the uniformed services within a reasonable time of accepting employment or becoming a member of the uniformed services. An employer may not take any action prohibited in RCW 73.16.032 against a person because the person provided notice of membership in the uniformed services to the employer.

(b) The applicant must furnish a receipt of an honorable, or under honorable conditions discharge, report of separation, certificate of satisfactory service, or other proof of having satisfactorily completed his or her service. Rejectees must furnish proof of orders for examination and rejection.

(c) The applicant must make written application to the employer or his or her representative as follows:

(i) In the case of an applicant whose period of service in the uniformed services was less than thirty-one days, by reporting to the employer:

(A) Not later than the beginning of the first full regularly scheduled work period on the first full calendar day following the completion of the period of service and the expiration of eight hours after a period allowing for the safe transportation of the applicant from the place of that service to the applicant's residence; or

(B) As soon as possible after the expiration of the eight-hour period in (c)(i)(A) of this subsection, if reporting within that period is impossible or unreasonable through no fault of the applicant;

(ii) In the case of an applicant who is absent from a position of employment for a period of any length for the purposes of an examination to determine the applicant's fitness to perform service in the uniformed services, by reporting in the manner and time referred to in (c)(i) of this subsection;

(iii) In the case of an applicant whose period of service in the uniformed services was for more than thirty days but less than one hundred eighty-one days, by submitting an application for reemployment with the employer not later than fourteen days after the completion of the period of service or if submitting such application within such period is impossible or unreasonable through no fault of the applicant, the next first full calendar day when submission of such application becomes possible;

(iv) In the case of an applicant whose period of service in the uniformed services was for more than one hundred eighty days, by submitting an application for reemployment with the employer not later than ninety days after the completion of the period of service;

(v) In the case of an applicant who is hospitalized for, or convalescing from, an illness or injury incurred or aggravated during the performance of service in the uniformed services, at the end of the period that is necessary for the applicant to recover from such illness or injury, the applicant shall submit an application for reemployment with such employer. The period of recovery may not exceed two years. This two-year period shall be extended by the minimum time required to accommodate the circumstances beyond the applicant's control that make reporting within the two-year period impossible or unreasonable;

(vi) In the case of an applicant who fails to report or apply for employment or reemployment within the appropriate period specified in this subsection (1)(c), the applicant does not automatically forfeit his or her entitlement to the rights and benefits conferred by this chapter, but is subject to the conduct rules, established policy, and general practices of the employer pertaining to explanations and discipline with respect to absence from scheduled work.

(d) An applicant who submits an application for reemployment shall provide to the applicant's employer, upon the request of that employer, documentation to establish that:

(i) The application is timely;

(ii) The applicant has not exceeded the service limitations set forth in this section, except as permitted under (c)(v) of this subsection; and

(iii) The applicant's entitlement to the benefits under this chapter has not been terminated pursuant to (e) of this subsection.

(e) The applicant must return and reenter the office or position within the appropriate period specified in (c) of this subsection after serving four years or less in the uniformed services other than state-ordered active duty: PROVIDED, That any period of additional service imposed by law, from which one is unable to obtain orders relieving him or her from active duty, will not affect reemployment rights.

(f) The applicant must return and reenter the office or position within the appropriate period specified in (c) of this

subsection after serving twelve weeks or less in a calendar year in state-ordered active duty: PROVIDED, That the governor, when declaring an emergency that necessitates a longer period of service, may extend the period of service in state-ordered active duty to up to twelve months after which the applicant is eligible for the benefits of this chapter.

(2) The failure of an applicant to provide documentation that satisfies rules adopted pursuant to subsection (1)(c) of this section shall not be a basis for denying reemployment in accordance with the provisions of this chapter if the failure occurs because such documentation does not exist or is not readily available at the time of the request of the employer. If, after such reemployment, documentation becomes available that establishes that the applicant does not meet one or more of the requirements referred to in subsection (1)(d) of this section, that applicant's employer may terminate the employment of the person and the provision of any rights or benefits afforded the person under this chapter.

(3) An employer may not delay or attempt to defeat a reemployment obligation by demanding documentation that does not then exist or is not then readily available.

(4) The application in subsection (1) of this section is not required if the giving of such application is precluded by military necessity or, under all of the relevant circumstances, the giving of such notice is otherwise impossible or unreasonable. A determination of military necessity for the purposes of this subsection shall be made by the adjutant general of the state of Washington military department and is not subject to judicial review.

(5) In any proceeding involving an issue of whether (a) reemployment is impossible or unreasonable because of a change in an employer's circumstances, (b) reemployment would impose an undue hardship on the employer, or (c) the employment is for a temporary position, the employer has the burden of proving the impossibility or unreasonableness, undue hardship, or the brief or nonrecurrent nature of the employment without a reasonable expectation of continuing indefinitely or for a significant period. [2001 c 133 § 6; 1969 c 16 § 1; 1953 c 212 § 3.]

Effective date—2001 c 133: See note following RCW 73.16.005.

73.16.041 Leaves of absence of elective and judicial officers. When any elective officer of this state or any political subdivision thereof, including any judicial officer, shall enter upon active service or training as provided in RCW 73.16.031, 73.16.033 and 73.16.035, the proper officer, board or other agency, which would ordinarily be authorized to grant leave of absence or fill a vacancy created by the death or resignation of the elective official so ordered to such service, shall grant an extended leave of absence to cover the period of such active service or training and may appoint a temporary successor to the position so vacated. No leave of absence provided for herein shall operate to extend the term for which the occupant of any elective position shall have been elected. [1953 c 212 § 4.]

73.16.051 Restoration without loss of seniority or benefits. Any person who is entitled to be restored to a position in accordance with this chapter shall be considered as having been on furlough or leave of absence, from his or her

position of employment, during his or her period of active military duty or service, and he or she shall be so restored without loss of seniority. He or she shall further be entitled to participate in insurance, vacations, retirement pay, and other benefits offered by the employer pursuant to established rules and practices relating to employees on furlough or leave of absence in effect with the employer at the time such person was ordered into the service; and he or she shall not be discharged from such position without cause within one year after restoration. [2001 c 133 § 7; 1953 c 212 § 5.]

Effective date—2001 c 133: See note following RCW 73.16.005.

73.16.053 Continuation of health plan coverage during absence—Reinstatement of health plan coverage upon reemployment. (1) If a person, or the person's dependents, have coverage under a health plan in connection with the person's position of state employment, and the person is absent from his or her position of state employment by reason of service in the uniformed services, the plan shall provide that the person may elect to continue the coverage as provided in this section. The maximum period of coverage of a person and person's dependents under such an election shall be the lesser of:

(a) The eighteen-month period beginning on the date on which the person's absence begins; or

(b) The day after the date on which the person fails to apply for or return to a position of state employment, as determined under RCW 73.16.035.

(2) A person who elects to continue health plan coverage under this section may be required to pay not more than one hundred two percent of the full premium under the plan associated with the coverage for the state employer's other employees, except that in the case of a person who performs service in the uniformed services for less than thirty-one days, the person may not be required to pay more than the employee share, if any, for the coverage.

(3) Except as provided in subsection (2) of this section, if a person's coverage under a health plan was terminated because of service in the uniformed services, an exclusion or waiting period may not be imposed in connection with the reinstatement of the coverage upon reemployment under this chapter if an exclusion or waiting period would not have been imposed under a health plan had coverage of the person by the plan not been terminated as a result of his or her service. This subsection applies to the person who is reemployed and to any dependent who is covered by the plan because of the reinstatement of the coverage of the person. [2001 c 133 § 8.]

Effective date—2001 c 133: See note following RCW 73.16.005.

73.16.055 Determination of pension benefits and liabilities for reemployed persons. (1)(a) In the case of a right provided under any state law governing pension benefits for state employees, the right to pension benefits of a person reemployed under this chapter shall be determined under this section.

(b) A person reemployed under this chapter shall be treated as not having incurred a break in service with the state because of the person's period of service in the uniformed services.

(c) Each period served by a person in the uniformed services shall, upon reemployment under this chapter, be deemed to constitute service with the state for the purpose of determining the nonforfeitability of the person's accrued benefits and for the purpose of determining the accrual of benefits under the plan.

(2) When the state is reemploying a person under this chapter, the state is liable to an employee pension benefit plan for funding any obligation of the plan to provide the pension benefits described in this section and shall allocate the amounts of any employer contribution for the person in the same manner and to the same extent the allocation occurs for other employees during the period of service. For purposes of determining the amount of such liability and any obligation of the plan, earnings and forfeitures shall not be included. For purposes of determining the amount of such liability and purposes of a state law governing pension benefits for state employees, service in the uniformed services that is deemed under subsection (1) of this section to be service with the state shall be deemed to be service with the state under the terms of the plan or any applicable collective bargaining agreement.

(3) A person reemployed by the state under this chapter is entitled to accrued benefits pursuant to subsection (1)(a) of this section that are contingent on the making of, or derived from, employee contributions or elective deferrals (as defined in section 402(g)(3) of the internal revenue code of 1986) only to the extent the person makes payment to the plan with respect to such contributions or deferrals. No such payment may exceed the amount the person would have been permitted or required to contribute had the person remained continuously employed by the state throughout the period of uniformed service. Any payment to the plan described in this subsection shall be made during the period beginning with the date of reemployment and whose duration is three times the period of the person's services, such payment period in the uniformed services, not to exceed five years.

(4) For purposes of computing an employer's liability of the employee's contributions under subsection (2) of this section, the employee's compensation during the period of service shall be computed:

(a) At the rate the employee would have received but for the period of service in subsection (1)(b) of this section; or

(b) In the case that the determination of such rate is not reasonably certain, on the basis of the employee's average rate of compensation during the twelve-month period immediately preceding such period or if shorter, the period of employment immediately preceding such period. [2001 c 133 § 9.]

Effective date—2001 c 133: See note following RCW 73.16.005.

73.16.061 Enforcement of provisions. (1) In case any employer, his or her successor or successors fails or refuses to comply with the provisions of RCW 73.16.031 through 73.16.061 and 73.16.090, the attorney general shall bring action in the superior court in the county in which the employer is located or does business to obtain an order to specifically require such employer to comply with the provisions of this chapter, and, as an incident thereto, to compen-

sate such person for any loss of wages or benefits suffered by reason of such employer's unlawful act if:

(a) The service in question was state duty not covered by the uniformed services employment and reemployment rights act of 1994, P.L. 103-353 (38 U.S.C. Sec. 4301 et seq.); and

(b) The employer support for guard and reserve ombudsman, or his or her designee, has inquired in the matter and has been unable to resolve it.

(2) If the conditions in subsection (1)(a) and (b) of this section are met, any such person who does not desire the services of the attorney general may, by private counsel, bring such action. [2001 c 133 § 10; 1953 c 212 § 6.]

Effective date—2001 c 133: See note following RCW 73.16.005.

73.16.070 Federal act to apply in state courts. The federal soldiers' and sailors' civil relief act of 1940, Public Act No. 861, is hereby specifically declared to apply in proper cases in all the courts of this state. [2001 c 133 § 11; 1941 c 201 § 5; Rem. Supp. 1941 § 10758-7.]

Effective date—2001 c 133: See note following RCW 73.16.005.

73.16.080 Bona fide executive, administrative, and professional employees—Offset of military pay. An offset of any military pay for temporary service in the uniformed services in a particular week against the salary of a bona fide executive, administrative, or professional employee in a particular week shall not be a factor in determining whether the employee is exempt under RCW 49.46.010(5)(c). [2001 c 133 § 12.]

Effective date—2001 c 133: See note following RCW 73.16.005.

73.16.090 Application of chapter—Other rights and benefits preserved. This chapter shall not supersede, nullify, or diminish any federal or state law, ordinance, rule, regulation, contract, agreement, policy, plan, practice, or other matter that establishes a right or benefit that is more beneficial to, or is in addition to, a right or benefit provided for such person in this chapter. [2001 c 133 § 13.]

Effective date—2001 c 133: See note following RCW 73.16.005.

73.16.100 Legislative declaration—Other civil actions abolished. The legislature declares that the public policies articulated in chapter 133, Laws of 2001 depend on the procedures established in chapter 133, Laws of 2001. No civil or criminal action may be maintained relying on the public policies articulated in chapter 133, Laws of 2001 without complying with the procedures in this chapter. To that end, all civil actions and civil causes of action for such injuries and all jurisdiction of the courts of this state over such causes are hereby abolished, except as provided in this chapter. [2001 c 133 § 14.]

Effective date—2001 c 133: See note following RCW 73.16.005.

Chapter 73.20 RCW ACKNOWLEDGMENTS AND POWERS OF ATTORNEY

Sections

73.20.010 Acknowledgments.

- 73.20.050 Agency created by power of attorney not revoked by unverified report of death.
- 73.20.060 Affidavit of agent as to knowledge of revocation.
- 73.20.070 "Missing in action" report not construed as actual knowledge.
- 73.20.080 Provision in power for revocation not affected.

73.20.010 Acknowledgments. In addition to the acknowledgment of instruments and the performance of other notarial acts in the manner and form and as otherwise authorized by law, instruments may be acknowledged, documents attested, oaths and affirmations administered, depositions and affidavits executed, and other notarial acts performed, before or by any commissioned officer in active service of the armed forces of the United States with the rank of second lieutenant or higher in the army or marine corps, or with the rank of ensign or higher in the navy or coast guard, or with equivalent rank in any other component part of the armed forces of the United States, by any person who either

(1) is a member of the armed forces of the United States, or

(2) is serving as a merchant seaman outside the limits of the United States included within the forty-eight states and the District of Columbia; or

(3) is outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to the prosecution of any war in which the United States is then engaged.

Such acknowledgment of instruments, attestation of documents, administration of oaths and affirmations, execution of depositions and affidavits, and performance of other notarial acts, heretofore or hereafter made or taken, are hereby declared legal, valid and binding, and instruments and documents so acknowledged, authenticated, or sworn to shall be admissible in evidence and eligible to record in this state under the same circumstances, and with the same force and effect as if such acknowledgment, attestation, oath, affirmation, deposition, affidavit, or other notarial act, had been made or taken within this state before or by a duly qualified officer or official as otherwise provided by law.

In the taking of acknowledgments and the performing of other notarial acts requiring certification, a certificate endorsed upon or attached to the instrument or documents, which shows the date of the notarial act and which states, in substance, that the person appearing before the officer acknowledged the instrument as his act or made or signed the instrument or document under oath, shall be sufficient for all intents and purposes. The instrument or document shall not be rendered invalid by the failure to state the place of execution or acknowledgment.

If the signature, rank, and branch of service or subdivision thereof, of any such commissioned officer appear upon such instrument or document or certificate, no further proof of the authority of such officer so to act shall be required and such action by such commissioned officer shall be prima facie evidence that the person making such oath or acknowledgment is within the purview of this section. [1945 c 271 § 1; Rem. Supp. 1945 § 10758-13a. See also, 1943 c 47. Formerly RCW 73.20.010 through 73.20.040.]

Acknowledgments, generally: Chapter 64.08 RCW.

(2004 Ed.)

73.20.050 Agency created by power of attorney not revoked by unverified report of death. No agency created by a power of attorney in writing given by a principal who is at the time of execution, or who, after executing such power of attorney, becomes either (1) a member of the armed forces of the United States, or (2) a person serving as a merchant seaman outside the limits of the United States, included within the forty-eight states and the District of Columbia; or (3) a person outside said limits by permission, assignment or direction of any department or official of the United States government, in connection with any activity pertaining to or connected with the prosecution of any war in which the United States is then engaged, shall be revoked or terminated by the death of the principal, as to the agent or other person who, without actual knowledge or actual notice of the death of the principal, shall have acted or shall act, in good faith, under or in reliance upon such power of attorney or agency, and any action so taken, unless otherwise invalid or unenforceable, shall be binding on the heirs, devisees, legatees, or personal representatives of the principal. [1945 c 139 § 1; Rem. Supp. 1945 § 10758-70.]

Severability—1945 c 139: "If any provision of this act or the application thereof to any person or circumstance be held invalid, such invalidity shall not affect any other provision or application of the act which can be given effect without the invalid provision or application, and to this end the provisions of this act are declared to be severable." [1945 c 139 § 5.]

73.20.060 Affidavit of agent as to knowledge of revocation. An affidavit, executed by the attorney in fact or agent, setting forth that the maker of the power of attorney is a member of the armed forces of the United States or within the class of persons described in RCW 73.20.050, and that he has not or had not, at the time of doing any act pursuant to the power of attorney, received actual knowledge or actual notice of the revocation or termination of the power of attorney, by death or otherwise, or notice of any facts indicating the same, shall, in the absence of fraud, be conclusive proof of the nonrevocation or nontermination of the power at such time. If the exercise of the power requires execution and delivery of any instrument which is recordable under the laws of this state, such affidavit shall likewise be recordable. [1945 c 139 § 2; Rem. Supp. 1945 § 10758-71.]

73.20.070 "Missing in action" report not construed as actual knowledge. No report or listing, either official or otherwise, of "missing" or "missing in action", as such words are used in military parlance, shall constitute or be interpreted as constituting actual knowledge or actual notice of the death of such principal or notice of any facts indicating the same, or shall operate to revoke the agency. [1945 c 139 § 3; Rem. Supp. 1945 § 10758-72.]

73.20.080 Provision in power for revocation not affected. RCW 73.20.050 through 73.20.070 shall not be construed so as to alter or affect any provision for revocation or termination contained in such power of attorney. [1945 c 139 § 4; Rem. Supp. 1945 § 10758-73.]

Chapter 73.24 RCW

BURIAL

Sections

- 73.24.020 Contract for care of veterans' plot at Olympia.
73.24.030 Authorized burials in plot.

73.24.020 Contract for care of veterans' plot at Olympia. The director of the *department of finance, budget and business is hereby authorized and directed to contract with Olympia Lodge No. 1, F.&A.M., a corporation for the improvement and perpetual care of the state veterans' plot in the Masonic cemetery at Olympia; such care to include the providing of proper curbs and walks, cultivating, reseeding and fertilizing grounds, repairing and resetting the bases and monuments in place on the ground, leveling grounds, and transporting and setting headstones for graves of persons hereafter buried on the plot. [1937 c 36 § 1; RRS § 10758-1.]

***Reviser's note:** Powers and duties of the "department of finance, budget and business" have devolved upon the department of general administration through a chain of statutes as follows: 1935 c 176 § 11; 1947 c 114 § 5; and 1955 c 285 §§ 4, 14, 16, and 18 (RCW 43.19.010 and 43.19.015).

Cemeteries, endowment and nonendowment care: Chapters 68.40, 68.44 RCW.

73.24.030 Authorized burials in plot. The said plot shall be available, to the extent such space is available, without charge or cost for the burial of persons who have served in the army, navy, or marine corps in the United States, in the Spanish-American war, Philippine insurrection, or the Chinese Relief Expedition, or who served in any said branches of said service at any time between April 21, 1898 and July 4, 1902 and any veteran as defined in RCW 41.04.007. [2002 c 292 § 10; 1977 c 31 § 4; 1937 c 36 § 2; RRS § 10758-2.]

Chapter 73.36 RCW

UNIFORM VETERANS' GUARDIANSHIP ACT

Sections

- 73.36.010 Terms defined.
73.36.020 Administrator party in interest in guardianship proceedings—Notice.
73.36.030 Appointment of guardian—Necessary when.
73.36.040 Guardian—Number of wards permitted.
73.36.050 Guardian—Appointment—Contents of petition.
73.36.060 Guardian for minor—Appointment—Prima facie evidence.
73.36.080 Notice of petition.
73.36.090 Guardian's bond.
73.36.100 Accounting by guardian—Copies of all proceedings to be furnished administration—Hearings.
73.36.110 Failure to account—Penalties.
73.36.120 Compensation of guardian.
73.36.130 Investment of funds—Procedure.
73.36.140 Use of funds—Procedure.
73.36.150 Purchase of real estate—Procedure.
73.36.155 Public records—Free copies.
73.36.160 Discharge of guardian—Final account.
73.36.165 Commitment to veterans administration or other federal agency.
73.36.170 Application of chapter to other guardianships of veterans.
73.36.180 Construction of chapter—Uniformity.
73.36.190 Short title.

Guardianship, generally: Chapters 11.88, 11.92 RCW.

73.36.010 Terms defined. As used in this chapter:
"Person" means an individual, a partnership, a corporation or an association.

"Veterans administration" means the veterans administration, its predecessors or successors.

"Income" means moneys received from the veterans administration and revenue or profit from any property wholly or partially acquired therewith.

"Estate" means income on hand and assets acquired partially or wholly with "income".

"Benefits" means all moneys paid or payable by the United States through the veterans administration.

"Administrator" means the administrator of veterans affairs of the United States or his successor.

"Ward" means a beneficiary of the veterans administration.

"Guardian" means any fiduciary for the person or estate of a ward. [1951 c 53 § 1.]

73.36.020 Administrator party in interest in guardianship proceedings—Notice. The administrator shall be a party in interest in any proceeding for the appointment or removal of a guardian or for the removal of the disability of minority or mental incapacity of a ward, and in any suit or other proceeding affecting in any manner the administration by the guardian of the estate of any present or former ward whose estate includes assets derived in whole or in part from benefits heretofore or hereafter paid by the veterans administration. Not less than fifteen days prior to hearing in such matter notice in writing of the time and place thereof shall be given by mail (unless waived in writing) to the office of the veterans administration having jurisdiction over the area in which any such suit or any such proceeding is pending. [1951 c 53 § 2.]

73.36.030 Appointment of guardian—Necessary when. Whenever, pursuant to any law of the United States or regulation of the veterans administration, it is necessary, prior to payment of benefits, that a guardian be appointed, the appointment may be made in the manner hereinafter provided. [1951 c 53 § 3.]

73.36.040 Guardian—Number of wards permitted. No person other than a bank or trust company shall be guardian of more than five wards at one time, unless all the wards are members of one family. Upon presentation of a petition by an attorney of the veterans administration or other interested person, alleging that a guardian is acting in a fiduciary capacity for more than five wards as herein provided and requesting his discharge for that reason, the court, upon proof substantiating the petition, shall require a final accounting forthwith from such guardian and shall discharge him from guardianships in excess of five and forthwith appoint a successor. [1951 c 53 § 4.]

73.36.050 Guardian—Appointment—Contents of petition. (1) A petition for the appointment of a guardian may be filed by any relative or friend of the ward or by any person who is authorized by law to file such a petition. If there is no person so authorized or if the person so authorized refuses or fails to file such a petition within thirty days after mailing of notice by the veterans administration to the last known address of the person, if any, indicating the necessity

for the same, a petition for appointment may be filed by any resident of this state.

(2) The petition for appointment shall set forth the name, age, place of residence of the ward, the name and place of residence of the nearest relative, if known, and the fact that the ward is entitled to receive benefits payable by or through the veterans administration and shall set forth the amount of moneys then due and the amount of probable future payments.

(3) The petition shall also set forth the name and address of the person or institution, if any, having actual custody of the ward and the name, age, relationship, if any, occupation and address of the proposed guardian and if the nominee is a natural person, the number of wards for whom the nominee is presently acting as guardian. Notwithstanding any law as to priority of persons entitled to appointment, or the nomination in the petition, the court may appoint some other individual or a bank or trust company as guardian, if the court determines it is for the best interest of the ward.

(4) In the case of a mentally incompetent ward the petition shall show that such ward has been rated incompetent by the veterans administration on examination in accordance with the laws and regulations governing the veterans administration.

(5) All proceedings under this chapter shall be governed by the provisions of chapters 11.88 and 11.92 RCW which shall prevail over any conflicting provisions of this chapter. [1994 c 147 § 4; 1951 c 53 § 5.]

Prohibitions: RCW 73.04.140.

73.36.060 Guardian for minor—Appointment—Prima facie evidence. Where a petition is filed for the appointment of a guardian for a minor, a certificate of the administrator or his authorized representative, setting forth the age of such minor as shown by the records of the veterans administration and the fact that the appointment of a guardian is a condition precedent to the payment of any moneys due the minor by the veterans administration shall be prima facie evidence of the necessity for such appointment. [1951 c 53 § 6.]

73.36.080 Notice of petition. Upon the filing of a petition for the appointment of a guardian under this chapter, notice shall be given to the ward, to such other persons, and in such manner as is provided by the general law of this state, and also to the veterans administration as provided by this chapter. [1951 c 53 § 8.]

73.36.090 Guardian's bond. (1) Upon the appointment of a guardian, he shall execute and file a bond to be approved by the court in an amount not less than the estimated value of the personal estate and anticipated income of the ward during the ensuing two years, except in cases where banks or trust companies are appointed as guardian and no bond is required by the general state law. The bond shall be in the form and be conditioned as required of guardians appointed under the general guardianship laws of this state. The court may from time to time require the guardian to file an additional bond.

(2) Where a bond is tendered by a guardian with personal sureties, there shall be at least two such sureties and they shall

file with the court a certificate under oath which shall describe the property owned, both real and personal, and shall state that each is worth the sum named in the bond as the penalty thereof over and above all his debts and liabilities and the aggregate of other bonds in which he is principal or surety and exclusive of property exempt from execution. The court may require additional security or may require a corporate surety bond, the premium thereon to be paid from the ward's estate. [1951 c 53 § 9.]

Guardianship, generally: Chapters 11.88 and 11.92 RCW.

73.36.100 Accounting by guardian—Copies of all proceedings to be furnished administration—Hearings.

(1) Every guardian, who has received or shall receive on account of his ward any money or other thing of value from the veterans administration, at the expiration of two years from date of his appointment, and every two years thereafter on the anniversary date of his appointment, or as much oftener as the court may require, shall file with the court a full, true and accurate account under oath of all moneys or other things of value received by him, all earnings, interest or profits derived therefrom, and all property acquired therewith and of all disbursements therefrom, and showing the balance thereof in his hands at the date of the account and how invested. Each year when not required to file an account with the court, the guardian shall file an account with the proper office of the veterans administration. If the interim account be not filed with the veterans administration, or, if filed, shall be unsatisfactory, the court shall upon receipt of notice thereof from the veterans administration require the guardian forthwith to file an account which shall be subject in all respects to the next succeeding paragraphs. Any account filed with the veterans administration and approved by the chief attorney thereof may be filed with the court and be approved by the court without hearing, unless a hearing thereon be requested by some party in interest.

(2) The guardian, at the time of filing any account with the court or veterans administration shall exhibit all securities or investments held by him to an officer of the bank or other depository wherein said securities or investments are held for safekeeping or to an authorized representative of the corporation which is surety on his bond, or to the judge or clerk of a court of record in this state, or upon request of the guardian or other interested party, to any other reputable person designated by the court, who shall certify in writing that he has examined the securities or investments and identified them with those described in the account and shall note any omissions or discrepancies. If the depository is the guardian, the certifying officer shall not be the officer verifying the account. The guardian may exhibit the securities or investments to the judge of the court, who shall endorse on the account and copy thereof, a certificate that the securities or investments shown therein as held by the guardian were each in fact exhibited to him and that those exhibited to him were the same as those in the account and noting any omission or discrepancy. The certificate, and the certificate of an official of the bank in which are deposited any funds for which the guardian is accountable, showing the amount on deposit, shall be prepared and signed in duplicate and one of each shall be filed by the guardian with his account.

(3) At the time of filing in the court any account, a certified copy thereof and a signed duplicate of each certificate filed with the court shall be sent by the guardian to the office of the veterans administration having jurisdiction over the area in which such court is located. A duplicate signed copy or a certified copy of any petition, motion or other pleading pertaining to an account, or to any matter other than an account, and which is filed in the guardianship proceedings or in any proceedings for the purpose of removing the disability of minority or mental incapacity, shall be furnished by the persons filing the same to the proper office of the veterans administration. Unless hearing be waived in writing by the attorney of the veterans administration and by all other persons, if any, entitled to notice, the court shall fix a time and place for the hearing on the account, petition, motion or other pleading, not less than fifteen days nor more than sixty days from the date same is filed, unless a different available date be stipulated in writing. Unless waived in writing, written notice of the time and place of hearing shall be given the veterans administration office concerned and to the guardian and any others entitled to notice, not less than fifteen days prior to the date fixed for the hearing. The notice may be given by mail, in which event it shall be deposited in the mails not less than fifteen days prior to said date. The court or clerk thereof, shall mail to said veterans administration office a copy of each order entered in any guardianship proceeding wherein the administrator is an interested party.

(4) If the guardian is accountable for property derived from sources other than the veterans administration, he shall be accountable as is or may be required under the applicable law of this state pertaining to the property of minors or persons of unsound mind who are not beneficiaries of the veterans administration, and as to such other property shall be entitled to the compensation provided by such law. The account for other property may be combined with the account filed in accordance with this section. [1951 c 53 § 10.]

73.36.110 Failure to account—Penalties. If any guardian shall fail to file with the court any account as required by this chapter, or by an order of the court, when any account is due or within thirty days after citation issues and provided by law, or shall fail to furnish the veterans administration a true copy of any account, petition or pleading as required by this chapter, such failure may in the discretion of the court be ground for his removal, in addition to other penalties provided by law. [1951 c 53 § 11.]

73.36.120 Compensation of guardian. Compensation payable to guardians shall be based upon services rendered and shall not exceed five percent of the amount of moneys received during the period covered by the account, except that the court may allow a fee of not exceeding twenty-five dollars per year, as a minimum fee, upon the approval of the chief attorney for the veterans administration. In the event of extraordinary services by any guardian, the court, upon petition and hearing thereon may authorize reasonable additional compensation therefor. A copy of the petition and notice of hearing thereon shall be given the proper office of the veterans administration in the manner provided in the case of hearing on a guardian's account or other pleading. No commission

or compensation shall be allowed on the moneys or other assets received from a prior guardian nor upon the amount received from liquidation of loans or other investments. [1951 c 53 § 12.]

73.36.130 Investment of funds—Procedure. Every guardian shall invest the surplus funds of his ward's estate in such securities or property as authorized under the laws of this state but only upon prior order of the court; except that the funds may be invested, without prior court authorization, in direct unconditional interest-bearing obligations of this state or of the United States and in obligations the interest and principal of which are unconditionally guaranteed by the United States. A signed duplicate or certified copy of the petition for authority to invest shall be furnished the proper office of the veterans administration, and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account. [1951 c 53 § 13.]

73.36.140 Use of funds—Procedure. A guardian shall not apply any portion of the income or the estate for the support or maintenance of any person including the ward, the spouse and the minor children of the ward, except upon petition to and prior order of the court after a hearing. A signed duplicate or certified copy of said petition shall be furnished the proper office of the veterans administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account or other pleading. [1951 c 53 § 14.]

73.36.150 Purchase of real estate—Procedure. (1) The court may authorize the purchase of the entire fee simple title to real estate in this state in which the guardian has no interest, but only as a home for the ward, or to protect his interest, or (if he is not a minor) as a home for his dependent family. Such purchase of real estate shall not be made except upon the entry of an order of the court after hearing upon verified petition. A copy of the petition shall be furnished the proper office of the veterans administration and notice of hearing thereon shall be given said office as provided in the case of hearing on a guardian's account.

(2) Before authorizing such investment the court shall require written evidence of value and of title and of the advisability of acquiring such real estate. Title shall be taken in the ward's name. This section does not limit the right of the guardian on behalf of his ward to bid and to become the purchaser of real estate at a sale thereof pursuant to decree of foreclosure of lien held by or for the ward, or at a trustee's sale, to protect the ward's right in the property so foreclosed or sold; nor does it limit the right of the guardian, if such be necessary to protect the ward's interest and upon prior order of the court in which the guardianship is pending, to agree with cotenants of the ward for a partition in kind, or to purchase from cotenants the entire undivided interests held by them, or to bid and purchase the same at a sale under a partition decree, or to compromise adverse claims of title to the ward's realty. [1951 c 53 § 15.]

73.36.155 Public records—Free copies. When a copy of any public record is required by the veterans administra-

tion to be used in determining the eligibility of any person to participate in benefits made available by the veterans administration, the official custodian of such public record shall without charge provide the applicant for such benefits or any person acting on his behalf or the authorized representative of the veterans administration with a certified copy of such record. [1951 c 53 § 16. Formerly RCW 73.04.025.]

73.36.160 Discharge of guardian—Final account. In addition to any other provisions of law relating to judicial restoration and discharge of guardian, a certificate by the veterans administration showing that a minor ward has attained majority, or that an incompetent ward has been rated competent by the veterans administration upon examination in accordance with law shall be prima facie evidence that the ward has attained majority, or has recovered his competency. Upon hearing after notice as provided by this chapter and the determination by the court that the ward has attained majority or has recovered his competency, an order shall be entered to that effect, and the guardian shall file a final account. Upon hearing after notice to the former ward and to the veterans administration as in case of other accounts, upon approval of the final account, and upon delivery to the ward of the assets due him from the guardian, the guardian shall be discharged and his sureties released. [1951 c 53 § 17.]

73.36.165 Commitment to veterans administration or other federal agency. (1) Whenever, in any proceeding under the laws of this state for the commitment of a person alleged to be of unsound mind or otherwise in need of confinement in a hospital or other institution for his proper care, it is determined after such adjudication of the status of such person as may be required by law that commitment to a hospital for mental disease or other institution is necessary for safekeeping or treatment and it appears that such person is eligible for care or treatment by the veterans administration or other agency of the United States government, the court, upon receipt of a certificate from the veterans administration or such other agency showing that facilities are available and that such person is eligible for care or treatment therein, may commit such person to said veterans administration or other agency. The person whose commitment is sought shall be personally served with notice of the pending commitment proceeding in the manner as provided by the law of this state; and nothing in this chapter shall affect his right to appear and be heard in the proceedings. Upon commitment, such person, when admitted to any hospital operated by any such agency within or without this state shall be subject to the rules and regulations of the veterans administration or other agency. The chief officer of any hospital of the veterans administration or institution operated by any other agency of the United States to which the person is so committed shall with respect to such person be vested with the same powers as superintendents of state hospitals for mental diseases within this state with respect to retention of custody, transfer, parole or discharge. Jurisdiction is retained in the committing or other appropriate court of this state at any time to inquire into the mental condition of the person so committed, and to determine the necessity for continuance of his restraint, and all commitments pursuant to this chapter are so conditioned.

(2004 Ed.)

(2) The judgment or order of commitment by a court of competent jurisdiction of another state or of the District of Columbia, committing a person to the veterans administration, or other agency of the United States government for care or treatment shall have the same force and effect as to the committed person while in this state as in the jurisdiction in which is situated the court entering the judgment or making the order; and the courts of the committing state, or of the District of Columbia, shall be deemed to have retained jurisdiction of the person so committed for the purpose of inquiring into the mental condition of such person, and of determining the necessity for continuance of his restraint; as is provided in subsection (1) of this section with respect to persons committed by the courts of this state. Consent is hereby given to the application of the law of the committing state or district in respect to the authority of the chief officer of any hospital of the veterans administration, or of any institution operated in this state by any other agency of the United States to retain custody, or transfer, parole or discharge the committed person.

(3) Upon receipt of a certificate of the veterans administration or such other agency of the United States that facilities are available for the care or treatment of any person heretofore committed to any hospital for the insane or other institution for the care or treatment of persons similarly afflicted and that such person is eligible for care or treatment, the superintendent of the institution may cause the transfer of such person to the veterans administration or other agency of the United States for care or treatment. Upon effecting any such transfer, the committing court or proper officer thereof shall be notified thereof by the transferring agency. No person shall be transferred to the veterans administration or other agency of the United States if he be confined pursuant to conviction of any felony or misdemeanor or if he has been acquitted of the charge solely on the ground of insanity, unless prior to transfer the court or other authority originally committing such person shall enter an order for such transfer after appropriate motion and hearing.

Any person transferred as provided in this section shall be deemed to be committed to the veterans administration or other agency of the United States pursuant to the original commitment. [1951 c 53 § 18. Formerly RCW 71.02.700 through 71.02.720.]

73.36.170 Application of chapter to other guardianships of veterans. The provisions of this chapter relating to surety bonds and the administration of estates of wards shall apply to all "income" and "estate" as defined in RCW 73.36.010 whether the guardian shall have been appointed under this chapter or under any other law of this state, special or general, prior or subsequent to the enactment hereof. [1951 c 53 § 21.]

73.36.180 Construction of chapter—Uniformity. This chapter shall be so construed to make uniform the law of those states which enact it. [1951 c 53 § 19.]

73.36.190 Short title. This chapter may be cited as the "uniform veterans' guardianship act". [1951 c 53 § 20.]

[Title 73 RCW—page 15]

Chapter 73.40 RCW

VETERANS' MEMORIALS

Sections

- 73.40.010 Memorial honoring state residents who died or are missing-in-action in southeast Asia.
- 73.40.030 Memorial honoring state residents who died or are missing-in-action in southeast Asia—Display of individual names.
- 73.40.040 Memorial honoring state residents who died or are missing-in-action in the Korean conflict.
- 73.40.060 National World War II memorial account.

73.40.010 Memorial honoring state residents who died or are missing-in-action in southeast Asia. The secretary of state shall coordinate the design, construction, and placement of a memorial within the state capitol building honoring Washington state residents who died or are "missing-in-action" in the southeast Asia theater of operations. [1984 c 81 § 1. Formerly RCW 40.14.200.]

73.40.030 Memorial honoring state residents who died or are missing-in-action in southeast Asia—Display of individual names. The memorial authorized by *RCW 40.14.200 through 40.14.210 shall display the individual names of the Washington state residents who died or are "missing-in-action" in the southeast Asia theater of operations. [1984 c 81 § 3. Formerly RCW 40.14.210.]

*Reviser's note: RCW 40.14.200 through 40.14.210 were recodified as RCW 73.40.010 through 73.40.030.

73.40.040 Memorial honoring state residents who died or are missing-in-action in the Korean conflict. The director of the department of veterans affairs shall coordinate the design, construction, and placement of a memorial within the state capitol grounds honoring Washington state residents who died or are "missing-in-action" in the Korean conflict. [1989 c 235 § 1. Formerly RCW 40.14.220.]

73.40.060 National World War II memorial account. The national World War II memorial account is created in the custody of the state treasurer. All receipts from appropriations and other sources must be deposited into the account. Expenditures from the account may be used only for the national World War II memorial in Washington, D.C. Only the director of the department of veterans' affairs or the director's designee may authorize expenditures from the account. The account is subject to allotment procedures under chapter 43.88 RCW, but an appropriation is not required for expenditures. [2000 c 12 § 2.]

Intent—2000 c 12: "It is the intent of the legislature to recognize the dedication of the men and women of Washington state who served or were wounded, killed, or missing in action during World War II by making a contribution towards the construction of a national World War II memorial to be located in Washington, D.C. The national World War II memorial will be the first national memorial dedicated to all who served during World War II. All military veterans of the war, the citizens on the home front, the nation at large, and the high moral purpose and idealism that motivated the nation's call to arms will be honored with this memorial." [2000 c 12 § 1.]

Title 74

PUBLIC ASSISTANCE

Chapters

- 74.04** General provisions—Administration.
- 74.08** Eligibility generally—Standards of assistance.
- 74.08A** Washington WorkFirst temporary assistance for needy families.
- 74.09** Medical care.
- 74.09A** Medical assistance—Coordination of benefits—Computerized information transfer.
- 74.12** Temporary assistance for needy families.
- 74.12A** Incentive to work—Economic independence.
- 74.13** Child welfare services.
- 74.14A** Children and family services.
- 74.14B** Children's services.
- 74.14C** Family preservation services.
- 74.14D** Alternative family-centered services.
- 74.15** Care of children, expectant mothers, developmentally disabled.
- 74.18** Department of services for the blind.
- 74.20** Support of dependent children.
- 74.20A** Support of dependent children—Alternative method—1971 act.
- 74.25** Job opportunities and basic skills training program.
- 74.25A** Employment partnership program.
- 74.26** Services for children with multiple handicaps.
- 74.29** Rehabilitation services for individuals with disabilities.
- 74.32** Advisory committees on vendor rates.
- 74.34** Abuse of vulnerable adults.
- 74.36** Funding for community programs for the aging.
- 74.38** Senior citizens services act.
- 74.39** Long-term care service options.
- 74.39A** Long-term care services options—Expansion.
- 74.41** Respite care services.
- 74.42** Nursing homes—Resident care, operating standards.
- 74.46** Nursing facility medicaid payment system.
- 74.50** Alcoholism and drug addiction treatment and support.
- 74.55** Children's system of care.
- 74.98** Construction.

Assistance and relief by counties: Chapter 36.39 RCW.

Assistance for parolees, work release, and discharged prisoners: RCW 9.95.310 through 9.95.370.

Child abuse or neglect, reports by practitioners of healing arts: Chapter 26.44 RCW.

Displaced homemaker act: Chapter 28B.04 RCW.

Domestic violence prevention: Chapter 26.50 RCW.

Jurisdiction over Indians as to public assistance: Chapter 37.12 RCW.

Low-income patients, malpractice insurance for retired physicians providing health care services: RCW 43.70.460.

Missing children clearinghouse and hot line: Chapter 13.60 RCW.

(2004 Ed.)

Chapter 74.04 RCW

GENERAL PROVISIONS—ADMINISTRATION

Sections

- 74.04.005 Definitions—Eligibility.
- 74.04.00511 Limitations on "resource" and "income."
- 74.04.0052 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral.
- 74.04.006 Contract of sale of property—Availability as a resource or income—Establishment.
- 74.04.011 Secretary's authority—Personnel.
- 74.04.015 Secretary responsible officer to administer federal funds, etc.
- 74.04.025 Bilingual services for non-English speaking applicants and recipients—Bilingual personnel, when—Primary language pamphlets and written materials.
- 74.04.033 Notification of availability of basic health plan.
- 74.04.040 Public assistance a joint federal, state, and county function—Notice required.
- 74.04.050 Department to administer public assistance programs.
- 74.04.055 Cooperation with federal government—Construction—Conflict with federal requirements.
- 74.04.057 Promulgation of rules and regulations to qualify for federal funds.
- 74.04.060 Records, confidential—Exceptions—Penalty.
- 74.04.062 Disclosure of recipient location to police officer or immigration official.
- 74.04.070 County office—Administrator.
- 74.04.080 County administrator—Personnel—Bond.
- 74.04.120 Basis of state's allocation of federal aid funds—County budget.
- 74.04.180 Joint county administration.
- 74.04.200 Standards—Established, enforced.
- 74.04.205 Simplified reporting for the food stamp program.
- 74.04.210 Basis of allocation of moneys to counties.
- 74.04.230 General assistance—Mental health services.
- 74.04.265 Earnings—Deductions from grants.
- 74.04.266 General assistance—Earned income exemption to be established for unemployable persons.
- 74.04.270 Audit of accounts—Uniform accounting system.
- 74.04.280 Assistance nontransferable and exempt from process.
- 74.04.290 Subpoena of witnesses, books, records, etc.
- 74.04.300 Recovery of payments improperly received—Lien—Recipient reporting requirements.
- 74.04.310 Authority to accept contributions.
- 74.04.330 Annual reports by assistance organizations—Penalty.
- 74.04.340 Federal surplus commodities—Certification of persons eligible to receive commodities.
- 74.04.350 Federal surplus commodities—Not to be construed as public assistance, eligibility not affected.
- 74.04.360 Federal surplus commodities—Certification deemed administrative expense of department.
- 74.04.370 Federal surplus commodities—County program, expenses, handling of commodities.
- 74.04.380 Federal and other surplus food commodities—Agreements—Personnel—Facilities—Cooperation with other agencies—Discontinuance of program.
- 74.04.385 Unlawful practices relating to surplus commodities—Penalty.
- 74.04.480 Educational leaves of absence for personnel.
- 74.04.500 Food stamp program—Authorized.
- 74.04.510 Food stamp program—Rules.
- 74.04.515 Food stamp program—Discrimination prohibited.
- 74.04.520 Food stamp program—Confidentiality.
- 74.04.600 Supplemental security income program—Purpose.
- 74.04.610 Supplemental security income program—Termination of federal financial assistance payments—Supersession by supplemental security income program.
- 74.04.620 State supplement to national program of supplemental security income—Authorized—Reimbursement of interim assistance, attorneys' fees.
- 74.04.630 State supplementation to national program of supplemental security income—Contractual agreements with federal government.

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| 74.04.635 | State supplement to national program of supplemental security income—World War II Philippine veterans. |
| 74.04.640 | Acceptance of referrals for vocational rehabilitation—Reimbursement. |
| 74.04.650 | Individuals failing to comply with federal requirements. |
| 74.04.660 | Family emergency assistance program. |
| 74.04.750 | Reporting requirements—Food stamp allotments and rent or housing subsidies, consideration as income. |
| 74.04.760 | Minimum amount of monthly assistance payments. |
| 74.04.770 | Consolidated standards of need—Rateable reductions—Grant maximums. |

Collection agencies to collect public debts: RCW 19.16.500.

Identical cards—Issuance to nondrivers and public assistance recipients: RCW 46.20.117.

74.04.005 Definitions—Eligibility. For the purposes of this title, unless the context indicates otherwise, the following definitions shall apply:

(1) "Public assistance" or "assistance"—Public aid to persons in need thereof for any cause, including services, medical care, assistance grants, disbursing orders, work relief, general assistance and federal-aid assistance.

(2) "Department"—The department of social and health services.

(3) "County or local office"—The administrative office for one or more counties or designated service areas.

(4) "Director" or "secretary" means the secretary of social and health services.

(5) "Federal-aid assistance"—The specific categories of assistance for which provision is made in any federal law existing or hereafter passed by which payments are made from the federal government to the state in aid or in respect to payment by the state for public assistance rendered to any category of needy persons for which provision for federal funds or aid may from time to time be made, or a federally administered needs-based program.

(6)(a) "General assistance"—Aid to persons in need who:

(i) Are not eligible to receive federal-aid assistance, other than food stamps or food stamp benefits transferred electronically and medical assistance; however, an individual who refuses or fails to cooperate in obtaining federal-aid assistance, without good cause, is not eligible for general assistance;

(ii) Meet one of the following conditions:

(A) Pregnant: PROVIDED, That need is based on the current income and resource requirements of the federal temporary assistance for needy families program; or

(B) Subject to chapter 165, Laws of 1992, incapacitated from gainful employment by reason of bodily or mental infirmity that will likely continue for a minimum of ninety days as determined by the department.

(C) Persons who are unemployable due to alcohol or drug addiction are not eligible for general assistance. Persons receiving general assistance on July 26, 1987, or becoming eligible for such assistance thereafter, due to an alcohol or drug-related incapacity, shall be referred to appropriate assessment, treatment, shelter, or supplemental security income referral services as authorized under chapter 74.50 RCW. Referrals shall be made at the time of application or at the time of eligibility review. Alcoholic and drug addicted clients who are receiving general assistance on July 26, 1987, may remain on general assistance if they otherwise retain their eligibility until they are assessed for services under

chapter 74.50 RCW. Subsection (6)(a)(ii)(B) of this section shall not be construed to prohibit the department from granting general assistance benefits to alcoholics and drug addicts who are incapacitated due to other physical or mental conditions that meet the eligibility criteria for the general assistance program;

(iii) Are citizens or aliens lawfully admitted for permanent residence or otherwise residing in the United States under color of law; and

(iv) Have furnished the department their social security account number. If the social security account number cannot be furnished because it has not been issued or is not known, an application for a number shall be made prior to authorization of assistance, and the social security number shall be provided to the department upon receipt.

(b) Notwithstanding the provisions of subsection (6)(a)(i), (ii), and (c) of this section, general assistance shall be provided to the following recipients of federal-aid assistance:

(i) Recipients of supplemental security income whose need, as defined in this section, is not met by such supplemental security income grant because of separation from a spouse; or

(ii) To the extent authorized by the legislature in the biennial appropriations act, to recipients of temporary assistance for needy families whose needs are not being met because of a temporary reduction in monthly income below the entitled benefit payment level caused by loss or reduction of wages or unemployment compensation benefits or some other unforeseen circumstances. The amount of general assistance authorized shall not exceed the difference between the entitled benefit payment level and the amount of income actually received.

(c) General assistance shall be provided only to persons who are not members of assistance units receiving federal aid assistance, except as provided in subsection (6)(a)(ii)(A) and (b) of this section, and will accept available services which can reasonably be expected to enable the person to work or reduce the need for assistance unless there is good cause to refuse. Failure to accept such services shall result in termination until the person agrees to cooperate in accepting such services and subject to the following maximum periods of ineligibility after reapplication:

(i) First failure: One week;

(ii) Second failure within six months: One month;

(iii) Third and subsequent failure within one year: Two months.

(d) Persons found eligible for general assistance based on incapacity from gainful employment may, if otherwise eligible, receive general assistance pending application for federal supplemental security income benefits. Any general assistance that is subsequently duplicated by the person's receipt of supplemental security income for the same period shall be considered a debt due the state and shall by operation of law be subject to recovery through all available legal remedies.

(e) The department shall adopt by rule medical criteria for general assistance eligibility to ensure that eligibility decisions are consistent with statutory requirements and are based on clear, objective medical information.

(f) The process implementing the medical criteria shall involve consideration of opinions of the treating or consulting physicians or health care professionals regarding incapacity, and any eligibility decision which rejects uncontroverted medical opinion must set forth clear and convincing reasons for doing so.

(g) Recipients of general assistance based upon a finding of incapacity from gainful employment who remain otherwise eligible shall have their benefits discontinued unless the recipient demonstrates no material improvement in their medical or mental condition. The department may discontinue benefits when there was specific error in the prior determination that found the recipient eligible by reason of incapacitation. Recipients of general assistance based upon pregnancy who relinquish their child for adoption, remain otherwise eligible, and are not eligible to receive benefits under the federal temporary assistance for needy families program shall not have their benefits terminated until the end of the month in which the period of six weeks following the birth of the recipient's child falls. Recipients of the federal temporary assistance for needy families program who lose their eligibility solely because of the birth and relinquishment of the qualifying child may receive general assistance through the end of the month in which the period of six weeks following the birth of the child falls.

(h) No person may be considered an eligible individual for general assistance with respect to any month if during that month the person:

(i) Is fleeing to avoid prosecution of, or to avoid custody or confinement for conviction of, a felony, or an attempt to commit a felony, under the laws of the state of Washington or the place from which the person flees; or

(ii) Is violating a condition of probation, community supervision, or parole imposed under federal or state law for a felony or gross misdemeanor conviction.

(7) "Applicant"—Any person who has made a request, or on behalf of whom a request has been made, to any county or local office for assistance.

(8) "Recipient"—Any person receiving assistance and in addition those dependents whose needs are included in the recipient's assistance.

(9) "Standards of assistance"—The level of income required by an applicant or recipient to maintain a level of living specified by the department.

(10) "Resource"—Any asset, tangible or intangible, owned by or available to the applicant at the time of application, which can be applied toward meeting the applicant's need, either directly or by conversion into money or its equivalent. The department may by rule designate resources that an applicant may retain and not be ineligible for public assistance because of such resources. Exempt resources shall include, but are not limited to:

(a) A home that an applicant, recipient, or their dependents is living in, including the surrounding property;

(b) Household furnishings and personal effects;

(c) A motor vehicle, other than a motor home, used and useful having an equity value not to exceed five thousand dollars;

(d) A motor vehicle necessary to transport a physically disabled household member. This exclusion is limited to one vehicle per physically disabled person;

(e) All other resources, including any excess of values exempted, not to exceed one thousand dollars or other limit as set by the department, to be consistent with limitations on resources and exemptions necessary for federal aid assistance. The department shall also allow recipients of temporary assistance for needy families to exempt savings accounts with combined balances of up to an additional three thousand dollars;

(f) Applicants for or recipients of general assistance shall have their eligibility based on resource limitations consistent with the temporary assistance for needy families program rules adopted by the department; and

(g) If an applicant for or recipient of public assistance possesses property and belongings in excess of the ceiling value, such value shall be used in determining the need of the applicant or recipient, except that: (i) The department may exempt resources or income when the income and resources are determined necessary to the applicant's or recipient's restoration to independence, to decrease the need for public assistance, or to aid in rehabilitating the applicant or recipient or a dependent of the applicant or recipient; and (ii) the department may provide grant assistance for a period not to exceed nine months from the date the agreement is signed pursuant to this section to persons who are otherwise ineligible because of excess real property owned by such persons when they are making a good faith effort to dispose of that property: PROVIDED, That:

(A) The applicant or recipient signs an agreement to repay the lesser of the amount of aid received or the net proceeds of such sale;

(B) If the owner of the excess property ceases to make good faith efforts to sell the property, the entire amount of assistance may become an overpayment and a debt due the state and may be recovered pursuant to RCW 43.20B.630;

(C) Applicants and recipients are advised of their right to a fair hearing and afforded the opportunity to challenge a decision that good faith efforts to sell have ceased, prior to assessment of an overpayment under this section; and

(D) At the time assistance is authorized, the department files a lien without a sum certain on the specific property.

(11) "Income"—(a) All appreciable gains in real or personal property (cash or kind) or other assets, which are received by or become available for use and enjoyment by an applicant or recipient during the month of application or after applying for or receiving public assistance. The department may by rule and regulation exempt income received by an applicant for or recipient of public assistance which can be used by him or her to decrease his or her need for public assistance or to aid in rehabilitating him or her or his or her dependents, but such exemption shall not, unless otherwise provided in this title, exceed the exemptions of resources granted under this chapter to an applicant for public assistance. In addition, for cash assistance the department may disregard income pursuant to RCW 74.08A.230 and 74.12.350.

(b) If, under applicable federal requirements, the state has the option of considering property in the form of lump sum compensatory awards or related settlements received by an applicant or recipient as income or as a resource, the department shall consider such property to be a resource.

(12) "Need"—The difference between the applicant's or recipient's standards of assistance for himself or herself and the dependent members of his or her family, as measured by the standards of the department, and value of all nonexempt resources and nonexempt income received by or available to the applicant or recipient and the dependent members of his or her family.

(13) For purposes of determining eligibility for public assistance and participation levels in the cost of medical care, the department shall exempt restitution payments made to people of Japanese and Aleut ancestry pursuant to the Civil Liberties Act of 1988 and the Aleutian and Pribilof Island Restitution Act passed by congress, P.L. 100-383, including all income and resources derived therefrom.

(14) In the construction of words and phrases used in this title, the singular number shall include the plural, the masculine gender shall include both the feminine and neuter genders and the present tense shall include the past and future tenses, unless the context thereof shall clearly indicate to the contrary. [2003 1st sp.s. c 10 § 1; 2000 c 218 § 1. Prior: 1998 c 80 § 1; 1998 c 79 § 6; prior: 1997 c 59 § 10; 1997 c 58 § 309; prior: 1992 c 165 § 1; 1992 c 136 § 1; 1991 sp.s. c 10 § 1; 1991 c 126 § 1; 1990 c 285 § 2; 1989 1st ex.s. c 9 § 816; prior: 1987 c 406 § 9; 1987 c 75 § 31; 1985 c 335 § 2; 1983 1st ex.s. c 41 § 36; 1981 2nd ex.s. c 10 § 5; 1981 1st ex.s. c 6 § 1; prior: 1981 c 8 § 1; prior: 1980 c 174 § 1; 1980 c 84 § 1; 1979 c 141 § 294; 1969 ex.s. c 173 § 1; 1965 ex.s. c 2 § 1; 1963 c 228 § 1; 1961 c 235 § 1; 1959 c 26 § 74.04.005; prior: (i) 1947 c 289 § 1; 1939 c 216 § 1; Rem. Supp. 1947 § 10007-101a. (ii) 1957 c 63 § 1; 1953 c 174 § 17; 1951 c 122 § 1; 1951 c 1 § 3 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 3; Rem. Supp. 1949 § 9998-33c.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—1991 sp.s. c 10: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1991 sp.s. c 10 § 2.]

Effective date—1991 sp.s. c 10: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 sp.s. c 10 § 3.]

Findings—Purpose—1990 c 285: "(1) The legislature finds that each year less than five percent of pregnant teens relinquish their babies for adoption in Washington state. Nationally, fewer than eight percent of pregnant teens relinquish their babies for adoption.

(2) The legislature further finds that barriers such as lack of information about adoption, inability to voluntarily enter into adoption agreements, and current state public assistance policies act as disincentives to adoption.

(3) It is the purpose of this act to support adoption as an option for women with unintended pregnancies by removing barriers that act as disincentives to adoption." [1990 c 285 § 1.]

Severability—1990 c 285: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1990 c 285 § 10.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Effective date—1981 1st ex.s. c 6: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1981." [1981 1st ex.s. c 6 § 31.]

Severability—1981 1st ex.s. c 6: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1981 1st ex.s. c 6 § 30.]

Consolidated standards of need: RCW 74.04.770.

74.04.00511 Limitations on "resource" and "income." For purposes of RCW 74.04.005 (10) and (11), "resource" and "income" do not include educational assistance awarded under *the gaining independence for students with dependents program as defined in chapter 19, Laws of 2003 for recipients of temporary assistance for needy families. [2003 c 19 § 8.]

***Reviser's note:** The gaining independence for students with dependents program is codified in chapter 28B.133 RCW.

Finding—Intent—Short title—Captions not law—2003 c 19: See RCW 28B.133.005, 28B.133.900, and 28B.133.901.

74.04.0052 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral. (1) The department shall determine, after consideration of all relevant factors and in consultation with the applicant, the most appropriate living situation for applicants under eighteen years of age, unmarried, and pregnant who are eligible for general assistance as defined in RCW 74.04.005(6)(a)(ii)(A). An appropriate living situation shall include a place of residence that is maintained by the applicant's parents, parent, legal guardian, or other adult relative as their or his or her own home and that the department finds would provide an appropriate supportive living arrangement. It also includes a living situation maintained by an agency that is licensed under chapter 74.15 RCW that the department finds would provide an appropriate supportive living arrangement. Grant assistance shall not be provided under this chapter if the applicant does not reside in the most appropriate living situation, as determined by the department.

(2) A pregnant minor residing in the most appropriate living situation, as provided under subsection (1) of this section, is presumed to be unable to manage adequately the funds paid to the minor or on behalf of the dependent child or children and, unless the minor provides sufficient evidence to rebut the presumption, shall be subject to the protective payee requirements provided for under RCW 74.12.250 and 74.08.280.

(3) The department shall consider any statements or opinions by either parent of the unmarried minor parent or pregnant minor applicant as to an appropriate living situation for the minor, whether in the parental home or other situation. If the parents or a parent of the minor request, they or he or she shall be entitled to a hearing in juvenile court regarding designation of the parental home or other relative placement as the most appropriate living situation for the pregnant or parenting minor.

The department shall provide the parents or parent with the opportunity to make a showing that the parental home, or home of the other relative placement, is the most appropriate living situation. It shall be presumed in any administrative or judicial proceeding conducted under this subsection that the

parental home or other relative placement requested by the parents or parent is the most appropriate living situation. This presumption is rebuttable.

(4) In cases in which the minor is unmarried and unemployed, the department shall, as part of the determination of the appropriate living situation, provide information about adoption including referral to community-based organizations providing counseling.

(5) For the purposes of this section, "most appropriate living situation" shall not include a living situation including an adult male who fathered the qualifying child and is found to meet the elements of rape of a child as set forth in RCW 9A.44.079. [1997 c 58 § 502; 1994 c 299 § 34.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Aid to families with dependent children: RCW 74.12.255.

74.04.006 Contract of sale of property—Availability as a resource or income—Establishment. The department may establish, by rule and regulation, the availability of a contract of sale of real or personal property as a resource or income as defined in RCW 74.04.005. [1973 1st ex.s. c 49 § 2.]

74.04.011 Secretary's authority—Personnel. The secretary of social and health services shall be the administrative head and appointing authority of the department of social and health services and he shall have the power to and shall employ such assistants and personnel as may be necessary for the general administration of the department: PROVIDED, That such employment is in accordance with the rules and regulations of the state merit system. The secretary shall through and by means of his assistants and personnel exercise such powers and perform such duties as may be prescribed by the public assistance laws of this state.

The authority vested in the secretary as appointing authority may be delegated by the secretary or his designee to any suitable employee of the department. [1979 c 141 § 295; 1969 ex.s. c 173 § 4; 1959 c 26 § 74.04.011. Prior: 1953 c 174 § 3. (i) 1937 c 111 § 3; RRS § 10785-2. (ii) 1937 c 111 § 5; RRS § 10785-4.]

State civil service law: Chapter 41.06 RCW.

74.04.015 Secretary responsible officer to administer federal funds, etc. The secretary of social and health services shall be the responsible state officer for the administration of, and the disbursement of all funds, goods, commodities and services, which may be received by the state in connection with programs of public assistance or services related directly or indirectly to assistance programs, and all other matters included in the federal social security act approved August 14, 1935, or any other federal act or as the same may be amended excepting those specifically required to be administered by other entities.

He shall make such reports and render such accounting as may be required by the federal agency having authority in the premises. [1981 1st ex.s. c 6 § 2; 1981 c 8 § 2; 1979 c 141

(2004 Ed.)

§ 296; 1963 c 228 § 2; 1959 c 26 § 74.04.015. Prior: 1953 c 174 § 49; 1937 c 111 § 12; RRS § 10785-11.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

Children's center for research and training in mental retardation, assistant secretaries as advisory committee members: RCW 28B.20.412.

74.04.025 Bilingual services for non-English speaking applicants and recipients—Bilingual personnel, when—Primary language pamphlets and written materials. (1) The department and the office of administrative hearings shall ensure that bilingual services are provided to non-English speaking applicants and recipients. The services shall be provided to the extent necessary to assure that non-English speaking persons are not denied, or unable to obtain or maintain, services or benefits because of their inability to speak English.

(2) If the number of non-English speaking applicants or recipients sharing the same language served by any community service office client contact job classification equals or exceeds fifty percent of the average caseload of a full-time position in such classification, the department shall, through attrition, employ bilingual personnel to serve such applicants or recipients.

(3) Regardless of the applicant or recipient caseload of any community service office, each community service office shall ensure that bilingual services required to supplement the community service office staff are provided through contracts with interpreters, local agencies, or other community resources.

(4) Initial client contact materials shall inform clients in all primary languages of the availability of interpretation services for non-English speaking persons. Basic informational pamphlets shall be translated into all primary languages.

(5) To the extent all written communications directed to applicants or recipients are not in the primary language of the applicant or recipient, the department and the office of administrative hearings shall include with the written communication a notice in all primary languages of applicants or recipients describing the significance of the communication and specifically how the applicants or recipients may receive assistance in understanding, and responding to if necessary, the written communication. The department shall assure that sufficient resources are available to assist applicants and recipients in a timely fashion with understanding, responding to, and complying with the requirements of all such written communications.

(6) As used in this section, "primary languages" includes but is not limited to Spanish, Vietnamese, Cambodian, Laotian, and Chinese. [1998 c 245 § 143; 1983 1st ex.s. c 41 § 33.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.04.033 Notification of availability of basic health plan. The department shall notify any applicant for public assistance who resides in a local area served by the Washington basic health plan and is under sixty-five years of age of the availability of basic health care coverage to qualified enrollees in the Washington basic health plan under chapter 70.47 RCW, unless the Washington basic health plan administrator has notified the department of a closure of enrollment

in the area. The department shall maintain a supply of Washington basic health plan enrollment application forms, which shall be provided in reasonably necessary quantities by the administrator, in each appropriate community service office for the use of persons wishing to apply for enrollment in the Washington basic health plan. [1987 1st ex.s. c 5 § 18.]

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

74.04.040 Public assistance a joint federal, state, and county function—Notice required. The care, support, and relief of needy persons is hereby declared to be a joint federal, state, and county function. County offices are charged with the responsibility for the administration of public assistance within the respective county or counties or parts thereof as local offices of the department as prescribed by the rules and regulations of the department.

Whenever a city or town establishes a program or policy for the care, support, and relief of needy persons it shall provide notice of the program or policy to the county or counties within which the city or town is located. [1981 c 191 § 1; 1959 c 26 § 74.04.040. Prior: 1953 c 174 § 12; 1939 c 216 § 5; RRS § 10007-105a.]

74.04.050 Department to administer public assistance programs. The department shall serve as the single state agency to administer public assistance. The department is hereby empowered and authorized to cooperate in the administration of such federal laws, consistent with the public assistance laws of this state, as may be necessary to qualify for federal funds for:

- (1) Medical assistance;
- (2) Aid to dependent children;
- (3) Child welfare services; and
- (4) Any other programs of public assistance for which provision for federal grants or funds may from time to time be made.

The state hereby accepts and assents to all the present provisions of the federal law under which federal grants or funds, goods, commodities and services are extended to the state for the support of programs administered by the department, and to such additional legislation as may subsequently be enacted as is not inconsistent with the purposes of this title, authorizing public welfare and assistance activities. The provisions of this title shall be so administered as to conform with federal requirements with respect to eligibility for the receipt of federal grants or funds.

The department shall periodically make application for federal grants or funds and submit such plans, reports and data, as are required by any act of congress as a condition precedent to the receipt of federal funds for such assistance. The department shall make and enforce such rules and regulations as shall be necessary to insure compliance with the terms and conditions of such federal grants or funds. [1981 1st ex.s. c 6 § 3; 1981 c 8 § 3; 1963 c 228 § 3; 1959 c 26 § 74.04.050. Prior: 1955 c 273 § 21; 1953 c 174 § 6; 1939 c 216 § 6; RRS § 10007-106a.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.055 Cooperation with federal government—Construction—Conflict with federal requirements. In furtherance of the policy of this state to cooperate with the federal government in the programs included in this title the secretary shall issue such rules and regulations as may become necessary to entitle this state to participate in federal grants-in-aid, goods, commodities and services unless the same be expressly prohibited by this title. Any section or provision of this title which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to satisfy federal laws entitling this state to receive federal matching or other funds for the various programs of public assistance. If any part of this chapter is found to be in conflict with federal requirements which are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this chapter is hereby inoperative solely to the extent of the conflict with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter. [1991 c 126 § 2; 1979 c 141 § 298; 1963 c 228 § 4; 1959 c 26 § 74.04.055. Prior: 1953 c 174 § 50.]

74.04.057 Promulgation of rules and regulations to qualify for federal funds. The department is authorized to promulgate such rules and regulations as are necessary to qualify for any federal funds available under Title XVI of the federal social security act, and any other combination of existing programs of assistance consistent with federal law and regulations. [1969 ex.s. c 173 § 3.]

74.04.060 Records, confidential—Exceptions—Penalty. For the protection of applicants and recipients, the department and the county offices and their respective officers and employees are prohibited, except as hereinafter provided, from disclosing the contents of any records, files, papers and communications, except for purposes directly connected with the administration of the programs of this title. In any judicial proceeding, except such proceeding as is directly concerned with the administration of these programs, such records, files, papers and communications, and their contents, shall be deemed privileged communications and except for the right of any individual to inquire of the office whether a named individual is a recipient of welfare assistance and such person shall be entitled to an affirmative or negative answer. However, upon written request of a parent who has been awarded visitation rights in an action for divorce or separation or any parent with legal custody of the child, the department shall disclose to him or her the last known address and location of his or her natural or adopted children. The secretary shall adopt rules which establish procedures for disclosing the address of the children and providing, when appropriate, for prior notice to the custodian of the children. The notice shall state that a request for disclosure has been received and will be complied with by the department unless the department receives a copy of a court order which enjoins the disclosure of the information or restricts or limits the requesting party's right to contact or visit the other party or the child. Information supplied to a parent by the department shall be used only for purposes directly related to the enforcement of the visitation and custody provisions of the court order of separation or decree of divorce. No parent

shall disclose such information to any other person except for the purpose of enforcing visitation provisions of the said order or decree.

The county offices shall maintain monthly at their offices a report showing the names and addresses of all recipients in the county receiving public assistance under this title, together with the amount paid to each during the preceding month.

The provisions of this section shall not apply to duly designated representatives of approved private welfare agencies, public officials, members of legislative interim committees and advisory committees when performing duties directly connected with the administration of this title, such as regulation and investigation directly connected therewith: **PROVIDED, HOWEVER,** That any information so obtained by such persons or groups shall be treated with such degree of confidentiality as is required by the federal social security law.

It shall be unlawful, except as provided in this section, for any person, body, association, firm, corporation or other agency to solicit, publish, disclose, receive, make use of, or to authorize, knowingly permit, participate in or acquiesce in the use of any lists or names for commercial or political purposes of any nature. The violation of this section shall be a gross misdemeanor. [1987 c 435 § 29; 1983 1st ex.s. c 41 § 32; 1973 c 152 § 1; 1959 c 26 § 74.04.060. Prior: 1953 c 174 § 7; 1950 ex.s. c 10 § 1; 1941 c 128 § 5; Rem. Supp. 1941 § 10007-106b.]

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Severability—1973 c 152: "If any provision of this 1973 act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1973 c 152 § 3.]

Child support, department may disclose information to internal revenue department: RCW 74.20.160.

74.04.062 Disclosure of recipient location to police officer or immigration official. Upon written request of a person who has been properly identified as an officer of the law or a properly identified United States immigration official the department shall disclose to such officer the current address and location of a recipient of public welfare if the officer furnishes the department with such person's name and social security account number and satisfactorily demonstrates that such recipient is a fugitive, that the location or apprehension of such fugitive is within the officer's official duties, and that the request is made in the proper exercise of those duties.

When the department becomes aware that a public assistance recipient is the subject of an outstanding warrant, the department may contact the appropriate law enforcement agency and, if the warrant is valid, provide the law enforcement agency with the location of the recipient. [1997 c 58 § 1006; 1973 c 152 § 2.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—1973 c 152: See note following RCW 74.04.060.

74.04.070 County office—Administrator. There may be established in each county of the state a county office which shall be administered by an executive officer designated as the county administrator. The county administrator shall be appointed by the secretary in accordance with the rules and regulations of the state merit system. [1979 c 141 § 299; 1959 c 26 § 74.04.070. Prior: 1953 c 174 § 13; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007-104a, part.]

74.04.080 County administrator—Personnel—Bond. The county administrator shall have the power to, and shall, employ such personnel as may be necessary to carry out the provisions of this title, which employment shall be in accordance with the rules and regulations of the state merit system, and in accordance with personnel and administrative standards established by the department. The county administrator before qualifying shall furnish a surety bond in such amount as may be fixed by the secretary, but not less than five thousand dollars, conditioned that the administrator will faithfully account for all money and property that may come into his possession or control. The cost of such bond shall be an administrative expense and shall be paid by the department. [1979 c 141 § 300; 1959 c 26 § 74.04.080. Prior: 1953 c 174 § 14; 1941 c 128 § 2, part; 1939 c 216 § 4, part; Code 1881 §§ 2680, 2696; 1854 p 422 § 19; 1854 p 395 § 1; Rem. Supp. 1941 § 10007-104a, part.]

74.04.120 Basis of state's allocation of federal aid funds—County budget. Allocations of state and federal funds shall be made upon the basis of need within the respective counties as disclosed by the quarterly budgets, considered in conjunction with revenues available for the satisfaction of that need: **PROVIDED,** That in preparing his quarterly budget for federal aid assistance, the administrator shall include the aggregate of the individual case load approved by the department to date on the basis of need and the secretary shall approve and allocate an amount sufficient to service the aggregate case load as included in said budget, and in the event any portion of the budgeted case load cannot be serviced with moneys available for the particular category for which an application is made the committee may on the administrator's request authorize the transfer of sufficient general assistance funds to the appropriation for such category to service such case load and secure the benefit of federal matching funds. [1979 c 141 § 301; 1959 c 26 § 74.04.120. Prior: 1939 c 216 § 8, part; RRS § 10007-108a, part.]

74.04.180 Joint county administration. Public assistance may be administered through a single administrator and a single administrative office for one or more counties. There may be a local office for the transaction of official business maintained in each county. [1959 c 26 § 74.04.180. Prior: 1953 c 174 § 15; 1939 c 216 § 12; RRS § 10007-112a.]

74.04.200 Standards—Established, enforced. It shall be the duty of the department of social and health services to establish statewide standards which may vary by geographi-

cal areas to govern the granting of assistance in the several categories of this title and it shall have power to compel compliance with such standards as a condition to the receipt of state and federal funds by counties for social security purposes. [1981 1st ex.s. c 6 § 4; 1981 c 8 § 4; 1979 c 141 § 302; 1959 c 26 § 74.04.200. Prior: 1939 c 216 § 14; RRS § 10007-114a.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.205 Simplified reporting for the food stamp program. (1) To the maximum extent allowable by federal law, the department shall implement simplified reporting for the food stamp program by October 31, 2004.

(2) For the purposes of this section, "simplified reporting" means the only change in circumstance that a recipient of a benefit program must report between eligibility reviews is an increase of income that would result in ineligibility for the benefit program or a change of address. Every six months the assistance unit must either complete a semiannual report or participate in an eligibility review. [2004 c 54 § 3.]

Findings—Conflict with federal requirements—2004 c 54: See notes following RCW 28A.235.160.

74.04.210 Basis of allocation of moneys to counties. The moneys appropriated for public assistance purposes and subject to allocation as in this title provided shall be allocated to counties on the basis of past experience and established case load history. [1959 c 26 § 74.04.210. Prior: 1939 c 216 § 15; RRS § 10007-115a.]

74.04.230 General assistance—Mental health services. Persons eligible for general assistance under RCW 74.04.005 are eligible for mental health services to the extent that they meet the client definitions and priorities established by chapter 71.24 RCW. [1982 c 204 § 16.]

Clients to be charged for mental health services: RCW 71.24.215.

74.04.265 Earnings—Deductions from grants. The secretary may issue rules consistent with federal laws and with memorials of the legislature, as will recognize the income of any persons without the deduction in full thereof from the amount of their grants. [1979 c 141 § 303; 1965 ex.s. c 35 § 1; 1959 c 26 § 74.04.265. Prior: 1953 c 174 § 16.]

74.04.266 General assistance—Earned income exemption to be established for unemployable persons. In determining need for general assistance for unemployable persons as defined in RCW 74.04.005(6)(a), the department may by rule and regulation establish a monthly earned income exemption in an amount not to exceed the exemption allowable under disability programs authorized in Title XVI of the federal social security act. [1977 ex.s. c 215 § 1.]

74.04.270 Audit of accounts—Uniform accounting system. It shall be the duty of the state auditor to audit the accounts, books and records of the department of social and health services. The public assistance committee shall establish and install a uniform accounting system for all categories of public assistance, applicable to all officers, boards, com-

missions, departments or other agencies having to do with the allowance and disbursement of public funds for assistance purposes, which said uniform accounting system shall conform to the accounting methods required by the federal government in respect to the administration of federal funds for assistance purposes. [1979 c 141 § 304; 1959 c 26 § 74.04.270. Prior: 1939 c 216 § 21; RRS § 10007-121a.]

74.04.280 Assistance nontransferable and exempt from process. Assistance given under this title shall not be transferable or assignable at law or in equity and none of the moneys received by recipients under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of any bankruptcy or insolvency law. [1959 c 26 § 74.04.280. Prior: 1939 c 216 § 25; RRS § 10007-125a.]

74.04.290 Subpoena of witnesses, books, records, etc. In carrying out any of the provisions of this title, the secretary, county administrators, hearing examiners, or other duly authorized officers of the department shall have power to subpoena witnesses, administer oaths, take testimony and compel the production of such papers, books, records and documents as they may deem relevant to the performance of their duties. Subpoenas issued under this power shall be under RCW 43.20A.605. [1983 1st ex.s. c 41 § 22; 1979 ex.s. c 171 § 2; 1979 c 141 § 305; 1969 ex.s. c 173 § 2; 1959 c 26 § 74.04.290. Prior: 1939 c 216 § 26; RRS § 10007-126a.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.04.300 Recovery of payments improperly received—Lien—Recipient reporting requirements. If a recipient receives public assistance and/or food stamps or food stamp benefits transferred electronically for which the recipient is not eligible, or receives public assistance and/or food stamps or food stamp benefits transferred electronically in an amount greater than that for which the recipient is eligible, the portion of the payment to which the recipient is not entitled shall be a debt due the state recoverable under RCW 43.20B.030 and 43.20B.620 through 43.20B.645. It shall be the duty of recipients of cash benefits to notify the department of changes to earned income as defined in RCW 74.04.005(11). It shall be the duty of recipients of cash benefits to notify the department of changes to liquid resources as defined in RCW 74.04.005(10) that would result in ineligibility for cash benefits. It shall be the duty of recipients of food benefits to report changes in income that result in ineligibility for food benefits. All recipients shall report changes required in this section by the tenth of the month following the month in which the change occurs. The department shall make a determination of eligibility within ten days from the date it receives the reported change from the recipient. The department shall adopt rules consistent with federal law and regulations for additional reporting requirements. The department shall advise applicants for assistance that failure to report as required, failure to reveal resources or income, and false statements will result in recovery by the state of any overpayment and may result in criminal prosecution. [2003 c 208 § 1; 1998 c 79 § 7; 1987 c 75 § 32; 1982 c 201 § 16; 1980

c 84 § 2; 1979 c 141 § 306; 1973 1st ex.s. c 49 § 1; 1969 ex.s. c 173 § 18; 1959 c 26 § 74.04.300. Prior: 1957 c 63 § 3; 1953 c 174 § 35; 1939 c 216 § 27; RRS § 10007-127a.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

74.04.310 Authority to accept contributions. In furthering the purposes of this title, the secretary or any county administrator may accept contributions or gifts in cash or otherwise from persons, associations or corporations, such contributions to be disbursed in the same manner as moneys appropriated for the purposes of this title: **PROVIDED**, That the donor of such gifts may stipulate the manner in which such gifts shall be expended. [1979 c 141 § 309; 1959 c 26 § 74.04.310. Prior: 1939 c 216 § 28; RRS § 10007-128a.]

74.04.330 Annual reports by assistance organizations—Penalty. Every person, firm, corporation, association or organization receiving twenty-five percent or more of its income from contributions, gifts, dues, or other payments from persons receiving assistance, community work and training, federal-aid assistance, or any other form of public assistance from the state of Washington or any agency or subdivision thereof, and engaged in political or other activities in behalf of such persons receiving such public assistance, shall, within ninety days after the close of each calendar year, make a report to the secretary of social and health services for the preceding year, which report shall contain:

(1) A statement of the total amount of contributions, gifts, dues, or other payments received;

(2) The names of any and all persons, firms, corporations, associations or organizations contributing the sum of twenty-five dollars or more during such year, and the amounts contributed by such persons, firms, corporations, associations, or organizations;

(3) A full and complete statement of all disbursements made during such year, including the names of all persons, firms, corporations, associations, or organizations to whom any moneys were paid, and the amounts and purposes of such payments; and

(4) Every such report so filed shall constitute a public record.

(5) Any person, firm, or corporation, and any officer or agent of any firm, corporation, association or organization, violating this section by failing to file such report, or in any other manner, shall be guilty of a gross misdemeanor. [1979 c 141 § 310; 1963 c 228 § 5; 1959 c 26 § 74.04.330. Prior: 1941 c 170 § 7; Rem. Supp. 1941 § 10007-138.]

74.04.340 Federal surplus commodities—Certification of persons eligible to receive commodities. The state department of social and health services is authorized to assist needy families and individuals to obtain federal surplus commodities for their use, by certifying, when such is the case, that they are eligible to receive such commodities. However, only those who are receiving or are eligible for public assistance or care and such others as may qualify in accordance with federal requirements and standards shall be certified as eligible to receive such commodities. [1979 c 141 § 311; 1959 c 26 § 74.04.340. Prior: 1957 c 187 § 2.]

(2004 Ed.)

Purchase of federal property: Chapter 39.32 RCW.

74.04.350 Federal surplus commodities—Not to be construed as public assistance, eligibility not affected. Federal surplus commodities shall not be deemed or construed to be public assistance and care or a substitute, in whole or in part, therefor; and the receipt of such commodities by eligible families and individuals shall not subject them, their legally responsible relatives, their property or their estates to any demand, claim or liability on account thereof. A person's need or eligibility for public assistance or care shall not be affected by his receipt of federal surplus commodities. [1959 c 26 § 74.04.350. Prior: 1957 c 187 § 3.]

74.04.360 Federal surplus commodities—Certification deemed administrative expense of department. Expenditures made by the state department of social and health services for the purpose of certifying eligibility of needy families and individuals for federal surplus commodities shall be deemed to be expenditures for the administration of public assistance and care. [1979 c 141 § 312; 1959 c 26 § 74.04.360. Prior: 1957 c 187 § 4.]

74.04.370 Federal surplus commodities—County program, expenses, handling of commodities. See RCW 36.39.040.

74.04.380 Federal and other surplus food commodities—Agreements—Personnel—Facilities—Cooperation with other agencies—Discontinuance of program. The secretary of social and health services, from funds appropriated to the department for such purpose, shall, upon receipt of authorization from the governor, provide for the receiving, warehousing and distributing of federal and other surplus food commodities for the use and assistance of recipients of public assistance or other needy families and individuals certified as eligible to obtain such commodities. The secretary is authorized to enter into such agreements as may be necessary with the federal government or any state agency in order to participate in any program of distribution of surplus food commodities including but not limited to a food stamp or benefit program. The secretary shall hire personnel, establish distribution centers and acquire such facilities as may be required to carry out the intent of this section; and the secretary may carry out any such program as a sole operation of the department or in conjunction or cooperation with any similar program of distribution by private individuals or organizations, any department of the state or any political subdivision of the state.

The secretary shall discontinue such program, or any part thereof, whenever in the determination of the governor such program, or any part thereof, is no longer in the best interest of the state. [1998 c 79 § 8; 1979 c 141 § 313; 1963 c 219 § 1; 1961 c 112 § 1.]

74.04.385 Unlawful practices relating to surplus commodities—Penalty. It shall be unlawful for any recipient of federal or other surplus commodities received under RCW 74.04.380 to sell, transfer, barter or otherwise dispose of such commodities to any other person. It shall be unlawful

for any person to receive, possess or use any surplus commodities received under RCW 74.04.380 unless he has been certified as eligible to receive, possess and use such commodities by the state department of social and health services.

Violation of the provisions of RCW 74.04.380 or this section shall constitute a misdemeanor and upon conviction thereof shall be punished by imprisonment in the county jail for not more than six months or by a fine of not more than five hundred dollars or both. [1979 c 141 § 314; 1963 c 219 § 2.]

74.04.480 Educational leaves of absence for personnel. The state department of social and health services is hereby authorized to promulgate rules and regulations governing the granting to any employee of the department, other than a provisional employee, a leave of absence for educational purposes to attend an institution of learning for the purpose of improving his skill, knowledge and technique in the administration of social welfare programs which will benefit the department.

Pursuant to the rules and regulations of the department, employees of the department who are engaged in the administration of public welfare programs may (1) attend courses of training provided by institutions of higher learning; (2) attend special courses of study or seminars of short duration conducted by experts on a temporary basis for the purpose; (3) accept fellowships or traineeships at institutions of higher learning with such stipends as are permitted by regulations of the federal government.

The department of social and health services is hereby authorized to accept any funds from the federal government or any other public or private agency made available for training purposes for public assistance personnel and to conform with such requirements as are necessary in order to receive such funds. [1979 c 141 § 321; 1963 c 228 § 15.]

74.04.500 Food stamp program—Authorized. The department is authorized to establish a food stamp or benefit program under the federal food stamp act of 1977, as amended. [1998 c 79 § 9; 1991 c 126 § 3; 1979 c 141 § 322; 1969 ex.s. c 172 § 4.]

Overpayment, recovery: RCW 74.04.300.

Unlawful use of food stamps: RCW 9.91.140.

74.04.510 Food stamp program—Rules. The department shall adopt rules conforming to federal laws, rules, and regulations required to be observed in maintaining the eligibility of the state to receive from the federal government and to issue or distribute to recipients, food stamps, coupons, or food stamp or coupon benefits transferred electronically under a food stamp or benefits plan. Such rules shall relate to and include, but shall not be limited to: (1) The classifications of and requirements of eligibility of households to receive food stamps, coupons, or food stamp or coupon benefits transferred electronically; and (2) the periods during which households shall be certified or recertified to be eligible to receive food stamps, coupons, or food stamp or coupon benefits transferred electronically under this plan. [1998 c 79 § 10; 1981 1st ex.s. c 6 § 5; 1981 c 8 § 5; 1969 ex.s. c 172 § 6.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.515 Food stamp program—Discrimination prohibited. In administering the food stamp or benefits program, there shall be no discrimination against any applicant or recipient by reason of age, sex, handicap, religious creed, political beliefs, race, color, or national origin. [1998 c 79 § 11; 1991 c 126 § 4; 1969 ex.s. c 172 § 7.]

74.04.520 Food stamp program—Confidentiality. The provisions of RCW 74.04.060 relating to disclosure of information regarding public assistance recipients shall apply to recipients of food stamps or food stamp benefits transferred electronically. [1998 c 79 § 12; 1969 ex.s. c 172 § 8.]

74.04.600 Supplemental security income program—Purpose. The purpose of RCW 74.04.600 through 74.04.650 is to recognize and accept that certain act of congress known as Public Law 92-603 and Public Law 93-66, and to enable the department of social and health services to take advantage of and implement the provisions of that act. The state shall provide assistance to those individuals who were eligible or would have been eligible for benefits under this state's old age assistance, disability assistance, and aid to the blind programs as they were in effect in December, 1973 but who will no longer be eligible for such program due to Title XVI of the Social Security Act. [1973 2nd ex.s. c 10 § 1.]

74.04.610 Supplemental security income program—Termination of federal financial assistance payments—Supersession by supplemental security income program. Effective January 1, 1974, the financial assistance payments under the federal aid categories of old age assistance, disability assistance, and blind assistance provided in chapters 74.08, *74.10, and 74.16 RCW, respectively, and the corresponding provisions of RCW 74.04.005, shall be terminated and superseded by the national program to provide supplemental security income to individuals who have attained age sixty-five or are blind or disabled as established by Public Law 92-603 and Public Law 93-66: PROVIDED, That the agreements between the department of social and health services and the United States department of health, education and welfare receive such legislative authorization and/or ratification as required by **RCW 74.04.630. [1973 2nd ex.s. c 10 § 2.]

Reviser's note: *(1) Chapter 74.10 RCW was repealed by 1981 1st ex.s. c 6 § 28, effective July 1, 1982; chapter 74.16 RCW was repealed by 1983 c 194 § 30, effective June 30, 1983.

** (2) The legislative authorization and/or ratification requirements in RCW 74.04.630 were eliminated by 1986 c 158 § 22.

74.04.620 State supplement to national program of supplemental security income—Authorized—Reimbursement of interim assistance, attorneys' fees. (1) The department is authorized to establish a program of state supplementation to the national program of supplemental security income consistent with Public Law 92-603 and Public Law 93-66 to those persons who are in need thereof in accordance with eligibility requirements established by the department.

(2) The department is authorized to establish reasonable standards of assistance and resource and income exemptions specifically for such program of state supplementation which shall be consistent with the provisions of the Social Security Act.

(3) The department is authorized to make payments to applicants for supplemental security income, pursuant to agreements as provided in Public Law 93-368, who are otherwise eligible for general assistance.

(4) Any agreement between the department and a supplemental security income applicant providing for the reimbursement of interim assistance to the department shall provide, if the applicant has been represented by an attorney, that twenty-five percent of the reimbursement received shall be withheld by the department and all or such portion thereof as has been approved as a fee by the United States department of health and human services shall be released directly to the applicant's attorney. The secretary may maintain such records as are deemed appropriate to measure the cost and effectiveness of such agreements and may make recommendations concerning the continued use of such agreements to the legislature. [1983 1st ex.s. c 41 § 37; 1981 1st ex.s. c 6 § 7; 1981 c 8 § 6; 1973 2nd ex.s. c 10 § 3.]

Retroactive application—1983 1st ex.s. c 41 § 37: "Section 37, chapter 41, Laws of 1983 1st ex. sess. shall be applied retroactively by the department of social and health services to all reimbursement of interim assistance received on or after August 23, 1983, so long as the attorney of the applicant for whom reimbursement is received began representing the applicant on or after August 23, 1983." [1985 c 100 § 1.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.630 State supplementation to national program of supplemental security income—Contractual agreements with federal government. The department may enter into contractual agreements with the United States department of health, education and welfare, consistent with the provisions of Public Laws 92-603 and 93-66, and to be effective January 1, 1974, for the purpose of enabling the secretary of the department of health, education and welfare to perform administrative functions of state supplementation to the national supplemental security income program and the determination of medicaid eligibility on behalf of the state. The department is authorized to transfer and make payments of state funds to the secretary of the department of health, education and welfare as required by Public Laws 92-603 and 93-66. These agreements shall be submitted for review and comment to the social and health services committees of the senate and house of representatives. The department of social and health services shall administer the state supplemental program as established in RCW 74.04.620. [2001 2nd sp.s. c 5 § 1; 1986 c 158 § 22; 1973 2nd ex.s. c 10 § 4.]

74.04.635 State supplement to national program of supplemental security income—World War II Philippine veterans. (1) Notwithstanding any other provision of law, any person receiving benefits under RCW 74.04.620 on December 14, 1999, and who meets the requirements of subsection (2) of this section is eligible to receive benefits under this section although he or she does not retain a residence in

the state and returns to the Republic of the Philippines, if he or she maintains a permanent residence in the Republic of the Philippines without any lapse of his or her presence in the Republic of the Philippines.

(2) A person subject to subsection (1) of this section is eligible to receive benefits pursuant to this section if he or she was receiving benefits pursuant to RCW 74.04.620 on December 14, 1999, and meets both the following requirements:

(a) He or she is a veteran of World War II; and

(b)(i) He or she was a member of the government of the Commonwealth of the Philippines military forces who was in the service of the United States on July 26, 1941, or thereafter; or

(ii) He or she was a Regular Philippine Scout who enlisted in Filipino-manned units of the United States army prior to October 6, 1945; or

(iii) He or she was a member of the Special Philippine Scouts who enlisted in the United States Armed Forces between October 6, 1945, and June 30, 1947.

(3) Within funds appropriated for this purpose, the department is authorized to make a one-time lump sum payment of one thousand five hundred dollars to each person eligible for benefits under this section.

(a) Benefits paid under this section are in lieu of benefits paid under RCW 74.04.620 for the period for which the benefits are paid.

(b) Benefits are to be paid under this section for any period during which the recipient is receiving benefits under Title 8 of the federal social security act as a result of the application of federal Public Law 106-169, subject to any limitations imposed by this section.

(4) This section applies only to an individual who returns to the Republic of the Philippines for the period during which the individual establishes and maintains a residence in the Republic of the Philippines. [2001 c 111 § 2.]

Findings—2001 c 111: "The legislature finds and declares:

(1) That soldiers who were members of the government of the Commonwealth of the Philippines military forces who were in the service of the United States of America on July 31, 1941, including the organized guerrilla forces under commanders appointed, designated, or subsequently recognized by the Commander in Chief of the Southwest Pacific Area or other competent authority in the Army of the United States, performed an invaluable function during World War II.

(2) It is in the public interest for the state of Washington to recognize those courageous soldiers who fought and defended American interests during World War II and who are currently receiving supplemental state benefits under RCW 74.04.620 as of December 14, 1999, by permitting them to return to their homeland to spend their last days without a complete forfeiture of benefits." [2001 c 111 § 1.]

74.04.640 Acceptance of referrals for vocational rehabilitation—Reimbursement. Referrals to the state department of social and health services for vocational rehabilitation made in accordance with section 1615 of Title XVI of the Social Security Act, as amended, shall be accepted by the state.

The department shall be reimbursed by the secretary of the department of health, education and welfare for the costs it incurs in providing such vocational rehabilitation services. [1973 2nd ex.s. c 10 § 5.]

74.04.650 Individuals failing to comply with federal requirements. Notwithstanding any other provisions of RCW 74.04.600 through 74.04.650, those individuals who have been receiving supplemental security income assistance and failed to comply with any federal requirements, including those relating to drug abuse and alcoholism treatment and rehabilitation, shall be ineligible for state assistance. [1981 1st ex.s. c 6 § 8; 1981 c 8 § 7; 1973 2nd ex.s. c 10 § 6.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.660 Family emergency assistance program. The department shall establish a consolidated emergency assistance program for families with children. Assistance may be provided in accordance with this section.

(1) Benefits provided under this program shall be limited to one period of time, as determined by the department, within any consecutive twelve-month period.

(2) Benefits under this program shall be provided to alleviate emergent conditions resulting from insufficient income and resources to provide for: Food, shelter, clothing, medical care, or other necessary items, as defined by the department. Benefits may also be provided for family reconciliation services, family preservation services, home-based services, short-term substitute care in a licensed agency as defined in RCW 74.15.020, crisis nurseries, therapeutic child care, or other necessary services as defined by the department. Benefits shall be provided only in an amount sufficient to cover the cost of the specific need, subject to the limitations established in this section.

(3)(a) The department shall, by rule, establish assistance standards and eligibility criteria for this program in accordance with this section.

(b) Eligibility for benefits or services under this section does not automatically entitle a recipient to medical assistance.

(4) The department shall seek federal emergency assistance funds to supplement the state funds appropriated for the operation of this program as long as other departmental programs are not adversely affected by the receipt of federal funds.

(5) If state funds appropriated for the consolidated emergency assistance program are exhausted, the department may discontinue the program. [1994 c 296 § 1; 1993 c 63 § 1; 1989 c 11 § 26; 1985 c 335 § 3; 1981 1st ex.s. c 6 § 6.]

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

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.04.750 Reporting requirements—Food stamp allotments and rent or housing subsidies, consideration as income. (1) Applicants and recipients under this title must satisfy all reporting requirements imposed by the department.

(2) The secretary shall have the discretion to consider: (a) Food stamp allotments or food stamp benefits transferred electronically and/or (b) rent or housing subsidies as income in determining eligibility for and assistance to be provided by public assistance programs. If the department considers food stamp allotments or food stamp benefits transferred electronically as income in determining eligibility for assistance, applicants or recipients for any grant assistance program

must apply for and take all reasonable actions necessary to establish and maintain eligibility for food stamps or food stamp benefits transferred electronically. [1998 c 79 § 13; 1981 2nd ex.s. c 10 § 1.]

74.04.760 Minimum amount of monthly assistance payments. Payment of assistance shall not be made for any month if the payment prior to any adjustments would be less than ten dollars. However, if payment is denied solely by reason of this section, the individual with respect to whom such payment is denied is determined to be a recipient of assistance for purposes of eligibility for other programs of assistance except for a community work experience program. [1981 2nd ex.s. c 10 § 2.]

74.04.770 Consolidated standards of need—Rateable reductions—Grant maximums. The department shall establish consolidated standards of need each fiscal year which may vary by geographical areas, program, and family size, for temporary assistance for needy families, refugee assistance, supplemental security income, and general assistance. Standards for temporary assistance for needy families, refugee assistance, and general assistance shall be based on studies of actual living costs and generally recognized inflation indices and shall include reasonable allowances for shelter, fuel, food, transportation, clothing, household maintenance and operations, personal maintenance, and necessary incidentals. The standard of need may take into account the economies of joint living arrangements, but unless explicitly required by federal statute, there shall not be proration of any portion of assistance grants unless the amount of the grant standard is equal to the standard of need.

The department is authorized to establish rateable reductions and grant maximums consistent with federal law.

Payment level will be equal to need or a lesser amount if rateable reductions or grant maximums are imposed. In no case shall a recipient of supplemental security income receive a state supplement less than the minimum required by federal law.

The department may establish a separate standard for shelter provided at no cost. [1997 c 59 § 11; 1983 1st ex.s. c 41 § 38; 1981 2nd ex.s. c 10 § 4.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Chapter 74.08 RCW

ELIGIBILITY GENERALLY—STANDARDS OF ASSISTANCE

Sections

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|-----------|--|
| 74.08.025 | Eligibility for public assistance—Temporary assistance for needy families—Limitations for new residents, drug or alcohol-dependent persons, and former felons—Eligibility for federal food assistance. |
| 74.08.030 | Old age assistance eligibility requirements. |
| 74.08.043 | Need for personal and special care—Authority to consider in determining living requirements. |
| 74.08.044 | Need for personal and special care—Licensing—Rules and regulations. |
| 74.08.045 | Need for personal and special care—Purchase of personal and special care by department. |
| 74.08.046 | Energy assistance allowance. |
| 74.08.050 | Applications for grants. |
| 74.08.055 | Verification of applications—Penalty. |

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| 74.08.060 | Action on applications—Contingent eligibility—Employment and training services. |
| 74.08.080 | Grievances—Departmental and judicial review. |
| 74.08.090 | Rule-making authority and enforcement. |
| 74.08.100 | Age and residency verification—Felony. |
| 74.08.105 | Out-of-state recipients. |
| 74.08.210 | Grants not assignable nor subject to execution. |
| 74.08.260 | Federal act to control in event of conflict. |
| 74.08.278 | Central operating fund established. |
| 74.08.280 | Payments to persons incapable of self-care—Protective payee services. |
| 74.08.283 | Services provided to attain self-care. |
| 74.08.290 | Suspension of payments—Need lapse—Imprisonment—Conviction under RCW 74.08.331. |
| 74.08.331 | Unlawful practices—Obtaining assistance—Disposal of realty—Penalties. |
| 74.08.335 | Transfers of property to qualify for assistance. |
| 74.08.338 | Real property transfers for inadequate consideration. |
| 74.08.340 | No vested rights conferred. |
| 74.08.370 | Old age assistance grants charged against general fund. |
| 74.08.380 | Acceptance of federal act. |
| 74.08.390 | Research, projects, to effect savings by restoring self-support—Waiver of public assistance requirements. |
| 74.08.580 | Electronic benefit cards—Prohibited uses—Violations. |
| 74.08.900 | Limited application. |

74.08.025 Eligibility for public assistance—Temporary assistance for needy families—Limitations for new residents, drug or alcohol-dependent persons, and former felons—Eligibility for federal food assistance. (1) Public assistance may be awarded to any applicant:

(a) Who is in need and otherwise meets the eligibility requirements of department assistance programs; and

(b) Who has not made a voluntary assignment of property or cash for the purpose of qualifying for an assistance grant; and

(c) Who is not an inmate of a public institution except as a patient in a medical institution or except as an inmate in a public institution who could qualify for federal aid assistance: PROVIDED, That the assistance paid by the department to recipients in nursing homes, or receiving nursing home care, may cover the cost of clothing and incidentals and general maintenance exclusive of medical care and health services. The department may pay a grant to cover the cost of clothing and personal incidentals in public or private medical institutions and institutions for tuberculosis. The department shall allow recipients in nursing homes to retain, in addition to the grant to cover the cost of clothing and incidentals, wages received for work as a part of a training or rehabilitative program designed to prepare the recipient for less restrictive placement to the extent permitted under Title XIX of the federal social security act.

(2) Any person otherwise qualified for temporary assistance for needy families under this title who has resided in the state of Washington for fewer than twelve consecutive months immediately preceding application for assistance is limited to the benefit level in the state in which the person resided immediately before Washington, using the eligibility rules and other definitions established under this chapter, that was obtainable on the date of application in Washington state, if the benefit level of the prior state is lower than the level provided to similarly situated applicants in Washington state. The benefit level under this subsection shall be in effect for the first twelve months a recipient is on temporary assistance for needy families in Washington state.

(3) Any person otherwise qualified for temporary assistance for needy families who is assessed through the state

alcohol and substance abuse program as drug or alcohol-dependent and requiring treatment to become employable shall be required by the department to participate in a drug or alcohol treatment program as a condition of benefit receipt.

(4) In order to be eligible for temporary assistance for needy families benefits, any applicant with a felony conviction after August 21, 1996, involving drug use or possession, must: (a) Have been assessed as chemically dependent by a chemical dependency program approved under chapter 70.96A RCW and be participating in or have completed a coordinated rehabilitation plan consisting of chemical dependency treatment and vocational services; and (b) have not been convicted of a felony involving drug use or possession in the three years prior to the most current conviction.

(5) Pursuant to 21 U.S.C. 862a(d)(1), the department shall exempt individuals from the eligibility restrictions of 21 U.S.C. 862a(a)(2) to ensure eligibility for federal food assistance. [2004 c 54 § 5; 1997 c 58 § 101; 1981 1st ex.s. c 6 § 9; 1981 c 8 § 8; 1980 c 79 § 1; 1971 ex.s. c 169 § 1; 1967 ex.s. c 31 § 1; 1959 c 26 § 74.08.025. Prior: 1953 c 174 § 19.]

Findings—Conflict with federal requirements—2004 c 54: See notes following RCW 28A.235.160.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.08.030 Old age assistance eligibility requirements.

In addition to meeting the eligibility requirements of RCW 74.08.025, an applicant for old age assistance must be an applicant who:

(1) Has attained the age of sixty-five: PROVIDED, That if an applicant for old age assistance is already on the assistance rolls in some other program or category of assistance, such applicant shall be considered eligible the first of the month immediately preceding the date on which such applicant will attain the age of sixty-five; and

(2) Is a resident of the state of Washington. [1971 ex.s. c 169 § 2; 1961 c 248 § 1; 1959 c 26 § 74.08.030. Prior: 1953 c 174 § 20; 1951 c 165 § 1; 1951 c 1 § 5 (Initiative Measure No. 178, approved November 7, 1950); 1949 c 6 § 4; Rem. Supp. 1949 § 9998-33d.]

74.08.043 Need for personal and special care—Authority to consider in determining living requirements.

In determining the living requirements of otherwise eligible applicants and recipients of supplemental security income and general assistance, the department is authorized to consider the need for personal and special care and supervision due to physical and mental conditions. [1981 1st ex.s. c 6 § 12; 1981 c 8 § 11; 1969 ex.s. c 172 § 10.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.08.044 Need for personal and special care—Licensing—Rules and regulations.

The department is authorized to promulgate rules and regulations establishing eligibility for alternate living arrangements, and license the same, including minimum standards of care, based upon need

for personal care and supervision beyond the level of board and room only, but less than the level of care required in a hospital or a nursing facility as defined in the federal social security act. [1991 sp.s. c 8 § 5; 1975-'76 2nd ex.s. c 52 § 1; 1969 ex.s. c 172 § 11.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

74.08.045 Need for personal and special care—Purchase of personal and special care by department. The department may purchase such personal and special care at reasonable rates established by the department from substitute homes and intermediate care facilities providing [provided] this service is in compliance with standards of care established by the regulations of the department. [1969 ex.s. c 172 § 12.]

74.08.046 Energy assistance allowance. There is designated to be included in the public assistance payment level a monthly energy assistance allowance. The allowance shall be excluded from consideration as income for the purpose of determining eligibility and benefit levels of food stamp or benefits program recipients to the maximum extent exclusion is authorized by federal law. The allowance shall be calculated on a seasonal basis for the period of November 1st through April 30th. [1998 c 79 § 14; 1982 c 127 § 1.]

Legislative intent—1982 c 127: "It is the continuing intention of the legislature that first priority in the use of increased appropriations, expenditures, and payment levels for the 1981-83 biennium to income assistance recipients be for an energy allowance to offset the high and escalating costs of energy. Of the total amount appropriated or transferred for public assistance, an amount not to exceed \$50,000,000 is designated as energy assistance allowance to meet the high cost of energy. This designation is consistent with the legislative intent of section 11, chapter 6, Laws of 1981 1st ex. sess. to assist public assistance recipients in meeting the high costs of energy." [1982 c 127 § 2.]

Effective date—1982 c 127: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1982." [1982 c 127 § 4.]

74.08.050 Applications for grants. Application for a grant in any category of public assistance shall be made to the county office by the applicant or by another on his behalf, and shall be reduced to writing upon standard forms prescribed by the department, and a written acknowledgment of receipt of the application by the department shall be given to each applicant at the time of making application. [1971 ex.s. c 169 § 3; 1959 c 26 § 74.08.050. Prior: 1953 c 174 § 26; 1949 c 6 § 6; Rem. Supp. 1949 § 9998-33f.]

74.08.055 Verification of applications—Penalty. (1) Each applicant for or recipient of public assistance shall make an application for assistance which shall contain or be verified by a written declaration that it is made under the penalties of perjury. The secretary, by rule and regulation, may require that any other forms filled out by applicants or recipients of public assistance shall contain or be verified by a written declaration that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each applicant shall be so informed at the time of the signing.

(2) Any applicant for or recipient of public assistance who willfully makes and subscribes any application, statement or other paper which contains or is verified by a written declaration that it is made under the penalties of perjury and which he or she does not believe to be true and correct as to every material matter is guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 366; 1979 c 141 § 323; 1959 c 26 § 74.08.055. Prior: 1953 c 174 § 27.]

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

74.08.060 Action on applications—Contingent eligibility—Employment and training services. The department shall be required to approve or deny the application within forty-five days after the filing thereof and shall immediately notify the applicant in writing of its decision: PROVIDED, That if the department is not able within forty-five days, despite due diligence, to secure all information necessary to establish his eligibility, the department is charged to continue to secure such information and if such information, when established, makes applicant eligible, the department shall pay his grant from date of authorization or forty-five days after date of application whichever is sooner.

Any person currently ineligible, who will become eligible after the occurrence of a specific event, may apply for assistance within forty-five days of that event.

The department is authorized, in respect to work requirements, to provide employment and training services, including job search, job placement, work orientation, and necessary support services to verify eligibility. [1985 c 335 § 4; 1981 1st ex.s. c 6 § 13; 1969 ex.s. c 173 § 6; 1959 c 26 § 74.08.060. Prior: 1953 c 174 § 28; 1949 c 6 § 7; Rem. Supp. 1949 § 9998-33g.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.08.080 Grievances—Departmental and judicial review. (1)(a) A public assistance applicant or recipient who is aggrieved by a decision of the department or an authorized agency of the department has the right to an adjudicative proceeding. A current or former recipient who is aggrieved by a department claim that he or she owes a debt for an overpayment of assistance or food stamps or food stamp benefits transferred electronically, or both, has the right to an adjudicative proceeding.

(b) An applicant or recipient has no right to an adjudicative proceeding when the sole basis for the department's decision is a state or federal law that requires an assistance adjustment for a class of recipients.

(2) The adjudicative proceeding is governed by the Administrative Procedure Act, chapter 34.05 RCW, and this subsection.

(a) The applicant or recipient must file the application for an adjudicative proceeding with the secretary within ninety days after receiving notice of the aggrieving decision.

(b) The hearing shall be conducted at the local community services office or other location in Washington convenient to the appellant.

(c) The appellant or his or her representative has the right to inspect his or her department file and, upon request, to

receive copies of department documents relevant to the proceedings free of charge.

(d) The appellant has the right to a copy of the tape recording of the hearing free of charge.

(e) The department is limited to recovering an overpayment arising from assistance being continued pending the adjudicative proceeding to the amount recoverable up to the sixtieth day after the secretary's receipt of the application for an adjudicative proceeding.

(f) If the final adjudicative order is made in favor of the appellant, assistance shall be paid from the date of denial of the application for assistance or thirty days following the date of application for temporary assistance for needy families or forty-five days after date of application for all other programs, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision.

(g) This subsection applies only to an adjudicative proceeding in which the appellant is an applicant for or recipient of medical assistance or the limited casualty program for the medically needy and the issue is his or her eligibility or ineligibility due to the assignment or transfer of a resource. The burden is on the department to prove by a preponderance of the evidence that the person knowingly and willingly assigned or transferred the resource at less than market value for the purpose of qualifying or continuing to qualify for medical assistance or the limited casualty program for the medically needy. If the prevailing party in the adjudicative proceeding is the applicant or recipient, he or she is entitled to reasonable attorney's fees.

(3) When a person files a petition for judicial review as provided in RCW 34.05.514 of an adjudicative order entered in a public assistance program, no filing fee shall be collected from the person and no bond shall be required on any appeal. In the event that the superior court, the court of appeals, or the supreme court renders a decision in favor of the appellant, said appellant shall be entitled to reasonable attorneys' fees and costs. If a decision of the court is made in favor of the appellant, assistance shall be paid from date of the denial of the application for assistance or thirty days after the application for temporary assistance for needy families or forty-five days following the date of application, whichever is sooner; or in the case of a recipient, from the effective date of the local community services office decision. [1998 c 79 § 15; 1997 c 59 § 12; 1989 c 175 § 145; 1988 c 202 § 58; 1971 c 81 § 136; 1969 ex.s. c 172 § 2; 1959 c 26 § 74.08.080. Prior: 1953 c 174 § 31; 1949 c 6 § 9; Rem. Supp. 1949 § 9998-33i.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1988 c 202: See note following RCW 2.24.050.

74.08.090 Rule-making authority and enforcement.

The department is hereby authorized to make rules and regulations not inconsistent with the provisions of this title to the end that this title shall be administered uniformly throughout the state, and that the spirit and purpose of this title may be complied with. The department shall have the power to compel compliance with the rules and regulations established by it. Such rules and regulations shall be filed in accordance with the Administrative Procedure Act, as it is now or hereafter amended, and copies shall be available for public inspection

in the office of the department and in each county office. [1969 ex.s. c 173 § 5; 1959 c 26 § 74.08.090. Prior: 1953 c 174 § 5; 1949 c 6 § 10; Rem. Supp. 1949 § 9998-33j.]

74.08.100 Age and residency verification—Felony.

Proof of age and length of residence in the state of any applicant may be established as provided by the rules and regulations of the department: PROVIDED, That if an applicant is unable to establish proof of age or length of residence in the state by any other method he or she may make a statement under oath of his or her age on the date of application or the length of his or her residence in the state, before any judge of the superior court, any judge of the court of appeals, or any justice of the supreme court of the state of Washington, and such statement shall constitute sufficient proof of age of applicant or of length of residence in the state: PROVIDED HOWEVER, That any applicant who willfully makes a false statement as to his or her age or length of residence in the state under oath before a judge of the superior court, a judge of the court of appeals, or a justice of the supreme court, as provided above, shall be guilty of a class B felony punishable according to chapter 9A.20 RCW. [2003 c 53 § 367; 1971 c 81 § 137; 1959 c 26 § 74.08.100. Prior: 1949 c 6 § 11; Rem. Supp. 1949 § 9998-33k.]

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

74.08.105 Out-of-state recipients. No assistance payments shall be made to recipients living outside the state of Washington unless in the discretion of the secretary there is sound social reason for such out-of-state payments: PROVIDED, That the period for making such payments when authorized shall not exceed the length of time required to satisfy the residence requirements in the other state in order to be eligible for a grant in the same category of assistance as the recipient was eligible to receive in Washington. [1979 c 141 § 325; 1959 c 26 § 74.08.105. Prior: 1953 c 174 § 39.]

74.08.210 Grants not assignable nor subject to execution. Grants awarded under this title shall not be transferable or assignable, at law or in equity, and none of the money paid or payable under this title shall be subject to execution, levy, attachment, garnishment, or other legal process, or to the operation of bankruptcy or insolvency law. [1959 c 26 § 74.08.210. Prior: 1941 c 1 § 16; 1935 c 182 § 17; 1933 c 29 § 13; Rem. Supp. 1941 § 9998-49.]

74.08.260 Federal act to control in event of conflict.

If any plan of administration of this title submitted to the federal security agency shall be found to be not in conformity with the federal social security act by reason of any conflict of any section, portion, clause or part of this title and the federal social security act, such conflicting section, portion, clause or part of this title is hereby declared to be inoperative to the extent that it is so in conflict, and such finding or determination shall not affect the remainder of this title. [1959 c 26 § 74.08.260. Prior: 1949 c 6 § 17; Rem. Supp. 1949 § 9998-33q.]

74.08.278 Central operating fund established. In order to comply with federal statutes and regulations pertaining to federal matching funds and to provide for the prompt payment of initial grants and adjusting payments of grants the secretary is authorized to make provisions for the cash payment of assistance by the secretary or county administrators by the establishment of a central operating fund. The secretary may establish such a fund with the approval of the state auditor from moneys appropriated to the department for the payment of general assistance in a sum not to exceed one million dollars. Such funds shall be deposited as agreed upon by the secretary and the state auditor in accordance with the laws regulating the deposits of public funds. Such security shall be required of the depository in connection with the fund as the state treasurer may prescribe. Moneys remaining in the fund shall be returned to the general fund at the end of the biennium, or an accounting of proper expenditures from the fund shall be made to the state auditor. All expenditures from such central operating fund shall be reimbursed out of and charged to the proper program appropriated by the use of such forms and vouchers as are approved by the secretary of the department and the state auditor. Expenditures from such fund shall be audited by the director of financial management and the state auditor from time to time and a report shall be made by the state auditor and the secretary as are required by law. [1979 c 141 § 327; 1959 c 26 § 74.08.278. Prior: 1953 c 174 § 42; 1951 c 261 § 1.]

74.08.280 Payments to persons incapable of self-care—Protective payee services. If any person receiving public assistance has demonstrated an inability to care for oneself or for money, the department may direct the payment of the installments of public assistance to any responsible person, social service agency, or corporation or to a legally appointed guardian for his benefit. The state may contract with persons, social service agencies, or corporations approved by the department to provide protective payee services for a fixed amount per recipient receiving protective payee services to cover administrative costs. The department may by rule specify a fee to cover administrative costs. Such fee shall not be withheld from a recipient's grant.

If the state requires the appointment of a guardian for this purpose, the department shall pay all costs and reasonable fees as fixed by the court. [1987 c 406 § 10; 1979 c 141 § 328; 1959 c 26 § 74.08.280. Prior: 1953 c 174 § 40; 1937 c 156 § 7; 1935 c 182 § 10; RRS § 9998-10.]

Living situation presumption: RCW 74.12.255, 74.04.0052.

74.08.283 Services provided to attain self-care. The department is authorized to provide such social and related services as are reasonably necessary to the end that applicants for or recipients of public assistance are helped to attain self-care. [1963 c 228 § 16; 1959 c 26 § 74.08.283. Prior: 1957 c 63 § 6.]

74.08.290 Suspension of payments—Need lapse—Imprisonment—Conviction under RCW 74.08.331. The department is hereby authorized to suspend temporarily the public assistance granted to any person for any period during which such person is not in need thereof.

If a recipient is convicted of any crime or offense, and punished by imprisonment, no payment shall be made during the period of imprisonment.

If a recipient is convicted of unlawful practices under RCW 74.08.331, no payment shall be made for a period to be determined by the court, but in no event less than six months upon the first conviction and no less than twelve months for a second or subsequent violation. This suspension of public assistance shall apply regardless of whether the recipient is subject to complete or partial confinement upon conviction, or incurs some lesser penalty. [1995 c 379 § 2; 1959 c 26 § 74.08.290. Prior: 1953 c 174 § 38; 1935 c 182 § 12; RRS § 9998-12.]

Finding—1995 c 379: "The legislature finds that welfare fraud damages the state's ability to use its limited resources to help those in need who legitimately qualify for assistance. In addition, it affects the credibility and integrity of the system, promoting disdain for the law.

Persons convicted of committing such fraud should be barred, for a period of time, from receiving additional public assistance." [1995 c 379 § 1.]

74.08.331 Unlawful practices—Obtaining assistance—Disposal of realty—Penalties. (1) Any person who by means of a willfully false statement, or representation, or impersonation, or a willful failure to reveal any material fact, condition, or circumstance affecting eligibility or need for assistance, including medical care, surplus commodities, and food stamps or food stamp benefits transferred electronically, as required by law, or a willful failure to promptly notify the county office in writing as required by law or any change in status in respect to resources, or income, or need, or family composition, money contribution and other support, from whatever source derived, including unemployment insurance, or any other change in circumstances affecting the person's eligibility or need for assistance, or other fraudulent device, obtains, or attempts to obtain, or aids or abets any person to obtain any public assistance to which the person is not entitled or greater public assistance than that to which he or she is justly entitled is guilty of theft in the first degree under RCW 9A.56.030 and upon conviction thereof shall be punished by imprisonment in a state correctional facility for not more than fifteen years.

(2) Any person who by means of a willfully false statement or representation or by impersonation or other fraudulent device aids or abets in buying, selling, or in any other way disposing of the real property of a recipient of public assistance without the consent of the secretary is guilty of a gross misdemeanor and upon conviction thereof shall be punished by imprisonment for not more than one year in the county jail or a fine of not to exceed one thousand dollars or by both. [2003 c 53 § 368; 1998 c 79 § 16; 1997 c 58 § 303; 1992 c 7 § 59; 1979 c 141 § 329; 1965 ex.s. c 34 § 1.]

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

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

74.08.335 Transfers of property to qualify for assistance. Temporary assistance for needy families and general assistance shall not be granted to any person who has made

an assignment or transfer of property for the purpose of rendering himself or herself eligible for the assistance. There is a rebuttable presumption that a person who has transferred or transfers any real or personal property or any interest in property within two years of the date of application for the assistance without receiving adequate monetary consideration therefor, did so for the purpose of rendering himself or herself eligible for the assistance. Any person who transfers property for the purpose of rendering himself or herself eligible for assistance, or any person who after becoming a recipient transfers any property or any interest in property without the consent of the secretary, shall be ineligible for assistance for a period of time during which the reasonable value of the property so transferred would have been adequate to meet the person's needs under normal conditions of living: PROVIDED, That the secretary is hereby authorized to allow exceptions in cases where undue hardship would result from a denial of assistance. [1997 c 59 § 13; 1980 c 79 § 2; 1979 c 141 § 330; 1959 c 26 § 74.08.335. Prior: 1953 c 174 § 33.]

74.08.338 Real property transfers for inadequate consideration. When the consideration for a deed executed and delivered by a recipient is not paid, or when the consideration does not approximate the fair cash market value of the property, such deed shall be prima facie fraudulent as to the state and the department may proceed under RCW 43.20B.660. [1987 c 75 § 40; 1979 c 141 § 331; 1959 c 26 § 74.08.338. Prior: 1953 c 174 § 37.]

Savings—Severability—1987 c 75: See RCW 43.20B.900 and 43.20B.901.

74.08.340 No vested rights conferred. All assistance granted under this title shall be deemed to be granted and to be held subject to the provisions of any amending or repealing act that may hereafter be enacted, and no recipient shall have any claim for compensation, or otherwise, by reason of his assistance being affected in any way by such amending or repealing act. There is no legal entitlement to public assistance. [1997 c 58 § 102; 1959 c 26 § 74.08.340. Prior: 1935 c 182 § 21; RRS § 9998-21.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

74.08.370 Old age assistance grants charged against general fund. All old age assistance grants under this title shall be a charge against and payable out of the general fund of the state. Payment thereof shall be by warrant drawn upon vouchers duly prepared and verified by the secretary of the department of social and health services or his official representative. [1973 c 106 § 33; 1959 c 26 § 74.08.370. Prior: 1935 c 182 § 24; RRS § 9998-24. FORMER PART OF SECTION: 1935 c 182 § 25; RRS § 9998-25, now codified as RCW 74.08.375.]

74.08.380 Acceptance of federal act. The state hereby accepts the provisions of that certain act of the congress of the United States entitled, An Act to provide for the general welfare by establishing a system of federal old age benefits, and by enabling the several states to make more adequate

provisions for aged persons, blind persons, dependent and crippled children, maternal and child welfare, public health, and the administration of their unemployment compensation laws; to establish a social security board; to raise revenue; and for other purposes, and such other act with like or similar objects as may be enacted. [1959 c 26 § 74.08.380. Prior: 1937 c 156 § 12; 1935 c 182 § 26; RRS § 9998-26.]

74.08.390 Research, projects, to effect savings by restoring self-support—Waiver of public assistance requirements. The department of social and health services may conduct research studies, pilot projects, demonstration projects, surveys and investigations for the purpose of determining methods to achieve savings in public assistance programs by means of restoring individuals to maximum self-support and personal independence and preventing social and physical disablement, and for the accomplishment of any of such purposes may employ consultants or enter into contracts with any agency of the federal, state or local governments, nonprofit corporations, universities or foundations.

Pursuant to this authority the department may waive the enforcement of specific statutory requirements, regulations, and standards in one or more counties or on a statewide basis by formal order of the secretary. The order establishing the waiver shall provide alternative methods and procedures of administration, shall not be in conflict with the basic purposes, coverage, or benefits provided by law, shall not be general in scope but shall apply only for the duration of such a project and shall not take effect unless the secretary of health, education and welfare of the United States has agreed, for the same project, to waive the public assistance plan requirements relative to statewide uniformity. [1979 c 141 § 332; 1969 ex.s. c 173 § 7; 1963 c 228 § 17.]

74.08.580 Electronic benefit cards—Prohibited uses—Violations. (1) Any person receiving public assistance is prohibited from using electronic benefit cards or cash obtained with electronic benefit cards:

(a) For the purpose of participating in any of the activities authorized under chapter 9.46 RCW;

(b) For the purpose of parimutuel wagering authorized under chapter 67.16 RCW; or

(c) To purchase lottery tickets or shares authorized under chapter 67.70 RCW.

(2)(a) The department shall notify, in writing, all recipients of electronic benefit cards that any violation of subsection (1) of this section could result in legal proceedings and forfeiture of all cash public assistance.

(b) Whenever the department receives notice that a person has violated subsection (1) of this section, the department shall notify the person in writing that the violation could result in legal proceedings and forfeiture of all cash public assistance.

(c) The department shall assign a protective payee to the person receiving public assistance who violates subsection (1) of this section. [2002 c 252 § 1.]

74.08.900 Limited application. Nothing in this chapter except RCW 74.08.070 and 74.08.080 applies to chapter 74.50 RCW. [1989 c 3 § 3.]

Chapter 74.08A RCW

WASHINGTON WORKFIRST TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

Sections

| | |
|------------|---|
| 74.08A.010 | Time limits—Transitional food stamp assistance. |
| 74.08A.020 | Electronic benefit transfer. |
| 74.08A.030 | Provision of services by religiously affiliated organizations—Rules. |
| 74.08A.040 | Indian tribes—Program access—Funding—Rules. |
| 74.08A.050 | Indian tribes—Tribal program—Fiscal year. |
| 74.08A.060 | Food stamp work requirements. |
| 74.08A.100 | Immigrants—Eligibility. |
| 74.08A.110 | Immigrants—Sponsor deeming. |
| 74.08A.120 | Immigrants—Food assistance. |
| 74.08A.130 | Immigrants—Naturalization facilitation. |
| 74.08A.200 | Intent—Washington WorkFirst. |
| 74.08A.210 | Diversions program—Emergency assistance. |
| 74.08A.220 | Individual development accounts—Microcredit and microenterprise approaches—Rules. |
| 74.08A.230 | Earnings disregards and earned income cutoffs. |
| 74.08A.240 | Noncustodial parents in work programs. |
| 74.08A.250 | "Work activity" defined. |
| 74.08A.260 | Work activity—Referral—Individual responsibility plan—Refusal to work. |
| 74.08A.270 | Good cause. |
| 74.08A.275 | Employability screening. |
| 74.08A.280 | Program goal—Collaboration to develop work programs—Contracts—Service areas—Regional plans. |
| 74.08A.285 | Job search instruction and assistance. |
| 74.08A.290 | Competitive performance-based contracting—Evaluation of contracting practices—Contracting strategies. |
| 74.08A.300 | Placement bonuses. |
| 74.08A.310 | Self-employment assistance—Training and placement programs. |
| 74.08A.320 | Wage subsidy program. |
| 74.08A.330 | Community service program. |
| 74.08A.340 | Funding restrictions. |
| 74.08A.350 | Questionnaires—Job opportunities for welfare recipients. |
| 74.08A.380 | Teen parents—Education requirements. |
| 74.08A.400 | Outcome measures—Intent. |
| 74.08A.410 | Outcome measures—Development—Benchmarks. |
| 74.08A.420 | Outcome measures—Evaluations—Awarding contracts—Bonuses. |
| 74.08A.430 | Outcome measures—Report to legislature. |
| 74.08A.900 | Short title—1997 c 58. |
| 74.08A.901 | Part headings, captions, table of contents not law—1997 c 58. |
| 74.08A.902 | Exemptions and waivers from federal law—1997 c 58. |
| 74.08A.903 | Conflict with federal requirements—1997 c 58. |
| 74.08A.904 | Severability—1997 c 58. |

Interagency task force on unintended pregnancy: RCW 43.41.905.

74.08A.010 Time limits—Transitional food stamp assistance. (1) A family that includes an adult who has received temporary assistance for needy families for sixty months after July 27, 1997, shall be ineligible for further temporary assistance for needy families assistance.

(2) For the purposes of applying the rules of this section, the department shall count any month in which an adult family member received a temporary assistance for needy families cash assistance grant unless the assistance was provided when the family member was a minor child and not the head of the household or married to the head of the household.

(3) The department shall refer recipients who require specialized assistance to appropriate department programs, crime victims' programs through the department of community, trade, and economic development, or the crime victims' compensation program of the department of labor and industries.

(4) The department may exempt a recipient and the recipient's family from the application of subsection (1) of this section by reason of hardship or if the recipient meets the family violence options of section 402(A)(7) of Title IVA of

the federal social security act as amended by P.L. 104-193. The number of recipients and their families exempted from subsection (1) of this section for a fiscal year shall not exceed twenty percent of the average monthly number of recipients and their families to which assistance is provided under the temporary assistance for needy families program.

(5) The department shall not exempt a recipient and his or her family from the application of subsection (1) of this section until after the recipient has received fifty-two months of assistance under this chapter.

(6) Beginning on October 31, 2005, the department shall provide transitional food stamp assistance for a period of five months to a household that ceases to receive temporary assistance for needy families assistance and is not in sanction status. If necessary, the department shall extend the household's food stamp certification until the end of the transition period. [2004 c 54 § 4; 1997 c 58 § 103.]

Findings—Conflict with federal requirements—2004 c 54: See notes following RCW 28A.235.160.

74.08A.020 Electronic benefit transfer. By October 2002, the department shall develop and implement an electronic benefit transfer system to be used for the delivery of public assistance benefits, including without limitation, food assistance.

The department shall comply with P.L. 104-193, and shall cooperate with relevant federal agencies in the design and implementation of the electronic benefit transfer system. [1997 c 58 § 104.]

74.08A.030 Provision of services by religiously affiliated organizations—Rules. (1) The department shall allow religiously affiliated organizations to provide services to families receiving temporary assistance for needy families on the same basis as any other nongovernmental provider, without impairing the religious character of such organizations, and without diminishing the religious freedom of beneficiaries of assistance funded under chapter 74.12 RCW.

(2) The department shall adopt rules implementing this section, and the applicable sections of P.L. 104-193 related to services provided by charitable, religious, or private organizations. [1997 c 58 § 106.]

74.08A.040 Indian tribes—Program access—Funding—Rules. The department shall (1) provide eligible Indian tribes ongoing, meaningful opportunities to participate in the development, oversight, and operation of the state temporary assistance for needy families program; (2) certify annually that it is providing equitable access to the state temporary assistance for needy families program to Indian people whose tribe is not administering a tribal temporary assistance for needy families program; (3) coordinate and cooperate with eligible Indian tribes that elect to operate a tribal temporary assistance for needy families program as provided for in P.L. 104-193; (4) upon approval by the secretary of the federal department of health and human services of a tribal temporary assistance for needy families program, transfer a fair and equitable amount of the state maintenance of effort funds to the eligible Indian tribe; and (5) establish rules related to the operation of this section and RCW 74.08A.050, covering, at

a minimum, appropriate uses of state maintenance of effort funds and annual reports on program operations. The legislature shall specify the amount of state maintenance of effort funds to be transferred in the biennial appropriations act. [1997 c 58 § 107.]

Reviser's note: 1997 c 58 directed that this section be added to chapter 74.12 RCW. This section has been codified in chapter 74.08A RCW, which relates more directly to the temporary assistance for needy families program.

74.08A.050 Indian tribes—Tribal program—Fiscal year. An eligible Indian tribe exercising its authority under P.L. 104-193 to operate a tribal temporary assistance for needy families program shall operate the program on a state fiscal year basis. If a tribe decides to cancel a tribal temporary assistance for needy families program, it shall notify the department no later than ninety days prior to the start of the state fiscal year. [1997 c 58 § 108.]

Reviser's note: 1997 c 58 directed that this section be added to chapter 74.12 RCW. This section has been codified in chapter 74.08A RCW, which relates more directly to the temporary assistance for needy families program.

74.08A.060 Food stamp work requirements. Single adults without dependents between eighteen and fifty years of age shall comply with federal food stamp work requirements as a condition of eligibility. The department may exempt any counties or subcounty areas from the federal food stamp work requirements in P.L. 104-193, unless the department receives written evidence of official action by a county or subcounty governing entity, taken after noticed consideration, that indicates that a county or subcounty area chooses not to use an exemption to the federal food stamp work requirements. [1997 c 58 § 110.]

Reviser's note: 1997 c 58 directed that this section be added to chapter 74.12 RCW. This section has been codified in chapter 74.08A RCW, which relates more directly to the temporary assistance for needy families program.

74.08A.100 Immigrants—Eligibility. The state shall exercise its option under P.L. 104-193 to continue services to legal immigrants under temporary assistance for needy families, medicaid to the extent allowed by federal law, the state's basic health plan as provided in chapter 70.47 RCW, and social services block grant programs. Eligibility for these benefits for legal immigrants arriving after August 21, 1996, is limited to those families where the parent, parents, or legal guardians have been in residence in Washington state for a period of twelve consecutive months before making their application for assistance. Legal immigrants who lose benefits under the supplemental security income program as a result of P.L. 104-193 are immediately eligible for benefits under the state's general assistance-unemployable program. The department shall redetermine income and resource eligibility at least annually, in accordance with existing state policy. [2002 c 366 § 1; 1997 c 57 § 1.]

Effective date—2002 c 366: "This act takes effect October 1, 2002." [2002 c 366 § 3.]

Captions not law—1997 c 57: "Captions used in this act are not any part of the law." [1997 c 57 § 4.]

74.08A.110 Immigrants—Sponsor deeming. (1) Except as provided in subsection (4) of this section, qualified aliens and aliens permanently residing under color of law shall have their eligibility for assistance redetermined.

(2) In determining the eligibility and the amount of benefits of a qualified alien or an alien permanently residing under color of law for public assistance under this title, the income and resources of the alien shall be deemed to include the income and resources of any person and his or her spouse who executed an affidavit of support pursuant to section 213A of the federal immigration and naturalization act on behalf of the alien for a period of five years following the execution of that affidavit of support. The deeming provisions of this subsection shall be waived if the sponsor dies or is permanently incapacitated during the period the affidavit of support is valid.

(3) As used in this section, "qualified alien" has the meaning provided it in P.L. 104-183.

(4)(a) Qualified aliens specified under sections 403, 412, and 552 (e) and (f), subtitle B, Title IV, of P.L. 104-193 and in P.L. 104-208, are exempt from this section.

(b) Qualified aliens who served in the armed forces of an allied country, or were employed by an agency of the federal government, during a military conflict between the United States of America and a military adversary are exempt from the provisions of this section.

(c) Qualified aliens who are victims of domestic violence and petition for legal status under the federal violence against women act are exempt from the provisions of this section. [1997 c 57 § 2.]

Captions not law—1997 c 57: See note following RCW 74.08A.100.

74.08A.120 Immigrants—Food assistance. (1) The department may establish a food assistance program for legal immigrants who are ineligible for the federal food stamp program.

(2) The rules for the state food assistance program shall follow exactly the rules of the federal food stamp program except for the provisions pertaining to immigrant status.

(3) The benefit under the state food assistance program shall be established by the legislature in the biennial operating budget.

(4) The department may enter into a contract with the United States department of agriculture to use the existing federal food stamp program coupon system for the purposes of administering the state food assistance program.

(5) In the event the department is unable to enter into a contract with the United States department of agriculture, the department may issue vouchers to eligible households for the purchase of eligible foods at participating retailers. [1999 c 120 § 4; 1997 c 57 § 3.]

Captions not law—1997 c 57: See note following RCW 74.08A.100.

74.08A.130 Immigrants—Naturalization facilitation. The department shall make an affirmative effort to identify and proactively contact legal immigrants receiving public assistance to facilitate their applications for naturalization. The department shall obtain a complete list of legal immigrants in Washington who are receiving correspondence regarding their eligibility from the social security administration. The department shall inform immigrants regarding how citizenship may be attained. In order to facilitate the citizenship process, the department shall coordinate and contract, to the extent necessary, with existing public and private

resources and shall, within available funds, ensure that those immigrants who qualify to apply for naturalization are referred to or otherwise offered classes. The department shall assist eligible immigrants in obtaining appropriate test exemptions, and other exemptions in the naturalization process, to the extent permitted under federal law. The department shall report annually by December 15th to the legislature regarding the progress and barriers of the immigrant naturalization facilitation effort. It is the intent of the legislature that persons receiving naturalization assistance be facilitated in obtaining citizenship within two years of their eligibility to apply. [1997 c 58 § 204.]

74.08A.200 Intent—Washington WorkFirst. It is the intent of the legislature that all applicants to the Washington WorkFirst program shall be focused on obtaining paid, unsubsidized employment. The focus of the Washington WorkFirst program shall be work for all recipients. [1997 c 58 § 301.]

74.08A.210 Diversion program—Emergency assistance. (1) In order to prevent some families from developing dependency on temporary assistance for needy families, the department shall make available to qualifying applicants a diversion program designed to provide brief, emergency assistance for families in crisis whose income and assets would otherwise qualify them for temporary assistance for needy families.

(2) Diversion assistance may include cash or vouchers in payment for the following needs:

- (a) Child care;
- (b) Housing assistance;
- (c) Transportation-related expenses;
- (d) Food;
- (e) Medical costs for the recipient's immediate family;
- (f) Employment-related expenses which are necessary to keep or obtain paid unsubsidized employment.

(3) Diversion assistance is available once in each twelve-month period for each adult applicant. Recipients of diversion assistance are not included in the temporary assistance for needy families program.

(4) Diversion assistance may not exceed one thousand five hundred dollars for each instance.

(5) To be eligible for diversion assistance, a family must otherwise be eligible for temporary assistance for needy families.

(6) Families ineligible for temporary assistance for needy families or general assistance due to sanction, noncompliance, the lump sum income rule, or any other reason are not eligible for diversion assistance.

(7) Families must provide evidence showing that a bona fide need exists according to subsection (2) of this section in order to be eligible for diversion assistance.

An adult applicant may receive diversion assistance of any type no more than once per twelve-month period. If the recipient of diversion assistance is placed on the temporary assistance for needy families program within twelve months of receiving diversion assistance, the prorated dollar value of the assistance shall be treated as a loan from the state, and

recovered by deduction from the recipient's cash grant. [1997 c 58 § 302.]

74.08A.220 Individual development accounts—Microcredit and microenterprise approaches—Rules. The department shall carry out a program to fund individual development accounts established by recipients eligible for assistance under the temporary assistance for needy families program.

(1) An individual development account may be established by or on behalf of a recipient eligible for assistance provided under the temporary assistance for needy families program operated under this title for the purpose of enabling the recipient to accumulate funds for a qualified purpose described in subsection (2) of this section.

(2) A qualified purpose as described in this subsection is one or more of the following, as provided by the qualified entity providing assistance to the individual:

(a) Postsecondary expenses paid from an individual development account directly to an eligible educational institution;

(b) Qualified acquisition costs with respect to a qualified principal residence for a qualified first-time home buyer, if paid from an individual development account directly to the persons to whom the amounts are due;

(c) Amounts paid from an individual development account directly to a business capitalization account which is established in a federally insured financial institution and is restricted to use solely for qualified business capitalization expenses.

(3) A recipient may only contribute to an individual development account such amounts as are derived from earned income, as defined in section 911(d)(2) of the internal revenue code of 1986.

(4) The department shall establish rules to ensure funds held in an individual development account are only withdrawn for a qualified purpose as provided in this section.

(5) An individual development account established under this section shall be a trust created or organized in the United States and funded through periodic contributions by the establishing recipient and matched by or through a qualified entity for a qualified purpose as provided in this section.

(6) For the purpose of determining eligibility for any assistance provided under this title, all funds in an individual development account under this section shall be disregarded for such purpose with respect to any period during which such individual maintains or makes contributions into such an account.

(7) The department shall adopt rules authorizing the use of organizations using microcredit and microenterprise approaches to assisting low-income families to become financially self-sufficient.

(8) The department shall adopt rules implementing the use of individual development accounts by recipients of temporary assistance for needy families.

(9) For the purposes of this section, "eligible educational institution," "postsecondary educational expenses," "qualified acquisition costs," "qualified business," "qualified business capitalization expenses," "qualified expenditures," "qualified first-time home buyer," "date of acquisition," "qualified plan," and "qualified principal residence" include

the meanings provided for them in P.L. 104-193. [1997 c 58 § 307.]

74.08A.230 Earnings disregards and earned income cutoffs. (1) In addition to their monthly benefit payment, a family may earn and keep one-half of its earnings during every month it is eligible to receive assistance under this section.

(2) In no event may a family be eligible for temporary assistance for needy families if its monthly gross earned income exceeds the maximum earned income level as set by the department. In calculating a household's gross earnings, the department shall disregard the earnings of a minor child who is:

- (a) A full-time student; or
- (b) A part-time student carrying at least half the normal school load and working fewer than thirty-five hours per week. [1997 c 58 § 308.]

74.08A.240 Noncustodial parents in work programs. The department may provide Washington WorkFirst activities or make cross-referrals to existing programs to qualifying noncustodial parents of children receiving temporary assistance for needy families who are unable to meet their child support obligations. Services authorized under this section shall be provided within available funds. [1997 c 58 § 310.]

74.08A.250 "Work activity" defined. Unless the context clearly requires otherwise, as used in this chapter, "work activity" means:

- (1) Unsubsidized paid employment in the private or public sector;
- (2) Subsidized paid employment in the private or public sector, including employment through the state or federal work-study program for a period not to exceed twenty-four months;
- (3) Work experience, including:
 - (a) An internship or practicum, that is paid or unpaid and is required to complete a course of vocational training or to obtain a license or certificate in a high demand field, as determined by the employment security department. No internship or practicum shall exceed twelve months; or
 - (b) Work associated with the refurbishing of publicly assisted housing, if sufficient paid employment is not available;
- (4) On-the-job training;
- (5) Job search and job readiness assistance;
- (6) Community service programs;
- (7) Vocational educational training, not to exceed twelve months with respect to any individual;
- (8) Job skills training directly related to employment;
- (9) Education directly related to employment, in the case of a recipient who has not received a high school diploma or a GED;
- (10) Satisfactory attendance at secondary school or in a course of study leading to a GED, in the case of a recipient who has not completed secondary school or received such a certificate;
- (11) The provision of child care services to an individual who is participating in a community service program;

(2004 Ed.)

(12) Internships, that shall be paid or unpaid work experience performed by an intern in a business, industry, or government or nongovernmental agency setting;

(13) Practicums, which include any educational program in which a student is working under the close supervision of a professional in an agency, clinic, or other professional practice setting for purposes of advancing their skills and knowledge; and

(14) Services required by the recipient under RCW 74.08.025(3) and 74.08A.010(3) to become employable. [2000 c 10 § 1; 1997 c 58 § 311.]

74.08A.260 Work activity—Referral—Individual responsibility plan—Refusal to work. (1) Each recipient shall be assessed after determination of program eligibility and before referral to job search. Assessments shall be based upon factors that are critical to obtaining employment, including but not limited to education, availability of child care, history of family violence, history of substance abuse, and other factors that affect the ability to obtain employment. Assessments may be performed by the department or by a contracted entity. The assessment shall be based on a uniform, consistent, transferable format that will be accepted by all agencies and organizations serving the recipient. Based on the assessment, an individual responsibility plan shall be prepared that: (a) Sets forth an employment goal and a plan for moving the recipient immediately into employment; (b) contains the obligation of the recipient to become and remain employed; (c) moves the recipient into whatever employment the recipient is capable of handling as quickly as possible; and (d) describes the services available to the recipient to enable the recipient to obtain and keep employment.

(2) Recipients who are not engaged in work and work activities, and do not qualify for a good cause exemption under RCW 74.08A.270, shall engage in self-directed service as provided in RCW 74.08A.330.

(3) If a recipient refuses to engage in work and work activities required by the department, the family's grant shall be reduced by the recipient's share, and may, if the department determines it appropriate, be terminated.

(4) The department may waive the penalties required under subsection (3) of this section, subject to a finding that the recipient refused to engage in work for good cause provided in RCW 74.08A.270.

(5) In implementing this section, the department shall assign the highest priority to the most employable clients, including adults in two-parent families and parents in single-parent families that include older preschool or school-age children to be engaged in work activities.

(6) In consultation with the recipient, the department or contractor shall place the recipient into a work activity that is available in the local area where the recipient resides. [2003 c 383 § 1; 1997 c 58 § 313.]

74.08A.270 Good cause. (1) Good cause reasons for failure to participate in WorkFirst program components include: (a) Situations where the recipient is a parent or other relative personally providing care for a child under the age of six years, and formal or informal child care, or day care for an incapacitated individual living in the same home as a depen-

dent child, is necessary for an individual to participate or continue participation in the program or accept employment, and such care is not available, and the department fails to provide such care; or (b) the recipient is a parent with a child under the age of one year, except that at the time a child reaches the age of three months, the recipient is required to participate in one of the following for up to twenty hours per week:

- (i) Instruction or training which has the purpose of improving parenting skills or child well-being;
- (ii) Preemployment or job readiness training;
- (iii) Course study leading to a high school diploma or GED; or
- (iv) Volunteering in a child care facility licensed under chapter 74.15 RCW so long as the child care facility agrees to accept the recipient as a volunteer and the child without compensation while the parent is volunteering at the facility. The volunteer recipient and his or her child shall not be counted for the purposes of determining licensed capacity or the staff to child ratio of the facility.

(2) Nothing in this section shall prevent a recipient from participating fully in the WorkFirst program on a voluntary basis. A recipient who chooses to participate fully in the WorkFirst program shall be considered to be fulfilling the requirements of this section.

(3) For any recipient who claims a good cause reason for failure to participate in the WorkFirst program based on the fact that the recipient has a child under the age of one year, the department shall, within existing resources, conduct an assessment of the recipient within ninety days and before a job search component is initiated in order to determine if the recipient has any specific service needs or employment barriers. The assessment may include identifying the need for substance abuse treatment, mental health treatment, or domestic violence services, and shall be used in developing the recipient's individual responsibility plan.

(4) A parent may only receive the exemption under subsection (1)(b) of this section one time, for one child. [2002 c 89 § 1; 1997 c 58 § 314.]

74.08A.275 Employability screening. Each recipient approved to receive temporary assistance for needy families shall be subject to an employability screening under RCW 74.08A.260 after determination of program eligibility and before referral to job search. If the employability screening determines the recipient is not employable, or meets the criteria specified in RCW 74.08A.270 for a good cause exemption to work requirements, the department shall defer the job search requirement under RCW 74.08A.285. [2003 c 383 § 2; 1999 c 340 § 1.]

74.08A.280 Program goal—Collaboration to develop work programs—Contracts—Service areas—Regional plans. (1) The legislature finds that moving those eligible for assistance to self-sustaining employment is a goal of the WorkFirst program. It is the intent of WorkFirst to aid a participant's progress to self-sufficiency by allowing flexibility within the statewide program to reflect community resources, the local characteristics of the labor market, and the composition of the caseload. Program success will be enhanced through effective coordination at regional and local levels,

involving employers, labor representatives, educators, community leaders, local governments, and social service providers.

(2) The department, through its regional offices, shall collaborate with employers, recipients, frontline workers, educational institutions, labor, private industry councils, the work force training and education coordinating board, community rehabilitation employment programs, employment and training agencies, local governments, the employment security department, and community action agencies to develop work programs that are effective and work in their communities. For planning purposes, the department shall collect and make accessible to regional offices successful work program models from around the United States, including the employment partnership program, apprenticeship programs, microcredit, microenterprise, self-employment, and W-2 Wisconsin works. Work programs shall incorporate local volunteer citizens in their planning and implementation phases to ensure community relevance and success.

(3) To reduce administrative costs and to ensure equal statewide access to services, the department may develop contracts for statewide welfare-to-work services. These statewide contracts shall support regional flexibility and ensure that resources follow local labor market opportunities and recipients' needs.

(4) The secretary shall establish WorkFirst service areas for purposes of planning WorkFirst programs and for distributing WorkFirst resources. Service areas shall reflect department regions.

(5) By July 31st of each odd-numbered year, a plan for the WorkFirst program shall be developed for each region. The plan shall be prepared in consultation with local and regional sources, adapting the statewide WorkFirst program to achieve maximum effect for the participants and the communities within which they reside. Local consultation shall include to the greatest extent possible input from local and regional planning bodies for social services and work force development. The regional and local administrator shall consult with employers of various sizes, labor representatives, training and education providers, program participants, economic development organizations, community organizations, tribes, and local governments in the preparation of the service area plan.

(6) The secretary has final authority in plan approval or modification. Regional program implementation may deviate from the statewide program if specified in a service area plan, as approved by the secretary. [1997 c 58 § 315.]

74.08A.285 Job search instruction and assistance. The WorkFirst program operated by the department to meet the federal work requirements specified in P.L. 104-193 shall contain a job search component. The component shall consist of instruction on how to secure a job and assisted job search activities to locate and retain employment. Nonexempt recipients of temporary assistance for needy families shall participate in an initial job search for no more than twelve consecutive weeks. Each recipient shall receive a work skills assessment upon referral to the job search program. The work skills assessment shall include but not be limited to education, employment history, employment strengths, and job skills. The recipient's ability to obtain

employment will be reviewed periodically thereafter and, if it is clear at any time that further participation in a job search will not be productive, the department shall assess the recipient pursuant to RCW 74.08A.260. The department shall refer recipients unable to find employment through the initial job search period to work activities that will develop their skills or knowledge to make them more employable, including additional job search and job readiness assistance. [2003 c 383 § 3; 1998 c 89 § 1.]

74.08A.290 Competitive performance-based contracting—Evaluation of contracting practices—Contracting strategies. (1) It is the intent of the legislature that the department is authorized to engage in competitive contracting using performance-based contracts to provide all work activities authorized in chapter 58, Laws of 1997, including the job search component authorized in *section 312 of this act.

(2) The department may use competitive performance-based contracting to select which vendors will participate in the WorkFirst program. Performance-based contracts shall be awarded based on factors that include but are not limited to the criteria listed in RCW 74.08A.410, past performance of the contractor, demonstrated ability to perform the contract effectively, financial strength of the contractor, and merits of the proposal for services submitted by the contractor. Contracts shall be made without regard to whether the contractor is a public or private entity.

(3) The department may contract for an evaluation of the competitive contracting practices and outcomes to be performed by an independent entity with expertise in government privatization and competitive strategies. The evaluation shall include quarterly progress reports to the fiscal committees of the legislature and to the governor, starting at the first quarter after the effective date of the first competitive contract and ending two years after the effective date of the first competitive contract.

(4) The department shall seek independent assistance in developing contracting strategies to implement this section. Assistance may include but is not limited to development of contract language, design of requests for proposal, developing full cost information on government services, evaluation of bids, and providing for equal competition between private and public entities. [1997 c 58 § 316.]

*Reviser's note: Section 312 of this act was vetoed by the governor.

74.08A.300 Placement bonuses. In the case of service providers that are not public agencies, initial placement bonuses of no greater than five hundred dollars may be provided by the department for service entities responsible for placing recipients in an unsubsidized job for a minimum of twelve weeks, and the following additional bonuses shall also be provided:

(1) A percent of the initial bonus if the job pays double the minimum wage;

(2) A percent of the initial bonus if the job provides health care;

(3) A percent of the initial bonus if the job includes employer-provided child care needed by the recipient; and

(2004 Ed.)

(4) A percent of the initial bonus if the recipient is continuously employed for two years. [1997 c 58 § 317.]

74.08A.310 Self-employment assistance—Training and placement programs. The department shall:

(1) Notify recipients of temporary assistance for needy families that self-employment is one method of leaving state assistance. The department shall provide its regional offices, recipients of temporary assistance for needy families, and any contractors providing job search, training, or placement services notification of programs available in the state for entrepreneurial training, technical assistance, and loans available for start-up businesses;

(2) Provide recipients of temporary assistance for needy families and service providers assisting such recipients through training and placement programs with information it receives about the skills and training required by firms locating in the state;

(3) Encourage recipients of temporary assistance for needy families that are in need of basic skills to seek out programs that integrate basic skills training with occupational training and workplace experience. [1997 c 58 § 324.]

74.08A.320 Wage subsidy program. The department shall establish a wage subsidy program for recipients of temporary assistance for needy families. The department shall give preference in job placements to private sector employers that have agreed to participate in the wage subsidy program. The department shall identify characteristics of employers who can meet the employment goals stated in RCW 74.08A.410. The department shall use these characteristics in identifying which employers may participate in the program. The department shall adopt rules for the participation of recipients of temporary assistance for needy families in the wage subsidy program. Participants in the program established under this section may not be employed if: (1) The employer has terminated the employment of any current employee or otherwise caused an involuntary reduction of its work force in order to fill the vacancy so created with the participant; or (2) the participant displaces or partially displaces current employees. Employers providing positions created under this section shall meet the requirements of chapter 49.46 RCW. This section shall not diminish or result in the infringement of obligations or rights under chapters 41.06, 41.56, and 49.36 RCW and the national labor relations act, 29 U.S.C. Ch. 7. The department shall establish such local and statewide advisory boards, including business and labor representatives, as it deems appropriate to assist in the implementation of the wage subsidy program. Once the recipient is hired, the wage subsidy shall be authorized for up to nine months. [1997 c 58 § 325.]

74.08A.330 Community service program. The department shall establish the community service program to provide the experience of work for recipients of public assistance. The program is intended to promote a strong work ethic for participating public assistance recipients. Under this program, public assistance recipients are required to volunteer to work for charitable nonprofit organizations and public agencies, or engage in another activity designed to benefit the

recipient, the recipient's family, or the recipient's community, as determined by the department on a case-by-case basis. Participants in a community service or work experience program established by this chapter are deemed employees for the purpose of chapter 49.17 RCW. The cost of premiums under Title 51 RCW shall be paid for by the department for participants in a community service or work experience program. Participants in a community service or work experience program may not be placed if: (1) An employer has terminated the employment of any current employee or otherwise caused an involuntary reduction of its work force in order to fill the vacancy so created with the participant; or (2) the participant displaces or partially displaces current employees. [1997 c 58 § 326.]

74.08A.340 Funding restrictions. The department of social and health services shall operate the Washington WorkFirst program authorized under *RCW 74.08A.200 through 74.08A.330, 43.330.145, 74.13.0903 and 74.25.040, and chapter 74.12 RCW within the following constraints:

(1) The full amount of the temporary assistance for needy families block grant, plus qualifying state expenditures as appropriated in the biennial operating budget, shall be appropriated to the department each year in the biennial appropriations act to carry out the provisions of the program authorized in *RCW 74.08A.200 through 74.08A.330, 43.330.145, 74.13.0903 and 74.25.040, and chapter 74.12 RCW.

(2) The department may expend funds defined in subsection (1) of this section in any manner that will effectively accomplish the outcome measures defined in RCW 74.08A.410. No more than fifteen percent of the amount provided in subsection (1) of this section may be spent for administrative purposes. For the purpose of this subsection, "administrative purposes" does not include expenditures for information technology and computerization needed for tracking and monitoring required by P.L. 104-193. The department shall not increase grant levels to recipients of the program authorized in **RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW.

(3) The department shall implement strategies that accomplish the outcome measures identified in RCW 74.08A.410 that are within the funding constraints in this section. Specifically, the department shall implement strategies that will cause the number of cases in the program authorized in **RCW 74.08A.200 through 74.08A.330 and 43.330.145 and chapter 74.12 RCW to decrease by at least fifteen percent during the 1997-99 biennium and by at least five percent in the subsequent biennium. The department may transfer appropriation authority between funding categories within the economic services program in order to carry out the requirements of this subsection.

(4) The department shall monitor expenditures against the appropriation levels provided for in subsection (1) of this section. The department shall quarterly make a determination as to whether expenditure levels will exceed available funding and communicate its finding to the legislature. If the determination indicates that expenditures will exceed funding at the end of the fiscal year, the department shall take all necessary actions to ensure that all services provided under this chapter shall be made available only to the extent of the

availability and level of appropriation made by the legislature. [1997 c 58 § 321.]

Reviser's note: *(1) Additional sections referenced in 1997 c 58 include sections 312, 318, and 402, which were vetoed by the governor; section 401, which is quoted after RCW 74.13.0903; and section 403, which is temporary and uncodified.

***(2) Additional sections referenced in 1997 c 58 include sections 312 and 318, which were vetoed by the governor.

74.08A.350 Questionnaires—Job opportunities for welfare recipients. The department of social and health services shall create a questionnaire, asking businesses for information regarding available and upcoming job opportunities for welfare recipients. The department of revenue shall include the questionnaire in a regular quarterly mailing. The department of social and health services shall receive responses and use the information to develop work activities in the areas where jobs will be available. [1997 c 58 § 1007.]

74.08A.380 Teen parents—Education requirements. All applicants under the age of eighteen years who are approved for assistance and, within one hundred eighty days after the date of federal certification of the Washington temporary assistance for needy families program, all unmarried minor parents or pregnant minor applicants shall, as a condition of receiving benefits, actively progress toward the completion of a high school diploma or a GED. [1997 c 58 § 503.]

74.08A.400 Outcome measures—Intent. It is the intent of the legislature that the Washington WorkFirst program focus on work and on personal responsibility for recipients. The program shall be evaluated among other evaluations, through a limited number of outcome measures designed to hold each community service office and economic services region accountable for program success. [1997 c 58 § 701.]

Effective dates—1997 c 58: See note following RCW 74.20A.320.

74.08A.410 Outcome measures—Development—Benchmarks. (1) The WorkFirst program shall develop outcome measures for use in evaluating the WorkFirst program authorized in chapter 58, Laws of 1997, which may include but are not limited to:

- (a) Caseload reduction;
- (b) Recidivism to caseload after two years;
- (c) Job retention;
- (d) Earnings;
- (e) Reduction in average grant through increased recipient earnings; and
- (f) Placement of recipients into private sector, unsubsidized jobs.

(2) The department shall require that contractors for WorkFirst services collect outcome measure information and report outcome measures to the department regularly. The department shall develop benchmarks that compare outcome measure information from all contractors to provide a clear indication of the most effective contractors. Benchmark information shall be published quarterly and provided to the legislature, the governor, and all contractors for WorkFirst services. [1997 c 58 § 702.]

Effective dates—1997 c 58: See note following RCW 74.20A.320.

74.08A.420 Outcome measures—Evaluations—Awarding contracts—Bonuses. Every WorkFirst office, region, contract, employee, and contractor shall be evaluated using the criteria in RCW 74.08A.410. The department shall award contracts to the highest performing entities according to the criteria in RCW 74.08A.410. The department may provide for bonuses to offices, regions, and employees with the best outcomes according to measures in RCW 74.08A.410. [1997 c 58 § 703.]

Effective dates—1997 c 58: See note following RCW 74.20A.320.

74.08A.430 Outcome measures—Report to legislature. The department shall provide a report to the appropriate committees of the legislature on achievement of the outcome measures by region and contract on an annual basis, no later than January 15th of each year, beginning in 1999. The report shall include how the department is using the outcome measure information obtained under RCW 74.08A.410 to manage the WorkFirst program. [1997 c 58 § 704.]

Effective dates—1997 c 58: See note following RCW 74.20A.320.

74.08A.900 Short title—1997 c 58. This act may be known and cited as the Washington WorkFirst temporary assistance for needy families act. [1997 c 58 § 2.]

74.08A.901 Part headings, captions, table of contents not law—1997 c 58. Part headings, captions, and the table of contents used in this act are not any part of the law. [1997 c 58 § 1008.]

74.08A.902 Exemptions and waivers from federal law—1997 c 58. The governor and the department of social and health services shall seek all necessary exemptions and waivers from and amendments to federal statutes, rules, and regulations and shall report to the appropriate committees in the house of representatives and senate quarterly on the efforts to secure the federal changes to permit full implementation of this act at the earliest possible date. [1997 c 58 § 1009.]

74.08A.903 Conflict with federal requirements—1997 c 58. If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. As used in this section, "allocation of federal funds to the state" means the allocation of federal funds that are appropriated by the legislature to the department of social and health services and on which the department depends for carrying out any provision of the operating budget applicable to it. [1997 c 58 § 1011.]

(2004 Ed.)

74.08A.904 Severability—1997 c 58. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1997 c 58 § 1012.]

Chapter 74.09 RCW MEDICAL CARE

Sections

- 74.09.010 Definitions.
- 74.09.035 Medical care services—Eligibility, standards—Limits.
- 74.09.037 Identification card—Social security number restriction.
- 74.09.050 Secretary's responsibilities and duties—Personnel—Medical screeners—Medical directors.
- 74.09.055 Copayment, deductible, coinsurance, cost-sharing requirements authorized.
- 74.09.075 Employability and disability evaluation—Medical condition—Medical reports—Medical consultations and assistance.
- 74.09.080 Methods of performing administrative responsibilities.
- 74.09.110 Administrative personnel—Professional consultants and screeners.
- 74.09.120 Purchases of services, care, supplies—Nursing homes—Veterans' homes—Institutions for mentally retarded—Institutions for mental diseases.
- 74.09.150 Personnel to be under existing merit system.
- 74.09.160 Presentment of charges by contractors.
- 74.09.180 Chapter does not apply if another party is liable—Exception—Subrogation—Lien—Reimbursement—Delegation of lien and subrogation rights.
- 74.09.185 Third party has legal liability to make payments—State acquires rights—Lien—Equitable subrogation does not apply.
- 74.09.190 Religious beliefs—Construction of chapter.
- 74.09.200 Audits and investigations—Legislative declaration—State authority.
- 74.09.210 Fraudulent practices—Penalties.
- 74.09.220 Liability for receipt of excess payments.
- 74.09.230 False statements, fraud—Penalties.
- 74.09.240 Bribes, kickbacks, rebates—Self-referrals—Penalties.
- 74.09.250 False statements regarding institutions, facilities—Penalties.
- 74.09.260 Excessive charges, payments—Penalties.
- 74.09.270 Failure to maintain trust funds in separate account—Penalties.
- 74.09.280 False verification of written statements—Penalties.
- 74.09.290 Department audits and investigations of providers—Patient records—Penalties.
- 74.09.300 Department to report penalties to appropriate licensing agency or disciplinary board.
- 74.09.405 Children's health program—Purpose.
- 74.09.415 Children's health program established.
- 74.09.425 Children's health care accessibility—Community action.
- 74.09.435 Children's health program—Biennial evaluation.
- 74.09.450 Children's health insurance program—Intent—Department duties.
- 74.09.500 Medical assistance—Established.
- 74.09.510 Medical assistance—Eligibility.
- 74.09.520 Medical assistance—Care and services included—Funding limitations.
- 74.09.522 Medical assistance—Agreements with managed health care systems required for services to recipients of temporary assistance for needy families—Principles to be applied in purchasing managed health care.
- 74.09.5221 Medical assistance—Federal standards—Waivers—Application.
- 74.09.5225 Medical assistance—Payments for services provided by rural hospitals.
- 74.09.5227 Implementation date—Payments for services provided by rural hospitals.
- 74.09.523 PACE program—Definitions—Requirements.
- 74.09.5241 Special education programs—Medical services—Finding—Intent.
- 74.09.5243 Special education programs—Definitions.
- 74.09.5245 Special education programs—Medical services—Billing agent contract process.
- 74.09.5247 Special education programs—Medical services—District as billing agent—Administrative fee.
- 74.09.5249 Special education programs—Medical services—Billing agent duties.

- 74.09.5251 Special education programs—Medical services—Categories of services—Reimbursement system.
- 74.09.5253 Special education programs—Medical services—Student information—Report to legislature.
- 74.09.5254 Special education programs—Medical services—Reports to superintendent of public instruction.
- 74.09.5255 Special education programs—Medical services—Incentive payments.
- 74.09.5256 Special education programs—Medical services—Disbursement of revenue.
- 74.09.530 Medical assistance—Powers and duties of department.
- 74.09.540 Medical assistance—Working disabled—Intent.
- 74.09.545 Medical assistance or limited casualty program—Eligibility—Agreements between spouses to transfer future income—Community income.
- 74.09.565 Medical assistance for institutionalized persons—Treatment of income between spouses.
- 74.09.575 Medical assistance for institutionalized persons—Treatment of resources.
- 74.09.585 Medical assistance for institutionalized persons—Period of ineligibility for transfer of resources.
- 74.09.595 Medical assistance for institutionalized persons—Due process procedures.
- 74.09.600 Post audit examinations by state auditor.
- 74.09.650 Prescription drug assistance program.
- 74.09.660 Prescription drug education for seniors—Grant qualifications.
- 74.09.700 Medical care—Limited casualty program.
- 74.09.720 Prevention of blindness program.
- 74.09.730 Disproportionate share hospital adjustment.
- 74.09.740 Amendments to state plan—Federal approval required.
- 74.09.755 AIDS—Community-based care—Federal social security act waiver.

MATERNITY CARE ACCESS PROGRAM

- 74.09.760 Short title—1989 1st ex.s. c 10.
- 74.09.770 Maternity care access system established.
- 74.09.780 Reservation of legislative power.
- 74.09.790 Definitions.
- 74.09.800 Maternity care access program established.
- 74.09.810 Alternative maternity care service delivery system established—Remedial action report.
- 74.09.820 Maternity care provider's loan repayment program.
- 74.09.850 Conflict with federal requirements.
- 74.09.900 Other laws applicable.
- 74.09.910 Severability—1979 ex.s. c 152.

Requirements to seek federal waivers and state law changes to medical assistance program: RCW 43.20A.860.

74.09.010 Definitions. As used in this chapter:

- (1) "Children's health program" means the health care services program provided to children under eighteen years of age and in households with incomes at or below the federal poverty level as annually defined by the federal department of health and human services as adjusted for family size, and who are not otherwise eligible for medical assistance or the limited casualty program for the medically needy.
- (2) "Committee" means the children's health services committee created in *section 3 of this act.
- (3) "County" means the board of county commissioners, county council, county executive, or tribal jurisdiction, or its designee. A combination of two or more county authorities or tribal jurisdictions may enter into joint agreements to fulfill the requirements of RCW 74.09.415 through 74.09.435.
- (4) "Department" means the department of social and health services.
- (5) "Department of health" means the Washington state department of health created pursuant to RCW 43.70.020.
- (6) "Internal management" means the administration of medical assistance, medical care services, the children's health program, and the limited casualty program.
- (7) "Limited casualty program" means the medical care program provided to medically needy persons as defined under Title XIX of the federal social security act, and to med-

ically indigent persons who are without income or resources sufficient to secure necessary medical services.

(8) "Medical assistance" means the federal aid medical care program provided to categorically needy persons as defined under Title XIX of the federal social security act.

(9) "Medical care services" means the limited scope of care financed by state funds and provided to general assistance recipients, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW.

(10) "Nursing home" means nursing home as defined in RCW 18.51.010.

(11) "Poverty" means the federal poverty level determined annually by the United States department of health and human services, or successor agency.

(12) "Secretary" means the secretary of social and health services. [1990 c 296 § 6; 1987 c 406 § 11; 1981 1st ex.s. c 6 § 18; 1981 c 8 § 17; 1979 c 141 § 333; 1959 c 26 § 74.09.010. Prior: 1955 c 273 § 2.]

***Reviser's note:** "Section 3 of this act" [1990 c 296] which created the committee was vetoed by the governor.

Effective date—1990 c 296: See note following RCW 74.09.405.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.035 Medical care services—Eligibility, standards—Limits. (1) To the extent of available funds, medical care services may be provided to recipients of general assistance, and recipients of alcohol and drug addiction services provided under chapter 74.50 RCW, in accordance with medical eligibility requirements established by the department.

(2) Determination of the amount, scope, and duration of medical care services shall be limited to coverage as defined by the department, except that adult dental, and routine foot care shall not be included unless there is a specific appropriation for these services.

(3) The department shall establish standards of assistance and resource and income exemptions, which may include deductibles and co-insurance provisions. In addition, the department may include a prohibition against the voluntary assignment of property or cash for the purpose of qualifying for assistance.

(4) Residents of skilled nursing homes, intermediate care facilities, and intermediate care facilities for the mentally retarded who are eligible for medical care services shall be provided medical services to the same extent as provided to those persons eligible under the medical assistance program.

(5) Payments made by the department under this program shall be the limit of expenditures for medical care services solely from state funds.

(6) Eligibility for medical care services shall commence with the date of certification for general assistance or the date of eligibility for alcohol and drug addiction services provided under chapter 74.50 RCW. [1987 c 406 § 12; 1985 c 5 § 1; 1983 1st ex.s. c 43 § 2; 1982 1st ex.s. c 19 § 3; 1981 1st ex.s. c 6 § 19.]

Effective date—1983 1st ex.s. c 43: See note following RCW 74.09.700.

Effective date—1982 1st ex.s. c 19: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect April 1, 1982 [April 3, 1982]." [1982 1st ex.s. c 19 § 6.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.037 Identification card—Social security number restriction. Any card issued after December 31, 2005, by the department or a managed health care system to a person receiving services under this chapter, that must be presented to providers for purposes of claims processing, may not display an identification number that includes more than a four-digit portion of the person's complete social security number. [2004 c 115 § 3.]

74.09.050 Secretary's responsibilities and duties—Personnel—Medical screeners—Medical directors. The secretary shall appoint such professional personnel and other assistants and employees, including professional medical screeners, as may be reasonably necessary to carry out the provisions of this chapter. The medical screeners shall be supervised by one or more physicians who shall be appointed by the secretary or his or her designee. The secretary shall appoint a medical director who is licensed under chapter 18.57 or 18.71 RCW. [2000 c 5 § 15; 1979 c 141 § 335; 1959 c 26 § 74.09.050. Prior: 1955 c 273 § 6.]

Intent—Purpose—2000 c 5: See RCW 48.43.005.

Application—Short title—Captions not law—Construction—Severability—Application to contracts—Effective dates—2000 c 5: See notes following RCW 48.43.500.

74.09.055 Copayment, deductible, coinsurance, cost-sharing requirements authorized. The department is authorized to establish copayment, deductible, coinsurance, or other cost-sharing requirements for recipients of any medical programs defined in RCW 74.09.010. [2003 1st sp.s. c 14 § 1; 1993 c 492 § 231; 1982 c 201 § 19.]

Effective date—2003 1st sp.s. c 14: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 14 § 2.]

Findings—Intent—1993 c 492: See notes following RCW 43.20.050.

Short title—Severability—Savings—Captions not law—Reservation of legislative power—Effective dates—1993 c 492: See RCW 43.72.910 through 43.72.915.

74.09.075 Employability and disability evaluation—Medical condition—Medical reports—Medical consultations and assistance. The department shall provide (a) for evaluation of employability when a person is applying for public assistance representing a medical condition as a basis for need, and (b) for medical reports to be used in the evaluation of total and permanent disability. It shall further provide for medical consultation and assistance in determining the need for special diets, housekeeper and attendant services, and other requirements as found necessary because of the medical condition under the rules promulgated by the secretary. [1979 c 141 § 337; 1967 ex.s. c 30 § 2.]

74.09.080 Methods of performing administrative responsibilities. In carrying out the administrative responsibility of this chapter, the department may contract with an individual or a group, may utilize existing local state public assistance offices, or establish separate welfare medical care offices on a county or multicounty unit basis as found neces-

sary. [1979 c 141 § 338; 1959 c 26 § 74.09.080. Prior: 1955 c 273 § 9.]

74.09.110 Administrative personnel—Professional consultants and screeners. The department shall employ administrative personnel in both state and local offices and employ the services of professional screeners and consultants as found necessary to carry out the proper administration of the program. [1979 c 141 § 339; 1959 c 26 § 74.09.110. Prior: 1955 c 273 § 12.]

74.09.120 Purchases of services, care, supplies—Nursing homes—Veterans' homes—Institutions for mentally retarded—Institutions for mental diseases. The department shall purchase necessary physician and dentist services by contract or "fee for service." The department shall purchase nursing home care by contract and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department under the authority of RCW 74.46.800. No payment shall be made to a nursing home which does not permit inspection by the department of social and health services of every part of its premises and an examination of all records, including financial records, methods of administration, general and special dietary programs, the disbursement of drugs and methods of supply, and any other records the department deems relevant to the regulation of nursing home operations, enforcement of standards for resident care, and payment for nursing home services.

The department may purchase nursing home care by contract in veterans' homes operated by the state department of veterans affairs and payment for the care shall be in accordance with the provisions of chapter 74.46 RCW and rules adopted by the department under the authority of RCW 74.46.800.

The department may purchase care in institutions for the mentally retarded, also known as intermediate care facilities for the mentally retarded. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for the mentally retarded include licensed nursing homes, public institutions, licensed boarding homes with fifteen beds or less, and hospital facilities certified as intermediate care facilities for the mentally retarded under the federal medicaid program to provide health, habilitative, or rehabilitative services and twenty-four hour supervision for mentally retarded individuals or persons with related conditions and includes in the program "active treatment" as federally defined.

The department may purchase care in institutions for mental diseases by contract. The department shall establish rules for reasonable accounting and reimbursement systems for such care. Institutions for mental diseases are certified under the federal medicaid program and primarily engaged in providing diagnosis, treatment, or care to persons with mental diseases, including medical attention, nursing care, and related services.

The department may purchase all other services provided under this chapter by contract or at rates established by the department. [1998 c 322 § 45; 1993 sp.s. c 3 § 8; 1992 c 8 § 1; 1989 c 372 § 15; 1983 1st ex.s. c 67 § 44; 1981 2nd

ex.s. c 11 § 6; 1981 1st ex.s. c 2 § 11; (1980 c 177 § 84 repealed by 1983 1st ex.s. c 67 § 48); 1975 1st ex.s. c 213 § 1; 1967 ex.s. c 30 § 1; 1959 c 26 § 74.09.120. Prior: 1955 c 273 § 13.]

Effective date—1998 c 322 §§ 1-37, 40-49, and 52-54: See RCW 74.46.906.

Severability—1998 c 322: See RCW 74.46.907.

Effective date—1993 sp.s. c 3: See note following RCW 72.36.140.

Findings—1993 sp.s. c 3: See RCW 72.36.1601.

Severability—Effective dates—1983 1st ex.s. c 67: See RCW 74.46.905 and 74.46.901.

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

Effective dates—1980 c 177: See RCW 74.46.901.

Conflict with federal requirements and this section: RCW 74.46.840.

74.09.150 Personnel to be under existing merit system. All personnel employed in the administration of the medical care program shall be covered by the existing merit system under the Washington personnel resources board. [1993 c 281 § 66; 1959 c 26 § 74.09.150. Prior: 1955 c 273 § 16.]

Effective date—1993 c 281: See note following RCW 41.06.022.

74.09.160 Presentment of charges by contractors. Each vendor or group who has a contract and is rendering service to eligible persons as defined in this chapter shall submit such charges as agreed upon between the department and the individual or group no later than twelve months from the date of service. If the final charges are not presented within the twelve-month period, they shall not be a charge against the state. Said twelve-month period may also be extended by regulation, but only if required by applicable federal law or regulation, and to no more than the extension of time so required. For services rendered prior to July 28, 1991, final charges shall not be a charge against the state unless they are presented within one hundred twenty days from the date of service. [1991 c 103 § 1; 1980 c 32 § 11; 1979 ex.s. c 81 § 1; 1973 1st ex.s. c 48 § 1; 1959 c 26 § 74.09.160. Prior: 1955 c 273 § 17.]

74.09.180 Chapter does not apply if another party is liable—Exception—Subrogation—Lien—Reimbursement—Delegation of lien and subrogation rights. (1) The provisions of this chapter shall not apply to recipients whose personal injuries are occasioned by negligence or wrong of another: PROVIDED, HOWEVER, That the secretary may furnish assistance, under the provisions of this chapter, for the results of injuries to or illness of a recipient, and the department shall thereby be subrogated to the recipient's rights against the recovery had from any tortfeasor or the tortfeasor's insurer, or both, and shall have a lien thereupon to the extent of the value of the assistance furnished by the department. To secure reimbursement for assistance provided under this section, the department may pursue its remedies under RCW 43.20B.060.

(2) The rights and remedies provided to the department in this section to secure reimbursement for assistance, including the department's lien and subrogation rights, may be delegated to a managed health care system by contract entered

into pursuant to RCW 74.09.522. A managed health care system may enforce all rights and remedies delegated to it by the department to secure and recover assistance provided under a managed health care system consistent with its agreement with the department. [1997 c 236 § 1; 1990 c 100 § 2; 1987 c 283 § 14; 1979 ex.s. c 171 § 14; 1971 ex.s. c 306 § 1; 1969 ex.s. c 173 § 8; 1959 c 26 § 74.09.180. Prior: 1955 c 273 § 19.]

Application—1990 c 100 §§ 2, 4, 7(1), 8(2): See note following RCW 43.20B.060.

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.09.185 Third party has legal liability to make payments—State acquires rights—Lien—Equitable subrogation does not apply. To the extent that payment for covered expenses has been made under medical assistance for health care items or services furnished to an individual, in any case where a third party has a legal liability to make payments, the state is considered to have acquired the rights of the individual to payment by any other party for those health care items or services. Recovery pursuant to the subrogation rights, assignment, or enforcement of the lien granted to the department by this section shall not be reduced, prorated, or applied to only a portion of a judgment, award, or settlement, except as provided in RCW 43.20B.050 and 43.20B.060. The doctrine of equitable subrogation shall not apply to defeat, reduce, or prorate recovery by the department as to its assignment, lien, or subrogation rights. [1995 c 34 § 6.]

74.09.190 Religious beliefs—Construction of chapter. Nothing in this chapter shall be construed as empowering the secretary to compel any recipient of public assistance and a medical indigent person to undergo any physical examination, surgical operation, or accept any form of medical treatment contrary to the wishes of said person who relies on or is treated by prayer or spiritual means in accordance with the creed and tenets of any well recognized church or religious denomination. [1979 c 141 § 342; 1959 c 26 § 74.09.190. Prior: 1955 c 273 § 23.]

74.09.200 Audits and investigations—Legislative declaration—State authority. The legislature finds and declares it to be in the public interest and for the protection of the health and welfare of the residents of the state of Washington that a proper regulatory and inspection program be instituted in connection with the providing of medical, dental, and other health services to recipients of public assistance and medically indigent persons. In order to effectively accomplish such purpose and to assure that the recipient of such services receives such services as are paid for by the state of Washington, the acceptance by the recipient of such services, and by practitioners of reimbursement for performing such services, shall authorize the secretary of the department of social and health services or his designee, to inspect and audit all records in connection with the providing of such services. [1979 ex.s. c 152 § 1.]

74.09.210 Fraudulent practices—Penalties. (1) No person, firm, corporation, partnership, association, agency, institution, or other legal entity, but not including an individual public assistance recipient of health care, shall, on behalf of himself or others, obtain or attempt to obtain benefits or payments under this chapter in a greater amount than that to which entitled by means of:

- (a) A willful false statement;
- (b) By willful misrepresentation, or by concealment of any material facts; or
- (c) By other fraudulent scheme or device, including, but not limited to:
 - (i) Billing for services, drugs, supplies, or equipment that were unfurnished, of lower quality, or a substitution or misrepresentation of items billed; or
 - (ii) Repeated billing for purportedly covered items, which were not in fact so covered.

(2) Any person or entity knowingly violating any of the provisions of subsection (1) of this section shall be liable for repayment of any excess benefits or payments received, plus interest at the rate and in the manner provided in RCW 43.20B.695. Such person or other entity shall further, in addition to any other penalties provided by law, be subject to civil penalties. The secretary may assess civil penalties in an amount not to exceed three times the amount of such excess benefits or payments: PROVIDED, That these civil penalties shall not apply to any acts or omissions occurring prior to September 1, 1979. RCW 43.20A.215 governs notice of a civil fine and provides the right to an adjudicative proceeding.

(3) A criminal action need not be brought against a person for that person to be civilly liable under this section.

(4) In all proceedings under this section, service, adjudicative proceedings, and judicial review of such determinations shall be in accordance with chapter 34.05 RCW, the Administrative Procedure Act.

(5) Civil penalties shall be deposited in the general fund upon their receipt. [1989 c 175 § 146; 1987 c 283 § 7; 1979 ex.s. c 152 § 2.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

74.09.220 Liability for receipt of excess payments. Any person, firm, corporation, partnership, association, agency, institution or other legal entity, but not including an individual public assistance recipient of health care, that, without intent to violate this chapter, obtains benefits or payments under this code to which such person or entity is not entitled, or in a greater amount than that to which entitled, shall be liable for (1) any excess benefits or payments received, and (2) interest calculated at the rate and in the manner provided in RCW 43.20B.695. Whenever a penalty is due under RCW 74.09.210 or interest is due under RCW 43.20B.695, such penalty or interest shall not be reimbursable by the state as an allowable cost under any of the provisions of this chapter. [1987 c 283 § 8; 1979 ex.s. c 152 § 3.]

Severability—Savings—1987 c 283: See notes following RCW 43.20A.020.

(2004 Ed.)

74.09.230 False statements, fraud—Penalties. Any person, including any corporation, that

(1) knowingly makes or causes to be made any false statement or representation of a material fact in any application for any payment under any medical care program authorized under this chapter, or

(2) at any time knowingly makes or causes to be made any false statement or representation of a material fact for use in determining rights to such payment, or knowingly falsifies, conceals, or covers up by any trick, scheme, or device a material fact in connection with such application or payment, or

(3) having knowledge of the occurrence of any event affecting (a) the initial or continued right to any payment, or (b) the initial or continued right to any such payment of any other individual in whose behalf he has applied for or is receiving such payment, conceals or fails to disclose such event with an intent fraudulently to secure such payment either in a greater amount or quantity than is due or when no such payment is authorized,

shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1979 ex.s. c 152 § 4.]

74.09.240 Bribes, kickbacks, rebates—Self-referrals—Penalties. (1) Any person, including any corporation, that solicits or receives any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind

(a) in return for referring an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made in whole or in part under this chapter, or

(b) in return for purchasing, leasing, ordering, or arranging for or recommending purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter, shall be guilty of a class C felony; however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(2) Any person, including any corporation, that offers or pays any remuneration (including any kickback, bribe, or rebate) directly or indirectly, overtly or covertly, in cash or in kind to any person to induce such person

(a) to refer an individual to a person for the furnishing or arranging for the furnishing of any item or service for which payment may be made, in whole or in part, under this chapter, or

(b) to purchase, lease, order, or arrange for or recommend purchasing, leasing, or ordering any goods, facility, service, or item for which payment may be made in whole or in part under this chapter, shall be guilty of a class C felony; however, the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030.

(3)(a) Except as provided in 42 U.S.C. 1395 nn, physicians are prohibited from self-referring any client eligible under this chapter for the following designated health services to a facility in which the physician or an immediate family member has a financial relationship:

- (i) Clinical laboratory services;

- (ii) Physical therapy services;
- (iii) Occupational therapy services;
- (iv) Radiology including magnetic resonance imaging, computerized axial tomography, and ultrasound services;
- (v) Durable medical equipment and supplies;
- (vi) Parenteral and enteral nutrients equipment and supplies;
- (vii) Prosthetics, orthotics, and prosthetic devices;
- (viii) Home health services;
- (ix) Outpatient prescription drugs;
- (x) Inpatient and outpatient hospital services;
- (xi) Radiation therapy services and supplies.

(b) For purposes of this subsection, "financial relationship" means the relationship between a physician and an entity that includes either:

- (i) An ownership or investment interest; or
- (ii) A compensation arrangement.

For purposes of this subsection, "compensation arrangement" means an arrangement involving remuneration between a physician, or an immediate family member of a physician, and an entity.

(c) The department is authorized to adopt by rule amendments to 42 U.S.C. 1395 nn enacted after July 23, 1995.

(d) This section shall not apply in any case covered by a general exception specified in 42 U.S.C. Sec. 1395 nn.

(4) Subsections (1) and (2) of this section shall not apply to

(a) a discount or other reduction in price obtained by a provider of services or other entity under this chapter if the reduction in price is properly disclosed and appropriately reflected in the costs claimed or charges made by the provider or entity under this chapter, and

(b) any amount paid by an employer to an employee (who has a bona fide employment relationship with such employer) for employment in the provision of covered items or services.

(5) Subsections (1) and (2) of this section, if applicable to the conduct involved, shall supersede the criminal provisions of chapter 19.68 RCW, but shall not preclude administrative proceedings authorized by chapter 19.68 RCW. [1995 c 319 § 1; 1979 ex.s. c 152 § 5.]

74.09.250 False statements regarding institutions, facilities—Penalties. Any person, including any corporation, that knowingly makes or causes to be made, or induces or seeks to induce the making of, any false statement or representation of a material fact with respect to the conditions or operations of any institution or facility in order that such institution or facility may qualify (either upon initial certification or upon recertification) as a hospital, nursing facility, or home health agency, shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than five thousand dollars. [1991 sp.s. c 8 § 6; 1979 ex.s. c 152 § 6.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

74.09.260 Excessive charges, payments—Penalties. Any person, including any corporation, that knowingly:

(1) Charges, for any service provided to a patient under any medical care plan authorized under this chapter, money

or other consideration at a rate in excess of the rates established by the department of social and health services; or

(2) Charges, solicits, accepts, or receives, in addition to any amount otherwise required to be paid under such plan, any gift, money, donation, or other consideration (other than a charitable, religious, or philanthropic contribution from an organization or from a person unrelated to the patient):

(a) As a precondition of admitting a patient to a hospital or nursing facility; or

(b) As a requirement for the patient's continued stay in such facility,

when the cost of the services provided therein to the patient is paid for, in whole or in part, under such plan, shall be guilty of a class C felony: PROVIDED, That the fine, if imposed, shall not be in an amount more than twenty-five thousand dollars, except as authorized by RCW 9A.20.030. [1991 sp.s. c 8 § 7; 1979 ex.s. c 152 § 7.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

74.09.270 Failure to maintain trust funds in separate account—Penalties. (1) Any person having any patient trust funds in his possession, custody, or control, who, knowing that he is violating any statute, regulation, or agreement, deliberately fails to deposit, transfer, or maintain said funds in a separate, designated, trust bank account as required by such statute, regulation, or agreement shall be guilty of a gross misdemeanor and shall be punished by imprisonment for not more than one year in the county jail, or by a fine of not more than ten thousand dollars or as authorized by RCW 9A.20.030, or by both such fine and imprisonment.

(2) "Patient trust funds" are funds received by any health care facility which belong to patients and are required by any state or federal statute, regulation, or by agreement to be kept in a separate trust bank account for the benefit of such patients.

(3) This section shall not be construed to prevent a prosecution for theft. [1979 ex.s. c 152 § 8.]

74.09.280 False verification of written statements—Penalties. The secretary of social and health services may by rule require that any application, statement, or form filled out by suppliers of medical care under this chapter shall contain or be verified by a written statement that it is made under the penalties of perjury and such declaration shall be in lieu of any oath otherwise required, and each such paper shall in such event so state. The making or subscribing of any such papers or forms containing any false or misleading information may be prosecuted and punished under chapter 9A.72 RCW. [1979 ex.s. c 152 § 9.]

74.09.290 Department audits and investigations of providers—Patient records—Penalties. The secretary of the department of social and health services or his authorized representative shall have the authority to:

(1) Conduct audits and investigations of providers of medical and other services furnished pursuant to this chapter, except that the Washington state medical quality assurance commission shall generally serve in an advisory capacity to the secretary in the conduct of audits or investigations of physicians. Any overpayment discovered as a result of an audit

of a provider under this authority shall be offset by any underpayments discovered in that same audit sample. In order to determine the provider's actual, usual, customary, or prevailing charges, the secretary may examine such random representative records as necessary to show accounts billed and accounts received except that in the conduct of such examinations, patient names, other than public assistance applicants or recipients, shall not be noted, copied, or otherwise made available to the department. In order to verify costs incurred by the department for treatment of public assistance applicants or recipients, the secretary may examine patient records or portions thereof in connection with services to such applicants or recipients rendered by a health care provider, notwithstanding the provisions of RCW 5.60.060, 18.53.200, 18.83.110, or any other statute which may make or purport to make such records privileged or confidential: PROVIDED, That no original patient records shall be removed from the premises of the health care provider, and that the disclosure of any records or information by the department of social and health services is prohibited and shall be punishable as a class C felony according to chapter 9A.20 RCW, unless such disclosure is directly connected to the official purpose for which the records or information were obtained: PROVIDED FURTHER, That the disclosure of patient information as required under this section shall not subject any physician or other health services provider to any liability for breach of any confidential relationship between the provider and the patient, but no evidence resulting from such disclosure may be used in any civil, administrative, or criminal proceeding against the patient unless a waiver of the applicable evidentiary privilege is obtained: PROVIDED FURTHER, That the secretary shall destroy all copies of patient medical records in their possession upon completion of the audit, investigation or proceedings;

(2) Approve or deny applications to participate as a provider of services furnished pursuant to this chapter;

(3) Terminate or suspend eligibility to participate as a provider of services furnished pursuant to this chapter; and

(4) Adopt, promulgate, amend, and repeal administrative rules, in accordance with the Administrative Procedure Act, chapter 34.05 RCW, to carry out the policies and purposes of RCW 74.09.200 through 74.09.290. [1994 sp.s. c 9 § 749; 1990 c 100 § 5; 1983 1st ex.s. c 41 § 23; 1979 ex.s. c 152 § 10.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.09.300 Department to report penalties to appropriate licensing agency or disciplinary board. Whenever the secretary of the department of social and health services imposes a civil penalty under RCW 74.09.210, or terminates or suspends a provider's eligibility under RCW 74.09.290, he shall, if the provider is licensed pursuant to Titles 18, 70, or 71 RCW, give written notice of such imposition, termination, or suspension to the appropriate licensing agency or disciplinary board. [1979 ex.s. c 152 § 11.]

74.09.405 Children's health program—Purpose. It is the purpose of RCW 74.09.405 through 74.09.435 and 74.09.010 to provide, consistent with appropriated funds,

(2004 Ed.)

health care access and services to children in poverty in this state. To this end, a children's health program is established based on the following principles:

(1) Access to preventive and other health care services should be made more readily available for children in poverty.

(2) Unnecessary barriers to health care for children in poverty should be removed.

(3) The status of children's health and their access to health care providers should be evaluated at appropriate intervals to determine program effectiveness and need for modification.

(4) Health care services should be delivered in a cost-effective manner.

(5) The program should be sensitive to cultural and ethnic differences among children in poverty. [1990 c 296 § 1.]

Effective date—1990 c 296: "This act shall take effect July 1, 1990." [1990 c 296 § 9.]

74.09.415 Children's health program established. (1) There is hereby established a program to be known as the children's health program.

To the extent of available funds:

(a) Health care services may be provided to persons who are under eighteen years of age with household incomes at or below the federal poverty level and eligible for medical assistance or the limited casualty program for the medically needy.

(b) The determination of eligibility of recipients for health care services shall be the responsibility of the department. The application process shall be easy to understand and, to the extent possible, applications shall be made available at local schools and other appropriate locations. The department shall make eligibility determinations within the time frames for establishing eligibility for children on medical assistance, as defined by RCW 74.09.510.

(c) The amount, scope, and duration of health care services provided to eligible children under the children's health program shall be the same as that provided to children under medical assistance, as defined in RCW 74.09.520.

(2) The legislature is interested in assessing the effectiveness of the prenatal care program. However, the legislature recognizes the cost and complexity associated with such assessment.

The legislature accepts the effectiveness of prenatal and maternity care at improving birth outcomes when these services are received by eligible persons. Therefore, the legislature intends to focus scarce assessment resources to determine the extent to which support services such as child care, psychosocial and nutritional assessment and counseling, case management, transportation, and other support services authorized by chapter 296, Laws of 1990, result in receipt of prenatal and maternity care by eligible persons.

The University of Washington shall conduct a study, based on a statistically significant statewide sampling of data, to evaluate the effectiveness of the maternity care access program set forth in RCW 74.09.760 through 74.09.820 based on the principles set forth in RCW 74.09.770.

The University of Washington shall develop a plan and budget for the study in consultation with the joint legislative audit and review committee. The joint legislative audit and

review committee shall also monitor the progress of the study.

The department of social and health services shall make data and other information available as needed to the University of Washington as required to conduct this study.

The study shall determine:

(a) The characteristics of women receiving services, including health risk factors;

(b) The extent to which access to maternity care and support services have improved in this state as a result of this program;

(c) The utilization of services and birth outcomes for women and infants served by this program by type of practitioner;

(d) The extent to which birth outcomes for women receiving services under this program have improved in comparison to birth outcomes of nonmedicaid mothers;

(e) The impact of increased medicaid reimbursement to physicians on provider participation;

(f) The difference between costs for services provided under this program and medicaid reimbursement for the services;

(g) The gaps in services, if any, that may still exist for women and their infants as defined by RCW 74.09.790 (1) and (4) served by this program, excluding pregnant substance abusers, and women covered by private health insurance; and

(h) The number and mix of services provided to eligible women as defined by subsection (2)(g) of this section and the effect on birth outcomes as compared to nonmedicaid birth outcomes. [2002 c 366 § 2; 1998 c 245 § 144; 1990 c 296 § 2.]

Effective date—2002 c 366: See note following RCW 74.08A.100.

Effective date—1990 c 296: See note following RCW 74.09.405.

74.09.425 Children's health care accessibility—Community action. Local communities are encouraged to take actions necessary to make health care more accessible to children in poverty in their communities, such as coordinating the development of alternative health care delivery systems. To support communities in their efforts, *the committee, in coordination with counties and to the extent funds are available, shall: (1) Advise the secretary and the secretary of health regarding the dispensing of technical assistance to counties to enable them to develop provider resources and expand coordinated provision of health care to children in poverty, and (2) recommend to the secretary financial incentives to be provided within counties requesting assistance according to *section 3 of this act. [1990 c 296 § 4.]

***Reviser's note:** "Section 3 of this act" [1990 c 296], which created "the committee," was vetoed by the governor.

Effective date—1990 c 296: See note following RCW 74.09.405.

74.09.435 Children's health program—Biennial evaluation. *The committee, in coordination with the department of health, shall reevaluate the state of access to care for children in poverty on at least a biennial basis and shall provide this information, along with information on the implementation of RCW 74.09.405 through 74.09.425, to the board of health for consideration of possible inclusion in the biennial state health report. [1990 c 296 § 5.]

***Reviser's note:** The section that created "the committee" [1990 c 296 § 3] was vetoed by the governor.

Effective date—1990 c 296: See note following RCW 74.09.405.

74.09.450 Children's health insurance program—Intent—Department duties. (1) It is the intent of the legislature to create the children's health insurance program, the benefits of which are not an entitlement, to provide health care to children who are eligible for health care coverage under Title XXI of the federal social security act.

(2) For the purposes of this section, "children's health insurance program" means the program established in compliance with Title XXI of the federal social security act for health care coverage of children: (a) Who are under the age of nineteen; (b) whose family income at the time of enrollment exceeds two hundred percent, but does not exceed two hundred fifty percent, of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services; (c) who choose to obtain health care coverage in return for periodic payments; and (d) who are otherwise eligible under Title XXI.

(3) Consistent with appropriated funds, the department shall design and administer the children's health insurance program under Title XXI of the federal social security act. The benefit and cost-sharing designs shall comply with Title XXI. The primary mechanism for purchasing and delivery of health care for the program shall be through contracts with managed health care systems as defined in RCW 74.09.522. Consistent with Title XXI, the department may purchase health coverage for uninsured children whose families have access to dependent coverage.

(4) The department shall: Accept applications for enrollment in the children's health insurance program; establish appropriate minimum-enrollment periods, as may be necessary; and determine, upon application and based on a reasonable schedule defined by the department, eligibility due to current family income. No assistance may be paid with respect to any children's health insurance enrollee whose current family income is less than two hundred percent or greater than two hundred fifty percent of the federal poverty level or, is not otherwise eligible under Title XXI of the federal social security act.

(5) The department shall make every effort to obtain a change in federal law such that the state of Washington is authorized to use its children's health insurance program allotment to provide health care coverage for children whose family income at the time of enrollment is less than two hundred percent of the federal poverty level. By December 1, 1999, the department shall report to the legislature describing its efforts and the congressional response. [1999 c 370 § 1.]

74.09.500 Medical assistance—Established. There is hereby established a new program of federal-aid assistance to be known as medical assistance to be administered by the state department of social and health services. The department of social and health services is authorized to comply with the federal requirements for the medical assistance program provided in the Social Security Act and particularly Title XIX of Public Law (89-97) in order to secure federal matching funds for such program. [1979 c 141 § 343; 1967 ex.s. c 30 § 3.]

74.09.510 Medical assistance—Eligibility. Medical assistance may be provided in accordance with eligibility requirements established by the department, as defined in the social security Title XIX state plan for mandatory categorically needy persons and: (1) Individuals who would be eligible for cash assistance except for their institutional status; (2) individuals who are under twenty-one years of age, who would be eligible for medicaid, but do not qualify as dependent children and who are in (a) foster care, (b) subsidized adoption, (c) a nursing facility or an intermediate care facility for the mentally retarded, or (d) inpatient psychiatric facilities; (3) the aged, blind, and disabled who: (a) Receive only a state supplement, or (b) would not be eligible for cash assistance if they were not institutionalized; (4) categorically eligible individuals who meet the income and resource requirements of the cash assistance programs; (5) individuals who are enrolled in managed health care systems, who have otherwise lost eligibility for medical assistance, but who have not completed a current six-month enrollment in a managed health care system, and who are eligible for federal financial participation under Title XIX of the social security act; (6) children and pregnant women allowed by federal statute for whom funding is appropriated; (7) working individuals with disabilities authorized under section 1902(a)(10)(A)(ii) of the social security act for whom funding is appropriated; (8) other individuals eligible for medical services under RCW 74.09.035 and 74.09.700 for whom federal financial participation is available under Title XIX of the social security act; (9) persons allowed by section 1931 of the social security act for whom funding is appropriated; and (10) women who: (a) Are under sixty-five years of age; (b) have been screened for breast and cervical cancer under the national breast and cervical cancer early detection program administered by the department of health or tribal entity and have been identified as needing treatment for breast or cervical cancer; and (c) are not otherwise covered by health insurance. Medical assistance provided under this subsection is limited to the period during which the woman requires treatment for breast or cervical cancer, and is subject to any conditions or limitations specified in the omnibus appropriations act. [2001 2nd sp.s. c 15 § 3; 2001 1st sp.s. c 4 § 1. Prior: 1997 c 59 § 14; 1997 c 58 § 201; 1991 sp.s. c 8 § 8; 1989 1st ex.s. c 10 § 8; 1989 c 87 § 2; 1985 c 5 § 2; 1981 2nd ex.s. c 3 § 5; 1981 1st ex.s. c 6 § 20; 1981 c 8 § 19; 1971 ex.s. c 169 § 4; 1970 ex.s. c 60 § 1; 1967 ex.s. c 30 § 4.]

Reviser's note: This section was amended by 2001 1st sp.s. c 4 § 1 and by 2001 2nd sp.s. c 15 § 3, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—2001 2nd sp.s. c 15: See note following RCW 74.09.540.

Effective date—2001 1st sp.s. c 4: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2001." [2001 1st sp.s. c 4 § 2.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Effective dates—1989 c 87: See notes following RCW 11.94.050.

Severability—1981 2nd ex.s. c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of

the act or the application of the provision to other persons or circumstances is not affected." [1981 2nd ex.s. c 3 § 8.]

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.520 Medical assistance—Care and services included—Funding limitations. (1) The term "medical assistance" may include the following care and services: (a) Inpatient hospital services; (b) outpatient hospital services; (c) other laboratory and x-ray services; (d) nursing facility services; (e) physicians' services, which shall include prescribed medication and instruction on birth control devices; (f) medical care, or any other type of remedial care as may be established by the secretary; (g) home health care services; (h) private duty nursing services; (i) dental services; (j) physical and occupational therapy and related services; (k) prescribed drugs, dentures, and prosthetic devices; and eyeglasses prescribed by a physician skilled in diseases of the eye or by an optometrist, whichever the individual may select; (l) personal care services, as provided in this section; (m) hospice services; (n) other diagnostic, screening, preventive, and rehabilitative services; and (o) like services when furnished to a child by a school district in a manner consistent with the requirements of this chapter. For the purposes of this section, the department may not cut off any prescription medications, oxygen supplies, respiratory services, or other life-sustaining medical services or supplies.

"Medical assistance," notwithstanding any other provision of law, shall not include routine foot care, or dental services delivered by any health care provider, that are not mandated by Title XIX of the social security act unless there is a specific appropriation for these services.

(2) The department shall amend the state plan for medical assistance under Title XIX of the federal social security act to include personal care services, as defined in 42 C.F.R. 440.170(f), in the categorically needy program.

(3) The department shall adopt, amend, or rescind such administrative rules as are necessary to ensure that Title XIX personal care services are provided to eligible persons in conformance with federal regulations.

(a) These administrative rules shall include financial eligibility indexed according to the requirements of the social security act providing for medicaid eligibility.

(b) The rules shall require clients be assessed as having a medical condition requiring assistance with personal care tasks. Plans of care for clients requiring health-related consultation for assessment and service planning may be reviewed by a nurse.

(c) The department shall determine by rule which clients have a health-related assessment or service planning need requiring registered nurse consultation or review. This definition may include clients that meet indicators or protocols for review, consultation, or visit.

(4) The department shall design and implement a means to assess the level of functional disability of persons eligible for personal care services under this section. The personal care services benefit shall be provided to the extent funding is available according to the assessed level of functional disability. Any reductions in services made necessary for funding reasons should be accomplished in a manner that assures that priority for maintaining services is given to persons with

the greatest need as determined by the assessment of functional disability.

(5) Effective July 1, 1989, the department shall offer hospice services in accordance with available funds.

(6) For Title XIX personal care services administered by aging and disability services administration of the department, the department shall contract with area agencies on aging:

(a) To provide case management services to individuals receiving Title XIX personal care services in their own home; and

(b) To reassess and reauthorize Title XIX personal care services or other home and community services as defined in RCW 74.39A.009 in home or in other settings for individuals consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive Title XIX personal care services or other home and community services as defined in RCW 74.39A.009; and

(ii) Who, at the time of reassessment and reauthorization, are receiving such services in their own home.

(7) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found. [2004 c 141 § 2; 2003 c 279 § 1; 1998 c 245 § 145; 1995 1st sp.s. c 18 § 39; 1994 c 21 § 4. Prior: 1993 c 149 § 10; 1993 c 57 § 1; 1991 sp.s. c 8 § 9; prior: 1991 c 233 § 1; 1991 c 119 § 1; prior: 1990 c 33 § 594; 1990 c 25 § 1; prior: 1989 c 427 § 10; 1989 c 400 § 3; 1985 c 5 § 3; 1982 1st ex.s. c 19 § 4; 1981 1st ex.s. c 6 § 21; 1981 c 8 § 20; 1979 c 141 § 344; 1969 ex.s. c 173 § 11; 1967 ex.s. c 30 § 5.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Conflict with federal requirements—Effective date—1994 c 21: See notes following RCW 43.20B.080.

Conflict with federal requirements—Severability—Effective dates—1993 c 149: See notes following RCW 74.09.5241.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Purpose—Statutory references—Severability—1990 c 33: See RCW 28A.900.100 through 28A.900.102.

Severability—1989 c 427: See RCW 74.39.900.

Intent—1989 c 400: See note following RCW 28A.150.390.

Effective date—1982 1st ex.s. c 19: See note following RCW 74.09.035.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

Legislative confirmation of effect of 1994 c 21: RCW 43.20B.090.

74.09.522 Medical assistance—Agreements with managed health care systems required for services to recipients of temporary assistance for needy families—Principles to be applied in purchasing managed health care. (1) For the purposes of this section, "managed health care system" means any health care organization, including health care providers, insurers, health care service contractors, health maintenance organizations, health insuring organizations, or any combination thereof, that provides directly or by contract health care services covered under RCW

74.09.520 and rendered by licensed providers, on a prepaid capitated basis and that meets the requirements of section 1903(m)(1)(A) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act.

(2) The department of social and health services shall enter into agreements with managed health care systems to provide health care services to recipients of temporary assistance for needy families under the following conditions:

(a) Agreements shall be made for at least thirty thousand recipients statewide;

(b) Agreements in at least one county shall include enrollment of all recipients of temporary assistance for needy families;

(c) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act or federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act, recipients shall have a choice of systems in which to enroll and shall have the right to terminate their enrollment in a system: PROVIDED, That the department may limit recipient termination of enrollment without cause to the first month of a period of enrollment, which period shall not exceed twelve months: AND PROVIDED FURTHER, That the department shall not restrict a recipient's right to terminate enrollment in a system for good cause as established by the department by rule;

(d) To the extent that this provision is consistent with section 1903(m) of Title XIX of the federal social security act, participating managed health care systems shall not enroll a disproportionate number of medical assistance recipients within the total numbers of persons served by the managed health care systems, except as authorized by the department under federal demonstration waivers granted under section 1115(a) of Title XI of the federal social security act;

(e) In negotiating with managed health care systems the department shall adopt a uniform procedure to negotiate and enter into contractual arrangements, including standards regarding the quality of services to be provided; and financial integrity of the responding system;

(f) The department shall seek waivers from federal requirements as necessary to implement this chapter;

(g) The department shall, wherever possible, enter into prepaid capitation contracts that include inpatient care. However, if this is not possible or feasible, the department may enter into prepaid capitation contracts that do not include inpatient care;

(h) The department shall define those circumstances under which a managed health care system is responsible for out-of-plan services and assure that recipients shall not be charged for such services; and

(i) Nothing in this section prevents the department from entering into similar agreements for other groups of people eligible to receive services under this chapter.

(3) The department shall ensure that publicly supported community health centers and providers in rural areas, who show serious intent and apparent capability to participate as managed health care systems are seriously considered as contractors. The department shall coordinate its managed care activities with activities under chapter 70.47 RCW.

(4) The department shall work jointly with the state of Oregon and other states in this geographical region in order to develop recommendations to be presented to the appropriate federal agencies and the United States congress for improving health care of the poor, while controlling related costs.

(5) The legislature finds that competition in the managed health care marketplace is enhanced, in the long term, by the existence of a large number of managed health care system options for medicaid clients. In a managed care delivery system, whose goal is to focus on prevention, primary care, and improved enrollee health status, continuity in care relationships is of substantial importance, and disruption to clients and health care providers should be minimized. To help ensure these goals are met, the following principles shall guide the department in its healthy options managed health care purchasing efforts:

(a) All managed health care systems should have an opportunity to contract with the department to the extent that minimum contracting requirements defined by the department are met, at payment rates that enable the department to operate as far below appropriated spending levels as possible, consistent with the principles established in this section.

(b) Managed health care systems should compete for the award of contracts and assignment of medicaid beneficiaries who do not voluntarily select a contracting system, based upon:

- (i) Demonstrated commitment to or experience in serving low-income populations;
- (ii) Quality of services provided to enrollees;
- (iii) Accessibility, including appropriate utilization, of services offered to enrollees;
- (iv) Demonstrated capability to perform contracted services, including ability to supply an adequate provider network;
- (v) Payment rates; and
- (vi) The ability to meet other specifically defined contract requirements established by the department, including consideration of past and current performance and participation in other state or federal health programs as a contractor.

(c) Consideration should be given to using multiple year contracting periods.

(d) Quality, accessibility, and demonstrated commitment to serving low-income populations shall be given significant weight in the contracting, evaluation, and assignment process.

(e) All contractors that are regulated health carriers must meet state minimum net worth requirements as defined in applicable state laws. The department shall adopt rules establishing the minimum net worth requirements for contractors that are not regulated health carriers. This subsection does not limit the authority of the department to take action under a contract upon finding that a contractor's financial status seriously jeopardizes the contractor's ability to meet its contract obligations.

(f) Procedures for resolution of disputes between the department and contract bidders or the department and contracting carriers related to the award of, or failure to award, a managed care contract must be clearly set out in the procurement document. In designing such procedures, the department shall give strong consideration to the negotiation and dispute resolution processes used by the Washington state

(2004 Ed.)

health care authority in its managed health care contracting activities.

(6) The department may apply the principles set forth in subsection (5) of this section to its managed health care purchasing efforts on behalf of clients receiving supplemental security income benefits to the extent appropriate. [1997 c 59 § 15; 1997 c 34 § 1; 1989 c 260 § 2; 1987 1st ex.s. c 5 § 21; 1986 c 303 § 2.]

Reviser's note: This section was amended by 1997 c 34 § 1 and by 1997 c 59 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1997 c 34: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [April 16, 1997]." [1997 c 34 § 3.]

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

Legislative findings—Intent—1986 c 303: "(1) The legislature finds that:

- (a) Good health care for indigent persons is of importance to the state;
 - (b) To ensure the availability of a good level of health care, efforts must be made to encourage cost consciousness on the part of providers and consumers, while maintaining medical assistance recipients within the mainstream of health care delivery;
 - (c) Managed health care systems have been found to be effective in controlling costs while providing good health care services;
 - (d) By enrolling medical assistance recipients within managed health care systems, the state's goal is to ensure that medical assistance recipients receive at least the same quality of care they currently receive.
- (2) It is the intent of the legislature to develop and implement new strategies that promote the use of managed health care systems for medical assistance recipients by establishing prepaid capitated programs for both in-patient and out-patient services." [1986 c 303 § 1.]

74.09.5221 Medical assistance—Federal standards—Waivers—Application. To the extent that federal statutes or regulations, or provisions of waivers granted to the department of social and health services by the federal department of health and human services, include standards that differ from the minimums stated in *sections 101 through 106, 109, and 111 of this act, those sections do not apply to contracts with health carriers awarded pursuant to RCW 74.09.522. [1997 c 231 § 112.]

***Reviser's note:** Sections 101 through 106, 109, and 111 of this act were vetoed by the governor.

Short title—Part headings and captions not law—Severability—Effective dates—1997 c 231: See notes following RCW 48.43.005.

74.09.5225 Medical assistance—Payments for services provided by rural hospitals. Payments for recipients eligible for medical assistance programs under this chapter for services provided by hospitals, regardless of the beneficiary's managed care enrollment status, shall be made based on allowable costs incurred during the year, when services are provided by a rural hospital certified by the health care financing administration as a critical access hospital. Any additional payments made by the medical assistance administration for the healthy options program shall be no more than the additional amounts per service paid under this section for other medical assistance programs. [2001 2nd sp.s. c 2 § 2.]

Findings—2001 2nd sp.s. c 2: "The legislature finds that promoting a financially viable health care system in all parts of the state is a paramount interest. The health care financing administration has recognized the crucial role that hospitals play in providing care in rural areas by creating the critical access hospital program to allow small, rural hospitals that qualify to receive reasonable cost-based reimbursement for medicare services. The legislature

further finds that creating a similar reimbursement system for the state's medical assistance programs in small, rural hospitals that qualify will help assure the long-term financial viability of the rural health system in those communities." [2001 2nd sp.s. c 2 § 1.]

74.09.5227 Implementation date—Payments for services provided by rural hospitals. The department shall implement the program created in RCW 74.09.5225 within sixty days of September 20, 2001, regardless of the beneficiary's managed care status. [2001 2nd sp.s. c 2 § 3.]

Findings—2001 2nd sp.s. c 2: See note following RCW 74.09.5225.

74.09.523 PACE program—Definitions—Requirements. (1) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(a) "PACE" means the program of all-inclusive care for the elderly, a managed care medicare/medicaid program authorized under sections 1894, 1905(a), and 1934 of the social security act and administered by the department.

(b) "PACE program agreement" means an agreement between a PACE organization, the health care financing administration, and the department.

(2) A PACE program may operate in the state only in accordance with a PACE program agreement with the department.

(3) A PACE program shall at the time of entering into the initial PACE program agreement, and at each renewal thereof, demonstrate cash reserves to cover expenses in the event of insolvency.

(a) The cash reserves at a minimum shall equal the sum of:

- (i) One month's total capitation revenue; and
- (ii) One month's average payment to subcontractors.

(b) The program may demonstrate cash reserves to cover expenses of insolvency with one or more of the following: Reasonable and sufficient net worth, insolvency insurance, or parental guarantees.

(4) A PACE program must provide full disclosure regarding the terms of enrollment and the option to disenroll at any time to all persons who seek to participate or who are participants in the program. [2001 c 191 § 2.]

Finding—2001 c 191: "The legislature finds that PACE programs provide essential care to the frail elderly in the state of Washington. PACE serves to enhance the quality of life and autonomy for frail, older adults, maximize the dignity of and respect for older adults, enable frail and older adults to live in their homes and their community as long as medically possible, and preserve and support the older adult's family unit." [2001 c 191 § 1.]

Effective date—2001 c 191: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 7, 2001]." [2001 c 191 § 4.]

74.09.5241 Special education programs—Medical services—Finding—Intent. The legislature finds that there is increasing demand for medical services provided through the state's special education programs and that many of these services qualify for federal financial participation under Title XIX of the federal social security act. The legislature further finds that these services may be covered under private insurance policies. The legislature intends to establish a statewide system of billing medicaid and private insurers for eligible medical services provided through special education programs, in order that federal funding of medical services in

special education programs will be maximized and that additional revenue be made available for education programs. It is the further intent of the legislature that the program be administered by a public or private agency in such a fashion as to ensure that the additional administrative workloads for the districts and the health practitioners in the schools are kept to a minimum. [1993 c 149 § 1.]

Conflict with federal requirements—1993 c 149: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1993 c 149 § 12.]

Severability—1993 c 149: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 149 § 13.]

Effective dates—1993 c 149: "(1) Sections 1 through 10 and 12 through 14 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 30, 1993].

(2) Section 11 of this act takes effect September 1, 1993." [1993 c 149 § 15.]

74.09.5243 Special education programs—Definitions. Unless the context clearly requires otherwise, the following definitions apply throughout RCW 74.09.5241 through 74.09.5253 and 74.09.5254 through 74.09.5256.

(1) "District" means a school district, educational service district, or educational cooperatives offering special education services under chapter 28A.155 RCW.

(2) "Medical assistance" and "medicaid" means federal and state-funded programs under which medical services are provided under Title XIX of the federal social security act.

(3) "Medical services" means district services that qualify for medicaid funding. [1994 c 180 § 1; 1993 c 149 § 2.]

Conflict with federal requirements—1994 c 180: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1994 c 180 § 10.]

Severability—1994 c 180: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 180 § 11.]

Conflict with federal requirements—Severability—Effective dates—1993 c 149: See notes following RCW 74.09.5241.

74.09.5245 Special education programs—Medical services—Billing agent contract process. The superintendent of public instruction shall take necessary steps to establish a competitive bidding process for a contract to act as the state's billing agent for medical services provided through its special education programs. The process must be open to private firms and public entities. [1993 c 149 § 3.]

Conflict with federal requirements—Severability—Effective dates—1993 c 149: See notes following RCW 74.09.5241.

74.09.5247 Special education programs—Medical services—District as billing agent—Administrative fee.

(1) Chapter 149, Laws of 1993 does not apply to contracts between individual districts and private firms entered into for the purpose of billing either medicaid or private insurers, or both, for medical services and agreed to before April 30, 1993, except as provided in *RCW 28A.155.150(2).

(2) A district may elect to act as its own billing agent as of the start of any school year. For a district being served by the statewide billing agent, the district shall notify the billing agent in writing, no less than thirty days before the start of the school year, of its intent to terminate the agency relationship. A district that acts as its own billing agent or a district with a preexisting contract under subsection (1) of this section is entitled to an administrative fee equivalent to that of the statewide billing agent. [1994 c 180 § 2; 1993 c 149 § 4.]

*Reviser's note: RCW 28A.155.150 was repealed by 1994 c 180 § 9.

Conflict with federal requirements—Severability—1994 c 180: See notes following RCW 74.09.5243.

Conflict with federal requirements—Severability—Effective dates—1993 c 149: See notes following RCW 74.09.5241.

74.09.5249 Special education programs—Medical services—Billing agent duties. (1) The agency awarded the contract under RCW 74.09.5245 shall:

(a) Enroll all districts in this state, except those with preexisting contracts under RCW 74.09.5247, as medicaid providers effective the beginning of the 1993-94 school year;

(b) Develop a statewide system of billing the department and private insurers for medical services provided in special education programs;

(c) Train health care practitioners employed by or contracting with districts in medicaid and insurer billing;

(d) Verify the medicaid eligibility of students enrolled in special education programs in each district;

(e) Provide ongoing technical assistance to practitioners and districts; and

(f) Process and forward all medicaid claims to the department and all other claims to private insurers.

(2) For each student, individual districts may, in consultation with the billing agent, deliver to the student's parent or guardian a letter, prepared by the billing agent, requesting the consent of the parent or guardian to bill the student's health insurance carrier for services provided through the special education program. If a district chooses to do this, the letter must be accompanied by a consent form, on which the parent may identify the student's health insurance carrier so that the billing agent may bill the carrier for medical services provided to the student. The letter must clearly state the following:

(a) That the billing program is designed in part to raise additional funds to improve education services;

(b) That under no circumstances will the parent or guardian be personally charged for any portion of the bill not paid by the insurer, including copayments, deductibles, or uncovered services;

(c) That the amount of the billing will apply to the policy's annual deductible even though the parent will not be billed for the amount of the deductible;

(d) That the amount of the billing, will, however, apply towards annual or lifetime benefit caps if these are included in the policy;

(e) That it is possible that their premiums would be increased as a result of their consent;

(f) That if any of the possible negative consequences of consent were to affect them, they are free to withdraw their consent at any time; and

(g) That their consent is entirely voluntary and that the services the student receives through the district will not be affected by their willingness or refusal to consent to the billing of their private insurer. [1994 c 180 § 3; 1993 c 149 § 5.]

Conflict with federal requirements—Severability—1994 c 180: See notes following RCW 74.09.5243.

Conflict with federal requirements—Severability—Effective dates—1993 c 149: See notes following RCW 74.09.5241.

74.09.5251 Special education programs—Medical services—Categories of services—Reimbursement system. The medical assistance administration in the department of social and health services shall establish categories of medical services and a reimbursement system based on the costs of providing medical services provided in special education programs. [1993 c 149 § 6.]

Conflict with federal requirements—Severability—Effective dates—1993 c 149: See notes following RCW 74.09.5241.

74.09.5253 Special education programs—Medical services—Student information—Report to legislature.

(1) Each district shall participate in the program of billing for medical services provided in the district's special education program. Each participating district shall provide the superintendent of public instruction with a list, as of the first school day in October, December, and May of each year, of all students enrolled in special education programs within the area served by the district, for purposes of verifying the medicaid eligibility of the students.

(2) A person employed by or contracting with a district who provides medical services shall provide the billing agent with information necessary to promptly complete monthly billings for each medicaid-eligible student he or she serves as part of the district's special education program.

(3) The superintendent of public instruction shall submit to the legislature at the beginning of each legislative session a report indicating the district-by-district participation and the medicaid and private insurance payment receipts during the preceding fiscal year. The report must further indicate for each district the total number of special education students, and the number eligible for medicaid, as determined by the medical assistance administration. The superintendent may require a letter of explanation from any district whose billings for medical assistance under the program, in the judgment of the superintendent, indicate nonparticipation or underparticipation. [1994 c 180 § 4; 1993 c 149 § 7.]

Conflict with federal requirements—Severability—1994 c 180: See notes following RCW 74.09.5243.

Conflict with federal requirements—Severability—Effective dates—1993 c 149: See notes following RCW 74.09.5241.

74.09.5254 Special education programs—Medical services—Reports to superintendent of public instruction.

tion. (1) Each district that has elected to act as its own billing agent under RCW 74.09.5247(2) and each firm that is a party to a preexisting contract under RCW 74.09.5247(1) shall, at times designated by the superintendent of public instruction, provide the office of the superintendent of public instruction with a report indicating the total amount of medicaid and private insurance moneys billed by the district.

(2) The state billing agent shall, at times designated by the superintendent of public instruction, provide the superintendent of public instruction with a report for each district enrolled by the billing agent, indicating the total amount of medicaid and private insurance moneys billed through medicaid and private insurer billing. [1994 c 180 § 5.]

Conflict with federal requirements—Severability—1994 c 180: See notes following RCW 74.09.5243.

74.09.5255 Special education programs—Medical services—Incentive payments. Of the projected federal medicaid and private insurance revenue collected under RCW 74.09.5249, one-half of the percent of potential medicaid eligible students billed by the school district as calculated by the superintendent multiplied by the federal portion of medicaid payments, after deduction for billing fees, shall be for incentive payments to districts. Incentive payments shall only be used by districts for children with disabilities. [1999 c 318 § 2; 1999 c 318 § 1; 1994 c 180 § 6.]

Effective dates—1999 c 318: "(1) Sections 1 and 3 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [May 14, 1999].

(2) Sections 2 and 4 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1999." [1999 c 318 § 5.]

Conflict with federal requirements—Severability—1994 c 180: See notes following RCW 74.09.5243.

74.09.5256 Special education programs—Medical services—Disbursement of revenue. (1) Districts shall reassign medicaid payments to be received under RCW 74.09.5249 through 74.09.5253, 74.09.5254 and 74.09.5255, and this section to the superintendent of public instruction.

(2) The superintendent of public instruction shall receive medicaid payments from the department of social and health services for all state and federal moneys under Title XIX of the federal social security act due to districts for medical assistance provided in the district's special education program.

(3) The superintendent shall use reports from the department of social and health services, the state billing agent, districts acting as their own billing agent, and firms to calculate the appropriate amounts of incentive payments and state special education program moneys due each district.

(4) Moneys received by the superintendent of public instruction shall be disbursed for the following purposes:

(a) Reimbursement to the department of social and health services for the state-funded portion of medicaid payments;

(b) Reimbursement for billing agent's fees, including those of districts acting as their own agent and billing fees of firms;

(c) Incentive payments to each school district equal to one-half of the percent of potential medicaid eligible students billed by the school district as calculated by the superintendent multiplied by the federal portion of medicaid payments after deduction for billing fees; and

(d) The remainder shall be distributed to districts as part of state allocations for the special education program provided under RCW 28A.150.390.

(5) With respect to private insurer funds received by districts, the superintendent of public instruction shall reduce state special education program allocations to districts by one minus the percent calculated by the superintendent in subsection (4)(c) of this section, after deduction for billing fees. [1999 c 318 § 4; 1999 c 318 § 3; 1994 c 180 § 7.]

Effective dates—1999 c 318: See note following RCW 74.09.5255.

Conflict with federal requirements—Severability—1994 c 180: See notes following RCW 74.09.5243.

74.09.530 Medical assistance—Powers and duties of department. The amount and nature of medical assistance and the determination of eligibility of recipients for medical assistance shall be the responsibility of the department of social and health services. The department shall establish reasonable standards of assistance and resource and income exemptions which shall be consistent with the provisions of the Social Security Act and with the regulations of the secretary of health, education and welfare for determining eligibility of individuals for medical assistance and the extent of such assistance to the extent that funds are available from the state and federal government. The department shall not consider resources in determining continuing eligibility for recipients eligible under section 1931 of the social security act. [2000 c 218 § 2; 1979 c 141 § 345; 1967 ex.s. c 30 § 6.]

74.09.540 Medical assistance—Working disabled—Intent. (1) It is the intent of the legislature to remove barriers to employment for individuals with disabilities by providing medical assistance to the working disabled through a buy-in program in accordance with section 1902(a)(10)(A)(ii) of the social security act and eligibility and cost-sharing requirements established by the department.

(2) The department shall establish income, resource, and cost-sharing requirements for the buy-in program in accordance with federal law and any conditions or limitations specified in the omnibus appropriations act. The department shall establish and modify eligibility and cost-sharing requirements in order to administer the program within available funds. The department shall make every effort to coordinate benefits with employer-sponsored coverage available to the working disabled receiving benefits under this chapter. [2001 2nd sp.s. c 15 § 2.]

Findings—Intent—2001 2nd sp.s. c 15: "The legislature finds that individuals with disabilities face many barriers and disincentives to employment. Individuals with disabilities are often unable to obtain health insurance that provides the services and supports necessary to allow them to live independently and enter or rejoin the work force. The legislature finds that there is a compelling public interest in eliminating barriers to work by continuing needed health care coverage for individuals with disabilities who enter and maintain employment.

The legislature intends to strengthen the state's policy of supporting individuals with disabilities in leading fully productive lives by supporting the implementation of the federal ticket to work and work incentives improvement act of 1999, Public Law 106-170. This shall include improving

incentives to work by continuing coverage for health care and support services, by seeking federal funding for innovative programs, and by exploring options which provide individuals with disabilities a choice in receiving services needed to obtain and maintain employment." [2001 2nd sp.s. c 15 § 1.]

74.09.545 Medical assistance or limited casualty program—Eligibility—Agreements between spouses to transfer future income—Community income. (1) An agreement between spouses transferring or assigning rights to future income from one spouse to the other shall be invalid for purposes of determining eligibility for medical assistance or the limited casualty program for the medically needy, but this subsection does not affect agreements between spouses transferring or assigning resources, and income produced by transferred or assigned resources shall continue to be recognized as the separate income of the transferee; and

(2) In determining eligibility for medical assistance or the limited casualty program for the medically needy for a married person in need of institutional care, or care under home and community based waivers as defined in Title XIX of the Social Security Act, if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant. [1986 c 220 § 1.]

74.09.565 Medical assistance for institutionalized persons—Treatment of income between spouses. (1) An agreement between spouses transferring or assigning rights to future income from one spouse to the other shall be invalid for purposes of determining eligibility for medical assistance or the limited casualty program for the medically needy, but this subsection does not affect agreements between spouses transferring or assigning resources, and income produced by transferred or assigned resources shall continue to be recognized as the separate income of the transferee.

(2) In determining eligibility for medical assistance or the limited casualty program for the medically needy for a married person in need of institutional care, or care under home and community-based waivers as defined in Title XIX of the social security act, if the community income received in the name of the nonapplicant spouse exceeds the community income received in the name of the applicant spouse, the applicant's interest in that excess shall be considered unavailable to the applicant.

(3) The department shall adopt rules consistent with the provisions of section 1924 of the social security act entitled "Treatment of Income and Resources for Certain Institutionalized Spouses," in determining the allocation of income between an institutionalized and community spouse.

(4) The department shall establish the monthly maintenance needs allowance for the community spouse up to the maximum amount allowed by state appropriation or within available funds and permitted in section 1924 of the social security act. The total monthly needs allowance shall not exceed one thousand five hundred dollars, subject to adjustment provided in section 1924 of the social security act. [1989 c 87 § 4.]

Captions not law—1989 c 87: "Section captions, as found in sections 4 through 8 of this act, constitute no part of the law." [1989 c 87 § 10.]

Effective dates—1989 c 87: See note following RCW 11.94.050.

(2004 Ed.)

74.09.575 Medical assistance for institutionalized persons—Treatment of resources. (1) The department shall promulgate rules consistent with the treatment of resources provisions of section 1924 of the social security act entitled "Treatment of Income and Resources for Certain Institutionalized Spouses," in determining the allocation of resources between the institutionalized and community spouse.

(2) In the interest of supporting the community spouse the department shall allow the maximum resource allowance amount permissible under the social security act for the community spouse for persons institutionalized before August 1, 2003.

(3) For persons institutionalized on or after August 1, 2003, the department, in the interest of supporting the community spouse, shall allow up to a maximum of forty thousand dollars in resources for the community spouse. For the fiscal biennium beginning July 1, 2005, and each fiscal biennium thereafter, the maximum resource allowance amount for the community spouse shall be adjusted for economic trends and conditions by increasing the amount allowable by the consumer price index as published by the federal bureau of labor statistics. However, in no case shall the amount allowable exceed the maximum resource allowance permissible under the social security act. [2003 1st sp.s. c 28 § 1; 1989 c 87 § 5.]

Effective date—2003 1st sp.s. c 28: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 2003." [2003 1st sp.s. c 28 § 2.]

Effective dates—1989 c 87: See note following RCW 11.94.050.

Captions not law—1989 c 87: See note following RCW 74.09.565.

74.09.585 Medical assistance for institutionalized persons—Period of ineligibility for transfer of resources.

(1) The department shall establish standards consistent with section 1917 of the social security act in determining the period of ineligibility for medical assistance due to the transfer of resources.

(2) There shall be no penalty imposed for the transfer of assets that are excluded in a determination of the individual's eligibility for medicaid to the extent such assets are protected by the long-term care insurance policy or contract pursuant to chapter 48.85 RCW.

(3) The department may waive a period of ineligibility if the department determines that denial of eligibility would work an undue hardship. [1995 1st sp.s. c 18 § 81; 1989 c 87 § 7.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective dates—1989 c 87: See note following RCW 11.94.050.

Captions not law—1989 c 87: See note following RCW 74.09.565.

74.09.595 Medical assistance for institutionalized persons—Due process procedures. The department shall in compliance with section 1924 of the social security act adopt procedures which provide due process for institutionalized or community spouses who request a fair hearing as to the valuation of resources, the amount of the community spouse resource allowance, or the monthly maintenance needs allowance. [1989 c 87 § 8.]

Effective dates—1989 c 87: See note following RCW 11.94.050.

Captions not law—1989 c 87: See note following RCW 74.09.565.

74.09.600 Post audit examinations by state auditor.

Nothing in this chapter shall preclude the state auditor from conducting post audit examinations of public funds pursuant to RCW 43.09.330 or other applicable law. [1977 ex.s. c 260 § 6.]

Severability—1977 ex.s. c 260: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1977 ex.s. c 260 § 8.]

74.09.650 Prescription drug assistance program. (1)

To the extent funds are appropriated specifically for this purpose, and subject to any conditions placed on appropriations made for this purpose, the department shall design a medicaid prescription drug assistance program. Neither the benefits of, nor eligibility for, the program is considered to be an entitlement.

(2) The department shall request any federal waiver necessary to implement this program. Consistent with federal waiver conditions, the department may charge enrollment fees, premiums, or point-of-service cost-sharing to program enrollees.

(3) Eligibility for this program is limited to persons:

(a) Who are eligible for medicare or age sixty-five and older;

(b) Whose family income does not exceed two hundred percent of the federal poverty level as adjusted for family size and determined annually by the federal department of health and human services;

(c) Who lack insurance that provides prescription drug coverage; and

(d) Who are not otherwise eligible under Title XIX of the federal social security act.

(4) The department shall use a cost-effective prescription drug benefit design. Consistent with federal waiver conditions, this benefit design may be different than the benefit design offered under the medical assistance program. The benefit design may include a deductible benefit that provides coverage when enrollees incur higher prescription drug costs as defined by the department. The department also may offer more than one benefit design.

(5) The department shall limit enrollment of persons who qualify for the program so as to prevent an overexpenditure of appropriations for this program or to assure necessary compliance with federal waiver budget neutrality requirements. The department may not reduce existing medical assistance program eligibility or benefits to assure compliance with federal waiver budget neutrality requirements.

(6) Premiums paid by medicaid enrollees not in the medicaid prescription drug assistance program may not be used to finance the medicaid prescription drug assistance program.

(7) This program will be terminated within twelve months after implementation of a prescription drug benefit under Title XVIII of the federal social security act.

(8) The department shall provide recommendations to the appropriate committees of the senate and house of representatives by November 15, 2003, on financing options available to support the medicaid prescription drug assistance pro-

gram. In recommending financing options, the department shall explore every opportunity to maximize federal funding to support the program. [2003 1st sp.s. c 29 § 2.]

Finding—Intent—2003 1st sp.s. c 29: "The legislature finds that prescription drugs are an effective and important part of efforts to maintain and improve the health of Washington state residents. However, their increased cost and utilization is straining the resources of many state health care programs, and is particularly hard on low-income elderly people who lack insurance coverage for such drugs. Furthermore, inappropriate use of prescription drugs can result in unnecessary expenditures and lead to serious health consequences. It is therefore the intent of the legislature to support the establishment by the state of an evidence-based prescription drug program that identifies preferred drugs, develop programs to provide prescription drugs at an affordable price to those in need, and increase public awareness regarding their safe and cost-effective use." [2003 1st sp.s. c 29 § 1.]

Severability—2003 1st sp.s. c 29: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2003 1st sp.s. c 29 § 14.]

Conflict with federal requirements—2003 1st sp.s. c 29: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [2003 1st sp.s. c 29 § 15.]

Effective date—2003 1st sp.s. c 29: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [June 26, 2003]." [2003 1st sp.s. c 29 § 16.]

74.09.660 Prescription drug education for seniors—Grant qualifications.

Each of the state's area agencies on aging shall implement a program intended to inform and train persons sixty-five years of age and older in the safe and appropriate use of prescription and nonprescription medications. To further this purpose, the department shall award development grants averaging up to twenty-five thousand dollars to each of the agencies upon a showing that:

(1) The agency has the ability to effectively administer such a program, including an understanding of the relevant issues and appropriate outreach and follow-up;

(2) The agency can bring resources to the program in addition to those funded by the grant; and

(3) The program will be a collaborative effort between the agency and other health care programs and providers in the location to be served, including doctors, pharmacists, and long-term care providers. [2003 1st sp.s. c 29 § 8.]

Finding—Intent—Severability—Conflict with federal requirements—Effective date—2003 1st sp.s. c 29: See notes following RCW 74.09.650.

74.09.700 Medical care—Limited casualty program.

(1) To the extent of available funds and subject to any conditions placed on appropriations made for this purpose, medical care may be provided under the limited casualty program to persons not otherwise eligible for medical assistance or medical care services who are medically needy as defined in the social security Title XIX state plan and medical indigents in accordance with eligibility requirements established by the department. The eligibility requirements may include minimum levels of incurred medical expenses. This includes residents of nursing facilities, residents of intermediate care facilities for the mentally retarded, and individuals who are

otherwise eligible for section 1915(c) of the federal social security act home and community-based waiver services, administered by the department of social and health services aging and adult services administration, who are aged, blind, or disabled as defined in Title XVI of the federal social security act and whose income exceeds three hundred percent of the federal supplement security income benefit level.

(2) Determination of the amount, scope, and duration of medical coverage under the limited casualty program shall be the responsibility of the department, subject to the following:

(a) Only the following services may be covered:

(i) For persons who are medically needy as defined in the social security Title XIX state plan: Inpatient and outpatient hospital services, and home and community-based waiver services;

(ii) For persons who are medically needy as defined in the social security Title XIX state plan, and for persons who are medical indigents under the eligibility requirements established by the department: Rural health clinic services; physicians' and clinic services; prescribed drugs, dentures, prosthetic devices, and eyeglasses; nursing facility services; and intermediate care facility services for the mentally retarded; home health services; hospice services; other laboratory and x-ray services; rehabilitative services, including occupational therapy; medically necessary transportation; and other services for which funds are specifically provided in the omnibus appropriations act;

(b) Medical care services provided to the medically indigent and received no more than seven days prior to the date of application shall be retroactively certified and approved for payment on behalf of a person who was otherwise eligible at the time the medical services were furnished: PROVIDED, That eligible persons who fail to apply within the seven-day time period for medical reasons or other good cause may be retroactively certified and approved for payment.

(3) The department shall establish standards of assistance and resource and income exemptions. All nonexempt income and resources of limited casualty program recipients shall be applied against the cost of their medical care services. [2001 c 269 § 1; 1993 c 57 § 2. Prior: 1991 sp.s. c 9 § 7; 1991 sp.s. c 8 § 10; 1991 c 233 § 2; 1989 c 87 § 3; 1985 c 5 § 4; 1983 1st ex.s. c 43 § 1; 1982 1st ex.s. c 19 § 1; 1981 2nd ex.s. c 10 § 6; 1981 2nd ex.s. c 3 § 6; 1981 1st ex.s. c 6 § 22.]

Effective dates—1991 sp.s. c 9: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect on July 1, 1991, except sections 1 through 6 and 9 of this act which shall take effect on September 1, 1991." [1991 sp.s. c 9 § 11.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Effective dates—1989 c 87: See note following RCW 11.94.050.

Effective date—1983 1st ex.s. c 43: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on July 1, 1983." [1983 1st ex.s. c 43 § 3.]

Effective date—1982 1st ex.s. c 19: See note following RCW 74.09.035.

Severability—1981 2nd ex.s. c 3: See note following RCW 74.09.510.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.09.720 Prevention of blindness program. (1) A prevention of blindness program is hereby established in the (2004 Ed.)

department of social and health services to provide prompt, specialized medical eye care, including assistance with costs when necessary, for conditions in which sight is endangered or sight can be restored or significantly improved. The department of social and health services shall adopt rules concerning program eligibility, levels of assistance, and the scope of services.

(2) The department of social and health services shall employ on a part-time basis an ophthalmological and/or an optometrical consultant to provide liaison with participating eye physicians and to review medical recommendations made by an applicant's eye physician to determine whether the proposed services meet program standards.

(3) The department of social and health services and the department of services for the blind shall formulate a cooperative agreement concerning referral of clients between the two agencies and the coordination of policies and services. [1983 c 194 § 26.]

Severability—Effective dates—1983 c 194: See RCW 74.18.902 and 74.18.903.

74.09.730 Disproportionate share hospital adjustment. In establishing Title XIX payments for inpatient hospital services:

(1) The department of social and health services shall provide a disproportionate share hospital adjustment considering the following components:

(a) A low-income care component based on a hospital's medicaid utilization rate, its low-income utilization rate, its provision of obstetric services, and other factors authorized by federal law;

(b) A medical indigency care component based on a hospital's services to persons who are medically indigent; and

(c) A state-only component, to be paid from available state funds to hospitals that do not qualify for federal payments under (b) of this subsection, based on a hospital's services to persons who are medically indigent;

(2) The payment methodology for disproportionate share hospitals shall be specified by the department in regulation. [1991 sp.s. c 9 § 8; 1989 c 260 § 1; 1987 1st ex.s. c 5 § 20.]

Effective dates—1991 sp.s. c 9: See note following RCW 74.09.700.

Severability—1987 1st ex.s. c 5: See note following RCW 70.47.901.

74.09.740 Amendments to state plan—Federal approval required. The department must seek approval from the federal health care financing administration of any amendments to the existing state plan or waivers necessary to ensure federal financial participation in the provision of services to consumers under Title XIX of the federal social security act. [2002 c 3 § 14 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.09.755 AIDS—Community-based care—Federal social security act waiver. The department shall prepare and request a waiver under section 1915(c) of the federal social security act to provide community based long-term care services to persons with AIDS or AIDS-related conditions who qualify for the medical assistance program under

RCW 74.09.510 or the limited casualty program for the medically needy under RCW 74.09.700. Respite services shall be included as a service available under the waiver. [1989 c 427 § 12.]

Severability—1989 c 427: See RCW 74.39.900.

MATERNITY CARE ACCESS PROGRAM

74.09.760 Short title—1989 1st ex.s. c 10. This act may be known and cited as the "maternity care access act of 1989." [1989 1st ex.s. c 10 § 1.]

74.09.770 Maternity care access system established.

(1) The legislature finds that Washington state and the nation as a whole have a high rate of infant illness and death compared with other industrialized nations. This is especially true for minority and low-income populations. Premature and low weight births have been directly linked to infant illness and death. The availability of adequate maternity care throughout the course of pregnancy has been identified as a major factor in reducing infant illness and death. Further, the investment in preventive health care programs, such as maternity care, contributes to the growth of a healthy and productive society and is a sound approach to health care cost containment. The legislature further finds that access to maternity care for low-income women in the state of Washington has declined significantly in recent years and has reached a crisis level.

(2) It is the purpose of this chapter [subchapter] to provide, consistent with appropriated funds, maternity care necessary to ensure healthy birth outcomes for low-income families. To this end, a maternity care access system is established based on the following principles:

(a) The family is the fundamental unit in our society and should be supported through public policy.

(b) Access to maternity care for eligible persons to ensure healthy birth outcomes should be made readily available in an expeditious manner through a single service entry point.

(c) Unnecessary barriers to maternity care for eligible persons should be removed.

(d) Access to preventive and other health care services should be available for low-income children.

(e) Each woman should be encouraged to and assisted in making her own informed decisions about her maternity care.

(f) Unnecessary barriers to the provision of maternity care by qualified health professionals should be removed.

(g) The system should be sensitive to cultural differences among eligible persons.

(h) To the extent possible, decisions about the scope, content, and delivery of services should be made at the local level involving a broad representation of community interests.

(i) The maternity care access system should be evaluated at appropriate intervals to determine effectiveness and need for modification.

(j) Maternity care services should be delivered in a cost-effective manner. [1989 1st ex.s. c 10 § 2.]

74.09.780 Reservation of legislative power. The legislature reserves the right to amend or repeal all or any part of

this chapter [subchapter] at any time and there shall be no vested private right of any kind against such amendment or repeal. All rights, privileges, or immunities conferred by this chapter [subchapter] or any acts done pursuant thereto shall exist subject to the power of the legislature to amend or repeal this chapter [subchapter] at any time. [1989 1st ex.s. c 10 § 3.]

74.09.790 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout RCW 74.09.760 through 74.09.820 and 74.09.510:

(1) "At-risk eligible person" means an eligible person determined by the department to need special assistance in applying for and obtaining maternity care, including pregnant women who are substance abusers, pregnant and parenting adolescents, pregnant minority women, and other eligible persons who need special assistance in gaining access to the maternity care system.

(2) "County authority" means the board of county commissioners, county council, or county executive having the authority to participate in the maternity care access program or its designee. Two or more county authorities may enter into joint agreements to fulfill the requirements of this chapter.

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

(4) "Eligible person" means a woman in need of maternity care or a child, who is eligible for medical assistance pursuant to this chapter or the prenatal care program administered by the department.

(5) "Maternity care services" means inpatient and outpatient medical care, case management, and support services necessary during prenatal, delivery, and postpartum periods.

(6) "Support services" means, at least, public health nursing assessment and follow-up, health and childbirth education, psychological assessment and counseling, outreach services, nutritional assessment and counseling, needed vitamin and nonprescriptive drugs, transportation, family planning services, and child care. Support services may include alcohol and substance abuse treatment for pregnant women who are addicted or at risk of being addicted to alcohol or drugs to the extent funds are made available for that purpose.

(7) "Family planning services" means planning the number of one's children by use of contraceptive techniques. [1993 c 407 § 9; 1990 c 151 § 4; 1989 1st ex.s. c 10 § 4.]

74.09.800 Maternity care access program established. The department shall, consistent with the state budget act, develop a maternity care access program designed to ensure healthy birth outcomes as follows:

(1) Provide maternity care services to low-income pregnant women and health care services to children in poverty to the maximum extent allowable under the medical assistance program, Title XIX of the federal social security act;

(2) Provide maternity care services to low-income women who are not eligible to receive such services under the medical assistance program, Title XIX of the federal social security act;

(3) By January 1, 1990, have the following procedures in place to improve access to maternity care services and eligibility determinations for pregnant women applying for maternity care services under the medical assistance program, Title XIX of the federal social security act:

(a) Use of a shortened and simplified application form;

(b) Outstationing department staff to make eligibility determinations;

(c) Establishing local plans at the county and regional level, coordinated by the department; and

(d) Conducting an interview for the purpose of determining medical assistance eligibility within five working days of the date of an application by a pregnant woman and making an eligibility determination within fifteen working days of the date of application by a pregnant woman;

(4) Establish a maternity care case management system that shall assist at-risk eligible persons with obtaining medical assistance benefits and receiving maternity care services, including transportation and child care services;

(5) Within available resources, establish appropriate reimbursement levels for maternity care providers;

(6) Implement a broad-based public education program that stresses the importance of obtaining maternity care early during pregnancy;

(7) Refer persons eligible for maternity care services under the program established by this section to persons, agencies, or organizations with maternity care service practices that primarily emphasize healthy birth outcomes;

(8) Provide family planning services including information about the synthetic progestin capsule implant form of contraception, for twelve months immediately following a pregnancy to women who were eligible for medical assistance under the maternity care access program during that pregnancy or who were eligible only for emergency labor and delivery services during that pregnancy; and

(9) Within available resources, provide family planning services to women who meet the financial eligibility requirements for services under subsections (1) and (2) of this section. [1993 c 407 § 10; 1989 1st ex.s. c 10 § 5.]

74.09.810 Alternative maternity care service delivery system established—Remedial action report. (1) The department shall establish an alternative maternity care service delivery system, if it determines that a county or a group of counties is a maternity care distressed area. A maternity care distressed area shall be defined by the department, in rule, as a county or a group of counties where eligible women are unable to obtain adequate maternity care. The department shall include the following factors in its determination:

(a) Higher than average percentage of eligible persons in the distressed area who receive late or no prenatal care;

(b) Higher than average percentage of eligible persons in the distressed area who go out of the area to receive maternity care;

(c) Lower than average percentage of obstetrical care providers in the distressed area who provide care to eligible persons;

(d) Higher than average percentage of infants born to eligible persons per obstetrical care provider in the distressed area; and

(2004 Ed.)

(e) Higher than average percentage of infants that are of low birth weight, five and one-half pounds or two thousand five hundred grams, born to eligible persons in the distressed area.

(2) If the department determines that a maternity care distressed area exists, it shall notify the relevant county authority. The county authority shall, within one hundred twenty days, submit a brief report to the department recommending remedial action. The report shall be prepared in consultation with the department and its local community service offices, the local public health officer, community health clinics, health care providers, hospitals, the business community, labor representatives, and low-income advocates in the distressed area. A county authority may contract with a local nonprofit entity to develop the report. If the county authority is unwilling or unable to develop the report, it shall notify the department within thirty days, and the department shall develop the report for the distressed area.

(3) The department shall review the report and use it, to the extent possible, in developing strategies to improve maternity care access in the distressed area. The department may contract with or directly employ qualified maternity care health providers to provide maternity care services, if access to such providers in the distressed area is not possible by other means. In such cases, the department is authorized to pay that portion of the health care providers' malpractice liability insurance that represents the percentage of maternity care provided to eligible persons by that provider through increased medical assistance payments. [1989 1st ex.s. c 10 § 6.]

74.09.820 Maternity care provider's loan repayment program. To the extent that federal matching funds are available, the department or the *department of health if one is created shall establish, in consultation with the health science programs of the state's colleges and universities, and community health clinics, a loan repayment program that will encourage maternity care providers to practice in medically underserved areas in exchange for repayment of part or all of their health education loans. [1989 1st ex.s. c 10 § 7.]

**Reviser's note:* The department of health was created by 1989 1st ex.s. c 9.

Health professional scholarships: Chapter 28B.115 RCW.

74.09.850 Conflict with federal requirements. If any part of this chapter is found to conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and such finding or determination shall not affect the operation of the remainder of this chapter. [1981 2nd ex.s. c 3 § 7.]

Severability—1981 2nd ex.s. c 3: See note following RCW 74.09.510.

74.09.900 Other laws applicable. All the provisions of Title 74 RCW, not otherwise inconsistent herewith, shall apply to the provisions of this chapter. [1959 c 26 § 74.09.900. Prior: 1955 c 273 § 22.]

74.09.910 Severability—1979 ex.s. c 152. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 152 § 12.]

Chapter 74.09A RCW

MEDICAL ASSISTANCE—COORDINATION OF BENEFITS—COMPUTERIZED INFORMATION TRANSFER

Sections

- 74.09A.005 Finding.
74.09A.010 Definitions.
74.09A.020 Computerized information—Provision to private insurers.

74.09A.005 Finding. The legislature finds that:

(1) Simplification in the administration of payment of health benefits is important for the state, providers, and private insurers;

(2) The state, providers, and private insurers should take advantage of all opportunities to streamline operations through automation and the use of common computer standards; and

(3) It is in the best interests of the state, providers, and private insurers to identify all third parties that are obligated to cover the cost of health care coverage of joint beneficiaries.

Therefore, the legislature declares that to improve the coordination of benefits between the department of social and health services and private insurers to ensure that medical insurance benefits are properly utilized, a transfer of uniform information from the department of social and health services to Washington state private insurers should be instituted. [1993 c 10 § 1.]

74.09A.010 Definitions. For the purposes of this chapter:

(1) "Health insurance coverage" includes any coverage under which medical services are provided by an employer or a union whether that coverage is provided through a self-insurance program, under the employee retirement income security act of 1974, a commercial insurer pursuant to chapters 48.20 and 48.21 RCW, a health care service contractor pursuant to chapter 48.44 RCW, or a health maintenance organization pursuant to chapter 48.46 RCW, and medical assistance under chapter 74.09 RCW, and the state through this chapter.

(2) "Insurer" means a commercial insurance company providing disability insurance under chapter 48.20 or 48.21 RCW, a health care service contractor providing health care coverage under chapter 48.44 RCW, a health maintenance organization providing comprehensive health care services under chapter 48.46 RCW, and shall also include any employer or union that is providing health insurance coverage on a self-insured basis.

(3) "Medical assistance administration" means the division within the department of social and health services authorized under chapter 74.09 RCW.

(4) "Computerized" means on-line or batch processing with standardized format via magnetic tape output.

(5) "Insurance coverage" means subscriber and beneficiary eligibility and benefit coverage data.

(6) "Joint beneficiary" is a resident of Washington state who has private insurance coverage and is a recipient of public assistance benefits under chapter 74.09 RCW. [1993 c 10 § 2.]

74.09A.020 Computerized information—Provision to private insurers. (1) The medical assistance administration shall provide routine and periodic computerized information to private insurers regarding client eligibility and coverage information. Private insurers shall use this information to identify joint beneficiaries. Identification of joint beneficiaries shall be transmitted to the medical assistance administration. The medical assistance administration shall use this information to improve accuracy and currency of health insurance coverage and promote improved coordination of benefits.

(2) To the maximum extent possible, necessary data elements and a compatible data base shall be developed by affected health insurers and the medical assistance administration. The medical assistance administration shall establish a representative group of insurers and state agency representatives to develop necessary technical and file specifications to promote a standardized data base. The data base shall include elements essential to the medical assistance administration and its population's insurance coverage information.

(3) If the state and private insurers enter into other agreements regarding the use of common computer standards, the data base identified in this section shall be replaced by the new common computer standards.

(4) The information provided will be of sufficient detail to promote reliable and accurate benefit coordination and identification of individuals who are also eligible for medical assistance administration programs.

(5) The frequency of updates will be mutually agreed to by each insurer and the medical assistance administration based on frequency of change and operational limitations. In no event shall the computerized data be provided less than semiannually.

(6) The insurers and the medical assistance administration shall safeguard and properly use the information to protect records as provided by law, including but not limited to chapters 42.48, 74.09, 74.04, and 70.02 RCW, RCW 42.17.310, and 42 U.S.C. Sec. 1396a and 42 C.F.R. Sec. 43 et seq. The purpose of this exchange of information is to improve coordination and administration of benefits and ensure that medical insurance benefits are properly utilized.

(7) The medical assistance administration shall target implementation of this chapter to those private insurers with the highest probability of joint beneficiaries. [1993 c 10 § 3.]

Chapter 74.12 RCW

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES

(Formerly: Aid to families with dependent children)

Sections

- 74.12.010 Definitions.
74.12.030 Eligibility.
74.12.035 Additional eligibility requirements—Students—Exceptions.
74.12.240 Services provided to help attain maximum self-support and independence of parents and relatives.

- 74.12.250 Payment of grant to another—Limited guardianship.
- 74.12.255 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral.
- 74.12.260 Persons to whom grants shall be made—Proof of use for benefit of children.
- 74.12.280 Rules for coordination of services.
- 74.12.290 Suitability of home—Evaluation.
- 74.12.300 Grant during period required to eliminate undesirable conditions.
- 74.12.310 Placement of child with other relatives.
- 74.12.320 Placement of child pursuant to chapter 13.04 RCW.
- 74.12.330 Assistance not to be denied for want of relative or court order.
- 74.12.340 Day care.
- 74.12.350 Child's income set aside for future needs—Irrevocable trusts—Educational accounts.
- 74.12.361 Supplemental security income program—Enrollment of disabled persons.
- 74.12.400 Reduce reliance on aid—Work and job training—Family planning—Staff training.
- 74.12.410 Family planning information—Cooperation with the superintendent of public instruction—Abstinence education and motivation programs, contracts—Legislative review and oversight of programs and contracts.
- 74.12.420 Long-term recipients—Benefit reduction—Limitation—Food stamp benefit computation.
- 74.12.425 Long-term recipients—Benefit reduction—Computation.
- 74.12.450 Application for assistance—Report on suspected child abuse or neglect—Notice to parent about application, location of child, and family reconciliation act.
- 74.12.460 Notice to parent—Required within seven days of approval of application.
- 74.12.900 Welfare reform implementation—1994 c 299.
- 74.12.901 Federal waivers and legislation—1994 c 299.

Agencies for care of children, expectant mothers, developmentally disabled: Chapter 74.15 RCW.

Children and youth services: Chapter 72.05 RCW.

Enforcement of support of dependent children: Chapters 74.20 and 74.20A RCW.

Sale or gift of tobacco to minor is gross misdemeanor: RCW 26.28.080.

State schools for blind and deaf: Chapter 72.40 RCW.

74.12.010 Definitions. For the purposes of the administration of temporary assistance for needy families, the term "dependent child" means any child in need under the age of eighteen years who is living with a relative as specified under federal temporary assistance for needy families program requirements, in a place of residence maintained by one or more of such relatives as his or their homes. The term a "dependent child" shall, notwithstanding the foregoing, also include a child who would meet such requirements except for his removal from the home of a relative specified above as a result of a judicial determination that continuation therein would be contrary to the welfare of such child, for whose placement and care the state department of social and health services or the county office is responsible, and who has been placed in a licensed or approved child care institution or foster home as a result of such determination and who: (1) Was receiving an aid to families with dependent children grant for the month in which court proceedings leading to such determination were initiated; or (2) would have received aid to families with dependent children for such month if application had been made therefor; or (3) in the case of a child who had been living with a specified relative within six months prior to the month in which such proceedings were initiated, would have received aid to families with dependent children for such month if in such month he had been living with such a relative and application had been made therefor, as authorized by the Social Security Act.

"Temporary assistance for needy families" means money payments, services, and remedial care with respect to a

(2004 Ed.)

dependent child or dependent children and the needy parent or relative with whom the child lives. [1999 c 120 § 1; 1997 c 59 § 16; 1992 c 136 § 2; 1983 1st ex.s. c 41 § 40; 1981 1st ex.s. c 6 § 23; 1981 c 8 § 21; 1979 c 141 § 350; 1973 2nd ex.s. c 31 § 1; 1969 ex.s. c 173 § 13; 1965 ex.s. c 37 § 1; 1963 c 228 § 18; 1961 c 265 § 1; 1959 c 26 § 74.12.010. Prior: 1957 c 63 § 10; 1953 c 174 § 24; 1941 c 242 § 1; 1937 c 114 § 1; Rem. Supp. 1941 § 9992-101.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.12.030 Eligibility. In addition to meeting the eligibility requirements of RCW 74.08.025, as now or hereafter amended, an applicant for temporary assistance for needy families must be a needy child who is a resident of the state of Washington. [1997 c 59 § 17; 1971 ex.s. c 169 § 6; 1963 c 228 § 19; 1959 c 26 § 74.12.030. Prior: 1953 c 174 § 23; 1941 c 242 § 2; 1937 c 114 § 4; Rem. Supp. 1941 § 9992-104.]

74.12.035 Additional eligibility requirements—Students—Exceptions. (1) Children over eighteen years of age and under nineteen years of age who are full-time students reasonably expected to complete a program of secondary school, or the equivalent level of vocational or technical training, before reaching nineteen years of age are eligible to receive temporary assistance for needy families: **PROVIDED HOWEVER,** That if such students do not successfully complete such program before reaching nineteen years of age, the assistance rendered under this subsection during such period shall not be a debt due the state.

(2) Children with disabilities who are eighteen years of age and under twenty-one years of age and who are full-time students whose education is being provided in accordance with RCW 28A.155.020 are eligible to receive temporary assistance for needy families benefits.

(3) The department is authorized to grant exceptions to the eligibility restrictions for children eighteen years of age and under twenty-one years of age under subsections (1) and (2) of this section only when it determines by reasonable, objective criteria that such exceptions are likely to enable the children to complete their high school education, general equivalency diploma or vocational education. [1999 c 120 § 2; 1997 c 59 § 18; 1985 c 335 § 1; 1981 2nd ex.s. c 10 § 3.]

State consolidated standards of need: RCW 74.04.770.

74.12.240 Services provided to help attain maximum self-support and independence of parents and relatives. The department is authorized to provide such social and related services as are reasonably necessary to encourage the care of dependent children in their own homes or in the homes of relatives, to help maintain and strengthen family life and to help such parents or relatives to attain maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection. In the provision of such services, maximum utilization of other agencies providing similar or related services shall be effected. [1959 c 26 § 74.12.240. Prior: 1957 c 63 § 8.]

74.12.250 Payment of grant to another—Limited guardianship. If the department, after investigation, finds that any applicant for assistance under this chapter or any recipient of funds under this chapter would not use, or is not utilizing, the grant adequately for the needs of his or her child or children or would dissipate the grant or is dissipating such grant, or would be or is unable to manage adequately the funds paid on behalf of said child and that to provide or continue payments to the applicant or recipient would be contrary to the welfare of the child, the department may make such payments to another individual who is interested in or concerned with the welfare of such child and relative: **PROVIDED,** That the department shall provide such counseling and other services as are available and necessary to develop greater ability on the part of the relative to manage funds in such manner as to protect the welfare of the family. Periodic review of each case shall be made by the department to determine if said relative is able to resume management of the assistance grant. If after a reasonable period of time the payments to the relative cannot be resumed, the department may request the attorney general to file a petition in the superior court for the appointment of a guardian for the child or children. Such petition shall set forth the facts warranting such appointment. Notice of the hearing on such petition shall be served upon the recipient and the department not less than ten days before the date set for such hearing. Such petition may be filed with the clerk of superior court and all process issued and served without payment of costs. If upon the hearing of such petition the court is satisfied that it is for the best interest of the child or children, and all parties concerned, that a guardian be appointed, he shall order the appointment, and may require the guardian to render to the court a detailed itemized account of expenditures of such assistance payments at such time as the court may deem advisable.

It is the intention of this section that the guardianship herein provided for shall be a special and limited guardianship solely for the purpose of safeguarding the assistance grants made to dependent children. Such guardianship shall terminate upon the termination of such assistance grant, or sooner on order of the court, upon good cause shown. [1997 c 58 § 506; 1963 c 228 § 21; 1961 c 206 § 1.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

74.12.255 Teen applicants' living situation—Criteria—Presumption—Protective payee—Adoption referral. (1) The department shall determine, after consideration of all relevant factors and in consultation with the applicant, the most appropriate living situation for applicants under eighteen years of age, unmarried, and either pregnant or having a dependent child or children in the applicant's care. An appropriate living situation shall include a place of residence that is maintained by the applicant's parents, parent, legal guardian, or other adult relative as their or his or her own home and that the department finds would provide an appropriate supportive living arrangement. It also includes a living situation maintained by an agency that is licensed under chapter 74.15 RCW that the department finds would provide an appropriate supportive living arrangement. Grant assis-

tance shall not be provided under this chapter if the applicant does not reside in the most appropriate living situation, as determined by the department.

(2) An unmarried minor parent or pregnant minor applicant residing in the most appropriate living situation, as provided under subsection (1) of this section, is presumed to be unable to manage adequately the funds paid to the minor or on behalf of the dependent child or children and, unless the minor provides sufficient evidence to rebut the presumption, shall be subject to the protective payee requirements provided for under RCW 74.12.250 and 74.08.280.

(3) The department shall consider any statements or opinions by either parent of the unmarried minor parent or pregnant minor applicant as to an appropriate living situation for the minor and his or her children, whether in the parental home or other situation. If the parents or a parent of the minor request, they or he or she shall be entitled to a hearing in juvenile court regarding designation of the parental home or other relative placement as the most appropriate living situation for the pregnant or parenting minor.

The department shall provide the parents or parent with the opportunity to make a showing that the parental home, or home of the other relative placement, is the most appropriate living situation. It shall be presumed in any administrative or judicial proceeding conducted under this subsection that the parental home or other relative placement requested by the parents or parent is the most appropriate living situation. This presumption is rebuttable.

(4) In cases in which the minor is unmarried and unemployed, the department shall, as part of the determination of the appropriate living situation, make an affirmative effort to provide current and positive information about adoption including referral to community-based organizations for counseling and provide information about the manner in which adoption works, its benefits for unmarried, unemployed minor parents and their children, and the meaning and availability of open adoption.

(5) For the purposes of this section, "most appropriate living situation" shall not include a living situation including an adult male who fathered the qualifying child and is found to meet the elements of rape of a child as set forth in RCW 9A.44.079. [1997 c 58 § 501; 1994 c 299 § 33.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

General assistance: RCW 74.04.0052.

74.12.260 Persons to whom grants shall be made—Proof of use for benefit of children. Temporary assistance for needy families grants shall be made to persons specified in RCW 74.12.010 as amended or such others as the federal department of health, education and welfare shall recognize for the sole purposes of giving benefits to the children whose needs are included in the grant paid to such persons. The recipient of each temporary assistance for needy families grant shall be and hereby is required to present reasonable proof to the department of social and health services as often as may be required by the department that all funds received

in the form of a temporary assistance for needy families grant for the children represented in the grant are being spent for the benefit of the children. [1997 c 59 § 21; 1979 c 141 § 351; 1963 c 228 § 22.]

74.12.280 Rules for coordination of services. The department is hereby authorized to adopt rules that will provide for coordination between the services provided pursuant to chapter 74.13 RCW and the services provided under the temporary assistance for needy families program in order to provide welfare and related services which will best promote the welfare of such children and their families and conform with the provisions of Public Law 87-543 (HR 10606). [1997 c 59 § 22; 1983 c 3 § 191; 1963 c 228 § 24.]

74.12.290 Suitability of home—Evaluation. The department of social and health services shall, during the initial and any subsequent determination of eligibility, evaluate the suitability of the home in which the dependent child lives, consideration to be given to physical care and supervision provided in the home; social, educational, and the moral atmosphere of the home as compared with the standards of the community; the child's physical and mental health and emotional security, special needs occasioned by the child's physical handicaps or illnesses, if any; the extent to which desirable factors outweigh the undesirable in the home; and the apparent possibility for improving undesirable conditions in the home. [1979 c 141 § 352; 1963 c 228 § 25.]

74.12.300 Grant during period required to eliminate undesirable conditions. If the home in which the child lives is found to be unsuitable, but there is reason to believe that elimination of the undesirable conditions can be effected, and the child is otherwise eligible for aid, a grant shall be initiated or continued for such time as the state department of social and health services and the family require to remedy the conditions. [1979 c 141 § 353; 1963 c 228 § 26.]

74.12.310 Placement of child with other relatives. When intensive efforts over a reasonable period have failed to improve the home conditions, the department shall determine if any other relatives specified by the social security act are maintaining a suitable home and are willing to take the care and custody of the child in their home. Upon an affirmative finding the department shall, if the parents or relatives with whom the child is living consent, take the necessary steps for placement of the child with such other relatives, but if the parents or relatives with whom the child lives refuse their consent to the placement then the department shall file a petition in the juvenile court for a decree adjudging the home unsuitable and placing the dependent child with such other relatives. [1963 c 228 § 27.]

74.12.320 Placement of child pursuant to chapter 13.04 RCW. If a diligent search reveals no other relatives as specified in the social security act maintaining a suitable home and willing to take custody of the child, then the department may file a petition in the appropriate juvenile court for placement of the child pursuant to the provisions of chapter 13.04 RCW. [1963 c 228 § 28.]

74.12.330 Assistance not to be denied for want of relative or court order. Notwithstanding the provisions of this chapter a child otherwise eligible for aid shall not be denied such assistance where a relative as specified in the social security act is unavailable or refuses to accept custody and the juvenile court fails to enter an order removing the child from the custody of the parent, relative or guardian then having custody. [1963 c 228 § 29.]

74.12.340 Day care. The department is authorized to promulgate rules and regulations governing the provision of day care as a part of child welfare services when the secretary determines that a need exists for such day care and that it is in the best interests of the child, the parents, or the custodial parent and in determining the need for such day care priority shall be given to geographical areas having the greatest need for such care and to members of low income groups in the population: PROVIDED, That where the family is financially able to pay part or all of the costs of such care, fees shall be imposed and paid according to the financial ability of the family. [1973 1st ex.s. c 154 § 111; 1963 c 228 § 30.]

Severability—1973 1st ex.s. c 154: See note following RCW 2.12.030.
Child welfare services: Chapter 74.13 RCW.

74.12.350 Child's income set aside for future needs—Irrevocable trusts—Educational accounts. The department of social and health services is hereby authorized to promulgate rules and regulations in conformity with the provisions of Public Law 87-543 to allow all or any portion of a dependent child's earned or other income to be set aside for the identifiable future needs of the dependent child which will make possible the realization of the child's maximum potential as an independent and useful citizen.

The transfer into, or accumulation of, a child's income or resources in an irrevocable trust account is hereby allowed. The amount allowable is four thousand dollars. The department will provide income assistance recipients with clear and simple information on how to set up educational accounts, including how to assure that the accounts comply with federal law by being adequately earmarked for future educational use, and are irrevocable. [1994 c 299 § 31; 1979 c 141 § 354; 1963 c 226 § 1.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

74.12.361 Supplemental security income program—Enrollment of disabled persons. The department shall actively develop mechanisms for the income assistance program, the medical assistance program, and the community services administration to facilitate the enrollment in the federal supplemental security income program of disabled persons currently part of assistance units receiving temporary assistance for needy families benefits. [1997 c 59 § 23; 1994 c 299 § 35.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

74.12.400 Reduce reliance on aid—Work and job training—Family planning—Staff training. The department shall train financial services and social work staff who

provide direct service to recipients of temporary assistance for needy families to:

(1) Effectively communicate the transitional nature of temporary assistance for needy families and the expectation that recipients will enter employment;

(2) Actively refer clients to the job opportunities and basic skills program;

(3) Provide social services needed to overcome obstacles to employability; and

(4) Provide family planning information and assistance, including alternatives to abortion, which shall be conducted in consultation with the department of health. [1997 c 59 § 24; 1994 c 299 § 2.]

Intent—1994 c 299: "The legislature finds that lengthy stays on welfare, lack of access to vocational education and training, the inadequate emphasis on employment by the social welfare system, and teen pregnancy are obstacles to achieving economic independence. Therefore, the legislature intends that:

(1) Income and employment assistance programs emphasize the temporary nature of welfare and set goals of responsibility, work, and independence;

(2) State institutions take an active role in preventing pregnancy in young teens;

(3) Family planning assistance be readily available to welfare recipients;

(4) Support enforcement be more effective and the level of responsibility of noncustodial parents be significantly increased; and

(5) Job search, job skills training, and vocational education resources are to be used in the most cost-effective manner possible." [1994 c 299 § 1.]

Finding—1994 c 299: "The legislature finds that the reliable receipt of child support payments by custodial parents is essential to maintaining economic self-sufficiency. It is the intent of the legislature to ensure that child support payments received by custodial parents when such support is owed are retained by those parents regardless of future claims made against such payments." [1994 c 299 § 17.]

Severability—1994 c 299: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1994 c 299 § 40.]

Conflict with federal requirements—1994 c 299: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1994 c 299 § 41.]

74.12.410 Family planning information—Cooperation with the superintendent of public instruction—Abstinence education and motivation programs, contracts—Legislative review and oversight of programs and contracts. (1) At time of application or reassessment under this chapter the department shall offer or contract for family planning information and assistance, including alternatives to abortion, and any other available locally based teen pregnancy prevention programs, to prospective and current recipients of aid to families with dependent children.

(2) The department shall work in cooperation with the superintendent of public instruction to reduce the rate of illegitimate births and abortions in Washington state.

(3) The department of health shall maximize federal funding by timely application for federal funds available under P.L. 104-193 and Title V of the federal social security act, 42 U.S.C. 701 et seq., as amended, for the establishment of qualifying abstinence education and motivation programs.

The department of health shall contract, by competitive bid, with entities qualified to provide abstinence education and motivation programs in the state.

(4) The department of health shall seek and accept local matching funds to the maximum extent allowable from qualifying abstinence education and motivation programs.

(5)(a) For purposes of this section, "qualifying abstinence education and motivation programs" are those bidders with experience in the conduct of the types of abstinence education and motivation programs set forth in Title V of the federal social security act, 42 U.S.C. Sec. 701 et seq., as amended.

(b) The application for federal funds, contracting for abstinence education and motivation programs and performance of contracts under this section are subject to review and oversight by a joint committee of the legislature, composed of four legislative members, appointed by each of the two caucuses in each house. [1997 c 58 § 601; 1994 c 299 § 3.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

74.12.420 Long-term recipients—Benefit reduction—Limitation—Food stamp benefit computation.

Reviser's note: RCW 74.12.420 was amended by 1997 c 59 § 26 without reference to its repeal by 1997 c 58 § 105. It has been decodified for publication purposes under RCW 1.12.025.

74.12.425 Long-term recipients—Benefit reduction—Computation.

Reviser's note: RCW 74.12.425 was amended by 1997 c 59 § 27 without reference to its repeal by 1997 c 58 § 105. It has been decodified for publication purposes under RCW 1.12.025.

74.12.450 Application for assistance—Report on suspected child abuse or neglect—Notice to parent about application, location of child, and family reconciliation act. (1) Whenever the department receives an application for assistance on behalf of a child under this chapter and an employee of the department has reason to believe that the child has suffered abuse or neglect, the employee shall cause a report to be made as provided under chapter 26.44 RCW.

(2) Whenever the department approves an application for assistance on behalf of a child under this chapter, the department shall make a reasonable effort to determine whether the child is living with a parent of the child. Whenever the child is living in the home of a relative other than a parent of the child, the department shall make reasonable efforts to notify the parent with whom the child has most recently resided that an application for assistance on behalf of the child has been approved by the department and shall advise the parent of his or her rights under this section, RCW 74.12.460, and *sections 4 and 5 of this act, unless good cause exists not to do so based on a substantiated claim that the parent has abused or neglected the child.

(3) Upon written request of the parent, the department shall notify the parent of the address and location of the child,

unless there is a current investigation or pending case involving abuse or neglect by the parent under chapter 13.34 RCW.

(4) The department shall notify and advise the parent of the provisions of the family reconciliation act under chapter 13.32A RCW. [1995 c 401 § 2.]

***Reviser's note:** Sections 4 and 5 of this act were vetoed by the governor.

Severability—1995 c 401: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 401 § 7.]

74.12.460 Notice to parent—Required within seven days of approval of application. The department shall make reasonable efforts to notify the parent under RCW 74.12.450(2) as soon as reasonably possible, but no later than seven days after approval of the application by the department. [1995 c 401 § 3.]

Severability—1995 c 401: See note following RCW 74.12.450.

74.12.900 Welfare reform implementation—1994 c 299. The revisions to the temporary assistance for needy families program and job opportunities and basic skills training program shall be implemented by the department of social and health services on a statewide basis. [1997 c 59 § 28; 1994 c 299 § 12.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

74.12.901 Federal waivers and legislation—1994 c 299. By October 1, 1994, the department shall request the governor to seek congressional action on any federal legislation that may be necessary to implement any sections of chapter 299, Laws of 1994. By October 1, 1994, the department shall request the governor to seek federal agency action on any federal regulation that may require a federal waiver. [1994 c 299 § 39.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Chapter 74.12A RCW

INCENTIVE TO WORK— ECONOMIC INDEPENDENCE

Sections

- 74.12A.020 Job support services—Grants to community action agencies or nonprofit organizations.
74.12A.030 Federal waiver—Governor to seek.

74.12A.020 Job support services—Grants to community action agencies or nonprofit organizations. The department shall provide grants to community action agencies or other local nonprofit organizations to provide job opportunities and basic skills training program participants with transitional support services, one-to-one assistance, case management, and job retention services. [1997 c 58 § 327; 1993 c 312 § 8.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

(2004 Ed.)

Findings—Intent—1993 c 312: "The legislature finds that:

(1) Public assistance is intended to be a temporary financial relief program, recognizing that families can be confronted with a financial crisis at any time in life. Successful public assistance programs depend on the availability of adequate resources to assist individuals deemed eligible for the benefits of such a program. In this way, eligible families are given sufficient assistance to reenter productive employment in a minimal time period.

(2) The current public assistance system requires a reduction in grant standards when income is received. In most cases, family income is limited to levels substantially below the standard of need. This is a strong disincentive to work. To remove this disincentive, the legislature intends to allow families to retain a greater percentage of income before it results in the reduction or termination of benefits;

(3) Employment, training, and education services provided to employable recipients of public assistance are effective tools in achieving economic self-sufficiency. Support services that are targeted to the specific needs of the individual offer the best hope of achieving economic self-sufficiency in a cost-effective manner;

(4) State welfare-to-work programs, which move individuals from dependence to economic independence, must be operated cooperatively and collaboratively between state agencies and programs. They also must include public assistance recipients as active partners in self-sufficiency planning activities. Participants in economic independence programs and services will benefit from the concepts of personal empowerment, self-motivation, and self-esteem;

(5) Many barriers to economic independence are found in federal statutes and rules, and provide states with limited options for restructuring existing programs in order to create incentives for employment over continued dependence;

(6) The legislature finds that the personal and societal costs of teenage childbearing are substantial. Teen parents are less likely to finish high school and more likely to depend upon public assistance than women who delay childbearing until adulthood; and

(7) The legislature intends that an effort be made to ensure that each teenage parent who is a public assistance recipient live in a setting that increases the likelihood that the teen parent will complete high school and achieve economic independence." [1993 c 312 § 1.]

Emergency—1993 c 312: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions." [1993 c 312 § 19.]

Implementation program design—1993 c 312: "The department of social and health services shall design a program for implementation involving recipients of aid to families with dependent children. A goal of this program is to develop a system that segments the aid to families with dependent children recipient population and identifies subgroups, matches services to the needs of the subgroup, and prioritizes available services. The department shall specify the services to be offered in each population segment. The general focus of the services offered shall be on job training, work force preparedness, and job retention.

The program shall be designed for statewide implementation on July 1, 1994. A proposal for implementation may include phasing certain components over time or geographic area. The department shall submit this program to the appropriate committees of the senate and house of representatives by December 1, 1993." [1993 c 312 § 9.]

74.12A.030 Federal waiver—Governor to seek. By October 1, 1993, the department shall request the governor to seek congressional and federal agency action on any federal legislation or federal regulation that may be necessary to implement chapter 74.12A RCW and *sections 3 and 4, chapter 312, Laws of 1993, and any other section of chapter 312, Laws of 1993 that may require a federal waiver. [1993 c 312 § 12.]

***Reviser's note:** Sections 3 and 4, chapter 312, Laws of 1993 failed to become law due to lack of specific funding.

Findings—Intent—Emergency—1993 c 312: See notes following RCW 74.12A.020.

Chapter 74.13 RCW

CHILD WELFARE SERVICES

Sections

- 74.13.010 Declaration of purpose.
- 74.13.013 Finding—Accreditation of children's services.
- 74.13.017 Accreditation—Completion date.
- 74.13.020 Definitions—"Child," "child welfare services"—Duty to provide services to homeless families with children.
- 74.13.021 Developmentally disabled child—Defined.
- 74.13.025 Counties may administer and provide services under RCW 13.32A.197—Plan for at-risk youth required.
- 74.13.031 Duties of department—Child welfare services—Children's services advisory committee.
- 74.13.0311 Provided under deferred prosecution order.
- 74.13.032 Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities.
- 74.13.0321 Crisis residential centers—Limit on reimbursement or compensation.
- 74.13.033 Crisis residential centers—Removal from—Services available—Unauthorized leave.
- 74.13.034 Crisis residential centers—Removal to another center or secure facility—Placement in secure juvenile detention facility.
- 74.13.035 Crisis residential centers—Annual records, contents—Multiple licensing.
- 74.13.036 Implementation of chapters 13.32A and 13.34 RCW—Report to legislature.
- 74.13.037 Transitional living programs for youth in the process of being emancipated—Rules.
- 74.13.039 Runaway hot line.
- 74.13.040 Rules and regulations for coordination of services.
- 74.13.042 Petition by the department for order compelling disclosure of record or information.
- 74.13.045 Complaint resolution process.
- 74.13.050 Day care—Rules and regulations governing the provision of day care as a part of child welfare services.
- 74.13.055 Foster care—Length of stay—Cooperation with private sector.
- 74.13.060 Secretary as custodian of funds of person placed with department—Authority—Limitations—Termination.
- 74.13.065 Out-of-home care—Social study required.
- 74.13.070 Moneys in possession of secretary not subject to certain proceedings.
- 74.13.075 Sexually aggressive youth—Defined—Expenditure of treatment funds—Tribal jurisdiction.
- 74.13.077 Sexually aggressive youth—Transfer of surplus funds for treatment.
- 74.13.080 Group care placement—Prerequisites for payment.
- 74.13.085 Child care services—Declaration of policy.
- 74.13.090 Child care coordinating committee.
- 74.13.0901 Child care partnership.
- 74.13.0902 Child care partnership employer liaison.
- 74.13.0903 Office of child care policy.
- 74.13.095 Child care expansion grant fund.

ADOPTION SUPPORT DEMONSTRATION ACT OF 1971

- 74.13.100 Adoption support—State policy enunciated.
- 74.13.103 Prospective adoptive parent's fee for cost of adoption services.
- 74.13.106 Adoption services—Disposition of fees—Use—Federal funds—Gifts and grants.
- 74.13.109 Adoption support program administration—Rules and regulations—Disbursements from general fund, criteria.
- 74.13.112 Factors determining payments or adjustment in standards.
- 74.13.115 Both continuing payments and lump sum payments authorized.
- 74.13.116 Application—1996 c 130.
- 74.13.118 Review of support payments.
- 74.13.121 Adoptive parent's financial information.
- 74.13.124 Agreements as contracts within state and federal Constitutions—State's continuing obligation.
- 74.13.127 Voluntary amendments to agreements—Procedure when adoptive parties disagree.
- 74.13.130 Nonrecurring adoption expenses.
- 74.13.133 Records—Confidentiality.
- 74.13.136 Recommendations for support of the adoption of certain children.
- 74.13.139 "Secretary" and "department" defined.
- 74.13.145 Short title—1971 act.
- 74.13.150 Adoption support reconsideration program.
- 74.13.152 Interstate agreements for adoption of children with special needs—Findings.

- 74.13.153 Interstate agreements for adoption of children with special needs—Purpose.
- 74.13.154 Interstate agreements for adoption of children with special needs—Definitions.
- 74.13.155 Interstate agreements for adoption of children with special needs—Authorization.
- 74.13.156 Interstate agreements for adoption of children with special needs—Required provisions.
- 74.13.157 Interstate agreements for adoption of children with special needs—Additional provisions.
- 74.13.158 Interstate agreements for adoption of children with special needs—Medical assistance for children residing in this state—Penalty for fraudulent claims.
- 74.13.159 Interstate agreements for adoption of children with special needs—Adoption assistance and medical assistance in state plan.
- 74.13.165 Home studies for adoption—Purchase of services from non-profit agencies.
- 74.13.170 Therapeutic family home program for youth in custody under chapter 13.34 RCW.
- 74.13.200 Demonstration project for protection, care, and treatment of children at-risk of abuse or neglect.
- 74.13.210 Project day care center—Definition.
- 74.13.220 Project services.
- 74.13.230 Project shall utilize community services.

FOSTER CARE

- 74.13.250 Preservice training.
- 74.13.260 On-site monitoring program.
- 74.13.270 Respite care.
- 74.13.280 Client information.
- 74.13.285 Passports—Information to be provided to foster parents.
- 74.13.287 Intent—Infant, foster family health.
- 74.13.288 Blood-borne pathogens—Testing—Report.
- 74.13.289 Blood-borne pathogens—Client information—Training.
- 74.13.290 Fewest possible placements for children.
- 74.13.300 Notification of proposed placement changes.
- 74.13.310 Foster parent training.
- 74.13.315 Child care for foster parents attending meetings or training.
- 74.13.320 Recruitment of foster homes and adoptive homes for special needs children.
- 74.13.325 Foster care and adoptive home recruitment program.
- 74.13.330 Responsibilities of foster parents.
- 74.13.332 Rights of foster parents.
- 74.13.333 Rights of foster parents—Complaints—Report.
- 74.13.334 Department to respond to foster parents' complaints.
- 74.13.335 Foster care—Reimbursement—Property damage.
- 74.13.340 Foster parent liaison.
- 74.13.350 Developmentally disabled children—Out-of-home placement—Voluntary placement agreement.
- 74.13.500 Disclosure of child welfare records—Factors—Exception.
- 74.13.505 Disclosure of child welfare records—Information to be disclosed.
- 74.13.510 Disclosure of child welfare records—Consideration of effects.
- 74.13.515 Disclosure of child welfare records—Fatalities.
- 74.13.520 Disclosure of child welfare records—Information not to be disclosed.
- 74.13.525 Disclosure of child welfare records—Immunity from liability.
- 74.13.530 Child placement—Conflict of interest.
- 74.13.540 Independent living services.
- 74.13.550 Child placement—Policy of educational continuity.
- 74.13.560 Educational continuity—Protocol development.
- 74.13.570 Oversight committee—Duties.
- 74.13.580 Educational stability during shelter care hearing—Protocol development.
- 74.13.590 Tasks to be performed based on available resources.
- 74.13.600 Kinship caregivers—Definition—Placement of children with kin a priority—Strategies.
- 74.13.610 Kinship caregivers—Grant proposal—Pilot projects.
- 74.13.620 Kinship care oversight committee—Duties—Report.
- 74.13.630 Family decision meetings.
- 74.13.640 Child fatality review—Report.
- 74.13.900 Severability—1965 c 30.

Consistency required in administration of statutes applicable to runaway youth, at-risk youth, and families in conflict: RCW 43.20A.770.

Education of children in short-term foster care: RCW 28A.300.800 and 28A.630.005.

Shaken baby syndrome: RCW 43.121.140.

74.13.010 Declaration of purpose. The purpose of this chapter is to safeguard, protect and contribute to the welfare

of the children of the state, through a comprehensive and coordinated program of public child welfare services providing for: Social services and facilities for children who require guidance, care, control, protection, treatment or rehabilitation; setting of standards for social services and facilities for children; cooperation with public and voluntary agencies, organizations, and citizen groups in the development and coordination of programs and activities in behalf of children; and promotion of community conditions and resources that help parents to discharge their responsibilities for the care, development and well-being of their children. [1965 c 30 § 2.]

74.13.013 Finding—Accreditation of children's services. The legislature finds that accreditation of children's services by an independent entity can significantly improve the quality of services provided to children and families. Accreditation involves an ongoing commitment to meeting nationally recognized standards of practice in child welfare and holds organizations accountable for achieving improved outcomes for children.

Accreditation is a structured process designed to facilitate organizational change and improvement within individual local offices. Standards require improved case management, documentation, internal case management practices, and accountability. Accreditation requires the establishment of clear communication with biological parents, foster and adoptive parents, providers, the courts, and members of the community. [2001 c 265 § 1.]

74.13.017 Accreditation—Completion date. The department shall undertake the process of accreditation with the goal of completion by July 2006. [2003 c 207 § 8; 2001 c 265 § 2.]

74.13.020 Definitions—"Child," "child welfare services"—Duty to provide services to homeless families with children. As used in Title 74 RCW, child welfare services shall be defined as public social services including adoption services which strengthen, supplement, or substitute for, parental care and supervision for the purpose of:

- (1) Preventing or remedying, or assisting in the solution of problems which may result in families in conflict, or the neglect, abuse, exploitation, or criminal behavior of children;
- (2) Protecting and caring for dependent or neglected children;
- (3) Assisting children who are in conflict with their parents, and assisting parents who are in conflict with their children with services designed to resolve such conflicts;
- (4) Protecting and promoting the welfare of children, including the strengthening of their own homes where possible, or, where needed;
- (5) Providing adequate care of children away from their homes in foster family homes or day care or other child care agencies or facilities.

As used in this chapter, child means a person less than eighteen years of age.

The department's duty to provide services to homeless families with children is set forth in RCW 43.20A.790 and in appropriations provided by the legislature for implementa-

(2004 Ed.)

tion of the plan. [1999 c 267 § 7; 1979 c 155 § 76; 1977 ex.s. c 291 § 21; 1975-'76 2nd ex.s. c 71 § 3; 1971 ex.s. c 292 § 66; 1965 c 30 § 3.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Severability—1971 ex.s. c 292: See note following RCW 26.28.010.

74.13.021 Developmentally disabled child—Defined.

As used in this chapter, "developmentally disabled child" is a child who has a developmental disability as defined in RCW 71A.10.020 and whose parent, guardian, or legal custodian and with the department mutually agree that services appropriate to the child's needs can not be provided in the home. [1998 c 229 § 3; 1997 c 386 § 15.]

74.13.025 Counties may administer and provide services under RCW 13.32A.197—Plan for at-risk youth required. Any county or group of counties may make application to the department of social and health services in the manner and form prescribed by the department to administer and provide the services established under RCW 13.32A.197. Any such application must include a plan or plans for providing such services to at-risk youth. [1998 c 296 § 1.]

Findings—Intent—1998 c 296: "The legislature finds it is often necessary for parents to obtain mental health or chemical dependency treatment for their minor children prior to the time the child's condition presents a likelihood of serious harm or the child becomes gravely disabled. The legislature finds that treatment of such conditions is not the equivalent of incarceration or detention, but is a legitimate act of parental discretion, when supported by decisions of credentialed professionals. The legislature finds that, consistent with *Parham v. J.R.*, 442 U.S. 584 (1979), state action is not involved in the determination of a parent and professional person to admit a minor child to treatment and finds this act provides sufficient independent review by the department of social and health services, as a neutral fact-finder, to protect the interests of all parties. The legislature intends and recognizes that children affected by the provisions of this act are not children whose mental or substance abuse problems are adequately addressed by chapters 70.96A and 71.34 RCW. Therefore, the legislature finds it is necessary to provide parents a statutory process, other than the petition process provided in chapters 70.96A and 71.34 RCW, to obtain treatment for their minor children without the consent of the children.

The legislature finds that differing standards of admission and review in parent-initiated mental health and chemical dependency treatment for their minor children are necessary and the admission standards and procedures under state involuntary treatment procedures are not adequate to provide safeguards for the safety and well-being of all children. The legislature finds the timeline for admission and reviews under existing law do not provide sufficient opportunities for assessment of the mental health and chemically dependent status of every minor child and that additional time and different standards will facilitate the likelihood of successful treatment of children who are in need of assistance but unwilling to obtain it voluntarily. The legislature finds there are children whose behavior presents a clear need of medical treatment but is not so extreme as to require immediate state intervention under the state involuntary treatment procedures." [1998 c 296 § 6.]

Part headings not law—1998 c 296: "Part headings used in this act do not constitute any part of the law." [1998 c 296 § 43.]

Short title—1998 c 296: "This act may be known and cited as "the Becca act of 1998."" [1998 c 296 § 44.]

74.13.031 Duties of department—Child welfare services—Children's services advisory committee. The department shall have the duty to provide child welfare services and shall:

(1) Develop, administer, supervise, and monitor a coordinated and comprehensive plan that establishes, aids, and strengthens services for the protection and care of runaway, dependent, or neglected children.

(2) Within available resources, recruit an adequate number of prospective adoptive and foster homes, both regular and specialized, i.e. homes for children of ethnic minority, including Indian homes for Indian children, sibling groups, handicapped and emotionally disturbed, teens, pregnant and parenting teens, and annually report to the governor and the legislature concerning the department's success in: (a) Meeting the need for adoptive and foster home placements; (b) reducing the foster parent turnover rate; (c) completing home studies for legally free children; and (d) implementing and operating the passport program required by RCW 74.13.285. The report shall include a section entitled "Foster Home Turn-Over, Causes and Recommendations."

(3) Investigate complaints of any recent act or failure to act on the part of a parent or caretaker that results in death, serious physical or emotional harm, or sexual abuse or exploitation, or that presents an imminent risk of serious harm, and on the basis of the findings of such investigation, offer child welfare services in relation to the problem to such parents, legal custodians, or persons serving in loco parentis, and/or bring the situation to the attention of an appropriate court, or another community agency: PROVIDED, That an investigation is not required of nonaccidental injuries which are clearly not the result of a lack of care or supervision by the child's parents, legal custodians, or persons serving in loco parentis. If the investigation reveals that a crime against a child may have been committed, the department shall notify the appropriate law enforcement agency.

(4) Offer, on a voluntary basis, family reconciliation services to families who are in conflict.

(5) Monitor out-of-home placements, on a timely and routine basis, to assure the safety, well-being, and quality of care being provided is within the scope of the intent of the legislature as defined in RCW 74.13.010 and 74.15.010, and annually submit a report measuring the extent to which the department achieved the specified goals to the governor and the legislature.

(6) Have authority to accept custody of children from parents and to accept custody of children from juvenile courts, where authorized to do so under law, to provide child welfare services including placement for adoption, and to provide for the physical care of such children and make payment of maintenance costs if needed. Except where required by Public Law 95-608 (25 U.S.C. Sec. 1915), no private adoption agency which receives children for adoption from the department shall discriminate on the basis of race, creed, or color when considering applications in their placement for adoption.

(7) Have authority to provide temporary shelter to children who have run away from home and who are admitted to crisis residential centers.

(8) Have authority to purchase care for children; and shall follow in general the policy of using properly approved private agency services for the actual care and supervision of such children insofar as they are available, paying for care of such children as are accepted by the department as eligible for support at reasonable rates established by the department.

(9) Establish a children's services advisory committee which shall assist the secretary in the development of a partnership plan for utilizing resources of the public and private sectors, and advise on all matters pertaining to child welfare, licensing of child care agencies, adoption, and services related thereto. At least one member shall represent the adoption community.

(10) Have authority to provide continued foster care or group care for individuals from eighteen through twenty years of age to enable them to complete their high school or vocational school program.

(11) Refer cases to the division of child support whenever state or federal funds are expended for the care and maintenance of a child, including a child with a developmental disability who is placed as a result of an action under chapter 13.34 RCW, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents of the child.

(12) Have authority within funds appropriated for foster care services to purchase care for Indian children who are in the custody of a federally recognized Indian tribe or tribally licensed child-placing agency pursuant to parental consent, tribal court order, or state juvenile court order; and the purchase of such care shall be subject to the same eligibility standards and rates of support applicable to other children for whom the department purchases care.

Notwithstanding any other provision of RCW 13.32A.170 through 13.32A.200 and 74.13.032 through 74.13.036, or of this section all services to be provided by the department of social and health services under subsections (4), (6), and (7) of this section, subject to the limitations of these subsections, may be provided by any program offering such services funded pursuant to Titles II and III of the federal juvenile justice and delinquency prevention act of 1974.

(13) Within amounts appropriated for this specific purpose, provide preventive services to families with children that prevent or shorten the duration of an out-of-home placement.

(14) Have authority to provide independent living services to youths, including individuals eighteen through twenty years of age, who are or have been in foster care. [2004 c 183 § 3; 2001 c 192 § 1; 1999 c 267 § 8; 1998 c 314 § 10. Prior: 1997 c 386 § 32; 1997 c 272 § 1; 1995 c 191 § 1; 1990 c 146 § 9; prior: 1987 c 505 § 69; 1987 c 170 § 10; 1983 c 246 § 4; 1982 c 118 § 3; 1981 c 298 § 16; 1979 ex.s. c 165 § 22; 1979 c 155 § 77; 1977 ex.s. c 291 § 22; 1975-'76 2nd ex.s. c 71 § 4; 1973 1st ex.s. c 101 § 2; 1967 c 172 § 17.]

Effective date—2004 c 183: See note following RCW 13.34.160.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

Effective date—1997 c 272: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 272 § 8.]

Effective date—1987 c 170 §§ 10 and 11: "Sections 10 and 11 of this act shall take effect July 1, 1988." [1987 c 170 § 16.]

Severability—1987 c 170: See note following RCW 13.04.030.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective dates—Severability—1977 ex.s. c 291: See notes following RCW 13.04.005.

Severability—1967 c 172: See note following RCW 74.15.010.

Declaration of purpose—1967 c 172: See RCW 74.15.010.

Abuse of child: Chapter 26.44 RCW.

Licensing of agencies caring for or placing children, expectant mothers, and developmentally disabled persons: Chapter 74.15 RCW.

74.13.0311 Provided under deferred prosecution order. The department or its contractors may provide child welfare services pursuant to a deferred prosecution plan ordered under chapter 10.05 RCW. Child welfare services provided under this chapter pursuant to a deferred prosecution order may not be construed to prohibit the department from providing services or undertaking proceedings pursuant to chapter 13.34 or 26.44 RCW. [2002 c 219 § 13.]

Intent—Finding—2002 c 219: See note following RCW 9A.42.037.

74.13.032 Crisis residential centers—Establishment—Staff—Duties—Semi-secure facilities—Secure facilities. (1) The department shall establish, by contracts with private or public vendors, regional crisis residential centers with semi-secure facilities. These facilities shall be structured group care facilities licensed under rules adopted by the department and shall have an average of at least four adult staff members and in no event less than three adult staff members to every eight children.

(2) Within available funds appropriated for this purpose, the department shall establish, by contracts with private or public vendors, regional crisis residential centers with secure facilities. These facilities shall be facilities licensed under rules adopted by the department. These centers may also include semi-secure facilities and to such extent shall be subject to subsection (1) of this section.

(3) The department shall, in addition to the facilities established under subsections (1) and (2) of this section, establish additional crisis residential centers pursuant to contract with licensed private group care facilities.

(4) The staff at the facilities established under this section shall be trained so that they may effectively counsel juveniles admitted to the centers, provide treatment, supervision, and structure to the juveniles that recognize the need for support and the varying circumstances that cause children to leave their families, and carry out the responsibilities stated in RCW 13.32A.090. The responsibilities stated in RCW 13.32A.090 may, in any of the centers, be carried out by the department.

(5) The secure facilities located within crisis residential centers shall be operated to conform with the definition in RCW 13.32A.030. The facilities shall have an average of no less than one adult staff member to every ten children. The staffing ratio shall continue to ensure the safety of the children.

(6) If a secure crisis residential center is located in or adjacent to a secure juvenile detention facility, the center shall be operated in a manner that prevents in-person contact between the residents of the center and the persons held in such facility. [1998 c 296 § 4; 1995 c 312 § 60; 1979 c 155 § 78.]

Findings—Intent—Part headings not law—Short title—1998 c 296: See notes following RCW 74.13.025.

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.0321 Crisis residential centers—Limit on reimbursement or compensation. No contract may provide reimbursement or compensation to a crisis residential center's secure facility for any service delivered or provided to a resident child after five consecutive days of residence. [1995 c 312 § 61.]

Short title—1995 c 312: See note following RCW 13.32A.010.

74.13.033 Crisis residential centers—Removal from—Services available—Unauthorized leave. (1) If a resident of a center becomes by his or her behavior disruptive to the facility's program, such resident may be immediately removed to a separate area within the facility and counseled on an individual basis until such time as the child regains his or her composure. The department may set rules and regulations establishing additional procedures for dealing with severely disruptive children on the premises.

(2) When the juvenile resides in this facility, all services deemed necessary to the juvenile's reentry to normal family life shall be made available to the juvenile as required by chapter 13.32A RCW. In assessing the child and providing these services, the facility staff shall:

(a) Interview the juvenile as soon as possible;

(b) Contact the juvenile's parents and arrange for a counseling interview with the juvenile and his or her parents as soon as possible;

(c) Conduct counseling interviews with the juvenile and his or her parents, to the end that resolution of the child/parent conflict is attained and the child is returned home as soon as possible;

(d) Provide additional crisis counseling as needed, to the end that placement of the child in the crisis residential center will be required for the shortest time possible, but not to exceed five consecutive days; and

(e) Convene, when appropriate, a multidisciplinary team.

(3) Based on the assessments done under subsection (2) of this section the facility staff may refer any child who, as the result of a mental or emotional disorder, or intoxication by alcohol or other drugs, is suicidal, seriously assaultive, or seriously destructive toward others, or otherwise similarly evidences an immediate need for emergency medical evaluation and possible care, for evaluation pursuant to chapter 71.34 RCW, to a mental health professional pursuant to chapter 71.05 RCW, or to a chemical dependency specialist pursuant to chapter 70.96A RCW whenever such action is deemed appropriate and consistent with law.

(4) A juvenile taking unauthorized leave from a facility shall be apprehended and returned to it by law enforcement officers or other persons designated as having this authority as provided in RCW 13.32A.050. If returned to the facility after having taken unauthorized leave for a period of more than twenty-four hours a juvenile shall be supervised by such a facility for a period, pursuant to this chapter, which, unless where otherwise provided, may not exceed five consecutive days on the premises. Costs of housing juveniles admitted to crisis residential centers shall be assumed by the department for a period not to exceed five consecutive days. [2000 c 162

§ 16; 2000 c 162 § 7; 1995 c 312 § 62; 1992 c 205 § 213; 1979 c 155 § 79.]

Effective date—2000 c 162 §§ 11-17: See note following RCW 13.32A.060.

Short title—1995 c 312: See note following RCW 13.32A.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.034 Crisis residential centers—Removal to another center or secure facility—Placement in secure juvenile detention facility. (1) A child taken into custody and taken to a crisis residential center established pursuant to RCW 74.13.032 may, if the center is unable to provide appropriate treatment, supervision, and structure to the child, be taken at department expense to another crisis residential center, the nearest regional secure crisis residential center, or a secure facility with which it is collocated under RCW 74.13.032. Placement in both locations shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130.

(2) A child taken into custody and taken to a crisis residential center established by this chapter may be placed physically by the department or the department's designee and, at departmental expense and approval, in a secure juvenile detention facility operated by the county in which the center is located for a maximum of forty-eight hours, including Saturdays, Sundays, and holidays, if the child has taken unauthorized leave from the center and the person in charge of the center determines that the center cannot provide supervision and structure adequate to ensure that the child will not again take unauthorized leave. Juveniles placed in such a facility pursuant to this section may not, to the extent possible, come in contact with alleged or convicted juvenile or adult offenders.

(3) Any child placed in secure detention pursuant to this section shall, during the period of confinement, be provided with appropriate treatment by the department or the department's designee, which shall include the services defined in RCW 74.13.033(2). If the child placed in secure detention is not returned home or if an alternative living arrangement agreeable to the parent and the child is not made within twenty-four hours after the child's admission, the child shall be taken at the department's expense to a crisis residential center. Placement in the crisis residential center or centers plus placement in juvenile detention shall not exceed five consecutive days from the point of intake as provided in RCW 13.32A.130.

(4) Juvenile detention facilities used pursuant to this section shall first be certified by the department to ensure that juveniles placed in the facility pursuant to this section are provided with living conditions suitable to the well-being of the child. Where space is available, juvenile courts, when certified by the department to do so, shall provide secure placement for juveniles pursuant to this section, at department expense. [2000 c 162 § 17; 2000 c 162 § 8; 1995 c 312 § 63; 1992 c 205 § 214; 1991 c 364 § 5; 1981 c 298 § 17; 1979 ex.s. c 165 § 21; 1979 c 155 § 80.]

Effective date—2000 c 162 §§ 11-17: See note following RCW 13.32A.060.

[Title 74 RCW—page 54]

Short title—1995 c 312: See note following RCW 13.32A.010.

Part headings not law—Severability—1992 c 205: See notes following RCW 13.40.010.

Conflict with federal requirements—1991 c 364: See note following RCW 70.96A.020.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Child admitted to secure facility—Maximum hours of custody—Reconciliation effort—Information to parent and child—Written statement of services and rights: RCW 13.32A.130.

74.13.035 Crisis residential centers—Annual records, contents—Multiple licensing. Crisis residential centers shall compile yearly records which shall be transmitted to the department and which shall contain information regarding population profiles of the children admitted to the centers during each past calendar year. Such information shall include but shall not be limited to the following:

- (1) The number, age, and sex of children admitted to custody;
- (2) Who brought the children to the center;
- (3) Services provided to children admitted to the center;
- (4) The circumstances which necessitated the children being brought to the center;
- (5) The ultimate disposition of cases;
- (6) The number of children admitted to custody who ran away from the center and their ultimate disposition, if any;
- (7) Length of stay.

The department may require the provision of additional information and may require each center to provide all such necessary information in a uniform manner.

A center may, in addition to being licensed as such, also be licensed as a family foster home or group care facility and may house on the premises juveniles assigned for foster or group care. [1979 c 155 § 81.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.036 Implementation of chapters 13.32A and 13.34 RCW—Report to legislature. (1) The department of social and health services shall oversee implementation of chapter 13.34 RCW and chapter 13.32A RCW. The oversight shall be comprised of working with affected parts of the criminal justice and child care systems as well as with local government, legislative, and executive authorities to effectively carry out these chapters. The department shall work with all such entities to ensure that chapters 13.32A and 13.34 RCW are implemented in a uniform manner throughout the state.

(2) The department shall develop a plan and procedures, in cooperation with the statewide advisory committee, to insure the full implementation of the provisions of chapter 13.32A RCW. Such plan and procedures shall include but are not limited to:

- (a) Procedures defining and delineating the role of the department and juvenile court with regard to the execution of the child in need of services placement process;
- (b) Procedures for designating department staff responsible for family reconciliation services;

(2004 Ed.)

(c) Procedures assuring enforcement of contempt proceedings in accordance with RCW 13.32A.170 and 13.32A.250; and

(d) Procedures for the continued education of all individuals in the criminal juvenile justice and child care systems who are affected by chapter 13.32A RCW, as well as members of the legislative and executive branches of government.

There shall be uniform application of the procedures developed by the department and juvenile court personnel, to the extent practicable. Local and regional differences shall be taken into consideration in the development of procedures required under this subsection.

(3) In addition to its other oversight duties, the department shall:

(a) Identify and evaluate resource needs in each region of the state;

(b) Disseminate information collected as part of the oversight process to affected groups and the general public;

(c) Educate affected entities within the juvenile justice and child care systems, local government, and the legislative branch regarding the implementation of chapters 13.32A and 13.34 RCW;

(d) Review complaints concerning the services, policies, and procedures of those entities charged with implementing chapters 13.32A and 13.34 RCW; and

(e) Report any violations and misunderstandings regarding the implementation of chapters 13.32A and 13.34 RCW.

(4) The department shall provide an annual report to the legislature not later than December 1 of each year only when it has declined to accept custody of a child from a law enforcement agency or it has received a report of a child being released without placement. The report shall indicate the number of times it has declined to accept custody of a child from a law enforcement agency under chapter 13.32A RCW and the number of times it has received a report of a child being released without placement under RCW 13.32A.060(1)(c). The report shall include the dates, places, and reasons the department declined to accept custody and the dates and places children are released without placement. [2003 c 207 § 2; 1996 c 133 § 37; 1995 c 312 § 65; 1989 c 175 § 147; 1987 c 505 § 70; 1985 c 257 § 11; 1981 c 298 § 18; 1979 c 155 § 82.]

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

Short title—1995 c 312: See note following RCW 13.32A.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1985 c 257: See note following RCW 13.34.165.

Severability—1981 c 298: See note following RCW 13.32A.040.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.13.037 Transitional living programs for youth in the process of being emancipated—Rules. Within available funds appropriated for this purpose, the department shall establish, by contracts with private vendors, transitional living programs for youth who are being assisted by the department in being emancipated as part of their permanency plan under chapter 13.34 RCW. These programs shall be licensed under rules adopted by the department. [1997 c 146 § 9; 1996 c 133 § 39.]

(2004 Ed.)

Findings—Short title—Intent—Construction—1996 c 133: See notes following RCW 13.32A.197.

74.13.039 Runaway hot line. The department of social and health services shall maintain a toll-free hot line to assist parents of runaway children. The hot line shall provide parents with a complete description of their rights when dealing with their runaway child. [1994 sp.s. c 7 § 501.]

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

74.13.040 Rules and regulations for coordination of services. See RCW 74.12.280.

74.13.042 Petition by the department for order compelling disclosure of record or information. If the department is denied lawful access to records or information, or requested records or information is not provided in a timely manner, the department may petition the court for an order compelling disclosure.

(1) The petition shall be filed in the juvenile court for the county in which the record or information is located or the county in which the person who is the subject of the record or information resides. If the person who is the subject of the record or information is a party to or the subject of a pending proceeding under chapter 13.32A or 13.34 RCW, the petition shall be filed in such proceeding.

(2) Except as otherwise provided in this section, the persons from whom and about whom the record or information is sought shall be served with a summons and a petition at least seven calendar days prior to a hearing on the petition. The court may order disclosure upon ex parte application of the department, without prior notice to any person, if the court finds there is reason to believe access to the record or information is necessary to determine whether the child is in imminent danger and in need of immediate protection.

(3) The court shall grant the petition upon a showing that there is reason to believe that the record or information sought is necessary for the health, safety, or welfare of the child who is currently receiving child welfare services. [1995 c 311 § 14.]

74.13.045 Complaint resolution process. The department shall develop and implement an informal, nonadversarial complaint resolution process to be used by clients of the department, foster parents, and other affected individuals who have complaints regarding a department policy or procedure, or the application of such a policy or procedure, related to programs administered under this chapter. The process shall not apply in circumstances where the complainant has the right under Title 13, 26, or 74 RCW to seek resolution of the complaint through judicial review or through an adjudicative proceeding.

Nothing in this section shall be construed to create substantive or procedural rights in any person. Participation in the complaint resolution process shall not entitle any person to an adjudicative proceeding under chapter 34.05 RCW or to superior court review. Participation in the process shall not affect the right of any person to seek other statutorily or constitutionally permitted remedies.

The department shall develop procedures to assure that clients and foster parents are informed of the availability of the complaint resolution process and how to access it. The department shall incorporate information regarding the complaint resolution process into the training for foster parents and caseworkers.

The department shall compile complaint resolution data including the nature of the complaint and the outcome of the process. [1998 c 245 § 146; 1991 c 340 § 2.]

Intent—1991 c 340: "It is the intent of the legislature to provide timely, thorough, and fair procedures for resolution of grievances of clients, foster parents, and the community resulting from decisions made by the department of social and health services related to programs administered pursuant to this chapter. Grievances should be resolved at the lowest level possible. However, all levels of the department should be accountable and responsible to individuals who are experiencing difficulties with agency services or decisions. It is the intent of the legislature that grievance procedures be made available to individuals who do not have other remedies available through judicial review or adjudicative proceedings." [1991 c 340 § 1.]

74.13.050 Day care—Rules and regulations governing the provision of day care as a part of child welfare services. See RCW 74.12.340.

74.13.055 Foster care—Length of stay—Cooperation with private sector. The department shall adopt rules pursuant to chapter 34.05 RCW which establish goals as to the maximum number of children who will remain in foster care for a period of longer than twenty-four months. The department shall also work cooperatively with the major private child care providers to assure that a partnership plan for utilizing the resources of the public and private sector in all matters pertaining to child welfare is developed and implemented. [1998 c 245 § 147; 1982 c 118 § 1.]

74.13.060 Secretary as custodian of funds of person placed with department—Authority—Limitations—Termination. The secretary or his designees or delegates shall be the custodian without compensation of such moneys and other funds of any person which may come into the possession of the secretary during the period such person is placed with the department of social and health services pursuant to chapter 74.13 RCW. As such custodian, the secretary shall have authority to disburse moneys from the person's funds for the following purposes only and subject to the following limitations:

(1) The secretary may disburse any of the funds belonging to such person for such personal needs of such person as the secretary may deem proper and necessary.

(2) The secretary may apply such funds against the amount of public assistance otherwise payable to such person. This includes applying, as reimbursement, any benefits, payments, funds, or accrual paid to or on behalf of said person from any source against the amount of public assistance expended on behalf of said person during the period for which the benefits, payments, funds or accruals were paid.

(3) All funds held by the secretary as custodian may be deposited in a single fund, the receipts and expenditures therefrom to be accurately accounted for by him on an individual basis. Whenever, the funds belonging to any one person exceed the sum of five hundred dollars, the secretary may

deposit said funds in a savings and loan association account on behalf of that particular person.

(4) When the conditions of placement no longer exist and public assistance is no longer being provided for such person, upon a showing of legal competency and proper authority, the secretary shall deliver to such person, or the parent, person, or agency legally responsible for such person, all funds belonging to the person remaining in his possession as custodian, together with a full and final accounting of all receipts and expenditures made therefrom.

(5) The appointment of a guardian for the estate of such person shall terminate the secretary's authority as custodian of said funds upon receipt by the secretary of a certified copy of letters of guardianship. Upon the guardian's request, the secretary shall immediately forward to such guardian any funds of such person remaining in the secretary's possession together with full and final accounting of all receipts and expenditures made therefrom. [1971 ex.s. c 169 § 7.]

74.13.065 Out-of-home care—Social study required.

(1) The department, or agency responsible for supervising a child in out-of-home care, shall conduct a social study whenever a child is placed in out-of-home care under the supervision of the department or other agency. The study shall be conducted prior to placement, or, if it is not feasible to conduct the study prior to placement due to the circumstances of the case, the study shall be conducted as soon as possible following placement.

(2) The social study shall include, but not be limited to, an assessment of the following factors:

(a) The physical and emotional strengths and needs of the child;

(b) Emotional bonds with siblings and the need to maintain regular sibling contacts;

(c) The proximity of the child's placement to the child's family to aid reunification;

(d) The possibility of placement with the child's relatives or extended family;

(e) The racial, ethnic, cultural, and religious background of the child;

(f) The least-restrictive, most family-like placement reasonably available and capable of meeting the child's needs; and

(g) Compliance with RCW 13.34.260 regarding parental preferences for placement of their children. [2002 c 52 § 8; 1995 c 311 § 26.]

Intent—2002 c 52: See note following RCW 13.34.025.

74.13.070 Moneys in possession of secretary not subject to certain proceedings. None of the moneys or other funds which come into the possession of the secretary under chapter 169, Laws of 1971 ex. sess. shall be subject to execution, levy, attachment, garnishment or other legal process or other operation of any bankruptcy or insolvency law. [1971 ex.s. c 169 § 8.]

74.13.075 Sexually aggressive youth—Defined—Expenditure of treatment funds—Tribal jurisdiction. (1) For the purposes of funds appropriated for the treatment of

sexually aggressive youth, the term "sexually aggressive youth" means those juveniles who:

(a) Have been abused and have committed a sexually aggressive act or other violent act that is sexual in nature; and

(i) Are in the care and custody of the state or a federally recognized Indian tribe located within the state; or

(ii) Are the subject of a proceeding under chapter 13.34 RCW or a child welfare proceeding held before a tribal court located within the state; or

(b) Cannot be detained under the juvenile justice system due to being under age twelve and incompetent to stand trial for acts that could be prosecuted as sex offenses as defined by RCW 9.94A.030 if the juvenile was over twelve years of age, or competent to stand trial if under twelve years of age.

(2) In expending these funds, the department of social and health services shall establish in each region a case review committee to review all cases for which the funds are used. In determining whether to use these funds in a particular case, the committee shall consider:

(a) The age of the juvenile;

(b) The extent and type of abuse to which the juvenile has been subjected;

(c) The juvenile's past conduct;

(d) The benefits that can be expected from the treatment;

(e) The cost of the treatment; and

(f) The ability of the juvenile's parent or guardian to pay for the treatment.

(3) The department may provide funds, under this section, for youth in the care and custody of a tribe or through a tribal court, for the treatment of sexually aggressive youth only if: (a) The tribe uses the same or equivalent definitions and standards for determining which youth are sexually aggressive; and (b) the department seeks to recover any federal funds available for the treatment of youth. [1994 c 169 § 1. Prior: 1993 c 402 § 3; 1993 c 146 § 1; 1990 c 3 § 305.]

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

74.13.077 Sexually aggressive youth—Transfer of surplus funds for treatment. The secretary of the department of social and health services is authorized to transfer surplus, unused treatment funds from the civil commitment center operated under chapter 71.09 RCW to the division of children and family services to provide treatment services for sexually aggressive youth. [1993 c 402 § 4.]

74.13.080 Group care placement—Prerequisites for payment. The department shall not make payment for any child in group care placement unless the group home is licensed and the department has the custody of the child and the authority to remove the child in a cooperative manner after at least seventy-two hours notice to the child care provider; such notice may be waived in emergency situations. However, this requirement shall not be construed to prohibit the department from making or mandate the department to make payment for Indian children placed in facilities licensed by federally recognized Indian tribes pursuant to chapter 74.15 RCW. [1987 c 170 § 11; 1982 c 118 § 2.]

Effective date—1987 c 170 §§ 10 and 11: See note following RCW 74.13.031.

Severability—1987 c 170: See note following RCW 13.04.030.

(2004 Ed.)

74.13.085 Child care services—Declaration of policy. It shall be the policy of the state of Washington to:

(1) Recognize the family as the most important social and economic unit of society and support the central role parents play in child rearing. All parents are encouraged to care for and nurture their children through the traditional methods of parental care at home. However, there has been a dramatic increase in participation of women in the workforce which has made the availability of quality, affordable child care a critical concern for the state and its citizens. There are not enough child care services and facilities to meet the needs of working parents, the costs of care are often beyond the resources of working parents, and child care facilities are not located conveniently to work places and neighborhoods. Parents are encouraged to participate fully in the effort to improve the quality of child care services.

(2) Promote a variety of culturally and developmentally appropriate child care settings and services of the highest possible quality in accordance with the basic principle of continuity of care. These settings shall include, but not be limited to, family day care homes, mini-centers, centers and schools.

(3) Promote the growth, development and safety of children by working with community groups including providers and parents to establish standards for quality service, training of child care providers, fair and equitable monitoring, and salary levels commensurate with provider responsibilities and support services.

(4) Promote equal access to quality, affordable, socio-economically integrated child care for all children and families.

(5) Facilitate broad community and private sector involvement in the provision of quality child care services to foster economic development and assist industry. [1989 c 381 § 2; 1988 c 213 § 1.]

Findings—1989 c 381: "The legislature finds that the increasing difficulty of balancing work life and family needs for parents in the workforce has made the availability of quality, affordable child care a critical concern for the state and its citizens. The prospect for labor shortages resulting from the aging of the population and the importance of the quality of the workforce to the competitiveness of Washington businesses make the availability of quality child care an important concern for the state and its businesses.

The legislature further finds that making information on child care options available to businesses can help the market for child care adjust to the needs of businesses and working families. The legislature further finds that investments are necessary to promote partnerships between the public and private sectors, educational institutions, and local governments to increase the supply, affordability, and quality of child care in the state." [1989 c 381 § 1.]

Severability—1989 c 381: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 c 381 § 7.]

Severability—1988 c 213: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1988 c 213 § 5.]

74.13.090 Child care coordinating committee. (1) There is established a child care coordinating committee to provide coordination and communication between state agencies responsible for child care and early childhood education services. The child care coordinating committee shall

be composed of not less than seventeen nor more than thirty-three members who shall include:

(a) One representative each from the department of social and health services, the department of community, trade, and economic development, the office of the superintendent of public instruction, and any other agency having responsibility for regulation, provision, or funding of child care services in the state;

(b) One representative from the department of labor and industries;

(c) One representative from the department of revenue;

(d) One representative from the employment security department;

(e) One representative from the department of personnel;

(f) One representative from the department of health;

(g) At least one representative of family home child care providers and one representative of center care providers;

(h) At least one representative of early childhood development experts;

(i) At least one representative of school districts and teachers involved in the provision of child care and preschool programs;

(j) At least one parent education specialist;

(k) At least one representative of resource and referral programs;

(l) One pediatric or other health professional;

(m) At least one representative of college or university child care providers;

(n) At least one representative of a citizen group concerned with child care;

(o) At least one representative of a labor organization;

(p) At least one representative of a head start - early childhood education assistance program agency;

(q) At least one employer who provides child care assistance to employees;

(r) Parents of children receiving, or in need of, child care, half of whom shall be parents needing or receiving subsidized child care and half of whom shall be parents who are able to pay for child care.

The named state agencies shall select their representative to the child care coordinating committee. The department of social and health services shall select the remaining members, considering recommendations from lists submitted by professional associations and other interest groups until such time as the committee adopts a member selection process. The department shall use any federal funds which may become available to accomplish the purposes of RCW 74.13.085 through 74.13.095.

The committee shall elect officers from among its membership and shall adopt policies and procedures specifying the lengths of terms, methods for filling vacancies, and other matters necessary to the ongoing functioning of the committee. The secretary of social and health services shall appoint a temporary chair until the committee has adopted policies and elected a chair accordingly. Child care coordinating committee members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(2) To the extent possible within available funds, the child care coordinating committee shall:

(a) Serve as an advisory coordinator for all state agencies responsible for early childhood or child care programs for the

purpose of improving communication and interagency coordination;

(b) Annually review state programs and make recommendations to the agencies and the legislature which will maximize funding and promote furtherance of the policies set forth in RCW 74.13.085. Reports shall be provided to all appropriate committees of the legislature by December 1 of each year. At a minimum the committee shall:

(i) Review and propose changes to the child care subsidy system in its December 1989 report;

(ii) Review alternative models for child care service systems, in the context of the policies set forth in RCW 74.13.085, and recommend to the legislature a new child care service structure; and

(iii) Review options and make recommendations on the feasibility of establishing an allocation for day care facilities when constructing state buildings;

(c) Review department of social and health services administration of the child care expansion grant program described in RCW 74.13.095;

(d) Review rules regarding child care facilities and services for the purpose of identifying those which unnecessarily obstruct the availability and affordability of child care in the state;

(e) Advise and assist the office of child care policy in implementing his or her duties under RCW 74.13.0903;

(f) Perform other functions to improve the quantity and quality of child care in the state, including compliance with existing and future prerequisites for federal funding; and

(g) Advise and assist the department of personnel in its responsibility for establishing policies and procedures that provide for the development of quality child care programs for state employees. [1995 c 399 § 204; 1993 c 194 § 7; 1989 c 381 § 3; 1988 c 213 § 2.]

Findings—Severability—1989 c 381: See notes following RCW 74.13.085.

Severability—1988 c 213: See note following RCW 74.13.085.

74.13.0901 Child care partnership. The child care partnership is established as a subcommittee of the child care coordinating committee to increase employer assistance and involvement in child care, and to foster cooperation between business and government to improve the availability, quality, and affordability of child care services in the state.

(1) The partnership shall have nine members who may be drawn from the membership of the child care coordinating committee. The secretary of the department of social and health services shall appoint the partnership members, who shall include:

(a) At least two members representing labor organizations;

(b) At least one member representing each of the following: Businesses with one through fifty employees, businesses with fifty-one through two hundred employees, and businesses with more than two hundred employees; and

(c) At least one representative of local child care resource and referral organizations.

(2) The partnership shall follow the same policies and procedures adopted by the child care coordinating committee, and members shall be reimbursed for travel expenses as provided in RCW 43.03.050 and 43.03.060.

(3) To the extent possible within available funds, the partnership shall:

(a) Review and propose statutory and administrative changes to encourage employer involvement in child care and partnerships between employers and the public sector to increase the quantity, quality, and affordability of child care services and facilities in this state;

(b) Review public and private child care programs with the purpose of enhancing communications and coordination among business, labor, public agencies, and child care providers in order to encourage employers to develop and implement child care services for their employees;

(c) Evaluate alternative employer-assisted child care service systems, in the context of the policies set forth in RCW 74.13.085, and recommend to the legislature and local governments ways to encourage and enhance employer-assisted child care services in the state, including statutory and administrative changes;

(d) Evaluate the impact of workplace personnel practices and policies, including flexible work schedules, on the ability of parents to access or provide care for their children, and make recommendations to employers and the legislature in this regard;

(e) Study the liability insurance issues related to the provision of employer-assisted child care and report the findings and recommendations to the legislature; and

(f) Advise and assist the employer liaison in the implementation of its duties under RCW 74.13.0902.

All findings and recommendations of the partnership to the legislature shall be incorporated into the annual report of the child care coordinating committee required under RCW 74.13.090. [1989 c 381 § 4.]

Findings—Severability—1989 c 381: See notes following RCW 74.13.085.

74.13.0902 Child care partnership employer liaison.

An employer liaison position is established in the department of social and health services to be colocated at the business assistance center established under *RCW 43.31.083. The employer liaison shall, within appropriated funds:

(1) Staff and assist the child care partnership in the implementation of its duties under RCW 74.13.0901;

(2) Provide technical assistance to employers regarding child care services, working with and through local resource and referral organizations whenever possible. Such technical assistance shall include at a minimum:

(a) Assessing the child care needs of employees and prospective employees;

(b) Reviewing options available to employers interested in increasing access to child care for their employees;

(c) Developing techniques to permit small businesses to increase access to child care for their employees;

(d) Reviewing methods of evaluating the impact of child care activities on employers; and

(e) Preparing, collecting, and distributing current information for employers on options for increasing involvement in child care; and

(3) Provide assistance to local child care resource and referral organizations to increase their capacity to provide quality technical assistance to employers in their community. [1989 c 381 § 6.]

(2004 Ed.)

***Reviser's note:** The business assistance center and its powers and duties were terminated June 30, 1995. RCW 43.31.083, 43.31.085, 43.31.087, and 43.31.089 were repealed by 1993 c 280 § 81, effective June 30, 1996.

Findings—Severability—1989 c 381: See notes following RCW 74.13.085.

74.13.0903 Office of child care policy. The office of child care policy is established to operate under the authority of the department of social and health services. The duties and responsibilities of the office include, but are not limited to, the following, within appropriated funds:

(1) Staff and assist the child care coordinating committee in the implementation of its duties under RCW 74.13.090;

(2) Work in conjunction with the statewide child care resource and referral network as well as local governments, nonprofit organizations, businesses, and community child care advocates to create local child care resource and referral organizations. These organizations may carry out needs assessments, resource development, provider training, technical assistance, and parent information and training;

(3) Actively seek public and private money for distribution as grants to the statewide child care resource and referral network and to existing or potential local child care resource and referral organizations;

(4) Adopt rules regarding the application for and distribution of grants to local child care resource and referral organizations. The rules shall, at a minimum, require an applicant to submit a plan for achieving the following objectives:

(a) Provide parents with information about child care resources, including location of services and subsidies;

(b) Carry out child care provider recruitment and training programs, including training under RCW 74.25.040;

(c) Offer support services, such as parent and provider seminars, toy-lending libraries, and substitute banks;

(d) Provide information for businesses regarding child care supply and demand;

(e) Advocate for increased public and private sector resources devoted to child care;

(f) Provide technical assistance to employers regarding employee child care services; and

(g) Serve recipients of temporary assistance for needy families and working parents with incomes at or below household incomes of one hundred seventy-five percent of the federal poverty line;

(5) Provide staff support and technical assistance to the statewide child care resource and referral network and local child care resource and referral organizations;

(6) Maintain a statewide child care licensing data bank and work with department of social and health services licensors to provide information to local child care resource and referral organizations about licensed child care providers in the state;

(7) Through the statewide child care resource and referral network and local resource and referral organizations, compile data about local child care needs and availability for future planning and development;

(8) Coordinate with the statewide child care resource and referral network and local child care resource and referral organizations for the provision of training and technical assistance to child care providers; and

(9) Collect and assemble information regarding the availability of insurance and of federal and other child care funding to assist state and local agencies, businesses, and other child care providers in offering child care services. [1997 c 58 § 404; 1993 c 453 § 2; 1991 sp.s. c 16 § 924; 1989 c 381 § 5.]

Finding—1997 c 58: "The legislature finds that informed choice is consistent with individual responsibility and that parents should be given a range of options for available child care while participating in the program." [1997 c 58 § 401.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Finding—1993 c 453: "The legislature finds that building a system of quality, affordable child care requires coordinated efforts toward constructing partnerships at state and community levels. Through the office of child care policy, the department of social and health services is responsible for facilitating the coordination of child care efforts and establishing working partnerships among the affected entities within the public and private sectors. Through these collaborative efforts, the office of child care policy encouraged the coalition of locally based child care resource and referral agencies into a statewide network. The statewide network, in existence since 1989, supports the development and operation of community-based resource and referral programs, improves the quality and quantity of child care available in Washington by fostering statewide strategies, and generates then nurtures effective public-private partnerships. The statewide network provides important training, standards of service, and general technical assistance to its locally based child care resource and referral programs. The locally based programs enrich the availability, affordability, and quality of child care in their communities." [1993 c 453 § 1.]

Effective date—1993 c 453: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 17, 1993]." [1993 c 453 § 3.]

Severability—Effective date—1991 sp.s. c 16: See notes following RCW 9.46.100.

Findings—Severability—1989 c 381: See notes following RCW 74.13.085.

74.13.095 Child care expansion grant fund. (1) The legislature recognizes that a severe shortage of child care exists to the detriment of all families and employers throughout the state. Many workers are unable to enter or remain in the work force due to a shortage of child care resources. The high costs of starting a child care business create a barrier to the creation of new slots, especially for children with special needs.

(2) A child care expansion grant fund is created in the custody of the secretary of the department of social and health services. Grants shall be awarded on a one-time only basis to persons, organizations, or schools needing assistance to start a child care center or mini-center as defined by the department by rule, or to existing licensed child care providers, including family home providers, for the purpose of making capital improvements in order to accommodate handicapped children as defined under chapter 72.40 RCW, sick children, or infant care, or children needing night time care. No grant may exceed ten thousand dollars. Start-up costs shall not include operational costs after the first three months of business.

(3) Child care expansion grants shall be awarded on the basis of need for the proposed services in the community, within appropriated funds.

(4) The department shall adopt rules under chapter 34.05 RCW setting forth criteria, application procedures, and meth-

ods to assure compliance with the purposes described in this section. [1988 c 213 § 3.]

Severability—1988 c 213: See note following RCW 74.13.085.

ADOPTION SUPPORT DEMONSTRATION ACT OF 1971

74.13.100 Adoption support—State policy enunciated. It is the policy of this state to enable the secretary to charge fees for certain services to adoptive parents who are able to pay for such services.

It is, however, also the policy of this state that the secretary of the department of social and health services shall be liberal in waiving, reducing, or deferring payment of any such fee to the end that adoptions shall be encouraged in cases where prospective adoptive parents lack means.

It is the policy of this state to encourage, within the limits of available funds, the adoption of certain hard to place children in order to make it possible for children living in, or likely to be placed in, foster homes or institutions to benefit from the stability and security of permanent homes in which such children can receive continuous parental care, guidance, protection, and love and to reduce the number of such children who must be placed or remain in foster homes or institutions until they become adults.

It is also the policy of this state to try, by means of the program of adoption support authorized in RCW 26.33.320 and 74.13.100 through 74.13.145, to reduce the total cost to the state of foster home and institutional care. [1985 c 7 § 133; 1971 ex.s. c 63 § 1.]

74.13.103 Prospective adoptive parent's fee for cost of adoption services. When a child proposed for adoption is placed with a prospective adoptive parent the department may charge such parent a fee in payment or part payment of such adoptive parent's part of the cost of the adoption services rendered and to be rendered by the department.

In charging such fees the department shall treat a husband and wife as a single prospective adoptive parent.

Each such fee shall be fixed according to a sliding scale based on the ability to pay of the prospective adoptive parent or parents.

Such fee scale shall be annually fixed by the secretary after considering the recommendations of the committee designated by the secretary to advise him on child welfare and pursuant to the regulations to be issued by the secretary in accordance with the provisions of Title 34 RCW.

The secretary may waive, defer, or provide for payment in installments without interest of, any such fee whenever in his judgment payment or immediate payment would cause economic hardship to such adoptive parent or parents.

Nothing in this section shall require the payment of a fee to the state of Washington in a case in which an adoption results from independent placement or placement by a licensed child-placing agency. [1971 ex.s. c 63 § 2.]

74.13.106 Adoption services—Disposition of fees—Use—Federal funds—Gifts and grants. All fees paid for adoption services pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 shall be credited to the general fund.

Expenses incurred in connection with supporting the adoption of hard to place children shall be paid by warrants drawn against such appropriations as may be available. The secretary may for such purposes, contract with any public agency or licensed child placing agency and/or adoptive parent and is authorized to accept funds from other sources including federal, private, and other public funding sources to carry out such purposes.

The secretary shall actively seek, where consistent with the policies and programs of the department, and shall make maximum use of, such federal funds as are or may be made available to the department for the purpose of supporting the adoption of hard to place children. The secretary may, if permitted by federal law, deposit federal funds for adoption support, aid to adoptions, or subsidized adoption in the general fund and may use such funds, subject to such limitations as may be imposed by federal or state law, to carry out the program of adoption support authorized by RCW 26.33.320 and 74.13.100 through 74.13.145. [1985 c 7 § 134; 1979 ex.s. c 67 § 7; 1975 c 53 § 1; 1973 c 61 § 1; 1971 ex.s. c 63 § 3.]

Severability—1979 ex.s. c 67: See note following RCW 19.28.351.

74.13.109 Adoption support program administration—Rules and regulations—Disbursements from general fund, criteria. The secretary shall issue rules and regulations to assist in the administration of the program of adoption support authorized by RCW 26.33.320 and 74.13.100 through 74.13.145.

Disbursements from the appropriations available from the general fund shall be made pursuant to such rules and regulations and pursuant to agreements conforming thereto to be made by the secretary with parents for the purpose of supporting the adoption of children in, or likely to be placed in, foster homes or child caring institutions who are found by the secretary to be difficult to place in adoption because of physical or other reasons; including, but not limited to, physical or mental handicap, emotional disturbance, ethnic background, language, race, color, age, or sibling grouping.

Such agreements shall meet the following criteria:

(1) The child whose adoption is to be supported pursuant to such agreement shall be or have been a child hard to place in adoption.

(2) Such agreement must relate to a child who was or is residing in a foster home or child-caring institution or a child who, in the judgment of the secretary, is both eligible for, and likely to be placed in, either a foster home or a child-caring institution.

(3) Such agreement shall provide that adoption support shall not continue beyond the time that the adopted child reaches eighteen years of age, becomes emancipated, dies, or otherwise ceases to need support, provided that if the secretary shall find that continuing dependency of such child after such child reaches eighteen years of age warrants the continuation of support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 the secretary may do so, subject to all the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, including annual review of the amount of such support.

(4) Any prospective parent who is to be a party to such agreement shall be a person who has the character, judgment,

sense of responsibility, and disposition which make him or her suitable as an adoptive parent of such child. [1990 c 285 § 7; 1985 c 7 § 135; 1982 c 118 § 4; 1979 ex.s. c 67 § 8; 1971 ex.s. c 63 § 4.]

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

Severability—1979 ex.s. c 67: See note following RCW 19.28.351.

74.13.112 Factors determining payments or adjustment in standards. The factors to be considered by the secretary in setting the amount of any payment or payments to be made pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 and in adjusting standards hereunder shall include: The size of the family including the adoptive child, the usual living expenses of the family, the special needs of any family member including education needs, the family income, the family resources and plan for savings, the medical and hospitalization needs of the family, the family's means of purchasing or otherwise receiving such care, and any other expenses likely to be needed by the child to be adopted. In setting the amount of any initial payment made pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary is authorized to establish maximum payment amounts that are reasonable and allow permanency planning goals related to adoption of children under RCW 13.34.145 to be achieved at the earliest possible date.

The amounts paid for the support of a child pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 may vary from family to family and from year to year. Due to changes in economic circumstances or the needs of the child such payments may be discontinued and later resumed.

Payments under RCW 26.33.320 and 74.13.100 through 74.13.145 may be continued by the secretary subject to review as provided for herein, if such parent or parents having such child in their custody establish their residence in another state or a foreign jurisdiction.

In fixing the standards to govern the amount and character of payments to be made for the support of adopted children pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 and before issuing rules and regulations to carry out the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary shall consider the comments and recommendations of the committee designated by the secretary to advise him with respect to child welfare. [1996 c 130 § 1; 1985 c 7 § 136; 1971 ex.s. c 63 § 5.]

74.13.115 Both continuing payments and lump sum payments authorized. To carry out the program authorized by RCW 26.33.320 and 74.13.100 through 74.13.145, the secretary may make continuing payments or lump sum payments of adoption support. In lieu of continuing payments, or in addition to them, the secretary may make one or more specific lump sum payments for or on behalf of a hard to place child either to the adoptive parents or directly to other persons to assist in correcting any condition causing such child to be hard to place for adoption.

Consistent with a particular child's needs, continuing adoption support payments shall include, if necessary to facilitate or support the adoption of a special needs child, an amount sufficient to remove any reasonable financial barrier

to adoption as determined by the secretary under RCW 74.13.112.

After determination by the secretary of the amount of a payment or the initial amount of continuing payments, the prospective parent or parents who desire such support shall sign an agreement with the secretary providing for the payment, in the manner and at the time or times prescribed in regulations to be issued by the secretary subject to the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145, of the amount or amounts of support so determined.

Payments shall be subject to review as provided in RCW 26.33.320 and 74.13.100 through 74.13.145. [1996 c 130 § 2; 1985 c 7 § 137; 1971 ex.s. c 63 § 6.]

74.13.116 Application—1996 c 130. Chapter 130, Laws of 1996 applies to adoption support payments for eligible children whose eligibility is determined on or after July 1, 1996. Chapter 130, Laws of 1996 does not apply retroactively to current recipients of adoption support payments. [1996 c 130 § 3.]

74.13.118 Review of support payments. At least once every five years, the secretary shall review the need of any adoptive parent or parents receiving continuing support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145, or the need of any parent who is to receive more than one lump sum payment where such payments are to be spaced more than one year apart.

At the time of such review and at other times when changed conditions, including variations in medical opinions, prognosis and costs, are deemed by the secretary to warrant such action, appropriate adjustments in payments shall be made based upon changes in the needs of the child, in the adoptive parents' income, resources, and expenses for the care of such child or other members of the family, including medical and/or hospitalization expense not otherwise covered by or subject to reimbursement from insurance or other sources of financial assistance.

Any parent who is a party to such an agreement may at any time in writing request, for reasons set forth in such request, a review of the amount of any payment or the level of continuing payments. Such review shall be begun not later than thirty days from the receipt of such request. Any adjustment may be made retroactive to the date such request was received by the secretary. If such request is not acted on within thirty days after it has been received by the secretary, such parent may invoke his rights under the hearing provisions set forth in RCW 74.13.127. [1995 c 270 § 2; 1985 c 7 § 138; 1971 ex.s. c 63 § 7.]

Finding—1995 c 270: "The legislature finds that it is in the best interest of the people of the state of Washington to support the adoption process in a variety of ways, including easing administrative burdens on adoptive parents receiving financial support, providing finality for adoptive placements and stable homes for children, and not delaying adoptions." [1995 c 270 § 1.]

74.13.121 Adoptive parent's financial information. So long as any adoptive parent is receiving support pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 he or she shall, upon request, file with the secretary a copy of his or her federal income tax return. Such return and any information thereon shall be marked by the secretary "confidential",

shall be used by the secretary solely for the purposes of RCW 26.33.320 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution or agency, public or private, including agencies of the United States government, other than a superior court, judge or commissioner before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 is then pending.

In carrying on the review process authorized by RCW 26.33.320 and 74.13.100 through 74.13.145 the secretary may require the adoptive parent or parents to disclose such additional financial information, not privileged, as may enable him or her to make determinations and adjustments in support to the end that the purposes and policies of this state expressed in RCW 74.13.100 may be carried out, provided that no adoptive parent or parents shall be obliged, by virtue of this section, to sign any agreement or other writing waiving any constitutional right or privilege nor to admit to his or her home any agent, employee, or official of any department of this state, or of the United States government.

Such information shall be marked "confidential" by the secretary, shall be used by him or her solely for the purposes of RCW 26.33.320 and 74.13.100 through 74.13.145, and shall not be revealed to any other person, institution, or agency, public or private, including agencies of the United States government other than a superior court judge or commissioner before whom a petition for adoption of a child being supported or to be supported pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 is then pending. [1995 c 270 § 3; 1985 c 7 § 139; 1971 ex.s. c 63 § 8.]

Finding—1995 c 270: See note following RCW 74.13.118.

74.13.124 Agreements as contracts within state and federal Constitutions—State's continuing obligation. An agreement for adoption support made pursuant to *RCW 26.32.115 before January 1, 1985, or RCW 26.33.320 and 74.13.100 through 74.13.145, although subject to review and adjustment as provided for herein, shall, as to the standard used by the secretary in making such review or reviews and any such adjustment, constitutes a contract within the meaning of section 10, Article I of the United States Constitution and section 23, Article I of the state Constitution. For that reason once such an agreement has been made any review of and adjustment under such agreement shall as to the standards used by the secretary, be made only subject to the provisions of RCW 26.33.320 and 74.13.100 through 74.13.145 and such rules and regulations relating thereto as they exist on the date of the initial determination in connection with such agreement or such more generous standard or parts of such standard as may hereafter be provided for by law or regulation. Once made such an agreement shall constitute a solemn undertaking by the state of Washington with such adoptive parent or parents. The termination of the effective period of RCW 26.33.320 and 74.13.100 through 74.13.145 or a decision by the state or federal government to discontinue or reduce general appropriations made available for the purposes to be served by RCW 26.33.320 and 74.13.100 through 74.13.145, shall not affect the state's specific continuing obligations to support such adoptions, subject to such annual

review and adjustment for all such agreements as have theretofore been entered into by the state.

The purpose of this section is to assure any such parent that, upon his consenting to assume the burdens of adopting a hard to place child, the state will not in future so act by way of general reduction of appropriations for the program authorized by RCW 26.33.320 and 74.13.100 through 74.13.145 or ratable reductions, to impair the trust and confidence necessarily reposed by such parent in the state as a condition of such parent taking upon himself the obligations of parenthood of a difficult to place child.

Should the secretary and any such adoptive parent differ as to whether any standard or part of a standard adopted by the secretary after the date of an initial agreement, which standard or part is used by the secretary in making any review and adjustment, is more generous than the standard in effect as of the date of the initial determination with respect to such agreement such adoptive parent may invoke his rights, including all rights of appeal under the fair hearing provisions, available to him under RCW 74.13.127. [1985 c 7 § 140; 1971 ex.s. c 63 § 9.]

***Reviser's note:** RCW 26.32.115 was repealed by 1984 c 155 § 38, effective January 1, 1985.

74.13.127 Voluntary amendments to agreements—Procedure when adoptive parties disagree. Voluntary amendments of any support agreement entered into pursuant to RCW 26.33.320 and 74.13.100 through 74.13.145 may be made at any time. In proposing any such amending action which relates to the amount or level of a payment or payments, the secretary shall, as provided in RCW 74.13.124, use either the standard which existed as of the date of the initial determination with respect to such agreement or any subsequent standard or parts of such standard which both parties to such agreement agree is more generous than those in effect as of the date of such initial agreement. If the parties do not agree to the level of support, the secretary shall set the level. The secretary shall give the adoptive parent or parents written notice of the determination. The adoptive parent or parents aggrieved by the secretary's determination have the right to an adjudicative proceeding. The proceeding is governed by RCW 74.08.080 and chapter 34.05 RCW, the Administrative Procedure Act. [1989 c 175 § 148; 1985 c 7 § 141; 1971 ex.s. c 63 § 10.]

Effective date—1989 c 175: See note following RCW 34.05.010.

74.13.130 Nonrecurring adoption expenses. The secretary may authorize the payment, from the appropriations available from the general fund, of all or part of the nonrecurring adoption expenses incurred by a prospective parent. "Nonrecurring adoption expenses" means those expenses incurred by a prospective parent in connection with the adoption of a difficult to place child including, but not limited to, attorneys' fees, court costs, and agency fees. Payment shall be made in accordance with rules adopted by the department.

This section shall have retroactive application to January 1, 1987. For purposes of retroactive application, the secretary may provide reimbursement to any parent who adopted a difficult to place child between January 1, 1987, and one year following June 7, 1990, regardless of whether the parent had previously entered into an adoption support agreement with

the department. [1990 c 285 § 8; 1985 c 7 § 142; 1979 ex.s. c 67 § 9; 1971 ex.s. c 63 § 11.]

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

Severability—1979 ex.s. c 67: See note following RCW 19.28.351.

74.13.133 Records—Confidentiality. The secretary shall keep such general records as are needed to evaluate the effectiveness of the program of adoption support authorized by RCW 26.33.320 and 74.13.100 through 74.13.145 in encouraging and effectuating the adoption of hard to place children. In so doing the secretary shall, however, maintain the confidentiality required by law with respect to particular adoptions. [1985 c 7 § 143; 1971 ex.s. c 63 § 13.]

74.13.136 Recommendations for support of the adoption of certain children. Any child-caring agency or person having a child in foster care or institutional care and wishing to recommend to the secretary support of the adoption of such child as provided for in RCW 26.33.320 and 74.13.100 through 74.13.145 may do so, and may include in its or his recommendation advice as to the appropriate level of support and any other information likely to assist the secretary in carrying out the functions vested in the secretary by RCW 26.33.320 and 74.13.100 through 74.13.145. Such agency may, but is not required to, be retained by the secretary to make the required preplacement study of the prospective adoptive parent or parents. [1985 c 7 § 144; 1971 ex.s. c 63 § 14.]

74.13.139 "Secretary" and "department" defined. As used in RCW 26.33.320 and 74.13.100 through 74.13.145 the following definitions shall apply:

- (1) "Secretary" means the secretary of the department of social and health services or his designee.
- (2) "Department" means the department of social and health services. [1985 c 7 § 145; 1971 ex.s. c 63 § 15.]

74.13.145 Short title—1971 act. RCW 26.33.320 and 74.13.100 through 74.13.145 may be known and cited as the "Adoption Support Demonstration Act of 1971". [1985 c 7 § 146; 1971 ex.s. c 63 § 17.]

74.13.150 Adoption support reconsideration program. (1) The department of social and health services shall establish, within funds appropriated for the purpose, a reconsideration program to provide medical and counseling services through the adoption support program for children of families who apply for services after the adoption is final. Families requesting services through the program shall provide any information requested by the department for the purpose of processing the family's application for services.

(2) A child meeting the eligibility criteria for registration with the program is one who:

- (a) Was residing in a preadoptive placement funded by the department or in foster care funded by the department immediately prior to the adoptive placement;
- (b) Had a physical or mental handicap or emotional disturbance that existed and was documented prior to the adoption or was at high risk of future physical or mental handicap

or emotional disturbance as a result of conditions exposed to prior to the adoption; and

(c) Resides in the state of Washington with an adoptive parent who lacks the necessary financial means to care for the child's special need.

(3) If a family is accepted for registration and meets the criteria in subsection (2) of this section, the department may enter into an agreement for services. Prior to entering into an agreement for services through the program, the medical needs of the child must be reviewed and approved by the department.

(4) Any services provided pursuant to an agreement between a family and the department shall be met from the department's medical program. Such services shall be limited to:

(a) Services provided after finalization of an agreement between a family and the department pursuant to this section;

(b) Services not covered by the family's insurance or other available assistance; and

(c) Services related to the eligible child's identified physical or mental handicap or emotional disturbance that existed prior to the adoption.

(5) Any payment by the department for services provided pursuant to an agreement shall be made directly to the physician or provider of services according to the department's established procedures.

(6) The total costs payable by the department for services provided pursuant to an agreement shall not exceed twenty thousand dollars per child. [1997 c 131 § 1; 1990 c 285 § 5.]

Findings—Purpose—Severability—1990 c 285: See notes following RCW 74.04.005.

74.13.152 Interstate agreements for adoption of children with special needs—Findings. The legislature finds that:

(1) Finding adoptive families for children for whom state assistance under RCW 74.13.100 through 74.13.145 is desirable and assuring the protection of the interest of the children affected during the entire assistance period require special measures when the adoptive parents move to other states or are residents of another state.

(2) Provision of medical and other necessary services for children, with state assistance, encounters special difficulties when the provision of services takes place in other states. [1997 c 31 § 1.]

74.13.153 Interstate agreements for adoption of children with special needs—Purpose. The purposes of RCW 74.13.152 through 74.13.159 are to:

(1) Authorize the department to enter into interstate agreements with agencies of other states for the protection of children on behalf of whom adoption assistance is being provided by the department; and

(2) Provide procedures for interstate children's adoption assistance payments, including medical payments. [1997 c 31 § 2.]

74.13.154 Interstate agreements for adoption of children with special needs—Definitions. The definitions in

this section apply throughout RCW 74.13.152 through 74.13.159 unless the context clearly indicates otherwise.

(1) "Adoption assistance state" means the state that is signatory to an adoption assistance agreement in a particular case.

(2) "Residence state" means the state where the child is living.

(3) "State" means a state of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, or a territory or possession of or administered by the United States. [1997 c 31 § 3.]

74.13.155 Interstate agreements for adoption of children with special needs—Authorization. The department is authorized to develop, participate in the development of, negotiate, and enter into one or more interstate compacts on behalf of this state with other states to implement one or more of the purposes set forth in RCW 74.13.152 through 74.13.159. When entered into, and for so long as it remains in force, such a compact has the force and effect of law. [1997 c 31 § 4.]

74.13.156 Interstate agreements for adoption of children with special needs—Required provisions. A compact entered into pursuant to the authority conferred by RCW 74.13.152 through 74.13.159 must have the following content:

(1) A provision making it available for joinder by all states;

(2) A provision for withdrawal from the compact upon written notice to the parties, but with a period of one year between the date of the notice and the effective date of the withdrawal;

(3) A requirement that the protections afforded by or pursuant to the compact continue in force for the duration of the adoption assistance and be applicable to all children and their adoptive parents who, on the effective date of the withdrawal, are receiving adoption assistance from a party state other than the one in which they are resident and have their principal place of abode;

(4) A requirement that each instance of adoption assistance to which the compact applies be covered by an adoption assistance agreement that is (a) in writing between the adoptive parents and the state child welfare agency of the state that undertakes to provide the adoption assistance, and (b) expressly for the benefit of the adopted child and enforceable by the adoptive parents and the state agency providing the adoption assistance; and

(5) Such other provisions as are appropriate to implement the proper administration of the compact. [1997 c 31 § 5.]

74.13.157 Interstate agreements for adoption of children with special needs—Additional provisions. A compact entered into pursuant to the authority conferred by RCW 74.13.152 through 74.13.159 may contain provisions in addition to those required under RCW 74.13.156, as follows:

(1) Provisions establishing procedures and entitlement to medical and other necessary social services for the child in

accordance with applicable laws, even though the child and the adoptive parents are in a state other than the one responsible for or providing the services or the funds to defray part or all of the costs of the services; and

(2) Such other provisions as are appropriate or incidental to the proper administration of the compact. [1997 c 31 § 6.]

74.13.158 Interstate agreements for adoption of children with special needs—Medical assistance for children residing in this state—Penalty for fraudulent claims. (1) A child with special needs who resides in this state and is the subject of an adoption assistance agreement with another state is entitled to receive a medical assistance identification card from this state upon the filing with the department of a certified copy of the adoption assistance agreement obtained from the adoption assistance state. In accordance with regulations of the medical assistance administration, the adoptive parents are required at least annually to show that the agreement is still in force or has been renewed.

(2) The medical assistance administration shall consider the holder of a medical assistance identification under this section as any other holder of a medical assistance identification under the laws of this state and shall process and make payment on claims in the same manner and under the same conditions and procedures as for other recipients of medical assistance.

(3) The medical assistance administration shall provide coverage and benefits for a child who is in another state and is covered by an adoption assistance agreement made by the department for the coverage or benefits, if any, not provided by the residence state. Adoptive parents acting for the child may submit evidence of payment for services or benefit amounts not payable in the residence state for reimbursement. No reimbursement may be made for services or benefit amounts covered under any insurance or other third party medical contract or arrangement held by the child or the adoptive parents. The department shall adopt rules implementing this subsection. The additional coverage and benefit amounts provided under this subsection must be for services to the cost of which there is no federal contribution, or which, if federally aided, are not provided by the residence state. The rules must include procedures to be followed in obtaining prior approval for services if required for the assistance.

(4) The submission of any claim for payment or reimbursement for services or benefits under this section or the making of any statement that the person knows or should know to be false, misleading, or fraudulent is punishable as perjury under chapter 9A.72 RCW.

(5) This section applies only to medical assistance for children under adoption assistance agreements from states that have entered into a compact with this state under which the other state provided medical assistance to children with special needs under adoption assistance agreements made by this state. All other children entitled to medical assistance under an adoption assistance agreement entered into by this state are eligible to receive assistance in accordance with the applicable laws and procedures. [1997 c 31 § 7.]

74.13.159 Interstate agreements for adoption of children with special needs—Adoption assistance and medi-

(2004 Ed.)

cal assistance in state plan. Consistent with federal law, the department, in connection with the administration of RCW 74.13.152 through 74.13.158 and any pursuant compact shall include in any state plan made pursuant to the adoption assistance and child welfare act of 1980 (P.L. 96-272), Titles IV(e) and XIX of the social security act, and any other applicable federal laws, the provision of adoption assistance and medical assistance for which the federal government pays some or all of the cost. The department shall apply for and administer all relevant federal aid in accordance with law. [1997 c 31 § 8.]

74.13.165 Home studies for adoption—Purchase of services from nonprofit agencies. The secretary or the secretary's designee may purchase services from nonprofit agencies for the purpose of conducting home studies for legally free children who have been awaiting adoption finalization for more than ninety days. The home studies selected to be done under this section shall be for the children who have been legally free and awaiting adoption finalization the longest period of time. [1997 c 272 § 4.]

Reviser's note: 1997 c 272 directed that this section be added to chapter 43.20A RCW. Since this placement appears inappropriate, this section has been codified as part of chapter 74.13 RCW.

Effective date—1997 c 272: See note following RCW 74.13.031.

74.13.170 Therapeutic family home program for youth in custody under chapter 13.34 RCW. The department of social and health services may implement a therapeutic family home program for up to fifteen youth in the custody of the department under chapter 13.34 RCW. The program shall strive to develop and maintain a mutually reinforcing relationship between the youth and the therapeutic staff associated with the program. [1991 c 326 § 2.]

Part headings not law—Severability—1991 c 326: See RCW 71.36.900 and 71.36.901.

74.13.200 Demonstration project for protection, care, and treatment of children at-risk of abuse or neglect. The department of social and health services shall conduct a two-year demonstration project for the purpose of contracting with an existing day care center to provide for the protection, care, and treatment of children who are at risk of being abused or neglected. The children who shall be served by this project shall range in age from birth to twenty-four months. The client population served shall not exceed thirty children at any one time. [1979 ex.s. c 248 § 1.]

74.13.210 Project day care center—Definition. For the purposes of RCW 74.13.200 through 74.13.230 "day care center" means an agency, other than a residence, which regularly provides care for children for any part of the twenty-four hour day. No day care center shall be located in a private family residence unless that portion of the residence to which the children have access is used exclusively for the children during the hours the center is in operation or is separate from the usual living quarters of the family. [1979 ex.s. c 248 § 2.]

74.13.220 Project services. The services provided through this project shall include:

(1) Transportation to and from the child's home;

[Title 74 RCW—page 65]

- (2) Daily monitoring of the child's physical and emotional condition;
- (3) Developmentally oriented programs designed to meet the unique needs of each child in order to overcome the effects of parental abuse or neglect;
- (4) Family counseling and treatment; and
- (5) Evaluation by the department of social and health services assessing the efficiency and effectiveness of day care centers operated under the project. [1979 ex.s. c 248 § 3.]

74.13.230 Project shall utilize community services.

The department of social and health services shall utilize existing community services and promote cooperation between the services in implementing the intent of RCW 74.13.200 through 74.13.230. [1979 ex.s. c 248 § 4.]

FOSTER CARE

74.13.250 Preservice training. (1) Preservice training is recognized as a valuable tool to reduce placement disruptions, the length of time children are in care, and foster parent turnover rates. Preservice training also assists potential foster parents in making their final decisions about foster parenting and assists social service agencies in obtaining information about whether to approve potential foster parents.

(2) Foster parent preservice training shall include information about the potential impact of placement on foster children; social service agency administrative processes; the requirements, responsibilities, expectations, and skills needed to be a foster parent; attachment, separation, and loss issues faced by birth parents, foster children, and foster parents; child management and discipline; birth family relationships; and helping children leave foster care. Preservice training shall assist applicants in making informed decisions about whether they want to be foster parents. Preservice training shall be designed to enable the agency to assess the ability, readiness, and appropriateness of families to be foster parents. As a decision tool, effective preservice training provides potential foster parents with enough information to make an appropriate decision, affords potential foster parents an opportunity to discuss their decision with others and consider its implications for their family, clarifies foster family expectations, presents a realistic picture of what foster parenting involves, and allows potential foster parents to consider and explore the different types of children they might serve.

(3) Preservice training shall be completed prior to the issuance of a foster care license, except that the department may, on a case by case basis, issue a written waiver that allows the foster parent to complete the training after licensure, so long as the training is completed within ninety days following licensure. [1990 c 284 § 2.]

Finding—1990 c 284: "The legislature finds that the foster care system plays an important role in preserving families and giving consistent and nurturing care to children placed in its care. The legislature further finds that foster parents play an integral and important role in the system and particularly in the child's chances for the earliest possible reunification with his or her family." [1990 c 284 § 1.]

Effective date—1990 c 284: "This act shall take effect July 1, 1990, however the secretary may immediately take any steps necessary to ensure implementation of section 17 of this act on July 1, 1990." [1990 c 284 § 27.]

74.13.260 On-site monitoring program. Regular on-site monitoring of foster homes to assure quality care improves care provided to children in family foster care. An on-site monitoring program shall be established by the department to assure quality care and regularly identify problem areas. Monitoring shall be done by the department on a random sample basis of no less than ten percent of the total licensed family foster homes licensed by the department on July 1 of each year. [1998 c 245 § 148; 1990 c 284 § 4.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.270 Respite care. The legislature recognizes the need for temporary short-term relief for foster parents who care for children with emotional, mental, or physical handicaps. For purposes of this section, respite care means appropriate, temporary, short-term care for these foster children placed with licensed foster parents. The purpose of this care is to give the foster parents temporary relief from the stresses associated with the care of these foster children. The department shall design a program of respite care that will minimize disruptions to the child and will serve foster parents within these priorities, based on input from foster parents, foster parent associations, and reliable research if available. [1990 c 284 § 8.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.280 Client information. (1) Except as provided in RCW 70.24.105, whenever a child is placed in out-of-home care by the department or a child-placing agency, the department or agency shall share information about the child and the child's family with the care provider and shall consult with the care provider regarding the child's case plan. If the child is dependent pursuant to a proceeding under chapter 13.34 RCW, the department or agency shall keep the care provider informed regarding the dates and location of dependency review and permanency planning hearings pertaining to the child.

(2) Any person who receives information about a child or a child's family pursuant to this section shall keep the information confidential and shall not further disclose or disseminate the information except as authorized by law.

(3) Nothing in this section shall be construed to limit the authority of the department or child-placing agencies to disclose client information or to maintain client confidentiality as provided by law. [2001 c 318 § 3; 1997 c 272 § 7; 1995 c 311 § 21; 1991 c 340 § 4; 1990 c 284 § 10.]

Effective date—1997 c 272: See note following RCW 74.13.031.

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.285 Passports—Information to be provided to foster parents. (1) Within available resources, the department shall prepare a passport containing all known and available information concerning the mental, physical, health, and educational status of the child for any child who has been in a foster home for ninety consecutive days or more. The passport shall contain education records obtained pursuant to RCW 28A.150.510. The passport shall be provided to a foster parent at any placement of a child covered by this section.

The department shall update the passport during the regularly scheduled court reviews required under chapter 13.34 RCW.

New placements after July 1, 1997, shall have first priority in the preparation of passports. Within available resources, the department may prepare passports for any child in a foster home on July 1, 1997, provided that no time spent in a foster home before July 1, 1997, shall be included in the computation of the ninety days.

(2) In addition to the requirements of subsection (1) of this section, the department shall, within available resources, notify a foster parent before placement of a child of any known health conditions that pose a serious threat to the child and any known behavioral history that presents a serious risk of harm to the child or others.

(3) The department shall hold harmless the provider for any unauthorized disclosures caused by the department. [2000 c 88 § 2; 1997 c 272 § 5.]

Effective date—1997 c 272: See note following RCW 74.13.031.

74.13.287 Intent—Infant, foster family health. The legislature intends to establish a policy with the goal of ensuring that the health and well-being of both infants in foster care and the families providing for their care are protected. [2004 c 40 § 1.]

74.13.288 Blood-borne pathogens—Testing—Report. (1) The department of health shall develop recommendations concerning evidence-based practices for testing for blood-borne pathogens of children under one year of age who have been placed in out-of-home care and shall identify the specific pathogens for which testing is recommended.

(2) The department shall report to the appropriate committees of the legislature on the recommendations developed in accordance with subsection (1) of this section by January 1, 2005. [2004 c 40 § 2.]

74.13.289 Blood-borne pathogens—Client information—Training. (1) Upon any placement, the department of social and health services shall inform each out-of-home care provider if the child to be placed in that provider's care is infected with a blood-borne pathogen, and shall identify the specific blood-borne pathogen for which the child was tested if known by the department.

(2) All out-of-home care providers licensed by the department shall receive training related to blood-borne pathogens, including prevention, transmission, infection control, treatment, testing, and confidentiality.

(3) Any disclosure of information related to HIV must be in accordance with RCW 70.24.105.

(4) The department of health shall identify by rule the term "blood-borne pathogen" as used in this section. [2004 c 40 § 3.]

74.13.290 Fewest possible placements for children. To provide stability to children in out-of-home care, placement selection shall be made with a view toward the fewest possible placements for each child. If possible, the initial placement shall be viewed as the only placement for the child. The use of short-term interim placements of thirty days or less to protect the child's health or safety while the place-

ment of choice is being arranged is not a violation of this principle. [1990 c 284 § 11.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.300 Notification of proposed placement changes. (1) Whenever a child has been placed in a foster family home by the department or a child-placing agency and the child has thereafter resided in the home for at least ninety consecutive days, the department or child-placing agency shall notify the foster family at least five days prior to moving the child to another placement, unless:

(a) A court order has been entered requiring an immediate change in placement;

(b) The child is being returned home;

(c) The child's safety is in jeopardy; or

(d) The child is residing in a receiving home or a group home.

(2) If the child has resided in a foster family home for less than ninety days or if, due to one or more of the circumstances in subsection (1) of this section, it is not possible to give five days' notification, the department or child-placing agency shall notify the foster family of proposed placement changes as soon as reasonably possible.

(3) This section is intended solely to assist in minimizing disruption to the child in changing foster care placements. Nothing in this section shall be construed to require that a court hearing be held prior to changing a child's foster care placement nor to create any substantive custody rights in the foster parents. [1990 c 284 § 12.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.310 Foster parent training. Adequate foster parent training has been identified as directly associated with increasing the length of time foster parents are willing to provide foster care and reducing the number of placement disruptions for children. Placement disruptions can be harmful to children by denying them consistent and nurturing support. Foster parents have expressed the desire to receive training in addition to the foster parent SCOPE training currently offered. Foster parents who care for more demanding children, such as children with severe emotional, mental, or physical handicaps, would especially benefit from additional training. The department shall develop additional training for foster parents that focuses on skills to assist foster parents in caring for emotionally, mentally, or physically handicapped children. [1990 c 284 § 13.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.315 Child care for foster parents attending meetings or training. The department may provide child care for all foster parents who are required to attend department-sponsored meetings or training sessions. If the department does not provide such child care, the department, where feasible, shall conduct the activities covered by this section in the foster parent's home or other location acceptable to the foster parent. [1997 c 272 § 6.]

Effective date—1997 c 272: See note following RCW 74.13.031.

74.13.320 Recruitment of foster homes and adoptive homes for special needs children. The legislature finds that during the fiscal years 1987 to 1989 the number of children in foster care has risen by 14.3 percent. At the same time there has been a 31 percent turnover rate in foster homes because many foster parents have declined to continue to care for foster children. This situation has caused a dangerously critical shortage of foster homes.

The department of social and health services shall develop and implement a project to recruit more foster homes and adoptive homes for special needs children by developing a request for proposal to licensed private foster care, licensed adoption agencies, and other organizations qualified to provide this service.

The project shall consist of one statewide administrator of recruitment programs, and one or more licensed foster care or adoption agency contracts in each of the six departmental regions. These contracts shall enhance currently provided services and may not replace services currently funded by the agencies. No more than sixty thousand dollars may be spent annually to fund the administrator position.

The agencies shall recruit foster care homes and adoptive homes for children classified as special needs children under chapter 74.08 RCW. The agencies shall utilize their own network of contacts and shall also develop programs similar to those used effectively in other states. The department shall expand the foster-adopt program statewide to encourage stable placements for foster children for whom permanent out-of-home placement is a likelihood. The department shall carefully consider existing programs to eliminate duplication of services.

The department shall assist the private contractors by providing printing services for informational brochures and other necessary recruitment materials. No more than fifty thousand dollars of the funds provided for this section may be expended annually for recruitment materials. [1990 c 284 § 15.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

74.13.325 Foster care and adoptive home recruitment program. Within available resources, the department shall increase the number of adoptive and foster families available to accept children through an intensive recruitment and retention program. The department shall contract with a private agency to coordinate foster care and adoptive home recruitment activities for the department and private agencies. [1997 c 272 § 3.]

Effective date—1997 c 272: See note following RCW 74.13.031.

74.13.330 Responsibilities of foster parents. Foster parents are responsible for the protection, care, supervision, and nurturing of the child in placement. As an integral part of the foster care team, foster parents shall, if appropriate and they desire to: Participate in the development of the service plan for the child and the child's family; assist in family visitation, including monitoring; and model effective parenting behavior for the natural family. [1990 c 284 § 23.]

Finding—Effective date—1990 c 284: See notes following RCW 74.13.250.

[Title 74 RCW—page 68]

74.13.332 Rights of foster parents. Foster parents have the right to be free of coercion, discrimination, and reprisal in serving foster children, including the right to voice grievances about treatment furnished or not furnished to the foster child. [2001 c 318 § 1.]

74.13.333 Rights of foster parents—Complaints—Report. A foster parent who believes that a department employee has retaliated against the foster parent or in any other manner discriminated against the foster parent because:

(1) The foster parent made a complaint with the office of the family and children's ombudsman, the attorney general, law enforcement agencies, or the department, provided information, or otherwise cooperated with the investigation of such a complaint;

(2) The foster parent has caused to be instituted any proceedings under or related to Title 13 RCW;

(3) The foster parent has testified or is about to testify in any proceedings under or related to Title 13 RCW;

(4) The foster parent has advocated for services on behalf of the foster child;

(5) The foster parent has sought to adopt a foster child in the foster parent's care; or

(6) The foster parent has discussed or consulted with anyone concerning the foster parent's rights under this chapter or chapter 74.15 or 13.34 RCW,

may file a complaint with the office of the family and children's ombudsman. The office of the family and children's ombudsman shall include its recommendations regarding complaints filed under this section in its annual report pursuant to RCW 43.06A.030. The office of the family and children's ombudsman shall identify trends which may indicate a need to improve relations between the department and foster parents. [2004 c 181 § 1.]

74.13.334 Department to respond to foster parents' complaints. The department shall develop procedures for responding to recommendations of the office of the family and children's ombudsman as a result of any and all complaints filed by foster parents under RCW 74.13.333. [2004 c 181 § 2.]

74.13.335 Foster care—Reimbursement—Property damage. Within available funds and subject to such conditions and limitations as may be established by the department or by the legislature in the omnibus appropriations act, the department of social and health services shall reimburse foster parents for property damaged or destroyed by foster children placed in their care. The department shall establish by rule a maximum amount that may be reimbursed for each occurrence. The department shall reimburse the foster parent for the replacement value of any property covered by this section. If the damaged or destroyed property is covered and reimbursed under an insurance policy, the department shall reimburse foster parents for the amount of the deductible associated with the insurance claim, up to the limit per occurrence as established by the department. [1999 c 338 § 2.]

Intent—1999 c 338: "The legislature recognizes that Washington state is experiencing a significant shortage of quality foster homes and that the majority of children entering the system are difficult to place due to their

(2004 Ed.)

complex needs. The legislature intends to provide additional assistance to those families willing to serve as foster parents." [1999 c 338 § 1.]

74.13.340 Foster parent liaison. Within available resources, the department shall provide a foster parent liaison position in each department region. The department shall contract with a private nonprofit organization to provide the foster parent liaison function. The foster parent liaison shall enhance the working relationship between department case workers and foster parents. The foster parent liaison shall provide expedited assistance for the unique needs and requirements posed by special needs foster children in out-of-home care. Any contract entered into under this section for a foster parent liaison shall include a requirement that the contractor substantially reduce the turnover rate of foster parents in the region by an agreed upon percentage. The department shall evaluate whether an organization that has a contract under this section has reduced the turnover rate by the agreed upon amount or more when determining whether to extend or renew a contract under this section. [1997 c 272 § 2.]

Effective date—1997 c 272: See note following RCW 74.13.031.

74.13.350 Developmentally disabled children—Out-of-home placement—Voluntary placement agreement. It is the intent of the legislature that parents are responsible for the care and support of children with developmental disabilities. The legislature recognizes that, because of the intense support required to care for a child with developmental disabilities, the help of an out-of-home placement may be needed. It is the intent of the legislature that, when the sole reason for the out-of-home placement is the child's developmental disability, such services be offered by the department to these children and their families through a voluntary placement agreement. In these cases, the parents shall retain legal custody of the child.

As used in this section, "voluntary placement agreement" means a written agreement between the department and a child's parent or legal guardian authorizing the department to place the child in a licensed facility. Under the terms of this agreement, the parent or legal guardian shall retain legal custody and the department shall be responsible for the child's placement and care. The agreement shall at a minimum specify the legal status of the child and the rights and obligations of the parent or legal guardian, the child, and the department while the child is in placement. The agreement must be signed by the child's parent or legal guardian and the department to be in effect, except that an agreement regarding an Indian child shall not be valid unless executed in writing before the court and filed with the court as provided in RCW 13.34.245. Any party to a voluntary placement agreement may terminate the agreement at any time. Upon termination of the agreement, the child shall be returned to the care of the child's parent or legal guardian unless the child has been taken into custody pursuant to RCW 13.34.050 or 26.44.050, placed in shelter care pursuant to RCW 13.34.060, or placed in foster care pursuant to RCW 13.34.130.

As used in this section, "out-of-home placement" and "out-of-home care" mean the placement of a child in a foster family home or group care facility licensed under chapter 74.15 RCW.

(2004 Ed.)

Whenever the department places a child in out-of-home care under a voluntary placement pursuant to this section, the department shall have the responsibility for the child's placement and care. The department shall develop a permanency plan of care for the child no later than sixty days from the date that the department assumes responsibility for the child's placement and care. Within the first one hundred eighty days of the placement, the department shall obtain a judicial determination pursuant to RCW 13.04.030(1)(j) and 13.34.270 that the placement is in the best interests of the child. If the child's out-of-home placement ends before one hundred eighty days have elapsed, no judicial determination under RCW 13.04.030(1)(b) is required. The permanency planning hearings shall review whether the child's best interests are served by continued out-of-home placement and determine the future legal status of the child.

The department shall provide for periodic administrative reviews as required by federal law. A review may be called at any time by either the department, the parent, or the legal guardian.

Nothing in this section shall prevent the department from filing a dependency petition if there is reason to believe that the child is a dependent child as defined in RCW 13.34.030.

The department shall adopt rules providing for the implementation of chapter 386, Laws of 1997 and the transfer of responsibility for out-of-home placements from the dependency process under chapter 13.34 RCW to the process under this chapter.

It is the intent of the legislature that the department undertake voluntary out-of-home placement in cases where the child's developmental disability is such that the parent, guardian, or legal custodian is unable to provide the necessary care for the child, and the parent, guardian, or legal custodian has determined that the child would benefit from placement outside of the home. If the department does not accept a voluntary placement agreement signed by the parent, a petition may be filed and an action pursued under chapter 13.34 RCW. The department shall inform the parent, guardian, or legal custodian in writing of their right to civil action under chapter 13.34 RCW.

Nothing in this section prohibits the department from seeking support from parents of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, when state or federal funds are expended for the care and maintenance of that child or when the department receives an application for services from the physical custodian of the child, unless the department finds that there is good cause not to pursue collection of child support against the parent or parents. [2004 c 183 § 4; 1998 c 229 § 1; 1997 c 386 § 16.]

Effective date—2004 c 183: See note following RCW 13.34.160.

74.13.500 Disclosure of child welfare records—Factors—Exception. (1) Consistent with the provisions of chapter 42.17 RCW and applicable federal law, the secretary, or the secretary's designee, shall disclose information regarding the abuse or neglect of a child, the investigation of the abuse, neglect, or near fatality of a child, and any services related to the abuse or neglect of a child if any one of the following factors is present:

(a) The subject of the report has been charged in an accusatory instrument with committing a crime related to a report maintained by the department in its case and management information system;

(b) The investigation of the abuse or neglect of the child by the department or the provision of services by the department has been publicly disclosed in a report required to be disclosed in the course of their official duties, by a law enforcement agency or official, a prosecuting attorney, any other state or local investigative agency or official, or by a judge of the superior court;

(c) There has been a prior knowing, voluntary public disclosure by an individual concerning a report of child abuse or neglect in which such individual is named as the subject of the report; or

(d) The child named in the report has died and the child's death resulted from abuse or neglect or the child was in the care of, or receiving services from the department at the time of death or within twelve months before death.

(2) The secretary is not required to disclose information if the factors in subsection (1) of this section are present if he or she specifically determines the disclosure is contrary to the best interests of the child, the child's siblings, or other children in the household.

(3) Except for cases in subsection (1)(d) of this section, requests for information under this section shall specifically identify the case about which information is sought and the facts that support a determination that one of the factors specified in subsection (1) of this section is present.

(4) For the purposes of this section, "near fatality" means an act that, as certified by a physician, places the child in serious or critical condition. The secretary is under no obligation to have an act certified by a physician in order to comply with this section. [1999 c 339 § 1; 1997 c 305 § 2.]

Effective date—1999 c 339: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 1999]." [1999 c 339 § 2.]

Conflict with federal requirements—1997 c 305: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1997 c 305 § 8.]

74.13.505 Disclosure of child welfare records—Information to be disclosed. For purposes of RCW 74.13.500, the following information shall be disclosable:

(1) The name of the abused or neglected child;

(2) The determination made by the department of the referrals, if any, for abuse or neglect;

(3) Identification of child protective or other services provided or actions, if any, taken regarding the child named in the report and his or her family as a result of any such report or reports. These records include but are not limited to administrative reports of fatality, fatality review reports, case files, inspection reports, and reports relating to social work practice issues; and

(4) Any actions taken by the department in response to reports of abuse or neglect of the child. [1997 c 305 § 3.]

Conflict with federal requirements—1997 c 305: See note following RCW 74.13.500.

74.13.510 Disclosure of child welfare records—Consideration of effects. In determining under RCW 74.13.500 whether disclosure will be contrary to the best interests of the child, the secretary, or the secretary's designee, must consider the effects which disclosure may have on efforts to reunite and provide services to the family. [1997 c 305 § 4.]

Conflict with federal requirements—1997 c 305: See note following RCW 74.13.500.

74.13.515 Disclosure of child welfare records—Fatalities. For purposes of RCW 74.13.500(1)(d), the secretary must make the fullest possible disclosure consistent with chapter 42.17 RCW and applicable federal law in cases of all fatalities of children who were in the care of, or receiving services from, the department at the time of their death or within the twelve months previous to their death.

If the secretary specifically determines that disclosure of the name of the deceased child is contrary to the best interests of the child's siblings or other children in the household, the secretary may remove personally identifying information.

For the purposes of this section, "personally identifying information" means the name, street address, social security number, and day of birth of the child who died and of private persons who are relatives of the child named in child welfare records. "Personally identifying information" shall not include the month or year of birth of the child who has died. Once this personally identifying information is removed, the remainder of the records pertaining to a child who has died must be released regardless of whether the remaining facts in the records are embarrassing to the unidentifiable other private parties or to identifiable public workers who handled the case. [1997 c 305 § 5.]

Conflict with federal requirements—1997 c 305: See note following RCW 74.13.500.

74.13.520 Disclosure of child welfare records—Information not to be disclosed. Except as it applies directly to the cause of the abuse or neglect of the child and any actions taken by the department in response to reports of abuse or neglect of the child, nothing in RCW 74.13.500 through 74.13.515 is deemed to authorize the release or disclosure of the substance or content of any psychological, psychiatric, therapeutic, clinical, or medical reports, evaluations, or like materials, or information pertaining to the child or the child's family. [1997 c 305 § 6.]

Conflict with federal requirements—1997 c 305: See note following RCW 74.13.500.

74.13.525 Disclosure of child welfare records—Immunity from liability. The department, when acting in good faith, is immune from any criminal or civil liability, except as provided under RCW 42.17.340, for any action taken under RCW 74.13.500 through 74.13.520. [1997 c 305 § 7.]

Conflict with federal requirements—1997 c 305: See note following RCW 74.13.500.

74.13.530 Child placement—Conflict of interest. (1) No child may be placed or remain in a specific out-of-home placement under this chapter or chapter 13.34 RCW when there is a conflict of interest on the part of any adult residing in the home in which the child is to be or has been placed. A conflict of interest exists when:

(a) There is an adult in the home who, as a result of: (i) His or her employment; and (ii) an allegation of abuse or neglect of the child, conducts or has conducted an investigation of the allegation; or

(b) The child has been, is, or is likely to be a witness in any pending cause of action against any adult in the home when the cause includes: (i) An allegation of abuse or neglect against the child or any sibling of the child; or (ii) a claim of damages resulting from wrongful interference with the parent-child relationship of the child and his or her biological or adoptive parent.

(2) For purposes of this section, "investigation" means the exercise of professional judgment in the review of allegations of abuse or neglect by: (a) Law enforcement personnel; (b) persons employed by, or under contract with, the state; (c) persons licensed to practice law and their employees; and (d) mental health professionals as defined in chapter 71.05 RCW.

(3) The prohibition set forth in subsection (1) of this section may not be waived or deferred by the department under any circumstance or at the request of any person, regardless of who has made the request or the length of time of the requested placement. [2001 c 318 § 4.]

74.13.540 Independent living services. Independent living services include assistance in achieving basic educational requirements such as a GED, enrollment in vocational and technical training programs offered at the community and vocational colleges, and obtaining and maintaining employment; and accomplishing basic life skills such as money management, nutrition, preparing meals, and cleaning house. A baseline skill level in ability to function productively and independently shall be determined at entry. Performance shall be measured and must demonstrate improvement from involvement in the program. Each recipient shall have a plan for achieving independent living skills by the time the recipient reaches age twenty-one. The plan shall be written within the first thirty days of placement and reviewed every ninety days. A recipient who fails to consistently adhere to the elements of the plan shall be subject to reassessment by the professional staff of the program and may be declared ineligible to receive services. [2001 c 192 § 2.]

74.13.550 Child placement—Policy of educational continuity. It is the policy of the state of Washington that, whenever practical and in the best interest of the child, children placed into foster care shall remain enrolled in the schools they were attending at the time they entered foster care. [2003 c 112 § 2.]

Findings—Intent—2003 c 112: "The legislature finds that the educational attainment of children in foster care is significantly lower than that of children not in foster care. The legislature finds that many factors influence educational outcomes for children in foster care, including the disruption of the educational process because of repeatedly changing schools.

The legislature recognizes the importance of educational stability for foster children, and encourages the ongoing efforts of the department of

(2004 Ed.)

social and health services and the office of the superintendent of public instruction to improve educational attainment of children in foster care. It is the intent of the legislature that efforts continue such as the recruitment of foster homes in school districts with high rates of foster care placements, the development and dissemination of informational materials regarding the challenges faced by children in foster care, and the expansion to other school districts of best practices identified in pilot projects." [2003 c 112 § 1.]

74.13.560 Educational continuity—Protocol development. The administrative regions of the department shall develop protocols with the respective school districts in their regions specifying specific strategies for communication, coordination, and collaboration regarding the status and progress of foster children placed in the region, in order to maximize the educational continuity and achievement for foster children. The protocols shall include methods to assure effective sharing of information consistent with RCW 28A.225.330. [2003 c 112 § 3.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.570 Oversight committee—Duties. (1) The department shall establish an oversight committee composed of staff from the children's administration of the department, the office of the superintendent of public instruction, and advocacy agencies to develop strategies for maintaining foster children in the schools they were attending at the time they entered foster care.

(2) The duties of the oversight committee shall include, but are not limited to:

(a) Developing strategies for school-based recruitment of foster homes;

(b) Monitoring the progress of current pilot projects that assist foster children to continue attending the schools they were attending at the time they entered foster care;

(c) Overseeing the expansion of the number of pilot projects;

(d) Promoting the use of best practices, throughout the state, demonstrated by the pilot projects and other programs relating to maintaining foster children in the schools they were attending at the time they entered foster care; and

(e) Informing the legislature of the status of efforts to maintain foster children in the schools they were attending at the time they entered foster care. [2003 c 112 § 4.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.580 Educational stability during shelter care hearing—Protocol development. The department shall work with the administrative office of the courts to develop protocols to ensure that educational stability is addressed during the shelter care hearing. [2003 c 112 § 5.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.590 Tasks to be performed based on available resources. The department shall perform the tasks provided in RCW 74.13.550 through 74.13.580 based on available resources. [2003 c 112 § 6.]

Findings—Intent—2003 c 112: See note following RCW 74.13.550.

74.13.600 Kinship caregivers—Definition—Placement of children with kin a priority—Strategies. (1) For the purposes of this section, "kin" means persons eighteen

years of age or older to whom the child is related by blood, adoption, or marriage, including marriages that have been dissolved, and means: (a) Any person denoted by the prefix "grand" or "great"; (b) sibling, whether full, half, or step; (c) uncle or aunt; (d) nephew or niece; or (e) first cousin.

(2) The department shall plan, design, and implement strategies to prioritize the placement of children with willing and able kin when out-of-home placement is required.

These strategies must include at least the following:

(a) Development of standardized, statewide procedures to be used when searching for kin of children prior to out-of-home placement. The procedures must include a requirement that documentation be maintained in the child's case record that identifies kin, and documentation that identifies the assessment criteria and procedures that were followed during all kin searches. The procedures must be used when a child is placed in out-of-home care under authority of chapter 13.34 RCW, when a petition is filed under RCW 13.32A.140, or when a child is placed under a voluntary placement agreement. To assist with implementation of the procedures, the department shall request that the juvenile court require parents to disclose to the department all contact information for available and appropriate kin within two weeks of an entered order. For placements under signed voluntary agreements, the department shall encourage the parents to disclose to the department all contact information for available and appropriate kin within two weeks of the date the parent signs the voluntary placement agreement.

(b) Development of procedures for conducting active outreach efforts to identify and locate kin during all searches. The procedures must include at least the following elements:

(i) Reasonable efforts to interview known kin, friends, teachers, and other identified community members who may have knowledge of the child's kin, within sixty days of the child entering out-of-home care;

(ii) Increased use of those procedures determined by research to be the most effective methods of promoting reunification efforts, permanency planning, and placement decisions;

(iii) Contacts with kin identified through outreach efforts and interviews under this subsection as part of permanency planning activities and change of placement discussions;

(iv) Establishment of a process for ongoing contact with kin who express interest in being considered as a placement resource for the child; and

(v) A requirement that when the decision is made to not place the child with any kin, the department provides documentation as part of the child's individual service and safety plan that clearly identifies the rationale for the decision and corrective action or actions the kin must take to be considered as a viable placement option.

(3) Nothing in this section shall be construed to create an entitlement to services or to create judicial authority to order the provision of services to any person or family if the services are unavailable or unsuitable or the child or family is not eligible for such services. [2003 c 284 § 1.]

74.13.610 Kinship caregivers—Grant proposal—Pilot projects. (*Expires January 1, 2007.*) (1) The department of social and health services shall collaborate with one or more nonprofit community-based agencies to develop a

grant proposal for submission to potential funding sources, including governmental entities and private foundations, to establish a minimum of two pilot projects to assist kinship caregivers with understanding and navigating the system of services for children in out-of-home care. The proposal must seek to establish at least one project in eastern Washington and one project in western Washington, each project to be managed by a participating community-based agency.

(2) The kinship care navigators funded through the proposal shall be responsible for at least the following:

(a) Understanding the various state agency systems serving kinship caregivers;

(b) Working in partnership with local community service providers;

(c) Tracking trends, concerns, and other factors related to kinship caregivers; and

(d) Assisting in establishing stable, respectful relationships between kinship caregivers and department staff.

(3) Implementation of the kinship care navigator pilot projects is contingent upon receipt of nonstate or private funding for that purpose.

(4) For the purposes of this section, "kinship" has the same meaning as "kin" given in RCW 74.13.600(1).

(5) This section expires January 1, 2007. [2003 c 284 § 2.]

74.13.620 Kinship care oversight committee—Duties—Report. (*Expires January 1, 2005.*) (1) Within existing resources, the department shall establish an oversight committee to monitor, guide, and report on kinship care recommendations and implementation activities. The committee shall:

(a) Draft a kinship care definition that is restricted to persons related by blood or marriage, including marriages that have been dissolved, or for a minor defined as an "Indian child" under the federal Indian child welfare act (25 U.S.C. Sec. 1901 et seq.), the definition of "extended family member" under the federal Indian child welfare act, and a set of principles. If the committee concludes that one or more program[s] or service[s] would be more efficiently and effectively delivered under a different definition of kin, it shall state what definition is needed, and identify the program or service in the report. It shall also provide evidence of how the program or service will be more efficiently and effectively delivered under the different definition. The department shall not adopt rules or policies changing the definition of kin without authorizing legislation;

(b) Monitor the implementation of recommendations contained in the 2002 kinship care report;

(c) Partner with nonprofit organizations and private sector businesses to guide a public education awareness campaign; and

(d) Assist with developing future recommendations on kinship care issues.

(2) The oversight committee must consist of a minimum of thirty percent kinship caregivers, who shall represent a diversity of kinship families. Statewide representation with geographic, ethnic, and gender diversity is required. Other members shall include representatives of the department, representatives of relevant state agencies, representatives of the private nonprofit and business sectors, child advocates, repre-

sentatives of Washington state Indian tribes as defined under the federal Indian welfare act (25 U.S.C. Sec. 1901 et seq.), and representatives of the legal or judicial field. Birth parents, foster parents, and others who have an interest in these issues may also be included.

(3) To the extent funding is available, the department may reimburse nondepartmental members of the oversight committee for costs incurred in participating in the meetings of the oversight committee.

(4) The kinship care oversight committee shall report to the legislature and the governor on the status of kinship care issues by December 1, 2004.

(5) This section expires January 1, 2005. [2003 c 284 § 4.]

74.13.630 Family decision meetings. (1) By January 1, 2005, the department shall:

(a) Consider options for the use of family decision meetings in cases in which a child is involved in the child welfare system;

(b) Develop strategies for implementing a policy of meaningful family involvement throughout the state within existing resources; and

(c) Present implementation recommendations to the appropriate committees of the legislature regarding (a) and (b) of this subsection.

(2) For the purposes of this section, "family decision meeting" means a family-focused intervention facilitated by dedicated professional staff that is designed to build and strengthen the natural caregiving system for the child. Family decision meetings may include, but are not limited to, family group conferences, family mediation, family support meetings, or other professionally recognized interventions that include extended family and rely upon the family to make shared decisions about planning for its children. The purpose of the family decision meeting is to establish a plan that provides for the safety and permanency needs of the child. [2004 c 182 § 2.]

Finding—Intent—2004 c 182: "(1) The legislature finds that engaging families in decision making when their children are involved in the child welfare system generally improves the outcomes for children. By involving families in the decision-making process, it is anticipated that the number of out-of-home placements can be reduced, as well as the incidence of behavioral, physical, and mental health problems for individual children. For those children in out-of-home placements, the number of placements for individual children, the likelihood of placing individual children with siblings, and successful reunifications are expected to improve as a result of family engagement. Based on the experience in the state where families have been engaged in decision making, these improved outcomes will result in cost savings to the state as fewer and less costly services and supports for children and families are needed.

(2) It is the intent of the legislature to encourage and support meaningful family involvement in the decision making related to planning for children involved in the child welfare system, in those instances where family is available and family involvement is in the best interest of the child." [2004 c 182 § 1.]

74.13.640 Child fatality review—Report. (1) The department of social and health services shall conduct a child fatality review in the event of an unexpected death of a minor in the state who is in the care of or receiving services described in chapter 74.13 RCW from the department or who has been in the care of or received services described in chap-

(2004 Ed.)

ter 74.13 RCW from the department within one year preceding the minor's death.

(2) Upon conclusion of a child fatality review required pursuant to subsection (1) of this section, the department shall issue a report on the results of the review to the appropriate committees of the legislature and shall make copies of the report available to the public upon request.

(3) The department shall develop and implement procedures to carry out the requirements of subsections (1) and (2) of this section. [2004 c 36 § 1.]

74.13.900 Severability—1965 c 30. If any provision of this chapter, or its application to any person or circumstance is held invalid, the remainder of the chapter, or the application of the provision to other persons or circumstances is not affected. [1965 c 30 § 6.]

Chapter 74.14A RCW

CHILDREN AND FAMILY SERVICES

Sections

| | |
|------------|--|
| 74.14A.010 | Legislative declaration. |
| 74.14A.020 | Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict. |
| 74.14A.025 | Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict—Policy updated. |
| 74.14A.030 | Treatment of juvenile offenders—Nonresidential community-based programs. |
| 74.14A.040 | Treatment of juvenile offenders—Involvement of family unit. |
| 74.14A.050 | Identification of children in a state-assisted support system—Program development for long-term care—Foster care case-load—Emancipation of minors study. |
| 74.14A.060 | Blended funding projects—Department to make annual reports. |
| 74.14A.900 | Short title—1983 c 192. |
| 74.14A.901 | Severability—1983 c 192. |

Shaken baby syndrome: RCW 43.121.140.

74.14A.010 Legislative declaration. The legislature reaffirms its declarations under RCW 13.34.020 that the family unit is the fundamental resource of American life which should be nurtured and that the family unit should remain intact in the absence of compelling evidence to the contrary. The legislature declares that the goal of serving emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict in their own homes to avoid out-of-home placement of the child, when that form of care is premature, unnecessary, or inappropriate, is a high priority of this state. [1983 c 192 § 1.]

74.14A.020 Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict. State efforts shall address the needs of children and their families, including emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict by:

(1) Serving children and families as a unit in the least restrictive setting available and in close proximity to the family home, consistent with the best interests and special needs of the child;

(2) Ensuring that appropriate social and health services are provided to the family unit both prior to and during the

removal of a child from the home and after family reunification;

(3) Ensuring that the safety and best interests of the child are the paramount considerations when making placement and service delivery decisions;

(4) Recognizing the interdependent and changing nature of families and communities, building upon their inherent strengths, maintaining their dignity and respect, and tailoring programs to their specific circumstances;

(5) Developing and implementing comprehensive, preventive, and early intervention social and health services which have demonstrated the ability to delay or reduce the need for out-of-home placements and ameliorate problems before they become chronic or severe;

(6) Authorizing and facilitating blended funding for children who require services and residential treatment from multiple services systems; including child welfare services, mental health, alcohol and drug, and juvenile rehabilitation;

(7) Being sensitive to the family and community culture, norms, values, and expectations, ensuring that all services are provided in a culturally appropriate and relevant manner, and ensuring participation of racial and ethnic minorities at all levels of planning, delivery, and evaluation efforts;

(8)(a) Developing coordinated social and health services which:

(i) Identify problems experienced by children and their families early and provide services which are adequate in availability, appropriate to the situation, and effective;

(ii) Seek to bring about meaningful change before family situations become irreversibly destructive and before disturbed psychological behavioral patterns and health problems become severe or permanent;

(iii) Serve children and families in their own homes thus preventing unnecessary out-of-home placement or institutionalization;

(iv) Focus resources on social and health problems as they begin to manifest themselves rather than waiting for chronic and severe patterns of illness, criminality, and dependency to develop which require long-term treatment, maintenance, or custody;

(v) Reduce duplication of and gaps in service delivery;

(vi) Improve planning, budgeting, and communication among all units of the department and among all agencies that serve children and families; and

(vii) Utilize outcome standards for measuring the effectiveness of social and health services for children and families.

(b) In developing services under this subsection, local communities must be involved in planning and developing community networks that are tailored to their unique needs. [2000 c 219 § 1; 1994 sp.s. c 7 § 102; 1983 c 192 § 2.]

Severability—2000 c 219: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2000 c 219 § 3.]

Effective date—2000 c 219: "This act takes effect July 1, 2000." [2000 c 219 § 4.]

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

Effective date—1983 c 192: "Sections 2 through 4 of this act shall take effect January 1, 1984." [1983 c 192 § 8.]

74.14A.025 Services for emotionally disturbed and mentally ill children, potentially dependent children, and families-in-conflict—Policy updated. To update, specify, and expand the policy stated in RCW 74.14A.020, the following is declared:

It is the policy of the state of Washington to promote:

(1) Family-oriented services and supports that:

(a) Respond to the changing nature of families; and

(b) Respond to what individuals and families say they need, and meet those needs in a way that maintains their dignity and respects their choices;

(2) Culturally relevant services and supports that:

(a) Explicitly recognize the culture and beliefs of each family and use these as resources on behalf of the family;

(b) Provide equal access to culturally unique communities in planning and programs, and day-to-day work, and actively address instances where clearly disproportionate needs exist; and

(c) Enhance every culture's ability to achieve self-sufficiency and contribute in a productive way to the larger community;

(3) Coordinated services that:

(a) Develop strategies and skills for collaborative planning, problem solving, and service delivery;

(b) Encourage coordination and innovation by providing both formal and informal ways for people to communicate and collaborate in planning and programs;

(c) Allow clients, vendors, community people, and other agencies to creatively provide the most effective, responsive, and flexible services; and

(d) Commit to an open exchange of skills and information; and expect people throughout the system to treat each other with respect, dignity, and understanding;

(4) Locally planned services and supports that:

(a) Operate on the belief that each community has special characteristics, needs, and strengths;

(b) Include a cross-section of local community partners from the public and private sectors, in the planning and delivery of services and supports; and

(c) Support these partners in addressing the needs of their communities through both short-range and long-range planning and in establishing priorities within state and federal standards;

(5) Community-based prevention that encourages and supports state residents to create positive conditions in their communities to promote the well-being of families and reduce crises and the need for future services;

(6) Outcome-based services and supports that:

(a) Include a fair and realistic system for measuring both short-range and long-range progress and determining whether efforts make a difference;

(b) Use outcomes and indicators that reflect the goals that communities establish for themselves and their children;

(c) Work towards these goals and outcomes at all staff levels and in every agency; and

(d) Provide a mechanism for informing the development of program policies;

(7) Customer service that:

(a) Provides a climate that empowers staff to deliver quality programs and services;

(b) Is provided by courteous, sensitive, and competent professionals; and

(c) Upholds the dignity and respect of individuals and families by providing appropriate staff recognition, information, training, skills, and support;

(8) Creativity that:

(a) Increases the flexibility of funding and programs to promote innovation in planning, development, and provision of quality services; and

(b) Simplifies and reduces or eliminates rules that are barriers to coordination and quality services. [1992 c 198 § 2.]

Severability—Effective date—1992 c 198: See RCW 70.190.910 and 70.190.920.

Family policy council: Chapter 70.190 RCW.

74.14A.030 Treatment of juvenile offenders—Non-residential community-based programs. The department shall address the needs of juvenile offenders whose standard range sentences do not include commitment by developing nonresidential community-based programs designed to reduce the incidence of manifest injustice commitments when consistent with public safety. [1983 c 192 § 3.]

Effective date—1983 c 192: See note following RCW 74.14A.020.

74.14A.040 Treatment of juvenile offenders—Involvement of family unit. The department shall involve a juvenile offender's family as a unit in the treatment process. The department need not involve the family as a unit in cases when family ties have by necessity been irrevocably broken. When the natural parents have been or will be replaced by a foster family or guardian, the new family will be involved in the treatment process. [1983 c 192 § 4.]

Effective date—1983 c 192: See note following RCW 74.14A.020.

74.14A.050 Identification of children in a state-assisted support system—Program development for long-term care—Foster care caseload—Emancipation of minors study. The secretary shall:

(1)(a) Consult with relevant qualified professionals to develop a set of minimum guidelines to be used for identifying all children who are in a state-assisted support system, whether at-home or out-of-home, who are likely to need long-term care or assistance, because they face physical, emotional, medical, mental, or other long-term challenges;

(b) The guidelines must, at a minimum, consider the following criteria for identifying children in need of long-term care or assistance:

(i) Placement within the foster care system for two years or more;

(ii) Multiple foster care placements;

(iii) Repeated unsuccessful efforts to be placed with a permanent adoptive family;

(iv) Chronic behavioral or educational problems;

(v) Repetitive criminal acts or offenses;

(vi) Failure to comply with court-ordered disciplinary actions and other imposed guidelines of behavior, including drug and alcohol rehabilitation; and

(vii) Chronic physical, emotional, medical, mental, or other similar conditions necessitating long-term care or assistance;

(2) Develop programs that are necessary for the long-term care of children and youth that are identified for the purposes of this section. Programs must: (a) Effectively address the educational, physical, emotional, mental, and medical needs of children and youth; and (b) incorporate an array of family support options, to individual needs and choices of the child and family. The programs must be ready for implementation by January 1, 1995;

(3) Conduct an evaluation of all children currently within the foster care agency caseload to identify those children who meet the criteria set forth in this section. All children entering the foster care system must be evaluated for identification of long-term needs within thirty days of placement;

(4) As a result of the passage of chapter 232, Laws of 2000, the department is conducting a pilot project to do a comparative analysis of a variety of assessment instruments to determine the most effective tools and methods for evaluation of children. The pilot project may extend through August 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives by September 30, 2001, on the results of the pilot project. The department shall select an assessment instrument that can be implemented within available resources. The department shall complete statewide implementation by December 31, 2001. The department shall report to the appropriate committees in the senate and house of representatives on how the use of the selected assessment instrument has affected department policies, by no later than December 31, 2002, December 31, 2004, and December 31, 2006;

(5) Use the assessment tool developed pursuant to subsection (4) of this section in making out-of-home placement decisions for children;

(6) Each region of the department shall make the appropriate number of referrals to the foster care assessment program to ensure that the services offered by the program are used to the extent funded pursuant to the department's contract with the program. The department shall report to the legislature by November 30, 2000, on the number of referrals, by region, to the foster care assessment program. If the regions are not referring an adequate number of cases to the program, the department shall include in its report an explanation of what action it is or has taken to ensure that the referrals are adequate;

(7) The department shall report to the legislature by December 15, 2000, on how it will use the foster care assessment program model to assess children as they enter out-of-home care;

(8) The department is to accomplish the tasks listed in subsections (4) through (7) of this section within existing resources;

(9) Study and develop a comprehensive plan for the evaluation and identification of all children and youth in need of long-term care or assistance, including, but not limited to, the mentally ill, developmentally disabled, medically fragile, seriously emotionally or behaviorally disabled, and physically impaired;

(10) Study and develop a plan for the children and youth in need of long-term care or assistance to ensure the coordi-

nation of services between the department's divisions and between other state agencies who are involved with the child or youth;

(11) Study and develop guidelines for transitional services, between long-term care programs, based on the person's age or mental, physical, emotional, or medical condition; and

(12) Study and develop a statutory proposal for the emancipation of minors. [2003 c 207 § 9; 2001 c 255 § 1; 2000 c 232 § 1; 1998 c 245 § 149; 1993 c 508 § 7; 1993 c 505 § 5.]

Section captions—Severability—Effective date—1993 c 508: See RCW 74.39A.900 through 74.39A.903.

Emancipation of minors: Chapter 13.64 RCW.

74.14A.060 Blended funding projects—Department to make annual reports. The secretary of the department of social and health services shall charge appropriated funds to support blended funding projects for youth subject to any current or future waiver the department receives to the requirements of IV-E funding. To be eligible for blended funding a child must be eligible for services designed to address a behavioral, mental, emotional, or substance abuse issue from the department of social and health services and require services from more than one categorical service delivery system. Before any blended funding project is established by the secretary, any entity or person proposing the project shall seek input from the public health and safety network or networks established in the catchment area of the project. The network or networks shall submit recommendations on the blended funding project to the family policy council. The family policy council shall advise the secretary whether to approve the proposed blended funding project. The network shall review the proposed blended funding project pursuant to its authority to examine the decategorization of program funds under RCW 70.190.110, within the current appropriation level. The department shall document the number of children who participate in blended funding projects, the total blended funding amounts per child, the amount charged to each appropriation by program, and services provided to each child through each blended funding project and report this information to the appropriate committees of the legislature by December 1st of each year, beginning in December 1, 2000. [2000 c 219 § 2.]

Severability—Effective date—2000 c 219: See notes following RCW 74.14A.020.

74.14A.900 Short title—1983 c 192. This act may be known and cited as the "children and family services act." [1983 c 192 § 6.]

74.14A.901 Severability—1983 c 192. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 192 § 7.]

Chapter 74.14B RCW CHILDREN'S SERVICES

Sections

- 74.14B.010 Children's services workers—Hiring and training.
- 74.14B.020 Foster parent training.
- 74.14B.030 Child abuse and neglect—Multidisciplinary teams.
- 74.14B.040 Child abuse and neglect—Therapeutic day care and treatment.
- 74.14B.050 Child abuse and neglect—Counseling referrals.
- 74.14B.060 Sexually abused children—Treatment services.
- 74.14B.070 Child victims of sexual assault or sexual abuse—Early identification, treatment.
- 74.14B.080 Liability insurance for foster parents.
- 74.14B.900 Captions.
- 74.14B.901 Severability—1987 c 503.
- 74.14B.902 Effective date—1987 c 503.

Shaken baby syndrome: RCW 43.121.140.

74.14B.010 Children's services workers—Hiring and training.

(1) Caseworkers employed in children services shall meet minimum standards established by the department of social and health services. Comprehensive training for caseworkers shall be completed before such caseworkers are assigned to case-carrying responsibilities without direct supervision. Intermittent, part-time, and standby workers shall be subject to the same minimum standards and training.

(2) On-going specialized training shall be provided for persons responsible for investigating child sexual abuse. Training participants shall have the opportunity to practice interview skills and receive feedback from instructors.

(3) The department, the criminal justice training commission, the Washington association of sheriffs and police chiefs, and the Washington association of prosecuting attorneys shall design and implement statewide training that contains consistent elements for persons engaged in the interviewing of children, including law enforcement, prosecution, and child protective services.

(4) The training shall: (a) Be based on research-based practices and standards; (b) minimize the trauma of all persons who are interviewed during abuse investigations; (c) provide methods of reducing the number of investigative interviews necessary whenever possible; (d) assure, to the extent possible, that investigative interviews are thorough, objective, and complete; (e) recognize needs of special populations, such as persons with developmental disabilities; (f) recognize the nature and consequences of victimization; (g) require investigative interviews to be conducted in a manner most likely to permit the interviewed persons the maximum emotional comfort under the circumstances; (h) address record retention and retrieval; and (i) documentation of investigative interviews. [1999 c 389 § 5; 1987 c 503 § 8.]

74.14B.020 Foster parent training. The department shall, within funds appropriated for this purpose, provide foster parent training as an ongoing part of the foster care program. The department shall contract for a variety of support services to foster parents to reduce isolation and stress, and to increase skills and confidence. [1987 c 503 § 11.]

74.14B.030 Child abuse and neglect—Multidisciplinary teams. The department shall establish and maintain one or more multidisciplinary teams in each state region of the division of children and family services. The team shall consist of at least four persons, selected by the department,

from professions which provide services to abused and neglected children and/or the parents of such children. The teams shall be available for consultation on all cases where a risk exists of serious harm to the child and where there is dispute over whether out-of-home placement is appropriate. [1987 c 503 § 12.]

74.14B.040 Child abuse and neglect—Therapeutic day care and treatment. The department shall, within funds appropriated for this purpose, provide therapeutic day care and day treatment to children who have been abused or neglected and meet program eligibility criteria. [1987 c 503 § 13.]

74.14B.050 Child abuse and neglect—Counseling referrals. The department of social and health services shall inform victims of child abuse and neglect and their families of the availability of state-supported counseling through the crime victims' compensation program, community mental health centers, domestic violence and sexual assault programs, and other related programs. The department shall assist victims with referrals to these services. [1987 c 503 § 14.]

74.14B.060 Sexually abused children—Treatment services. (1) Treatment services for children who have been sexually assaulted must be designed and delivered in a manner that accommodates their unique developmental needs and also considers the impact of family dynamics on treatment issues. In addition, the complexity of the civil and criminal justice systems requires that children who are involved receive appropriate consideration and attention that recognizes their unique vulnerability in a system designed primarily for adults.

(2) The department of community, trade, and economic development shall provide, subject to available funds, comprehensive sexual assault services to sexually abused children and their families. The department shall provide treatment services by qualified, registered, certified, or licensed professionals on a one-to-one or group basis as may be deemed appropriate.

(3) Funds appropriated under this section shall be provided solely for contracts or direct purchase of specific treatment services from community organizations and private service providers for child victims of sexual assault and sexual abuse. Funds shall be disbursed through the request for proposal or request for qualifications process.

(4) As part of the request for proposal or request for qualifications process the department of community, trade, and economic development shall ensure that there be no duplication of services with existing programs including the crime victims' compensation program as provided in chapter 7.68 RCW. The department shall also ensure that victims exhaust private insurance benefits available to the child victim before providing services to the child victim under this section. [1996 c 123 § 8; 1990 c 3 § 1402.]

Transfer of powers and duties—1996 c 123: "The powers and duties of the department of social and health services to provide services and funding for services to sexually abused children under RCW 74.14B.060 shall be transferred to the department of community, trade, and economic development on July 1, 1996. The department of social and health services shall

(2004 Ed.)

transfer all unspent appropriated funds, records, and documents necessary to facilitate a successful transfer." [1996 c 123 § 10.]

Effective date—1996 c 123: See note following RCW 43.280.010.

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

74.14B.070 Child victims of sexual assault or sexual abuse—Early identification, treatment. The department of social and health services through its division of children and family services shall, subject to available funds, establish a system of early identification and referral to treatment of child victims of sexual assault or sexual abuse. The system shall include schools, physicians, sexual assault centers, domestic violence centers, child protective services, and foster parents. A mechanism shall be developed to identify communities that have experienced success in this area and share their expertise and methodology with other communities statewide. [1990 c 3 § 1403.]

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

74.14B.080 Liability insurance for foster parents. (1) Subject to subsection (2) of this section, the secretary of social and health services shall provide liability insurance to foster parents licensed under chapter 74.15 RCW. The coverage shall be for personal injury and property damage caused by foster parents or foster children that occurred while the children were in foster care. Such insurance shall cover acts of ordinary negligence but shall not cover illegal conduct or bad faith acts taken by foster parents in providing foster care. Moneys paid from liability insurance for any claim are limited to the amount by which the claim exceeds the amount available to the claimant from any valid and collectible liability insurance.

(2) The secretary of social and health services may purchase the insurance required in subsection (1) of this section or may choose a self-insurance method. The total moneys expended pursuant to this authorization shall not exceed five hundred thousand dollars per biennium. If the secretary elects a method of self-insurance, the expenditure shall include all administrative and staff costs. If the secretary elects a method of self-insurance, he or she may, by rule, place a limit on the maximum amount to be paid on each claim.

(3) Nothing in this section or RCW 4.24.590 is intended to modify the foster parent reimbursement plan in place on July 1, 1991.

(4) The liability insurance program shall be available by July 1, 1991. [1991 c 283 § 2.]

Findings—1991 c 283: "The legislature recognizes the unique legal risks that foster parents face in taking children into their care. Third parties have filed claims against foster parents for losses and damage caused by foster children. Additionally, foster children and their parents have sued foster parents for actions occurring while the children were in foster care. The legislature finds that some potential foster parents are unwilling to subject themselves to potential liability without insurance protection. The legislature further finds that to encourage those people to serve as foster parents, it is necessary to assure that such insurance is available to them." [1991 c 283 § 1.]

Effective date—1991 c 283: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1991." [1991 c 283 § 5.]

74.14B.900 Captions. Section headings as used in this chapter do not constitute any part of the law. [1987 c 503 § 19.]

74.14B.901 Severability—1987 c 503. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1987 c 503 § 21.]

74.14B.902 Effective date—1987 c 503. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1987. [1987 c 503 § 22.]

Chapter 74.14C RCW

FAMILY PRESERVATION SERVICES

Sections

| | |
|------------|---|
| 74.14C.005 | Findings and intent. |
| 74.14C.010 | Definitions. |
| 74.14C.020 | Preservation services. |
| 74.14C.030 | Department duties. |
| 74.14C.032 | Preservation services contracts. |
| 74.14C.040 | Intensive family preservation services—Eligibility criteria. |
| 74.14C.042 | Family preservation services—Eligibility criteria. |
| 74.14C.050 | Implementation and evaluation plan. |
| 74.14C.060 | Funds, volunteer services. |
| 74.14C.065 | Federal funds. |
| 74.14C.070 | Appropriations—Transfer of funds from foster care services to family preservation services—Annual report. |
| 74.14C.080 | Data collection—Reports to the legislature. |
| 74.14C.090 | Reports on referrals and services. |
| 74.14C.100 | Training and consultation for department personnel—Training for judges and service providers. |
| 74.14C.900 | Severability—1992 c 214. |

74.14C.005 Findings and intent. (1) The legislature believes that protecting the health and safety of children is paramount. The legislature recognizes that the number of children entering out-of-home care is increasing and that a number of children receive long-term foster care protection. Reasonable efforts by the department to shorten out-of-home placement or avoid it altogether should be a major focus of the child welfare system. It is intended that providing up-front services decrease the number of children entering out-of-home care and have the effect of eventually lowering foster care expenditures and strengthening the family unit.

Within available funds, the legislature directs the department to focus child welfare services on protecting the child, strengthening families and, to the extent possible, providing necessary services in the family setting, while drawing upon the strengths of the family. The legislature intends services be locally based and offered as early as possible to avoid disruption to the family, out-of-home placement of the child, and entry into the dependency system. The legislature also intends that these services be used for those families whose children are returning to the home from out-of-home care. These services are known as family preservation services and intensive family preservation services and are characterized by the following values, beliefs, and goals:

- (a) Safety of the child is always the first concern;
- (b) Children need their families and should be raised by their own families whenever possible;

(c) Interventions should focus on family strengths and be responsive to the individual family's cultural values and needs;

(d) Participation should be voluntary; and

(e) Improvement of family functioning is essential in order to promote the child's health, safety, and welfare and thereby allow the family to remain intact and allow children to remain at home.

(2) Subject to the availability of funds for such purposes, the legislature intends for these services to be made available to all eligible families on a statewide basis through a phased-in process. Except as otherwise specified by statute, the department of social and health services shall have the authority and discretion to implement and expand these services as provided in this chapter. The department shall consult with the community public health and safety networks when assessing a community's resources and need for services.

(3) It is the legislature's intent that, within available funds, the department develop services in accordance with this chapter.

(4) Nothing in this chapter shall be construed to create an entitlement to services nor to create judicial authority to order the provision of preservation services to any person or family if the services are unavailable or unsuitable or that the child or family are not eligible for such services. [1995 c 311 § 1; 1992 c 214 § 1.]

74.14C.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

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

(2) "Community support systems" means the support that may be organized through extended family members, friends, neighbors, religious organizations, community programs, cultural and ethnic organizations, or other support groups or organizations.

(3) "Family preservation services" means in-home or community-based services drawing on the strengths of the family and its individual members while addressing family needs to strengthen and keep the family together where possible and may include:

(a) Respite care of children to provide temporary relief for parents and other caregivers;

(b) Services designed to improve parenting skills with respect to such matters as child development, family budgeting, coping with stress, health, safety, and nutrition; and

(c) Services designed to promote the well-being of children and families, increase the strength and stability of families, increase parents' confidence and competence in their parenting abilities, promote a safe, stable, and supportive family environment for children, and otherwise enhance children's development.

Family preservation services shall have the characteristics delineated in RCW 74.14C.020 (2) and (3).

(4) "Imminent" means a decision has been made by the department that, without intensive family preservation services, a petition requesting the removal of a child from the family home will be immediately filed under chapter 13.32A

or 13.34 RCW, or that a voluntary placement agreement will be immediately initiated.

(5) "Intensive family preservation services" means community-based services that are delivered primarily in the home, that follow intensive service models with demonstrated effectiveness in reducing or avoiding the need for unnecessary imminent out-of-home placement, and that have all of the characteristics delineated in RCW 74.14C.020 (1) and (3).

(6) "Out-of-home placement" means a placement in a foster family home or group care facility licensed pursuant to chapter 74.15 RCW or placement in a home, other than that of the child's parent, guardian, or legal custodian, not required to be licensed pursuant to chapter 74.15 RCW.

(7) "Paraprofessional worker" means any individual who is trained and qualified to provide assistance and community support systems development to families and who acts under the supervision of a preservation services therapist. The paraprofessional worker is not intended to replace the role and responsibilities of the preservation services therapist.

(8) "Preservation services" means family preservation services and intensive family preservation services that consider the individual family's cultural values and needs. [1996 c 240 § 2; 1995 c 311 § 2; 1992 c 214 § 2.]

74.14C.020 Preservation services. (1) Intensive family preservation services shall have all of the following characteristics:

(a) Services are provided by specially trained service providers who have received at least forty hours of training from recognized intensive in-home services experts. Service providers deliver the services in the family's home, and other environments of the family, such as their neighborhood or schools;

(b) Caseload size averages two families per service provider unless paraprofessional services are utilized, in which case a provider may, but is not required to, handle an average caseload of five families;

(c) The services to the family are provided by a single service provider who may be assisted by paraprofessional workers, with backup providers identified to provide assistance as necessary;

(d) Services are available to the family within twenty-four hours following receipt of a referral to the program; and

(e) Duration of service is limited to a maximum of forty days, unless paraprofessional workers are used, in which case the duration of services is limited to a maximum of ninety days. The department may authorize an additional provision of service through an exception to policy when the department and provider agree that additional services are needed.

(2) Family preservation services shall have all of the following characteristics:

(a) Services are delivered primarily in the family home or community;

(b) Services are committed to reinforcing the strengths of the family and its members and empowering the family to solve problems and become self-sufficient;

(c) Services are committed to providing support to families through community organizations including but not limited to school, church, cultural, ethnic, neighborhood, and business;

(d) Services are available to the family within forty-eight hours of referral unless an exception is noted in the file;

(e) Duration of service is limited to a maximum of six months, unless the department requires additional follow-up on an individual case basis; and

(f) Caseload size no more than ten families per service provider, which can be adjusted when paraprofessional workers are used or required by the department.

(3) Preservation services shall include the following characteristics:

(a) Services protect the child and strengthen the family;

(b) Service providers have the authority and discretion to spend funds, up to a maximum amount specified by the department, to help families obtain necessary food, shelter, or clothing, or to purchase other goods or services that will enhance the effectiveness of intervention;

(c) Services are available to the family twenty-four hours a day and seven days a week;

(d) Services enhance parenting skills, family and personal self-sufficiency, functioning of the family, and reduce stress on families; and

(e) Services help families locate and use additional assistance including, but not limited to, the development and maintenance of community support systems, counseling and treatment services, housing, child care, education, job training, emergency cash grants, state and federally funded public assistance, and other basic support services. [1996 c 240 § 3; 1995 c 311 § 3; 1992 c 214 § 3.]

74.14C.030 Department duties. (1) The department shall be the lead administrative agency for preservation services and may receive funding from any source for the implementation or expansion of such services. The department shall:

(a) Provide coordination and planning with the advice of the community networks for the implementation and expansion of preservation services; and

(b) Monitor and evaluate such services to determine whether the programs meet measurable standards specified by this chapter and the department.

(2) The department may: (a) Allow its contractors for preservation services to use paraprofessional workers when the department and provider determine the use appropriate. The department may also use paraprofessional workers, as appropriate, when the department provides preservation services; and (b) allow follow-up to be provided, on an individual case basis, when the department and provider determine the use appropriate.

(3) In carrying out the requirements of this section, the department shall consult with qualified agencies that have demonstrated expertise and experience in preservation services.

(4) The department may provide preservation services directly and shall, within available funds, enter into outcome-based, competitive contracts with social service agencies to provide preservation services, provided that such agencies meet measurable standards specified by this chapter and by the department. The standards shall include, but not be limited to, satisfactory performance in the following areas:

(a) The number of families appropriately connected to community resources;

(b) Avoidance of new referrals accepted by the department for child protective services or family reconciliation services within one year of the most recent case closure by the department;

(c) Consumer satisfaction;

(d) For reunification cases, reduction in the length of stay in out-of-home placement; and

(e) Reduction in the level of risk factors specified by the department.

(5)(a) The department shall not provide intensive family preservation services unless it is demonstrated that provision of such services prevent out-of-home placement in at least seventy percent of the cases served for a period of at least six months following termination of services. The department's caseworkers may only provide preservation services if there is no other qualified entity willing or able to do so.

(b) Contractors shall demonstrate that provision of intensive family preservation services prevent out-of-home placement in at least seventy percent of the cases served for a period of no less than six months following termination of services. The department may increase the period of time based on additional research and data. If the contractor fails to meet the seventy percent requirement the department may:

(i) Review the conditions that may have contributed to the failure to meet the standard and renew the contract if the department determines: (A) The contractor is making progress to meet the standard; or (B) conditions unrelated to the provision of services, including case mix and severity of cases, contributed to the failure; or (ii) reopen the contract for other bids.

(c) The department shall cooperate with any person who has a contract under this section in providing data necessary to determine the amount of reduction in foster care. For the purposes of this subsection "prevent out-of-home placement" means that a child who has been a recipient of intensive family preservation services has not been placed outside of the home, other than for a single, temporary period of time not exceeding fourteen days.

(6) The department shall adopt rules to implement this chapter. [1996 c 240 § 4; 1995 c 311 § 4; 1992 c 214 § 4.]

74.14C.032 Preservation services contracts. The initial contracts under *RCW 74.14C.030(3) shall be executed not later than July 1996 and shall expire June 30, 1997. Subsequent contracts shall be for periods not to exceed twenty-four months. [1995 c 311 § 13.]

*Reviser's note: RCW 74.14C.030 was amended by 1996 c 240 § 4, changing subsection (3) to subsection (4).

74.14C.040 Intensive family preservation services—Eligibility criteria. (1) Intensive family preservation services may be provided to children and their families only when the department has determined that:

(a) The child has been placed out-of-home or is at imminent risk of an out-of-home placement due to:

(i) Child abuse or neglect;

(ii) A serious threat of substantial harm to the child's health, safety, or welfare; or

(iii) Family conflict; and

(b) There are no other reasonably available services including family preservation services that will prevent out-

of-home placement of the child or make it possible to immediately return the child home.

(2) The department shall refer eligible families to intensive family preservation services on a twenty-four hour intake basis. The department need not refer otherwise eligible families, and intensive family preservation services need not be provided, if:

(a) The services are not available in the community in which the family resides;

(b) The services cannot be provided because the program is filled to capacity and there are no current service openings;

(c) The family refuses the services;

(d) The department, or the agency that is supervising the foster care placement, has developed a case plan that does not include reunification of the child and family; or

(e) The department or the service provider determines that the safety of a child, a family member, or persons providing the service would be unduly threatened.

(3) Nothing in this chapter shall prevent provision of intensive family preservation services to nonfamily members when the department or the service provider deems it necessary or appropriate to do so in order to assist the family or child. [1995 c 311 § 6; 1992 c 214 § 5.]

74.14C.042 Family preservation services—Eligibility criteria. (1) Family preservation services may be provided to children and their families only when the department has determined that without intervention, the child faces a substantial likelihood of out-of-home placement due to:

(a) Child abuse or neglect;

(b) A serious threat of substantial harm to the child's health, safety, or welfare; or

(c) Family conflict.

(2) The department need not refer otherwise eligible families and family preservation services need not be provided, if:

(a) The services are not available in the community in which the family resides;

(b) The services cannot be provided because the program is filled to capacity;

(c) The family refuses the services; or

(d) The department or the service provider determines that the safety of a child, a family member, or persons providing the services would be unduly threatened.

(3) Nothing in this chapter shall prevent provision of family preservation services to nonfamily members when the department or the service provider deems it necessary or appropriate to do so in order to assist the family or the child. [1995 c 311 § 7.]

74.14C.050 Implementation and evaluation plan. By December 1, 1995, the department, with the assistance of the family policy council, two urban and two rural public health and safety networks to be chosen by the family policy council, and two private, nonprofit agencies with expertise and experience in preservation services shall submit to the legislature an implementation and evaluation plan that identifies:

(1) A valid and reliable process that can be used by caseworkers for accurately identifying clients who are eligible for intensive family preservation services and family preserva-

tion services. The plan shall recognize the due process rights of families that receive preservation services and recognize that family preservation services are not intended to be investigative for purposes of chapter 13.34 RCW;

(2) Necessary data by which program success will be measured, projections of service needs, budget requests, and long-range planning;

(3) Regional and statewide projections of service needs;

(4) A cost estimate for statewide implementation and expansion of preservation services on a phased-in basis beginning no later than July 1, 1996;

(5) A plan and time frame for phased-in implementation of preservation services on a statewide basis to be accomplished as soon as possible but no later than July 1, 1997;

(6) Data regarding the number of children in foster care, group care, institutional placements, and other out-of-home placements due to medical needs, mental health needs, developmental disabilities, and juvenile offenses, and an assessment of the feasibility of providing preservation services to include all of these children;

(7) Standards and outcome measures for the department when the department provides preservation services directly; and

(8) A process to assess outcome measures identified in RCW 74.14C.030 for contractors providing preservation services. [1995 c 311 § 9; 1992 c 214 § 6.]

74.14C.060 Funds, volunteer services. For the purpose of providing preservation services the department may:

(1) Solicit and use any available federal or private resources, which may include funds, in-kind resources, or volunteer services; and

(2) Use any available state resources, which may include in-kind resources or volunteer services. [1995 c 311 § 10; 1992 c 214 § 7.]

74.14C.065 Federal funds. Any federal funds made available under RCW 74.14C.060 shall be used to supplement and shall not supplant state funds to carry out the purposes of this chapter. However, during the 1995-97 fiscal biennium, federal funds made available under RCW 74.14C.060 may be used to supplant state funds to carry out the purposes of this chapter. [1995 2nd sp.s. c 18 § 922; 1992 c 214 § 11.]

Severability—Effective date—1995 2nd sp.s. c 18: See notes following RCW 19.118.110.

74.14C.070 Appropriations—Transfer of funds from foster care services to family preservation services—Annual report. The secretary of social and health services, or the secretary's regional designee, may transfer funds appropriated for foster care services to purchase preservation services and other preventive services for children at imminent risk of out-of-home placement or who face a substantial likelihood of out-of-home placement. This transfer may be made in those regions that lower foster care expenditures through efficient use of preservation services and permanency planning efforts. The transfer shall be equivalent to the amount of reduced foster care expenditures and shall be made in accordance with the provisions of this chapter and

(2004 Ed.)

with the approval of the office of financial management. The department shall present an annual report to the legislature regarding any transfers under this section only if transfers occur. The department shall include caseload, expenditure, cost avoidance, identified improvements to the out-of-home care system, and outcome data related to the transfer in the report. The department shall also include in the report information regarding:

(1) The percent of cases where a child is placed in out-of-home care after the provision of intensive family preservation services or family preservation services;

(2) The average length of time before the child is placed out-of-home;

(3) The average length of time the child is placed out-of-home; and

(4) The number of families that refused the offer of either family preservation services or intensive family preservation services. [2003 c 207 § 3; 1995 c 311 § 11; 1994 c 288 § 3; 1992 c 214 § 9.]

Funds transfer review: "The juvenile issues task force established under chapter 234, Laws of 1991, shall review the advisability of transferring appropriated funds from foster care to purchase family preservation services for children at imminent risk of foster care placement and include findings and recommendations on the transfer of funds to the appropriate committees of the senate and house of representatives by December 15, 1992. The task force shall identify ways to improve the foster care system and expand family preservation services with the savings generated by avoiding the placement of children at imminent risk of foster care placement through the provision of family preservation services." [1992 c 214 § 10.]

74.14C.080 Data collection—Reports to the legislature. The department shall collect data regarding the rates at which intensive family preservation services prevent out-of-home placements over varying periods of time. The department shall make an initial report to the appropriate committees of the legislature of the data, and the proposed rules to implement this section, by December 1, 1995. The department shall present a report to the appropriate committees of the legislature on September 1st of each odd-numbered year, commencing on September 1, 1997. [1995 c 311 § 5.]

74.14C.090 Reports on referrals and services. Each department caseworker who refers a client for preservation services shall file a report with his or her direct supervisor stating the reasons for which the client was referred. The caseworker's supervisor shall verify in writing his or her belief that the family who is the subject of a referral for preservation services meets the eligibility criteria for services as provided in this chapter. The direct supervisor shall report monthly to the regional administrator on the provision of these services. The regional administrator shall report to the assistant secretary quarterly on the provision of these services for the entire region. The assistant secretary shall make a semiannual report to the secretary on the provision of these services on a statewide basis. [1995 c 311 § 8.]

74.14C.100 Training and consultation for department personnel—Training for judges and service providers. (1) The department shall, within available funds, provide for ongoing training and consultation to department personnel to carry out their responsibilities effectively. Such training may:

(a) Include the family unit as the primary focus of service; identifying family member strengths; empowering families; child, adult, and family development; stress management; and may include parent training and family therapy techniques;

(b) Address intake and referral, assessment of risk, case assessment, matching clients to services, and service planning issues in the context of the home-delivered service model, including strategies for engaging family members, defusing violent situations, and communication and conflict resolution skills;

(c) Cover methods of helping families acquire the skills they need, including home management skills, life skills, parenting, child development, and the use of community resources;

(d) Address crisis intervention and other strategies for the management of depression, and suicidal, assaultive, and other high-risk behavior; and

(e) Address skills in collaborating with other disciplines and services in promoting the safety of children and other family members and promoting the preservation of the family.

(2) The department and the office of the administrator for the courts shall, within available funds, collaborate in providing training to judges, and others involved in the provision of services pursuant to this title, including service providers, on the function and use of preservation services. [1995 c 311 § 12.]

74.14C.900 Severability—1992 c 214. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1992 c 214 § 13.]

Chapter 74.14D RCW

ALTERNATIVE FAMILY-CENTERED SERVICES

Sections

| | |
|------------|---|
| 74.14D.010 | Alternative response system—Defined. |
| 74.14D.020 | Delivery of services—Contracts—Two or three model systems to be used. |
| 74.14D.030 | Data collection, evaluation. |
| 74.14D.040 | Court may order delivery of services. |
| 74.14D.900 | Expiration of chapter. |

74.14D.010 Alternative response system—Defined. (Expires July 1, 2005.) As used in this chapter, "alternative response system" means voluntary family-centered services that are: (1) Provided by an entity with which the department contracts; and (2) intended to increase the strengths and cohesiveness of families that the department determines present a low risk of child abuse or neglect. [1997 c 386 § 9.]

Application—1997 c 386: "Sections 8 through 14 and 17 through 34 of this act apply only to incidents occurring on or after January 1, 1998." [1997 c 386 § 67.]

Effective date—1997 c 386: "Sections 8 through 13 and 21 through 34 of this act take effect January 1, 1998." [1997 c 386 § 68.]

74.14D.020 Delivery of services—Contracts—Two or three model systems to be used. (Expires July 1, 2005.) (1) The department shall contract for delivery of services for

at least two but not more than three models of alternative response systems. The services shall be reasonably available throughout the state but need not be sited in every county in the state, subject to such conditions and limitations as may be specified in the omnibus appropriations act.

(2) The systems shall provide delivery of services in the least intrusive manner reasonably likely to achieve improved family cohesiveness, prevention of rereferrals of the family for alleged abuse or neglect, and improvement in the health and safety of children.

(3) The department shall identify and prioritize risk and protective factors associated with the type of abuse or neglect referrals that are appropriate for services delivered by alternative response systems. Contractors who provide services through an alternative response system shall use the factors in determining which services to deliver, consistent with the provisions of subsection (2) of this section.

(4) Consistent with the provisions of chapter 26.44 RCW, the providers of services under the alternative response system shall recognize the due process rights of families that receive such services and recognize that these services are not intended to be investigative for purposes of chapter 13.34 RCW. [1997 c 386 § 10.]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

74.14D.030 Data collection, evaluation. (Expires July 1, 2005.) The department shall identify appropriate data to determine and evaluate outcomes of the services delivered by the alternative response systems. All contracts for delivery of alternative response system services shall include provisions and funding for data collection. [1997 c 386 § 11.]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

74.14D.040 Court may order delivery of services. (Expires July 1, 2005.) (1) The court may, upon the entry of an order under this chapter, order the delivery of services through any appropriate public or private provider.

(2) This section may not be construed as allowing the court to require the department to pay for the cost of any services provided under this section. [1997 c 386 § 12.]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

74.14D.900 Expiration of chapter. (Expires July 1, 2005.) This chapter expires July 1, 2005. [1997 c 386 § 13.]

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

Chapter 74.15 RCW

CARE OF CHILDREN, EXPECTANT MOTHERS, DEVELOPMENTALLY DISABLED

Sections

| | |
|-----------|--|
| 74.15.010 | Declaration of purpose. |
| 74.15.020 | Definitions. |
| 74.15.030 | Powers and duties of secretary. |
| 74.15.040 | Licenses for foster-family homes required—Inspections. |
| 74.15.050 | Fire protection—Powers and duties of chief of the Washington state patrol. |
| 74.15.060 | Health protection—Powers and duties of secretary of health. |
| 74.15.063 | Notice of pesticide use. |

- 74.15.070 Articles of incorporation and amendments—Copies to be furnished to department.
- 74.15.080 Access to agencies, records.
- 74.15.090 Licenses required for agencies.
- 74.15.100 License application, issuance, duration—Reclassification.
- 74.15.110 Renewal of licenses.
- 74.15.120 Initial licenses.
- 74.15.125 Probationary licenses.
- 74.15.130 Licenses—Denial, suspension, revocation, modification—Procedures—Adjudicative proceedings—Penalties.
- 74.15.132 Adjudicative proceedings—Training for administrative law judges.
- 74.15.134 License or certificate suspension—Noncompliance with support order—Reissuance.
- 74.15.140 Action against licensed or unlicensed agencies authorized.
- 74.15.150 Penalty for operating without license.
- 74.15.160 Continuation of existing licensing rules.
- 74.15.170 Agencies, homes conducted by religious organizations—Application of chapter.
- 74.15.180 Designating home or facility as semi-secure facility.
- 74.15.190 Authority of Indian tribes to license agencies within reservations—Placement of children.
- 74.15.200 Child abuse and neglect prevention training to parents and day care providers.
- 74.15.210 Community facility—Service provider must report juvenile infractions or violations—Violations by service provider—Secretary's duties—Rules.
- 74.15.220 HOPE centers—Establishment—Requirements.
- 74.15.230 Responsible living skills programs—Established—Requirements.
- 74.15.240 Responsible living skills program—Eligibility.
- 74.15.250 HOPE centers—Responsible living skills programs—Licensing authority—Rules.
- 74.15.260 HOPE centers—Responsible living skills programs—Grant proposals—Technical assistance.
- 74.15.270 HOPE centers—Responsible living skills programs—Awarding of contracts.
- 74.15.280 Emergency respite centers—Licensing—Rules.
- 74.15.900 Short title—Purpose—Entitlement not granted—1999 c 267 §§ 10-26.
- 74.15.901 Federal waivers—1999 c 267 §§ 10-26.

Adoption: Chapter 26.33 RCW.

Age of majority: Chapter 26.28 RCW.

Birthing centers: Chapter 18.46 RCW.

Child abuse: Chapter 26.44 RCW.

Immunization program, applicability to day care centers: RCW 28A.210.060 through 28A.210.170.

Liability insurance for foster parents: RCW 74.14B.080.

Liability of foster parents: RCW 4.24.590.

Out-of-home placement—Court action upon filing of child in need of services petition—Child placement: RCW 13.32A.160.

Uniform Parentage Act: Chapter 26.26 RCW.

74.15.010 Declaration of purpose. The purpose of chapter 74.15 RCW and RCW 74.13.031 is:

- (1) To safeguard the health, safety, and well-being of children, expectant mothers and developmentally disabled persons receiving care away from their own homes, which is paramount over the right of any person to provide care;
- (2) To strengthen and encourage family unity and to sustain parental rights and responsibilities to the end that foster care is provided only when a child's family, through the use of all available resources, is unable to provide necessary care;
- (3) To promote the development of a sufficient number and variety of adequate child-care and maternity-care facilities, both public and private, through the cooperative efforts of public and voluntary agencies and related groups;
- (4) To provide consultation to agencies caring for children, expectant mothers or developmentally disabled persons in order to help them to improve their methods of and facilities for care;

(2004 Ed.)

(5) To license agencies as defined in RCW 74.15.020 and to assure the users of such agencies, their parents, the community at large and the agencies themselves that adequate minimum standards are maintained by all agencies caring for children, expectant mothers and developmentally disabled persons. [1995 c 302 § 2; 1983 c 3 § 192; 1977 ex.s. c 80 § 70; 1967 c 172 § 1.]

Intent—1995 c 302: "The legislature declares that the state of Washington has a compelling interest in protecting and promoting the health, welfare, and safety of children, including those who receive care away from their own homes. The legislature further declares that no person or agency has a right to be licensed under this chapter to provide care for children. The health, safety, and well-being of children must be the paramount concern in determining whether to issue a license to an applicant, whether to suspend or revoke a license, and whether to take other licensing action. The legislature intends, through the provisions of this act, to provide the department of social and health services with additional enforcement authority to carry out the purpose and provisions of this act. Furthermore, administrative law judges should receive specialized training so that they have the specialized expertise required to appropriately review licensing decisions of the department.

Children placed in foster care are particularly vulnerable and have a special need for placement in an environment that is stable, safe, and nurturing. For this reason, foster homes should be held to a high standard of care, and department decisions regarding denial, suspension, or revocation of foster care licenses should be upheld on review if there are reasonable grounds for such action." [1995 c 302 § 1.]

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

Severability—1967 c 172: "If any provision of this 1967 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1967 c 172 § 24.]

74.15.020 Definitions. For the purpose of chapter 74.15 RCW and RCW 74.13.031, and unless otherwise clearly indicated by the context thereof, the following terms shall mean:

(1) "Agency" means any person, firm, partnership, association, corporation, or facility which receives children, expectant mothers, or persons with developmental disabilities for control, care, or maintenance outside their own homes, or which places, arranges the placement of, or assists in the placement of children, expectant mothers, or persons with developmental disabilities for foster care or placement of children for adoption, and shall include the following irrespective of whether there is compensation to the agency or to the children, expectant mothers or persons with developmental disabilities for services rendered:

(a) "Child day-care center" means an agency which regularly provides care for a group of children for periods of less than twenty-four hours;

(b) "Child-placing agency" means an agency which places a child or children for temporary care, continued care, or for adoption;

(c) "Community facility" means a group care facility operated for the care of juveniles committed to the department under RCW 13.40.185. A county detention facility that houses juveniles committed to the department under RCW 13.40.185 pursuant to a contract with the department is not a community facility;

(d) "Crisis residential center" means an agency which is a temporary protective residential facility operated to perform the duties specified in chapter 13.32A RCW, in the manner provided in RCW 74.13.032 through 74.13.036;

(e) "Emergency respite center" is an agency that may be commonly known as a crisis nursery, that provides emergency and crisis care for up to seventy-two hours to children who have been admitted by their parents or guardians to prevent abuse or neglect. Emergency respite centers may operate for up to twenty-four hours a day, and for up to seven days a week. Emergency respite centers may provide care for children ages birth through seventeen, and for persons eighteen through twenty with developmental disabilities who are admitted with a sibling or siblings through age seventeen. Emergency respite centers may not substitute for crisis residential centers or HOPE centers, or any other services defined under this section, and may not substitute for services which are required under chapter 13.32A or 13.34 RCW;

(f) "Family day-care provider" means a child day-care provider who regularly provides child day care for not more than twelve children in the provider's home in the family living quarters;

(g) "Foster-family home" means an agency which regularly provides care on a twenty-four hour basis to one or more children, expectant mothers, or persons with developmental disabilities in the family abode of the person or persons under whose direct care and supervision the child, expectant mother, or person with a developmental disability is placed;

(h) "Group-care facility" means an agency, other than a foster-family home, which is maintained and operated for the care of a group of children on a twenty-four hour basis;

(i) "HOPE center" means an agency licensed by the secretary to provide temporary residential placement and other services to street youth. A street youth may remain in a HOPE center for thirty days while services are arranged and permanent placement is coordinated. No street youth may stay longer than thirty days unless approved by the department and any additional days approved by the department must be based on the unavailability of a long-term placement option. A street youth whose parent wants him or her returned to home may remain in a HOPE center until his or her parent arranges return of the youth, not longer. All other street youth must have court approval under chapter 13.34 or 13.32A RCW to remain in a HOPE center up to thirty days;

(j) "Maternity service" means an agency which provides or arranges for care or services to expectant mothers, before or during confinement, or which provides care as needed to mothers and their infants after confinement;

(k) "Responsible living skills program" means an agency licensed by the secretary that provides residential and transitional living services to persons ages sixteen to eighteen who are dependent under chapter 13.34 RCW and who have been unable to live in his or her legally authorized residence and, as a result, the minor lived outdoors or in another unsafe location not intended for occupancy by the minor. Dependent minors ages fourteen and fifteen may be eligible if no other placement alternative is available and the department approves the placement;

(l) "Service provider" means the entity that operates a community facility.

(2) "Agency" shall not include the following:

(a) Persons related to the child, expectant mother, or person with developmental disability in the following ways:

(i) Any blood relative, including those of half-blood, and including first cousins, nephews or nieces, and persons of

preceding generations as denoted by prefixes of grand, great, or great-great;

(ii) Stepfather, stepmother, stepbrother, and stepsister;

(iii) A person who legally adopts a child or the child's parent as well as the natural and other legally adopted children of such persons, and other relatives of the adoptive parents in accordance with state law;

(iv) Spouses of any persons named in (i), (ii), or (iii) of this subsection (2)(a), even after the marriage is terminated; or

(v) Extended family members, as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, a person who has reached the age of eighteen and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent who provides care in the family abode on a twenty-four-hour basis to an Indian child as defined in 25 U.S.C. Sec. 1903(4);

(b) Persons who are legal guardians of the child, expectant mother, or persons with developmental disabilities;

(c) Persons who care for a neighbor's or friend's child or children, with or without compensation, where: (i) The person providing care for periods of less than twenty-four hours does not conduct such activity on an ongoing, regularly scheduled basis for the purpose of engaging in business, which includes, but is not limited to, advertising such care; or (ii) the parent and person providing care on a twenty-four-hour basis have agreed to the placement in writing and the state is not providing any payment for the care;

(d) Parents on a mutually cooperative basis exchange care of one another's children;

(e) A person, partnership, corporation, or other entity that provides placement or similar services to exchange students or international student exchange visitors or persons who have the care of an exchange student in their home;

(f) A person, partnership, corporation, or other entity that provides placement or similar services to international children who have entered the country by obtaining visas that meet the criteria for medical care as established by the United States immigration and naturalization service, or persons who have the care of such an international child in their home;

(g) Nursery schools or kindergartens which are engaged primarily in educational work with preschool children and in which no child is enrolled on a regular basis for more than four hours per day;

(h) Schools, including boarding schools, which are engaged primarily in education, operate on a definite school year schedule, follow a stated academic curriculum, accept only school-age children and do not accept custody of children;

(i) Seasonal camps of three months' or less duration engaged primarily in recreational or educational activities;

(j) Hospitals licensed pursuant to chapter 70.41 RCW when performing functions defined in chapter 70.41 RCW, nursing homes licensed under chapter 18.51 RCW and boarding homes licensed under chapter 18.20 RCW;

(k) Licensed physicians or lawyers;

(l) Facilities providing care to children for periods of less than twenty-four hours whose parents remain on the premises to participate in activities other than employment;

(m) Facilities approved and certified under chapter 71A.22 RCW;

(n) Any agency having been in operation in this state ten years prior to June 8, 1967, and not seeking or accepting moneys or assistance from any state or federal agency, and is supported in part by an endowment or trust fund;

(o) Persons who have a child in their home for purposes of adoption, if the child was placed in such home by a licensed child-placing agency, an authorized public or tribal agency or court or if a replacement report has been filed under chapter 26.33 RCW and the placement has been approved by the court;

(p) An agency operated by any unit of local, state, or federal government or an agency, located within the boundaries of a federally recognized Indian reservation, licensed by the Indian tribe;

(q) A maximum or medium security program for juvenile offenders operated by or under contract with the department;

(r) An agency located on a federal military reservation, except where the military authorities request that such agency be subject to the licensing requirements of this chapter.

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

(4) "Juvenile" means a person under the age of twenty-one who has been sentenced to a term of confinement under the supervision of the department under RCW 13.40.185.

(5) "Probationary license" means a license issued as a disciplinary measure to an agency that has previously been issued a full license but is out of compliance with licensing standards.

(6) "Requirement" means any rule, regulation, or standard of care to be maintained by an agency.

(7) "Secretary" means the secretary of social and health services.

(8) "Street youth" means a person under the age of eighteen who lives outdoors or in another unsafe location not intended for occupancy by the minor and who is not residing with his or her parent or at his or her legally authorized residence.

(9) "Transitional living services" means at a minimum, to the extent funds are available, the following:

(a) Educational services, including basic literacy and computational skills training, either in local alternative or public high schools or in a high school equivalency program that leads to obtaining a high school equivalency degree;

(b) Assistance and counseling related to obtaining vocational training or higher education, job readiness, job search assistance, and placement programs;

(c) Counseling and instruction in life skills such as money management, home management, consumer skills, parenting, health care, access to community resources, and transportation and housing options;

(d) Individual and group counseling; and

(e) Establishing networks with federal agencies and state and local organizations such as the United States department of labor, employment and training administration programs including the job training partnership act which administers private industry councils and the job corps; vocational rehabilitation; and volunteer programs. [2001 c 230 § 1; 2001 c 144 § 1; 2001 c 137 § 3; 1999 c 267 § 11; 1998 c 269 § 3;

(2004 Ed.)

1997 c 245 § 7. Prior: 1995 c 311 § 18; 1995 c 302 § 3; 1994 c 273 § 21; 1991 c 128 § 14; 1988 c 176 § 912; 1987 c 170 § 12; 1982 c 118 § 5; 1979 c 155 § 83; 1977 ex.s. c 80 § 71; 1967 c 172 § 2.]

Reviser's note: This section was amended by 2001 c 137 § 3, 2001 c 144 § 1, and by 2001 c 230 § 1, each without reference to the other. All amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Alphabetization—1998 c 269: See note following RCW 13.50.010.

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

Intent—1995 c 302: See note following RCW 74.15.010.

Severability—Effective date—1991 c 128: See RCW 19.166.900 and 19.166.901.

Severability—1988 c 176: See RCW 71A.10.900.

Severability—1987 c 170: See note following RCW 13.04.030.

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.030 Powers and duties of secretary. The secretary shall have the power and it shall be the secretary's duty:

(1) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to designate categories of facilities for which separate or different requirements shall be developed as may be appropriate whether because of variations in the ages, sex and other characteristics of persons served, variations in the purposes and services offered or size or structure of the agencies to be licensed hereunder, or because of any other factor relevant thereto;

(2) In consultation with the children's services advisory committee, and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt and publish minimum requirements for licensing applicable to each of the various categories of agencies to be licensed.

The minimum requirements shall be limited to:

(a) The size and suitability of a facility and the plan of operation for carrying out the purpose for which an applicant seeks a license;

(b) The character, suitability and competence of an agency and other persons associated with an agency directly responsible for the care and treatment of children, expectant mothers or developmentally disabled persons. In consultation with law enforcement personnel, the secretary shall investigate the conviction record or pending charges and dependency record information under chapter 43.43 RCW of each agency and its staff seeking licensure or relicensure. No unfounded allegation of child abuse or neglect as defined in RCW 26.44.020 may be disclosed to a child-placing agency, private adoption agency, or any other provider licensed under this chapter. In order to determine the suitability of applicants for an agency license, licensees, their employees, and other persons who have unsupervised access to children in care, and who have not resided in the state of Washington during the three-year period before being authorized to care for chil-

dren shall be fingerprinted. The fingerprints shall be forwarded to the Washington state patrol and federal bureau of investigation for a criminal history records check. The fingerprint criminal history records checks will be at the expense of the licensee except that in the case of a foster family home, if this expense would work a hardship on the licensee, the department shall pay the expense. The licensee may not pass this cost on to the employee or prospective employee, unless the employee is determined to be unsuitable due to his or her criminal history record. The secretary shall use the information solely for the purpose of determining eligibility for a license and for determining the character, suitability, and competence of those persons or agencies, excluding parents, not required to be licensed who are authorized to care for children, expectant mothers, and developmentally disabled persons. Criminal justice agencies shall provide the secretary such information as they may have and that the secretary may require for such purpose;

(c) The number of qualified persons required to render the type of care and treatment for which an agency seeks a license;

(d) The safety, cleanliness, and general adequacy of the premises to provide for the comfort, care and well-being of children, expectant mothers or developmentally disabled persons;

(e) The provision of necessary care, including food, clothing, supervision and discipline; physical, mental and social well-being; and educational, recreational and spiritual opportunities for those served;

(f) The financial ability of an agency to comply with minimum requirements established pursuant to chapter 74.15 RCW and RCW 74.13.031; and

(g) The maintenance of records pertaining to the admission, progress, health and discharge of persons served;

(3) To investigate any person, including relatives by blood or marriage except for parents, for character, suitability, and competence in the care and treatment of children, expectant mothers, and developmentally disabled persons prior to authorizing that person to care for children, expectant mothers, and developmentally disabled persons. However, if a child is placed with a relative under RCW 13.34.065 or 13.34.130, and if such relative appears otherwise suitable and competent to provide care and treatment the criminal history background check required by this section need not be completed before placement, but shall be completed as soon as possible after placement;

(4) On reports of alleged child abuse and neglect, to investigate agencies in accordance with chapter 26.44 RCW, including child day-care centers and family day-care homes, to determine whether the alleged abuse or neglect has occurred, and whether child protective services or referral to a law enforcement agency is appropriate;

(5) To issue, revoke, or deny licenses to agencies pursuant to chapter 74.15 RCW and RCW 74.13.031. Licenses shall specify the category of care which an agency is authorized to render and the ages, sex and number of persons to be served;

(6) To prescribe the procedures and the form and contents of reports necessary for the administration of chapter 74.15 RCW and RCW 74.13.031 and to require regular reports from each licensee;

(7) To inspect agencies periodically to determine whether or not there is compliance with chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted hereunder;

(8) To review requirements adopted hereunder at least every two years and to adopt appropriate changes after consultation with the child care coordinating committee and other affected groups for child day-care requirements and with the children's services advisory committee for requirements for other agencies; and

(9) To consult with public and private agencies in order to help them improve their methods and facilities for the care of children, expectant mothers and developmentally disabled persons. [2000 c 162 § 20; 2000 c 122 § 40; 1997 c 386 § 33; 1995 c 302 § 4; 1988 c 189 § 3. Prior: 1987 c 524 § 13; 1987 c 486 § 14; 1984 c 188 § 5; 1982 c 118 § 6; 1980 c 125 § 1; 1979 c 141 § 355; 1977 ex.s. c 80 § 72; 1967 c 172 § 3.]

Reviser's note: This section was amended by 2000 c 122 § 40 and by 2000 c 162 § 20, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

Intent—1995 c 302: See note following RCW 74.15.010.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.040 Licenses for foster-family homes required—Inspections. An agency seeking to accept and serve children, developmentally disabled persons, or expectant mothers as a foster-family home shall make application for license in such form and substance as required by the department. The department shall maintain a list of applicants through which placement may be undertaken. However, agencies and the department shall not place a child, developmentally disabled person, or expectant mother in a home until the home is licensed. Foster-family homes shall be inspected prior to licensure, except that inspection by the department is not required if the foster-family home is under the supervision of a licensed agency upon certification to the department by the licensed agency that such homes meet the requirements for foster homes as adopted pursuant to chapter 74.15 RCW and RCW 74.13.031. [1982 c 118 § 7; 1979 c 141 § 356; 1967 c 172 § 4.]

74.15.050 Fire protection—Powers and duties of chief of the Washington state patrol. The chief of the Washington state patrol, through the director of fire protection, shall have the power and it shall be his or her duty:

(1) In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to adopt recognized minimum standard requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, except foster-family homes and child-placing agencies, necessary to protect all persons residing therein from fire hazards;

(2) To make or cause to be made such inspections and investigations of agencies, other than foster-family homes or child-placing agencies, as he or she deems necessary;

(3) To make a periodic review of requirements under RCW 74.15.030(7) and to adopt necessary changes after consultation as required in subsection (1) of this section;

(4) To issue to applicants for licenses hereunder, other than foster-family homes or child-placing agencies, who comply with the requirements, a certificate of compliance, a copy of which shall be presented to the department of social and health services before a license shall be issued, except that a *provisional license may be issued as provided in RCW 74.15.120. [1995 c 369 § 62; 1986 c 266 § 123; 1982 c 118 § 8; 1979 c 141 § 357; 1967 c 172 § 5.]

***Reviser's note:** "Provisional license" redesignated "initial license" by 1995 c 311 § 22.

Effective date—1995 c 369: See note following RCW 43.43.930.

Severability—1986 c 266: See note following RCW 38.52.005.

74.15.060 Health protection—Powers and duties of secretary of health. The secretary of health shall have the power and it shall be his or her duty:

In consultation with the children's services advisory committee and with the advice and assistance of persons representative of the various type agencies to be licensed, to develop minimum requirements pertaining to each category of agency established pursuant to chapter 74.15 RCW and RCW 74.13.031, necessary to promote the health of all persons residing therein.

The secretary of health or the city, county, or district health department designated by the secretary shall have the power and the duty:

(1) To make or cause to be made such inspections and investigations of agencies as may be deemed necessary; and

(2) To issue to applicants for licenses hereunder who comply with the requirements adopted hereunder, a certificate of compliance, a copy of which shall be presented to the department of social and health services before a license shall be issued, except that a *provisional license may be issued as provided in RCW 74.15.120. [1991 c 3 § 376; 1989 1st ex.s. c 9 § 265; 1987 c 524 § 14; 1982 c 118 § 9; 1970 ex.s. c 18 § 14; 1967 c 172 § 6.]

***Reviser's note:** "Provisional license" redesignated "initial license" by 1995 c 311 § 22.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

74.15.063 Notice of pesticide use. Licensed day care centers shall provide notice of pesticide use to parents or guardians of students and employees pursuant to chapter 17.21 RCW. [2001 c 333 § 5.]

Effective date—2001 c 333: See note following RCW 17.21.020.

74.15.070 Articles of incorporation and amendments—Copies to be furnished to department. A copy of the articles of incorporation of any agency or amendments to the articles of existing corporation agencies shall be sent by the secretary of state to the department of social and health services at the time such articles or amendments are filed. [1979 c 141 § 358; 1967 c 172 § 7.]

(2004 Ed.)

74.15.080 Access to agencies, records. All agencies subject to chapter 74.15 RCW and RCW 74.13.031 shall accord the department of social and health services, the secretary of health, the chief of the Washington state patrol, and the director of fire protection, or their designees, the right of entrance and the privilege of access to and inspection of records for the purpose of determining whether or not there is compliance with the provisions of chapter 74.15 RCW and RCW 74.13.031 and the requirements adopted thereunder. [1995 c 369 § 63; 1989 1st ex.s. c 9 § 266; 1986 c 266 § 124; 1979 c 141 § 359; 1967 c 172 § 8.]

Effective date—1995 c 369: See note following RCW 43.43.930.

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

Severability—1986 c 266: See note following RCW 38.52.005.

74.15.090 Licenses required for agencies. Except as provided in RCW 74.15.190, it shall hereafter be unlawful for any agency to receive children, expectant mothers or developmentally disabled persons for supervision or care, or arrange for the placement of such persons, unless such agency is licensed as provided in chapter 74.15 RCW. [1987 c 170 § 14; 1982 c 118 § 10; 1977 ex.s. c 80 § 73; 1967 c 172 § 9.]

Severability—1987 c 170: See note following RCW 13.04.030.

Purpose—Intent—Severability—1977 ex.s. c 80: See notes following RCW 4.16.190.

74.15.100 License application, issuance, duration—Reclassification. Each agency shall make application for a license or renewal of license to the department of social and health services on forms prescribed by the department. A licensed agency having foster-family homes under its supervision may make application for a license on behalf of any such foster-family home. Such a foster home license shall cease to be valid when the home is no longer under the supervision of that agency. Upon receipt of such application, the department shall either grant or deny a license within ninety days unless the application is for licensure as a foster-family home, in which case RCW 74.15.040 shall govern. A license shall be granted if the agency meets the minimum requirements set forth in chapter 74.15 RCW and RCW 74.13.031 and the departmental requirements consistent herewith, except that an initial license may be issued as provided in RCW 74.15.120. Licenses provided for in chapter 74.15 RCW and RCW 74.13.031 shall be issued for a period of three years. The licensee, however, shall advise the secretary of any material change in circumstances which might constitute grounds for reclassification of license as to category. The license issued under this chapter is not transferable and applies only to the licensee and the location stated in the application. For licensed foster-family and family day-care homes having an acceptable history of child care, the license may remain in effect for two weeks after a move, except that for the foster-family home this will apply only if the family remains intact. [1995 c 302 § 8; 1982 c 118 § 11; 1979 c 141 § 360; 1967 c 172 § 10.]

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.110 Renewal of licenses. If a licensee desires to apply for a renewal of its license, a request for a renewal shall be filed ninety days prior to the expiration date of the license except that a request for renewal of a foster family home license shall be filed prior to the expiration of the license. If the department has failed to act at the time of the expiration date of the license, the license shall continue in effect until such time as the department shall act. [1991 c 14 § 1; 1967 c 172 § 11.]

74.15.120 Initial licenses. The secretary of social and health services may, at his or her discretion, issue an initial license instead of a full license, to an agency or facility for a period not to exceed six months, renewable for a period not to exceed two years, to allow such agency or facility reasonable time to become eligible for full license. An initial license shall not be granted to any foster-family home except as specified in this section. An initial license may be granted to a foster-family home only if the following three conditions are met: (1) The license is limited so that the licensee is authorized to provide care only to a specific child or specific children; (2) the department has determined that the licensee has a relationship with the child, and the child is comfortable with the licensee, or that it would otherwise be in the child's best interest to remain or be placed in the licensee's home; and (3) the initial license is issued for a period not to exceed ninety days. [1995 c 311 § 22; 1979 c 141 § 361; 1967 c 172 § 12.]

74.15.125 Probationary licenses. (1) The department may issue a probationary license to a licensee who has had a license but is temporarily unable to comply with a rule or has been the subject of multiple complaints or concerns about noncompliance if:

(a) The noncompliance does not present an immediate threat to the health and well-being of the children but would be likely to do so if allowed to continue; and

(b) The licensee has a plan approved by the department to correct the area of noncompliance within the probationary period.

(2) A probationary license may be issued for up to six months, and at the discretion of the department it may be extended for an additional six months. The department shall immediately terminate the probationary license, if at any time the noncompliance for which the probationary license was issued presents an immediate threat to the health or well-being of the children.

(3) The department may, at any time, issue a probationary license for due cause that states the conditions of probation.

(4) An existing license is invalidated when a probationary license is issued.

(5) At the expiration of the probationary license, the department shall reinstate the original license for the remainder of its term, issue a new license, or revoke the original license.

(6) A right to an adjudicative proceeding shall not accrue to the licensee whose license has been placed on probationary status unless the licensee does not agree with the placement on probationary status and the department then suspends, revokes, or modifies the license. [1995 c 302 § 7.]

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.130 Licenses—Denial, suspension, revocation, modification—Procedures—Adjudicative proceedings—Penalties. (1) An agency may be denied a license, or any license issued pursuant to chapter 74.15 RCW and RCW 74.13.031 may be suspended, revoked, modified, or not renewed by the secretary upon proof (a) that the agency has failed or refused to comply with the provisions of chapter 74.15 RCW and RCW 74.13.031 or the requirements promulgated pursuant to the provisions of chapter 74.15 RCW and RCW 74.13.031; or (b) that the conditions required for the issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses. RCW 43.20A.205 governs notice of a license denial, revocation, suspension, or modification and provides the right to an adjudicative proceeding.

(2) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of a foster family home license, the department's decision shall be upheld if there is reasonable cause to believe that:

(a) The applicant or licensee lacks the character, suitability, or competence to care for children placed in out-of-home care, however, no unfounded report of child abuse or neglect may be used to deny employment or a license;

(b) The applicant or licensee has failed or refused to comply with any provision of chapter 74.15 RCW, RCW 74.13.031, or the requirements adopted pursuant to such provisions; or

(c) The conditions required for issuance of a license under chapter 74.15 RCW and RCW 74.13.031 have ceased to exist with respect to such licenses.

(3) In any adjudicative proceeding regarding the denial, modification, suspension, or revocation of any license under this chapter, other than a foster family home license, the department's decision shall be upheld if it is supported by a preponderance of the evidence.

(4) The department may assess civil monetary penalties upon proof that an agency has failed or refused to comply with the rules adopted under the provisions of this chapter and RCW 74.13.031 or that an agency subject to licensing under this chapter and RCW 74.13.031 is operating without a license except that civil monetary penalties shall not be levied against a licensed foster home. Monetary penalties levied against unlicensed agencies that submit an application for licensure within thirty days of notification and subsequently become licensed will be forgiven. These penalties may be assessed in addition to or in lieu of other disciplinary actions. Civil monetary penalties, if imposed, may be assessed and collected, with interest, for each day an agency is or was out of compliance. Civil monetary penalties shall not exceed seventy-five dollars per violation for a family day-care home and two hundred fifty dollars per violation for group homes, child day-care centers, and child-placing agencies. Each day upon which the same or substantially similar action occurs is a separate violation subject to the assessment of a separate penalty. The department shall provide a notification period before a monetary penalty is effective and may forgive the penalty levied if the agency comes into compliance during this period. The department may suspend, revoke, or not renew a license for failure to pay a civil monetary penalty it has

assessed pursuant to this chapter within ten days after such assessment becomes final. Chapter 43.20A RCW governs notice of a civil monetary penalty and provides the right of an adjudicative proceeding. The preponderance of evidence standard shall apply in adjudicative proceedings related to assessment of civil monetary penalties. [1998 c 314 § 6; 1995 c 302 § 5; 1989 c 175 § 149; 1982 c 118 § 12; 1979 c 141 § 362; 1967 c 172 § 13.]

Intent—1995 c 302: See note following RCW 74.15.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

74.15.132 Adjudicative proceedings—Training for administrative law judges. (1) The office of administrative hearings shall not assign nor allow an administrative law judge to preside over an adjudicative hearing regarding denial, modification, suspension, or revocation of any license to provide child care, including foster care, under this chapter, unless such judge has received training related to state and federal laws and department policies and procedures regarding:

- (a) Child abuse, neglect, and maltreatment;
- (b) Child protective services investigations and standards;
- (c) Licensing activities and standards;
- (d) Child development; and
- (e) Parenting skills.

(2) The office of administrative hearings shall develop and implement a training program that carries out the requirements of this section. The office of administrative hearings shall consult and coordinate with the department in developing the training program. The department may assist the office of administrative hearings in developing and providing training to administrative law judges. [1995 c 302 § 6.]

Intent—1995 c 302: See note following RCW 74.15.010.

74.15.134 License or certificate suspension—Non-compliance with support order—Reissuance. The secretary shall immediately suspend the license or certificate of a person who has been certified pursuant to RCW 74.20A.320 by the department of social and health services as a person who is not in compliance with a support order or a *residential or visitation order. If the person has continued to meet all other requirements for reinstatement during the suspension, reissuance of the license or certificate shall be automatic upon the secretary's receipt of a release issued by the department of social and health services stating that the licensee is in compliance with the order. [1997 c 58 § 858.]

***Reviser's note:** 1997 c 58 § 887 requiring a court to order certification of noncompliance with residential provisions of a court-ordered parenting plan was vetoed. Provisions ordering the department of social and health services to certify a responsible parent based on a court order to certify for non-compliance with residential provisions of a parenting plan were vetoed. See RCW 74.20A.320.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

74.15.140 Action against licensed or unlicensed agencies authorized. Notwithstanding the existence or pursuit of

any other remedy, the secretary may, in the manner provided by law, upon the advice of the attorney general, who shall represent the department in the proceeding, maintain an action in the name of the state for injunction or such other relief as he may deem advisable against any agency subject to licensing under the provisions of chapter 74.15 RCW and RCW 74.13.031 or against any such agency not having a license as heretofore provided in chapter 74.15 RCW and RCW 74.13.031. [1979 c 141 § 363; 1967 c 172 § 14.]

74.15.150 Penalty for operating without license. Any agency operating without a license shall be guilty of a misdemeanor. This section shall not be enforceable against an agency until sixty days after the effective date of new rules, applicable to such agency, have been adopted under chapter 74.15 RCW and RCW 74.13.031. [1982 c 118 § 13; 1967 c 172 § 15.]

74.15.160 Continuation of existing licensing rules. Existing rules for licensing adopted pursuant to *chapter 74.14 RCW, sections 74.14.010 through 74.14.150, chapter 26, Laws of 1959, shall remain in force and effect until new rules are adopted under chapter 74.15 RCW and RCW 74.13.031, but not thereafter. [1982 c 118 § 14; 1967 c 172 § 16.]

***Reviser's note:** Chapter 74.14 RCW was repealed by 1967 c 172 § 23.

74.15.170 Agencies, homes conducted by religious organizations—Application of chapter. Nothing in this chapter or the rules and regulations adopted pursuant thereto shall be construed as authorizing the supervision, regulation, or control of the remedial care or treatment of residents of any agency, children's institution, child placing agency, maternity home, day or hourly nursery, foster home or other related institution conducted for or by members of a recognized religious sect, denomination or organization which in accordance with its creed, tenets, or principles depends for healing upon prayer in the practice of religion, nor shall the existence of any of the above conditions militate against the licensing of such a home or institution. [1967 c 172 § 21.]

74.15.180 Designating home or facility as semi-secure facility. The department, pursuant to rules, may enable any licensed foster family home or group care facility to be designated as a semi-secure facility, as defined by RCW 13.32A.030. [1979 c 155 § 84.]

Effective date—Severability—1979 c 155: See notes following RCW 13.04.011.

74.15.190 Authority of Indian tribes to license agencies within reservations—Placement of children. The state of Washington recognizes the authority of Indian tribes within the state to license agencies, located within the boundaries of a federally recognized Indian reservation, to receive children for control, care, and maintenance outside their own homes, or to place, receive, arrange the placement of, or assist in the placement of children for foster care or adoption. The department and state licensed child-placing agencies may place children in tribally licensed facilities if the requirements of RCW 74.15.030 (2)(b) and (3) and supporting rules

are satisfied before placing the children in such facilities by the department or any state licensed child-placing agency. [1987 c 170 § 13.]

Severability—1987 c 170: See note following RCW 13.04.030.

74.15.200 Child abuse and neglect prevention training to parents and day care providers. The department of social and health services shall have primary responsibility for providing child abuse and neglect prevention training to parents and licensed child day care providers of preschool age children participating in day care programs meeting the requirements of chapter 74.15 RCW. The department may limit training under this section to trainers' workshops and curriculum development using existing resources. [1987 c 489 § 5.]

Intent—1987 c 489: See note following RCW 28A.300.150.

74.15.210 Community facility—Service provider must report juvenile infractions or violations—Violations by service provider—Secretary's duties—Rules. (1) Whenever the secretary contracts with a service provider to operate a community facility, the contract shall include a requirement that each service provider must report to the department any known infraction or violation of conditions committed by any juvenile under its supervision. The report must be made immediately upon learning of serious infractions or violations and within twenty-four hours for other infractions or violations.

(2) The secretary shall adopt rules to implement and enforce the provisions of this section. The rules shall contain a schedule of monetary penalties not to exceed the total compensation set forth in the contract, and include provisions that allow the secretary to terminate all contracts with a service provider that has violations of this section and the rules adopted under this section.

(3) The secretary shall document in writing all violations of this section and the rules adopted under this section, penalties, actions by the department to remove juveniles from a community facility, and contract terminations. The department shall give great weight to a service provider's record of violations, penalties, actions by the department to remove juveniles from a community facility, and contract terminations in determining to execute, renew, or renegotiate a contract with a service provider. [1998 c 269 § 7.]

Intent—Finding—Effective date—1998 c 269: See notes following RCW 72.05.020.

74.15.220 HOPE centers—Establishment—Requirements. The secretary shall establish HOPE centers that provide no more than seventy-five beds across the state and may establish HOPE centers by contract, within funds appropriated by the legislature specifically for this purpose. HOPE centers shall be operated in a manner to reasonably assure that street youth placed there will not run away. Street youth may leave a HOPE center during the course of the day to attend school or other necessary appointments, but the street youth must be accompanied by an administrator or an administrator's designee. The street youth must provide the administration with specific information regarding his or her destination and expected time of return to the HOPE center. Any

street youth who runs away from a HOPE center shall not be readmitted unless specifically authorized by the street youth's placement and liaison specialist, and the placement and liaison specialist shall document with specific factual findings an appropriate basis for readmitting any street youth to a HOPE center. HOPE centers are required to have the following:

(1) A license issued by the secretary;

(2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. This professional staff person may be contractual or a part-time employee, but must be available to work with street youth in a HOPE center at a ratio of one to every fifteen youth staying in a HOPE center. This professional shall be known as a placement and liaison specialist. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency. The placement and liaison specialist shall:

(a) Conduct an assessment of the street youth that includes a determination of the street youth's legal status regarding residential placement;

(b) Facilitate the street youth's return to his or her legally authorized residence at the earliest possible date or initiate processes to arrange legally authorized appropriate placement. Any street youth who may meet the definition of dependent child under RCW 13.34.030 must be referred to the department. The department shall determine whether a dependency petition should be filed under chapter 13.34 RCW. A shelter care hearing must be held within seventy-two hours to authorize out-of-home placement for any youth the department determines is appropriate for out-of-home placement under chapter 13.34 RCW. All of the provisions of chapter 13.32A RCW must be followed for children in need of services or at-risk youth;

(c) Interface with other relevant resources and system representatives to secure long-term residential placement and other needed services for the street youth;

(d) Be assigned immediately to each youth and meet with the youth within eight hours of the youth receiving HOPE center services;

(e) Facilitate a physical examination of any street youth who has not seen a physician within one year prior to residence at a HOPE center and facilitate evaluation by a county-designated mental health professional, a chemical dependency specialist, or both if appropriate; and

(f) Arrange an educational assessment to measure the street youth's competency level in reading, writing, and basic mathematics, and that will measure learning disabilities or special needs;

(3) Staff trained in development needs of street youth as determined by the secretary, including an administrator who is a professional with a master's degree in counseling, social work, or a related field and at least one year of experience working with street youth, or a bachelor of arts degree in social work or a related field and five years of experience working with street youth, who must work with the placement and liaison specialist to provide appropriate services on site;

(4) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary;

(5) Notification requirements that meet the notification requirements of chapter 13.32A RCW. The youth's arrival date and time must be logged at intake by HOPE center staff. The staff must immediately notify law enforcement and dependency caseworkers if a street youth runs away from a HOPE center. A child may be transferred to a secure facility as defined in RCW 13.32A.030 whenever the staff reasonably believes that a street youth is likely to leave the HOPE center and not return after full consideration of the factors set forth in RCW 13.32A.130(2)(a) (i) and (ii). The street youth's temporary placement in the HOPE center must be authorized by the court or the secretary if the youth is a dependent of the state under chapter 13.34 RCW or the department is responsible for the youth under chapter 13.32A RCW, or by the youth's parent or legal custodian, until such time as the parent can retrieve the youth who is returning to home;

(6) HOPE centers must identify to the department any street youth it serves who is not returning promptly to home. The department then must contact the missing children's clearinghouse identified in chapter 13.60 RCW and either report the youth's location or report that the youth is the subject of a dependency action and the parent should receive notice from the department;

(7) Services that provide counseling and education to the street youth; and

(8) The department shall only award contracts for the operation of HOPE center beds and responsible living skills programs in departmental regions: (a) With operating secure crisis residential centers; or (b) in which the secretary finds significant progress is made toward opening a secure crisis residential center. [1999 c 267 § 12.]

Phase in of beds—1999 c 267 §§ 12 and 13: "Within funds specifically appropriated by the legislature, HOPE center beds referenced in section 12 of this act and responsible living skills program beds referenced in section 13 of this act shall be phased in at the rate of twenty-five percent each year beginning January 1, 2000, until the maximum is attained." [1999 c 267 § 26.]

Effective date—1999 c 267 §§ 12 and 13: "Sections 12 and 13 of this act take effect January 1, 2000." [1999 c 267 § 27.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.230 Responsible living skills programs—Established—Requirements. The secretary shall establish responsible living skills programs that provide no more than seventy-five beds across the state and may establish responsible living skills programs by contract, within funds appropriated by the legislature specifically for this purpose. Responsible living skills programs shall have the following:

(1) A license issued by the secretary;

(2) A professional with a master's degree in counseling, social work, or related field and at least one year of experience working with street youth available to serve residents or a bachelor of arts degree in social work or a related field and five years of experience working with street youth. The professional shall provide counseling services and interface with other relevant resources and systems to prepare the minor for

(2004 Ed.)

adult living. Preference shall be given to those professionals cross-credentialed in mental health and chemical dependency;

(3) Staff trained in development needs of older adolescents eligible to participate in responsible living skills programs as determined by the secretary;

(4) Transitional living services and a therapeutic model of service delivery that provides necessary program supervision of residents and at the same time includes a philosophy, program structure, and treatment planning that emphasizes achievement of competency in independent living skills. Independent living skills include achieving basic educational requirements such as a GED, enrollment in vocational and technical training programs offered at the community and vocational colleges, obtaining and maintaining employment; accomplishing basic life skills such as money management, nutrition, preparing meals, and cleaning house. A baseline skill level in ability to function productively and independently shall be determined at entry. Performance shall be measured and must demonstrate improvement from involvement in the program. Each resident shall have a plan for achieving independent living skills by the time the resident leaves the placement. The plan shall be written within the first thirty days of placement and reviewed every ninety days. A resident who fails to consistently adhere to the elements of the plan shall be subject to reassessment by the professional staff of the program and may be placed outside the program; and

(5) A data collection system that measures outcomes for the population served, and enables research and evaluation that can be used for future program development and service delivery. Data collection systems must have confidentiality rules and protocols developed by the secretary.

(6) The department shall not award contracts for the operation of responsible living skills programs until HOPE center beds are operational. [1999 c 267 § 13.]

Phase in of beds—Effective date—1999 c 267 §§ 12 and 13: See notes following RCW 74.15.220.

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.240 Responsible living skills program—Eligibility. To be eligible for placement in a responsible living skills program, the minor must be dependent under chapter 13.34 RCW and must have lived in a HOPE center or in a secure crisis residential center. Responsible living skills centers are intended as a placement alternative for dependent youth that the department chooses for the youth because no other services or alternative placements have been successful. Responsible living skills centers are not for dependent youth whose permanency plan includes return to home or family reunification. [1999 c 267 § 14.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.250 HOPE centers—Responsible living skills programs—Licensing authority—Rules. The secretary is authorized to license HOPE centers and responsible living skills programs that meet statutory and rule requirements created by the secretary. The secretary is authorized to develop rules necessary to carry out the provisions of sections 10

through 26, chapter 267, Laws of 1999. The secretary may rely upon existing licensing provisions in development of licensing requirements for HOPE centers and responsible living skills programs, as are appropriate to carry out the intent of sections 10 through 26, chapter 267, Laws of 1999. HOPE centers and responsible living skills programs shall be required to adhere to departmental regulations prohibiting the use of alcohol, tobacco, controlled substances, violence, and sexual activity between residents. [1999 c 267 § 15.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.260 HOPE centers—Responsible living skills programs—Grant proposals—Technical assistance. The department shall provide technical assistance in preparation of grant proposals for HOPE centers and responsible living skills programs to nonprofit organizations unfamiliar with and inexperienced in submission of requests for proposals to the department. [1999 c 267 § 21.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.270 HOPE centers—Responsible living skills programs—Awarding of contracts. The department shall consider prioritizing, on an ongoing basis, the awarding of contracts for HOPE centers and responsible living skills programs to providers who have not traditionally been awarded contracts with the department. [1999 c 267 § 22.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.280 Emergency respite centers—Licensing—Rules. The secretary is authorized to license emergency respite centers. The department may adopt rules to specify licensing requirements for emergency respite centers. [2001 c 230 § 2.]

74.15.900 Short title—Purpose—Entitlement not granted—1999 c 267 §§ 10-26. Sections 10 through 26, chapter 267, Laws of 1999 may be referred to as the homeless youth prevention, protection, and education act, or the HOPE act. Every day many youth in this state seek shelter out on the street. A nurturing nuclear family does not exist for them, and state-sponsored alternatives such as foster homes do not meet the demand and isolate youth, who feel like outsiders in families not their own. The legislature recognizes the need to develop placement alternatives for dependent youth ages sixteen to eighteen, who are living on the street. The HOPE act is an effort to engage youth and provide them access to services through development of life skills in a setting that supports them. Nothing in sections 10 through 26, chapter 267, Laws of 1999 shall constitute an entitlement. [1999 c 267 § 10.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

74.15.901 Federal waivers—1999 c 267 §§ 10-26. The department of social and health services shall seek any necessary federal waivers for federal funding of the programs created under sections 10 through 26, chapter 267, Laws of 1999. The department shall pursue federal funding sources

for the programs created under sections 10 through 26, chapter 267, Laws of 1999, and report to the legislature any statutory barriers to federal funding. [1999 c 267 § 23.]

Findings—Intent—Severability—1999 c 267: See notes following RCW 43.20A.790.

Chapter 74.18 RCW

DEPARTMENT OF SERVICES FOR THE BLIND

Sections

| | |
|-----------|--|
| 74.18.010 | Intent. |
| 74.18.020 | Definitions. |
| 74.18.030 | Department created. |
| 74.18.040 | Director—Appointment—Salary. |
| 74.18.045 | Telephonic reading service. |
| 74.18.050 | Appointment of personnel. |
| 74.18.060 | Department—Powers and duties. |
| 74.18.070 | Rehabilitation council for the blind—Membership. |
| 74.18.080 | Rehabilitation council for the blind—Meetings—Travel expenses. |
| 74.18.090 | Rehabilitation council for the blind—Powers. |
| 74.18.100 | Rehabilitation council for the blind—Director to consult. |
| 74.18.110 | Receipt of gifts, grants, and bequests. |
| 74.18.120 | Administrative hearing—Appeal—Rules. |
| 74.18.123 | Background checks—Individuals having unsupervised access to persons with significant disabilities—Rules. |
| 74.18.127 | Confidentiality of personal information, records—Rules. |
| 74.18.130 | Vocational rehabilitation—Eligibility. |
| 74.18.140 | Vocational rehabilitation—Services. |
| 74.18.150 | Vocational rehabilitation—Grants of equipment and material. |
| 74.18.170 | Rehabilitation or habilitation facilities authorized. |
| 74.18.180 | Services for independent living. |
| 74.18.190 | Services to blind children and their families. |
| 74.18.200 | Business enterprises program—Definitions. |
| 74.18.210 | Business enterprises program—Purposes. |
| 74.18.220 | Business enterprises program—Vending facilities in public buildings. |
| 74.18.230 | Business enterprises revolving account. |
| 74.18.901 | Conflict with federal requirements. |
| 74.18.902 | Severability—1983 c 194. |
| 74.18.903 | Effective dates—1983 c 194. |

74.18.010 Intent. The purposes of this chapter are to promote employment and independence of blind persons in the state of Washington through their complete integration into society on the basis of equality, and to encourage public acceptance of the abilities of blind persons. [2003 c 409 § 2; 1983 c 194 § 1.]

Findings—2003 c 409: "The legislature finds and declares the following:

- (1) Thousands of citizens in the state have disabilities, including blindness or visual impairment, that prevent them from using conventional print material.
- (2) Governmental and nonprofit organizations provide access to reading material by specialized means, including books and magazines prepared in braille, audio, and large-type formats.
- (3) Access to time-sensitive or local or regional publications, or both, is not feasible to produce through these traditional means and formats.
- (4) Lack of direct and prompt access to information included in newspapers, magazines, newsletters, schedules, announcements, and other time-sensitive materials limits educational opportunities, literacy, and full participation in society by people with print disabilities.
- (5) Creation and storage of information by computer results in electronic files used for publishing and distribution.
- (6) The use of high-speed computer and telecommunications technology combined with customized software provides a practical and cost-effective means to convert electronic text-based information, including daily newspapers, into synthetic speech suitable for statewide distribution by telephone.
- (7) Telephonic distribution of time-sensitive information, including daily newspapers, will enhance the state's current efforts to meet the needs of blind and disabled citizens for access to information which is otherwise available in print, thereby reducing isolation and supporting full integration and equal access for such individuals." [2003 c 409 § 1.]

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

(1) "Department" means an agency of state government called the department of services for the blind.

(2) "Director" means the director of the department of services for the blind. The director is appointed by the governor with the consent of the senate.

(3) "Rehabilitation council for the blind" means the body of members appointed by the governor in accordance with the provisions of RCW 74.18.070 to advise the state agency.

(4) "Blind person" means a person who: (a) Has no vision or whose vision with corrective lenses is so limited that the individual requires alternative methods or skills to do efficiently those things that are ordinarily done with sight by individuals with normal vision; (b) has an eye condition of a progressive nature which may lead to blindness; or (c) is blind for purposes of the business enterprise program as set forth in RCW 74.18.200 through 74.18.230 in accordance with requirements of the Randolph-Sheppard Act of 1936.

(5) "Telephonic reading service" means audio information provided by telephone, including the acquisition and distribution of daily newspapers and other information of local, state, or national interest. [2003 c 409 § 3; 1983 c 194 § 2.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.030 Department created. There is hereby created an agency of state government to be known as the department of services for the blind. The department shall deliver services to blind persons to the extent that appropriations are made available, provided that applicants meet the eligibility criteria for services authorized by this chapter. [1983 c 194 § 3.]

74.18.040 Director—Appointment—Salary. The executive head of the department shall be the director of the department of services for the blind. The director shall be appointed by the governor, with the consent of the senate, and hold office at the pleasure of the governor. The director's salary shall be fixed by the governor in accordance with the provisions of RCW 43.03.040. [1983 c 194 § 4.]

74.18.045 Telephonic reading service. (1)(a) The director shall provide access to a telephonic reading service for blind and disabled persons.

(b) The director shall establish criteria for eligibility for blind and disabled persons who may receive the telephonic reading services. The criteria may be based upon the eligibility criteria for persons who receive services established by the national library service for the blind and physically handicapped of the library of congress.

(2) The director may enter into contracts or other agreements that he or she determines to be appropriate to provide telephonic reading services pursuant to this section.

(3) The director may expand the type and scope of materials available on the telephonic reading service in order to meet the local, regional, or foreign language needs of blind or visually impaired residents of this state. The director may also expand the scope of services and availability of telephonic reading services by current methods and technologies

(2004 Ed.)

that may be developed. The director may inform current and potential patrons of the availability of telephonic reading services through appropriate means, including, but not limited to, direct mailings, direct telephonic contact, and public service announcements.

(4) The director may expend moneys from the business enterprises revolving account accrued from vending machine sales in state and local government buildings, as well as donations and grants, for the purpose of supporting the cost of activities described in this section. [2003 c 409 § 4.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.050 Appointment of personnel. The director may appoint such personnel as necessary, none of whom shall be members of the rehabilitation council for the blind. The director and other personnel who are assigned substantial responsibility for formulating agency policy or directing and controlling a major administrative division, together with their confidential secretaries, up to a maximum of six persons, shall be exempt from the provisions of chapter 41.06 RCW. [2003 c 409 § 5; 1983 c 194 § 5.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.060 Department—Powers and duties. The department shall:

(1) Serve as the sole agency of the state for contracting for and disbursing all federal and state funds appropriated for programs established by and within the jurisdiction of this chapter, and make reports and render accounting as may be required;

(2) Adopt rules, in accordance with chapter 34.05 RCW, necessary to carry out the purposes of this chapter;

(3) Negotiate agreements with other state agencies to provide services so that individuals of any age who are blind or are both blind and otherwise disabled receive the most beneficial services. [2003 c 409 § 6; 1983 c 194 § 6.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.070 Rehabilitation council for the blind—Membership. (1) There is hereby created the rehabilitation council for the blind. The rehabilitation council shall consist of the minimum number of voting members to meet the requirements of the rehabilitation council required under the federal rehabilitation act of 1973 as now or hereafter amended. A majority of the voting members shall be blind persons. Rehabilitation council members shall be residents of the state of Washington, and shall be appointed in accordance with the categories of membership specified in the federal rehabilitation act of 1973 as now or hereafter amended. The director of the department shall be an ex officio, nonvoting member.

(2) The governor shall appoint members of the rehabilitation council for terms of three years, except that the initial appointments shall be as follows: (a) Three members for terms of three years; (b) two members for terms of two years; and (c) other members for terms of one year. Vacancies in the membership of the rehabilitation council shall be filled by the governor for the remainder of the unexpired term.

(3) The governor may remove members of the rehabilitation council for cause. [2003 c 409 § 7; 2000 c 57 § 1; 1983 c 194 § 7.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.080 Rehabilitation council for the blind—Meetings—Travel expenses. (1) The rehabilitation council for the blind shall meet officially with the director of the department quarterly to perform the duties enumerated in RCW 74.18.090. Additional meetings of the rehabilitation council may be convened at the call of the chairperson or of a majority of the members. The rehabilitation council shall elect a chairperson from among its members for a term of one year or until a successor has been elected.

(2) Rehabilitation council members shall receive reimbursement for travel expenses incurred in the performance of their official duties in accordance with RCW 43.03.050 and 43.03.060. [2000 c 57 § 2; 1983 c 194 § 8.]

74.18.090 Rehabilitation council for the blind—Powers. The rehabilitation council for the blind may:

(1) Provide counsel to the director in developing, reviewing, making recommendations, and agreeing on the department's state plan for vocational rehabilitation, budget requests, permanent rules concerning services to blind persons, and other major policies which impact the quality or quantity of services for blind persons;

(2) Undertake annual reviews with the director of the needs of blind persons, the effectiveness of the services and priorities of the department to meet those needs, and the measures that could be taken to improve the department's services;

(3) Annually make recommendations to the governor and the legislature on issues related to the department, other state agencies, or state laws which have a significant effect on the opportunities, services, or rights of blind persons;

(4) Advise and make recommendations to the governor on the criteria and qualifications pertinent to the selection of the director;

(5) Perform additional functions as required by the federal rehabilitation act of 1973 as now or hereafter amended. [2003 c 409 § 8; 2000 c 57 § 3; 1983 c 194 § 9.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.100 Rehabilitation council for the blind—Director to consult. It shall be the duty of the director to consult in a timely manner with the rehabilitation council for the blind on the matters enumerated in RCW 74.18.090. The director shall provide appropriate departmental resources for the use of the rehabilitation council in conducting its official business. [2000 c 57 § 4; 1983 c 194 § 10.]

74.18.110 Receipt of gifts, grants, and bequests. The department may receive, accept, and disburse gifts, grants, conveyances, devises, and bequests from public or private sources, in trust or otherwise, if the terms and conditions thereof will provide services for blind persons in a manner consistent with the purposes of this chapter and with other provisions of law. Any money so received shall be deposited in the state treasury for investment or expenditure in accor-

dance with the conditions of its receipt. [2003 c 409 § 9; 1983 c 194 § 11.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.120 Administrative hearing—Appeal—Rules.

(1) An applicant or eligible person who is dissatisfied with a decision, action, or inaction made by the department or its agents regarding that person's eligibility or department services provided to that person is entitled to an administrative hearing. Such administrative hearings shall be conducted pursuant to chapter 34.05 RCW by an administrative law judge.

(2) The applicant or eligible individual may appeal final decisions issued following administrative hearings under RCW 34.05.510 through 34.05.598.

(3) The department shall develop rules governing other processes for dispute resolution as required under the federal rehabilitation act of 1973. [2003 c 409 § 10; 1989 c 175 § 150; 1983 c 194 § 12.]

Findings—2003 c 409: See note following RCW 74.18.010.

Effective date—1989 c 175: See note following RCW 34.05.010.

74.18.123 Background checks—Individuals having unsupervised access to persons with significant disabilities—Rules.

(1) The department shall investigate the conviction records, pending charges, and disciplinary board final decisions of individuals acting on behalf of the department who will or may have unsupervised access to persons with significant disabilities as defined by the federal rehabilitation act of 1973. This includes:

(a) Current employees of the department;

(b) Applicants seeking or being considered for any position with the department; and

(c) Any service provider, contractor, student intern, volunteer, or other individual acting on behalf of the department.

(2) The investigation shall consist of a background check as allowed through the Washington state criminal records privacy act under RCW 10.97.050, the Washington state patrol criminal identification system under RCW 43.43.832 through 43.43.834, and the federal bureau of investigation. The background check shall include a fingerprint check using a complete Washington state criminal identification fingerprint card. If the applicant or service provider has had a background check within the previous two years, the department may waive the requirement.

(3) When necessary, applicants may be employed and service providers may be engaged on a conditional basis pending completion of the background check.

(4) The department shall use the information solely to determine the character, suitability, and competence of employees, applicants, service providers, contractors, student interns, volunteers, and other individuals in accordance with RCW 41.06.475.

(5) The department shall adopt rules addressing procedures for undertaking background checks which shall include, but not be limited to, the following:

(a) The manner in which the individual will be provided access to and review of information obtained based on the background check required;

(b) Assurance that access to background check information shall be limited to only those individuals processing the information at the department;

(c) Action that shall be taken against a current employee, service provider, contractor, student intern, or volunteer who is disqualified from a position because of a background check not previously performed.

(6) The department shall determine who will pay costs associated with the background check. [2003 c 409 § 11.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.127 Confidentiality of personal information, records—Rules. (1) Personal information and records obtained and retained by the department concerning applicants and eligible individuals are confidential, are not subject to public disclosure, and may be released only in accordance with law or with this provision.

(2) The department shall adopt rules and develop contract language to safeguard the confidentiality of all personal information, including photographs and lists of names. Rules and contract language shall ensure that:

(a) Specific safeguards are established to protect all current and future stored personal information;

(b) Specific safeguards and procedures are established for the release of personal health information in accordance with the health insurance portability and accountability act of 1996, 45 C.F.R. 160 through 45 C.F.R. 164;

(c) All applicants and eligible individuals and, as appropriate, those individuals' representatives, service providers, cooperating agencies, and interested persons are informed upon initial intake of the confidentiality of personal information and the conditions for accessing and releasing this information;

(d) All applicants or their representatives are informed about the department's need to collect personal information and the policies governing its use, including: (i) Identification of the authority under which information is collected; (ii) explanation of the principal purposes for which the department intends to use or release the information; (iii) explanation of whether providing requested information to the department is mandatory or voluntary and the effects of not providing requested information; (iv) identification of those situations in which the department requires or does not require informed written consent of the individual before information may be released; and (v) identification of other agencies to which information is routinely released; and

(e) An explanation of department policies and procedures affecting personal information will be provided at intake or on request to each individual in that individual's native language and in an appropriate format including but not limited to braille, audio recording, electronic media, or large print. [2003 c 409 § 12.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.130 Vocational rehabilitation—Eligibility. The department shall provide a program of vocational rehabilitation to assist blind persons to overcome barriers to employment and to develop skills necessary for employment and independence. Applicants eligible for vocational rehabilitation services shall be blind persons who also meet eligibility

(2004 Ed.)

requirements as specified in the federal rehabilitation act of 1973. [2003 c 409 § 13; 1983 c 194 § 13.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.140 Vocational rehabilitation—Services. The department shall ensure that vocational rehabilitation services in accordance with requirements under the federal rehabilitation act of 1973 are available to meet the identified requirements of each eligible individual in preparing for, securing, retaining, or regaining an employment outcome that is consistent with the individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice. [2003 c 409 § 14; 1983 c 194 § 14.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.150 Vocational rehabilitation—Grants of equipment and material. The department may grant to eligible participants in the vocational rehabilitation program equipment and materials in accordance with the provisions related to transfer of capital assets as set forth by the office of financial management in the state administrative and accounting manual, provided that the equipment or materials are required by the individual's plan for employment and are used in a manner consistent therewith. The department shall adopt rules to implement this section. [2003 c 409 § 15; 1996 c 7 § 1; 1983 c 194 § 15.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.170 Rehabilitation or habilitation facilities authorized. The department may establish, construct, and/or operate rehabilitation or habilitation facilities to provide instruction in alternative skills necessary to adjust to blindness or substantial vision loss, to assist blind persons to develop increased confidence and independence, or to provide other services consistent with the purposes of this chapter. The department shall adopt rules concerning selection criteria for participation, services, and other matters necessary for efficient and effective operation of such facilities. [2003 c 409 § 16; 1983 c 194 § 16.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.180 Services for independent living. (1) The department may provide a program of independent living services for blind persons who are not seeking vocational rehabilitation services.

(2) Independent living services may include, but are not limited to, instruction in adaptive skills of blindness, counseling regarding adjustment to vision loss, and provision of adaptive devices that enable service recipients to participate in the community and maintain or increase their independence. [2003 c 409 § 17; 1983 c 194 § 18.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.190 Services to blind children and their families. (1) The department may offer services to assist blind children and their families to learn skills and locate resources which increase the child's ability for personal development and participation in society.

(2) Services provided under this section may include:

(a) Direct consultation with blind children and their families to provide needs assessment, counseling, developmental training, adaptive skills, and information regarding other available resources;

(b) Consultation and technical assistance in all sectors of society, at the request of a blind child, his or her family, or a service provider working with the child or family, to assure the blind child's rights to participate fully in educational, vocational, and social opportunities. The department is encouraged to establish working agreements and arrangements with community organizations and other state agencies which provide services to blind children.

(3) To facilitate the coordination of services to blind children and their families, the office of superintendent of public instruction and the department of services for the blind shall negotiate an interagency agreement providing for coordinated service delivery and the sharing of information between the two agencies, including an annual register of blind students in the state of Washington. [1983 c 194 § 19.]

74.18.200 Business enterprises program—Definitions. Unless the context clearly requires otherwise, the definitions in this section apply in RCW 74.18.200 through 74.18.230.

(1) "Business enterprises program" means a program operated by the department under the federal Randolph-Sheppard Act, 20 U.S.C. Sec. 107 et seq., and under this chapter in support of blind persons operating vending businesses in public buildings.

(2) "Vending facility" means any stand, snack bar, cafeteria, or business at which food, tobacco, sundries, or other retail merchandise or service is sold or provided.

(3) "Vending machine" means any coin-operated machine that sells or provides food, tobacco, sundries, or other retail merchandise or service.

(4) "Blind person" means a person whose central visual acuity does not exceed 20/200 in the better eye with correcting lenses or whose visual acuity, if better than 20/200, is accompanied by a limit to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than twenty degrees. In determining whether an individual is blind, there shall be an examination by a physician skilled in diseases of the eye, or by an optometrist, whichever the individual selects.

(5) "Licensee" means a blind person licensed by the state of Washington under the Randolph-Sheppard Act, this chapter, and the rules issued hereunder.

(6) "Public building" means any building and immediately adjacent outdoor space associated therewith, such as a patio or entryway, which is: (a) Owned by the state of Washington or any political subdivision thereof or any space leased by the state of Washington or any political subdivision thereof in any privately-owned building; and (b) dedicated to the administrative functions of the state or any political subdivision. However, this term shall not include property under the jurisdiction and control of a local board of education without the consent of such board.

(7) "Priority" means the department has first and primary right to operate the food service and vending facilities, including vending machines, on federal, state, county, municipal, and other local government property except those other-

wise exempted by statute. Such right may, at the sole discretion of the department, be waived in the event that the department is temporarily unable to assert the priority. [2003 c 409 § 18; 1985 c 97 § 1; 1983 c 194 § 20.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.210 Business enterprises program—Purposes.

The department shall maintain or cause to be maintained a business enterprises program for blind persons to operate vending facilities in public buildings. The purposes of the business enterprises program are to implement the Randolph-Sheppard Act and thereby give priority to qualified blind persons in operating vending facilities on federal property, to make similar provisions for vending facilities in public buildings in the state of Washington and thereby increase employment opportunities for blind persons, and to encourage blind persons to become successful, independent business persons. [2003 c 409 § 19; 1983 c 194 § 21.]

Findings—2003 c 409: See note following RCW 74.18.010.

74.18.220 Business enterprises program—Vending facilities in public buildings.

(1) The department is authorized to license blind persons to operate vending facilities and vending machines on federal property and in public buildings.

(2) The state, political subdivisions thereof, and agencies of the state, or political subdivisions thereof shall give priority to licensees in the operation of vending facilities and vending machines in public buildings. [1983 c 194 § 22.]

74.18.230 Business enterprises revolving account.

(1) There is established in the state treasury an account known as the business enterprises revolving account.

(2) The net proceeds from any vending machine operation in a public building, other than an operation managed by a licensee, shall be made payable to the business enterprises program, which will pay only the blind vendors' portion, at the subscriber's rate, for the purpose of funding a plan of health insurance for blind vendors, as provided in RCW 41.05.225. Net proceeds, for purposes of this section, means gross sales less state sales tax and a fair minimum return to the vending machine owner or service provider, which return shall be a reasonable amount to be determined by the department.

(3) All federal moneys in the business enterprises revolving account shall be expended only for development and expansion of locations, equipment, management services, and payments to licensees in the business enterprises program.

(4) The business enterprises program shall be supported by the business enterprises revolving account and by income which may accrue to the department pursuant to the federal Randolph-Sheppard Act. [2003 c 409 § 20; 2002 c 71 § 2; 1993 c 369 § 1; 1991 sp.s. c 13 §§ 19, 116. Prior: 1985 c 97 § 2; 1985 c 57 § 72; 1983 c 194 § 23.]

Findings—2003 c 409: See note following RCW 74.18.010.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1985 c 57: See note following RCW 18.04.105.

74.18.901 Conflict with federal requirements. If any part of this chapter is found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, the conflicting part of this chapter is hereby declared to be inoperative solely to the extent of the conflict, and the findings or determination shall not affect the operation of the remainder of this chapter. [1983 c 194 § 25.]

74.18.902 Severability—1983 c 194. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 c 194 § 31.]

74.18.903 Effective dates—1983 c 194. This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions. Section 27 of this act which transfers functions from the commission for the blind to the department of social and health services and section 26 of this act shall take effect immediately. All other sections of this act shall take effect June 30, 1983. [1983 c 194 § 33.]

Chapter 74.20 RCW

SUPPORT OF DEPENDENT CHILDREN

Sections

| | |
|-----------|---|
| 74.20.010 | Purpose—Legislative intent—Chapter to be liberally construed. |
| 74.20.021 | Definitions. |
| 74.20.040 | Duty of department to enforce child support—Requests for support enforcement services—Schedule of fees—Waiver—Rules. |
| 74.20.045 | Employment status—Self-employed individuals—Enforcement. |
| 74.20.055 | Designated agency under federal law—Role of prosecuting attorneys. |
| 74.20.057 | Adjudicative proceedings—Role of department. |
| 74.20.060 | Cooperation by person having custody of child—Penalty. |
| 74.20.065 | Wrongful deprivation of custody—Legal custodian excused from support payments. |
| 74.20.101 | Payment of support moneys to state support registry—Notice—Effects of noncompliance. |
| 74.20.160 | Department may disclose information to internal revenue department. |
| 74.20.210 | Attorney general may act under Uniform Reciprocal Enforcement of Support Act pursuant to agreement with prosecuting attorney. |
| 74.20.220 | Powers of department through the attorney general or prosecuting attorney. |
| 74.20.225 | Subpoena authority—Enforcement. |
| 74.20.230 | Petition for support order by married parent with minor children who are receiving public assistance. |
| 74.20.240 | Petition for support order by married parent with minor children who are receiving public assistance—Order—Powers of court. |
| 74.20.250 | Petition for support order by married parent with minor children who are receiving public assistance—Waiver of filing fees. |
| 74.20.260 | Financial statements by parent whose absence is basis of application for public assistance. |
| 74.20.280 | Central unit for information and administration—Cooperation enjoined—Availability of records. |
| 74.20.300 | Department exempt from fees relating to paternity or support. |
| 74.20.310 | Guardian ad litem in actions brought to determine parent and child relationship—Notice. |
| 74.20.320 | Custodian to remit support moneys when department has support obligation—Noncompliance. |
| 74.20.330 | Payment of public assistance as assignment of rights to support—Department authorized to provide services. |
| 74.20.340 | Employees' case workload standards. |

(2004 Ed.)

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| 74.20.350 | Costs and attorneys' fees. |
| 74.20.360 | Orders for genetic testing. |

Child support registry: Chapter 26.23 RCW.

Temporary assistance for needy families: Chapter 74.12 RCW.

74.20.010 Purpose—Legislative intent—Chapter to be liberally construed. It is the responsibility of the state of Washington through the state department of social and health services to conserve the expenditure of public assistance funds, whenever possible, in order that such funds shall not be expended if there are private funds available or which can be made available by judicial process or otherwise to partially or completely meet the financial needs of the children of this state. The failure of parents to provide adequate financial support and care for their children is a major cause of financial dependency and a contributing cause of social delinquency.

The purpose of this chapter is to provide the state of Washington, through the department of social and health services, a more effective and efficient way to effect the support of dependent children by the person or persons who, under the law, are primarily responsible for such support and to lighten the heavy burden of the taxpayer, who in many instances is paying toward the support of dependent children while those persons primarily responsible are avoiding their obligations. It is the intention of the legislature that the powers delegated to the said department in this chapter be liberally construed to the end that persons legally responsible for the care and support of children within the state be required to assume their legal obligations in order to reduce the financial cost to the state of Washington in providing public assistance funds for the care of children. It is the intention of the legislature that the department provide sufficient staff to carry out the purposes of this chapter, chapter 74.20A RCW, the abandonment and nonsupport statutes, and any applicable federal support enforcement statute administered by the department. It is also the intent of the legislature that the staff responsible for support enforcement be encouraged to conduct their support enforcement duties with fairness, courtesy, and the highest professional standards. [1979 ex.s. c 171 § 24; 1979 c 141 § 364; 1963 c 206 § 1; 1959 c 322 § 2.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.021 Definitions. See RCW 74.20A.020.

74.20.040 Duty of department to enforce child support—Requests for support enforcement services—Schedule of fees—Waiver—Rules. (1) Whenever the department receives an application for public assistance on behalf of a child, the department shall take appropriate action under the provisions of this chapter, chapter 74.20A RCW, or other appropriate statutes of this state to establish or enforce support obligations against the parent or other persons owing a duty to pay support moneys.

(2) The secretary may accept a request for support enforcement services on behalf of persons who are not recipients of public assistance and may take appropriate action to establish or enforce support obligations against the parent or other persons owing a duty to pay moneys. Requests accepted under this subsection may be conditioned upon the payment of a fee as required through regulation issued by the secre-

tary. The secretary may establish by regulation, reasonable standards and qualifications for support enforcement services under this subsection.

(3) The secretary may accept requests for support enforcement services from child support enforcement agencies in other states operating child support programs under Title IV-D of the social security act or from foreign countries, and may take appropriate action to establish and enforce support obligations, or to enforce subpoenas, information requests, orders for genetic testing, and collection actions issued by the other agency against the parent or other person owing a duty to pay support moneys, the parent or other person's employer, or any other person or entity properly subject to child support collection or information-gathering processes. The request shall contain and be accompanied by such information and documentation as the secretary may by rule require, and be signed by an authorized representative of the agency. The secretary may adopt rules setting forth the duration and nature of services provided under this subsection.

(4) The department may take action to establish, enforce, and collect a support obligation, including performing related services, under this chapter and chapter 74.20A RCW, or through the attorney general or prosecuting attorney for action under chapter 26.09, 26.18, 26.20, 26.21, or 26.26 RCW or other appropriate statutes or the common law of this state.

(5) Whenever a support order is filed with the Washington state support registry under chapter 26.23 RCW, the department may take appropriate action under the provisions of this chapter, chapter 26.23 or 74.20A RCW, or other appropriate law of this state to establish or enforce the support obligations contained in that order against the responsible parent or other persons owing a duty to pay support moneys.

(6) The secretary may charge and collect a fee from the person obligated to pay support to compensate the department for services rendered in establishment of or enforcement of support obligations. This fee shall be limited to not more than ten percent of any support money collected as a result of action taken by the secretary. The fee charged shall be in addition to the support obligation. In no event may any moneys collected by the department from the person obligated to pay support be retained as satisfaction of fees charged until all current support obligations have been satisfied. The secretary shall by regulation establish reasonable fees for support enforcement services and said schedule of fees shall be made available to any person obligated to pay support. The secretary may, on showing of necessity, waive or defer any such fee.

(7) Fees, due and owing, may be collected as delinquent support moneys utilizing any of the remedies in chapter 74.20 RCW, chapter 74.20A RCW, chapter 26.21 RCW, or any other remedy at law or equity available to the department or any agencies with whom it has a cooperative or contractual arrangement to establish, enforce, or collect support moneys or support obligations.

(8) The secretary may waive the fee, or any portion thereof, as a part of a compromise of disputed claims or may grant partial or total charge off of said fee if the secretary finds there are no available, practical, or lawful means by

which said fee may be collected or to facilitate payment of the amount of delinquent support moneys owed.

(9) The secretary shall adopt rules conforming to federal laws, rules, and regulations required to be observed in maintaining the state child support enforcement program required under Title IV-D of the federal social security act. The adoption of these rules shall be calculated to promote the cost-effective use of the agency's resources and not otherwise cause the agency to divert its resources from its essential functions. [1997 c 58 § 891; 1989 c 360 § 12; 1985 c 276 § 1; 1984 c 260 § 29; 1982 c 201 § 20; 1973 1st ex.s. c 183 § 1; 1971 ex.s. c 213 § 1; 1963 c 206 § 3; 1959 c 322 § 5.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—1984 c 260: See RCW 26.18.900.

74.20.045 Employment status—Self-employed individuals—Enforcement. The office of support enforcement shall, as a matter of policy, use all available remedies for the enforcement of support obligations where the obligor is a self-employed individual. The office of support enforcement shall not discriminate in favor of certain obligors based upon employment status. [1994 c 299 § 16.]

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

74.20.055 Designated agency under federal law—Role of prosecuting attorneys. The department of social and health services office of support enforcement is the designated agency in Washington state to administer the child support program under Title IV-D of the federal social security act and is responsible for providing necessary and mandated support enforcement services and ensuring that such services are available statewide. It is the intent of the legislature to enhance the total child support program in this state by granting the office of support enforcement administrative powers and flexibility. If the exercise of this authority is used to supplant or replace the role of the prosecuting attorneys for reasons other than economy or federal compliance, the Washington association of prosecuting attorneys shall report to the committees on judiciary of the senate and house of representatives. [1985 c 276 § 17.]

74.20.057 Adjudicative proceedings—Role of department. When the department appears or participates in an adjudicative proceeding under chapter 26.23 or 74.20A RCW it shall:

- (1) Act in furtherance of the state's financial interest in the matter;
- (2) Act in the best interests of the children of the state;
- (3) Facilitate the resolution of the controversy; and
- (4) Make independent recommendations to ensure the integrity and proper application of the law and process.

In the proceedings the department does not act on behalf or as an agent or representative of an individual. [1994 c 230 § 18.]

74.20.060 Cooperation by person having custody of child—Penalty. Any person having the care, custody or

control of any dependent child or children who shall fail or refuse to cooperate with the department of social and health services, any prosecuting attorney or the attorney general in the course of administration of provisions of this chapter shall be guilty of a misdemeanor. [1979 c 141 § 365; 1959 c 322 § 7.]

74.20.065 Wrongful deprivation of custody—Legal custodian excused from support payments. If the legal custodian has been wrongfully deprived of physical custody, the department is authorized to excuse the custodian from support payments for a child or children receiving or on whose behalf public assistance was provided under chapter 74.12 RCW, or for a child or children on behalf of whom the department is providing nonassistance support enforcement services. [2002 c 199 § 4; 1983 1st ex.s. c 41 § 31.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.20.101 Payment of support moneys to state support registry—Notice—Effects of noncompliance. (1) A responsible parent shall make all support payments through the office of support enforcement or the Washington state support registry if:

(a) The parent's support order contains a provision directing the parent to make support payments through the office of support enforcement or the Washington state support registry; or

(b) If the parent has received written notice from the office of support enforcement under RCW 26.23.110, 74.20A.040, or 74.20A.055 that all future support payments must be made through the office of support enforcement or the Washington state support registry.

(2) A responsible parent who has been ordered or notified to make support payments to the office of support enforcement or the Washington state support registry shall not receive credit for payments which are not paid to the office of support enforcement or the Washington state support registry unless:

(a) The department determines that the granting of credit would not prejudice the rights of the residential parent or other person or agency entitled to receive the support payments and circumstances of an equitable nature exist; or

(b) A court, after a hearing at which all interested parties were given an opportunity to be heard, on equitable principles, orders that credit be given.

(3) The rights of the payee under an order for support shall not be prejudiced if the department grants credit under subsection (2)(a) of this section. If the department determines that credit should be granted pursuant to subsection (2) of this section, the department shall mail notice of its decision to the last known address of the payee, together with information about the procedure to contest the determination. [1989 c 360 § 7; 1987 c 435 § 30; 1979 ex.s. c 171 § 13; 1973 1st ex.s. c 183 § 2; 1969 ex.s. c 173 § 16.]

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.160 Department may disclose information to internal revenue department. Notwithstanding the provisions of RCW 74.04.060, upon approval of the department of

health, education and welfare of the federal government, the department of social and health services may disclose to and keep the internal revenue department of the treasury of the United States advised of the names of all persons who are under legal obligation to support any dependent child or children and who are not doing so, to the end that the internal revenue department may have available to it the names of such persons for review in connection with income tax returns and claims of dependencies made by persons filing income tax returns. [1979 c 141 § 366; 1963 c 206 § 5; 1959 c 322 § 17.]

74.20.210 Attorney general may act under Uniform Reciprocal Enforcement of Support Act pursuant to agreement with prosecuting attorney. The prosecuting attorney of any county except a county with a population of one million or more may enter into an agreement with the attorney general whereby the duty to initiate petitions for support authorized under the provisions of chapter 26.21 RCW as it is now or hereafter amended (*Uniform Reciprocal Enforcement of Support Act) in cases where the petitioner has applied for or is receiving public assistance on behalf of a dependent child or children shall become the duty of the attorney general. Any such agreement may also provide that the attorney general has the duty to represent the petitioner in intercounty proceedings within the state initiated by the attorney general which involve a petition received from another county. Upon the execution of such agreement, the attorney general shall be empowered to exercise any and all powers of the prosecuting attorney in connection with said petitions. [1991 c 363 § 150; 1969 ex.s. c 173 § 14; 1963 c 206 § 6.]

***Reviser's note:** The "Uniform Reciprocal Enforcement of Support Act" was redesignated the "Uniform Interstate Family Support Act" by 1993 c 318.

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

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

74.20.220 Powers of department through the attorney general or prosecuting attorney. In order to carry out its responsibilities imposed under this chapter and as required by federal law, the state department of social and health services, through the attorney general or prosecuting attorney, is hereby authorized to:

(1) Initiate an action in superior court to obtain a support order or obtain other relief related to support for a dependent child on whose behalf the department is providing public assistance or support enforcement services under RCW 74.20.040, or to enforce a superior court order.

(2) Appear as a party in dissolution, child support, parentage, maintenance suits, or other proceedings, for the purpose of representing the financial interest and actions of the state of Washington therein.

(3) Petition the court for modification of a superior court order when the office of support enforcement is providing support enforcement services under RCW 74.20.040.

(4) When the attorney general or prosecuting attorney appears in, defends, or initiates actions to establish, modify, or enforce child support obligations he or she represents the state, the best interests of the child relating to parentage, and the best interests of the children of the state, but does not represent the interests of any other individual.

(5) If public assistance has been applied for or granted on behalf of a child of parents who are divorced or legally separated, the attorney general or prosecuting attorney may apply to the superior court in such action for an order directing either parent or both to show cause:

(a) Why an order of support for the child should not be entered, or

(b) Why the amount of support previously ordered should not be increased, or

(c) Why the parent should not be held in contempt for his or her failure to comply with any order of support previously entered.

(6) Initiate any civil proceedings deemed necessary by the department to secure reimbursement from the parent or parents of minor dependent children for all moneys expended by the state in providing assistance or services to said children.

(7) Nothing in this section limits the authority of the attorney general or prosecuting attorney to use any and all civil and criminal remedies to enforce, establish, or modify child support obligations whether or not the custodial parent receives public assistance. [1991 c 367 § 44; 1979 c 141 § 367; 1973 1st ex.s. c 154 § 112; 1969 ex.s. c 173 § 15; 1963 c 206 § 7.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

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

74.20.225 Subpoena authority—Enforcement. In carrying out the provisions of this chapter or chapters 26.18, 26.23, 26.26, and 74.20A RCW, the secretary and other duly authorized officers of the department may subpoena witnesses, take testimony, and compel the production of such papers, books, records, and documents as they may deem relevant to the performance of their duties. The division of child support may enforce subpoenas issued under this power according to RCW 74.20A.350. [1997 c 58 § 898.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

74.20.230 Petition for support order by married parent with minor children who are receiving public assistance. Any married parent with minor children, natural or legally adopted children who is receiving public assistance may apply to the superior court of the county in which such parent resides or in which the spouse may be found for an order upon such spouse, if such spouse is the natural or adoptive mother or father of such children, to provide for such spouse's support and the support of such spouse's minor children by filing in such county a petition setting forth the facts and circumstances upon which such spouse relies for such order. If it appears to the satisfaction of the court that such parent is without funds to employ counsel, the state department of social and health services through the attorney general may file such petition on behalf of such parent. If satisfied that a just cause exists, the court shall direct that a citation issue to the other spouse requiring such spouse to appear at a time set by the court to show cause why an order of sup-

port should not be entered in the matter. [1973 1st ex.s. c 154 § 113; 1963 c 206 § 8.]

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

74.20.240 Petition for support order by married parent with minor children who are receiving public assistance—Order—Powers of court. (1) After the hearing of the petition for an order of support the court shall make an order granting or denying it and fixing, if allowed, the terms and amount of the support. (2) The court has the same power to compel the attendance of witnesses and the production of testimony as in actions and suits, to make such decree or orders as are equitable in view of the circumstances of both parties and to punish violations thereof as other contempts are punished. [1963 c 206 § 9.]

74.20.250 Petition for support order by married parent with minor children who are receiving public assistance—Waiver of filing fees. The court may, upon satisfactory showing that the petitioner is without funds to pay the filing fee, order that the petition and other papers be filed without payment of the fee. [1963 c 206 § 10.]

74.20.260 Financial statements by parent whose absence is basis of application for public assistance. Any parent in the state whose absence is the basis upon which an application is filed for public assistance on behalf of a child shall be required to complete a statement, under oath, of his current monthly income, his total income over the past twelve months, the number of dependents for whom he is providing support, the amount he is contributing regularly toward the support of all children for whom application for such assistance is made, his current monthly living expenses and such other information as is pertinent to determining his ability to support his children. Such statement shall be provided upon demand made by the state department of social and health services or attorney general, and if assistance based upon such application is granted on behalf of such child, additional statements shall be filed annually thereafter with the state department of social and health services until such time as the child is no longer receiving such assistance. Failure to comply with this section shall constitute a misdemeanor. [1979 c 141 § 368; 1963 c 206 § 11.]

74.20.280 Central unit for information and administration—Cooperation enjoined—Availability of records. The department is authorized and directed to establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning the parents of dependent children, to coordinate and supervise departmental activities in relation to such parents, to assure effective cooperation with law enforcement agencies, and to perform other functions authorized by state and federal support enforcement and child custody statutes and regulations.

To effectuate the purposes of this section, the secretary may request from state, county and local agencies all information and assistance as authorized by this chapter. Upon the request of the department of social and health services, all state, county and city agencies, officers and employees shall cooperate in the location of the parents of a dependent child

and shall supply the department with all information relative to the location, income and property of such parents, notwithstanding any provision of law making such information confidential.

Any records established pursuant to the provisions of this section shall be available only to the attorney general, prosecuting attorneys, courts having jurisdiction in support and/or abandonment proceedings or actions, or other authorized agencies or persons for use consistent with the intent of state and federal support enforcement and child custody statutes and regulations. [1983 1st ex.s. c 41 § 15; 1979 c 141 § 370; 1963 c 206 § 13.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.20.300 Department exempt from fees relating to paternity or support. No filing or recording fees, court fees, or fees for making copies of documents shall be required from the state department of social and health services by any county clerk, county auditor, or other county officer for the filing of any actions or documents necessary to establish paternity or enforce or collect support moneys.

Filing fees shall also not be required of any prosecuting attorney or the attorney general for action to establish paternity or enforce or collect support moneys. [1979 ex.s. c 171 § 1; 1973 1st ex.s. c 183 § 3; 1963 c 206 § 15.]

Severability—1979 ex.s. c 171: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 ex.s. c 171 § 28.]

74.20.310 Guardian ad litem in actions brought to determine parent and child relationship—Notice. (1) The provisions of RCW 26.26.555 requiring appointment of a guardian ad litem to represent the child in an action brought to determine the parent and child relationship do not apply to actions brought under chapter 26.26 RCW if:

(a) The action is brought by the attorney general on behalf of the department of social and health services and the child; or

(b) The action is brought by any prosecuting attorney on behalf of the state and the child when referral has been made to the prosecuting attorney by the department of social and health services requesting such action.

(2) On the issue of parentage, the attorney general or prosecuting attorney functions as the child's guardian ad litem provided the interests of the state and the child are not in conflict.

(3) The court, on its own motion or on motion of a party, may appoint a guardian ad litem when necessary.

(4) The summons shall contain a notice to the parents that pursuant to RCW 26.26.555 the parents have a right to move the court for a guardian ad litem for the child other than the prosecuting attorney or the attorney general subject to subsection (2) of this section. [2002 c 302 § 705; 1991 c 367 § 45; 1979 ex.s. c 171 § 15.]

Application—Construction—Short title—Severability—2002 c 302: See RCW 26.26.903, 26.26.911, and 26.26.912.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

(2004 Ed.)

74.20.320 Custodian to remit support moneys when department has support obligation—Noncompliance. Whenever a custodian of children, or other person, receives support moneys paid to them which moneys are paid in whole or in part in satisfaction of a support obligation which has been assigned to the department pursuant to Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 or RCW 74.20.330 or to which the department is owed a debt pursuant to RCW 74.20A.030, the moneys shall be remitted to the department within eight days of receipt by the custodian or other person. If not so remitted the custodian or other person shall be indebted to the department as a support debt in an amount equal to the amount of the support money received and not remitted.

By not paying over the moneys to the department, a custodial parent or other person is deemed, without the necessity of signing any document, to have made an irrevocable assignment to the department of any support delinquency owed which is not already assigned to the department or to any support delinquency which may accrue in the future in an amount equal to the amount of support money retained. The department may utilize the collection procedures in chapter 74.20A RCW to collect the assigned delinquency to effect recoupment and satisfaction of the debt incurred by reason of the failure of the custodial parent or other person to remit. The department is also authorized to make a set-off to effect satisfaction of the debt by deduction from support moneys in its possession or in the possession of any clerk of the court or other forwarding agent which are paid to the custodial parent or other person for the satisfaction of any support delinquency. Nothing in this section authorizes the department to make set-off as to current support paid during the month for which the payment is due and owing. [1997 c 58 § 935; 1979 ex.s. c 171 § 17.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.330 Payment of public assistance as assignment of rights to support—Department authorized to provide services. (1) Whenever public assistance is paid under a state program funded under Title IV-A of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, each applicant or recipient is deemed to have made assignment to the department of any rights to a support obligation from any other person the applicant or recipient may have in his or her own behalf or in behalf of any other family member for whom the applicant or recipient is applying for or receiving public assistance, including any unpaid support obligation or support debt which has accrued at the time the assignment is made.

(2) Payment of public assistance under a state-funded program, or a program funded under Title IV-A or IV-E of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996 shall:

(a) Operate as an assignment by operation of law; and

[Title 74 RCW—page 101]

(b) Constitute an authorization to the department to provide the assistance recipient with support enforcement services. [2000 c 86 § 6; 1997 c 58 § 936; 1989 c 360 § 13; 1988 c 275 § 19; 1985 c 276 § 3; 1979 ex.s. c 171 § 22.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.340 Employees' case workload standards. The department shall develop workload standards for each employee classification involved in support enforcement activities for each category of support enforcement cases. [1998 c 245 § 150; 1979 ex.s. c 171 § 25.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.350 Costs and attorneys' fees. In order to facilitate and ensure compliance with Title IV-D of the federal social security act, now existing or hereafter amended, wherein the state is required to undertake to establish paternity of such children as are born out of wedlock, the secretary of social and health services may pay the reasonable and proper fees of attorneys admitted to practice before the courts of this state, who are engaged in private practice for the purpose of maintaining actions under chapter 26.26 RCW on behalf of such children, to the end that parent and child relationships be determined and financial support obligations be established by superior court order. The secretary or the secretary's designee shall make the determination in each case as to which cases shall be referred for representation by such private attorneys. The secretary may advance, pay, or reimburse for payment of, such reasonable costs as may be attendant to an action under chapter 26.26 RCW. The representation by a private attorney shall be only on behalf of the subject child, the custodial natural parent, and the child's personal representative or guardian ad litem, and shall not in any manner be, or be construed to be, in representation of the department of social and health services or the state of Washington, such representation being restricted to that provided pursuant to chapters 43.10 and 36.27 RCW. [1979 ex.s. c 171 § 19.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20.360 Orders for genetic testing. (1) The division of child support may issue an order for genetic testing when providing services under this chapter and Title IV-D of the federal social security act if genetic testing:

(a) Is appropriate in an action under chapter 26.26 RCW, the uniform parentage act;

(b) Is appropriate in an action to establish support under RCW 74.20A.056; or

(c) Would assist the parties or the division of child support in determining whether it is appropriate to proceed with an action to establish or disestablish paternity.

(2) The order for genetic testing shall be served on the alleged parent or parents and the legal parent by personal service or by any form of mail requiring a return receipt.

(3) Within twenty days of the date of service of an order for genetic testing, any party required to appear for genetic testing, the child, or a guardian on the child's behalf, may petition in superior court under chapter 26.26 RCW to bar or postpone genetic testing.

(4) The order for genetic testing shall contain:

(a) An explanation of the right to proceed in superior court under subsection (3) of this section;

(b) Notice that if no one proceeds under subsection (3) of this section, the agency issuing the order will schedule genetic testing and will notify the parties of the time and place of testing by regular mail;

(c) Notice that the parties must keep the agency issuing the order for genetic testing informed of their residence address and that mailing a notice of time and place for genetic testing to the last known address of the parties by regular mail constitutes valid service of the notice of time and place;

(d) Notice that the order for genetic testing may be enforced through:

(i) Public assistance grant reduction for noncooperation, pursuant to agency rule, if the child and custodian are receiving public assistance;

(ii) Termination of support enforcement services under Title IV-D of the federal social security act if the child and custodian are not receiving public assistance;

(iii) A referral to superior court for an appropriate action under chapter 26.26 RCW; or

(iv) A referral to superior court for remedial sanctions under RCW 7.21.060.

(5) The department may advance the costs of genetic testing under this section.

(6) If an action is pending under chapter 26.26 RCW, a judgment for reimbursement of the cost of genetic testing may be awarded under RCW 26.26.570.

(7) If no action is pending in superior court, the department may impose an obligation to reimburse costs of genetic testing according to rules adopted by the department to implement RCW 74.20A.056. [2002 c 302 § 706; 1997 c 58 § 901.]

Application—Construction—Short title—Severability—2002 c 302: See RCW 26.26.903, 26.26.911, and 26.26.912.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Chapter 74.20A RCW

SUPPORT OF DEPENDENT CHILDREN— ALTERNATIVE METHOD—1971 ACT

Sections

| | |
|------------|--|
| 74.20A.010 | Purpose—Remedies additional. |
| 74.20A.020 | Definitions. |
| 74.20A.030 | Department subrogated to rights for support—Enforcement actions—Certain parents exempt. |
| 74.20A.035 | Augmentation of paternity establishment services. |
| 74.20A.040 | Notice of support debt—Service or mailing—Contents—Action on, when. |
| 74.20A.055 | Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions. |
| 74.20A.056 | Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules (<i>as amended by 2002 c 199</i>). |

- 74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules (*as amended by 2002 c 302*).
- 74.20A.057 Jurisdiction over responsible parent.
- 74.20A.059 Modification of administrative orders establishing child support—Petition—Grounds—Procedure.
- 74.20A.060 Assertion of lien—Effect.
- 74.20A.070 Service of lien.
- 74.20A.080 Order to withhold and deliver—Issuance and service—Contents—Effect—Duties of person served—Processing fee.
- 74.20A.090 Certain amount of earnings exempt from lien or order—"Earnings" and "disposable earnings" defined.
- 74.20A.095 Support enforcement services—Action against earnings within state—Notice.
- 74.20A.100 Civil liability upon failure to comply with order or lien—Collection.
- 74.20A.110 Release of excess to debtor.
- 74.20A.120 Banks, savings and loan associations, credit unions—Service on main office or branch, effect—Collection actions against community bank account, right to adjudicative proceeding.
- 74.20A.130 Distraint, seizure and sale of property subject to liens under RCW 74.20A.060—Procedure.
- 74.20A.140 Action for foreclosure of support lien—Satisfaction.
- 74.20A.150 Satisfaction of lien after foreclosure proceedings instituted—Redemption.
- 74.20A.160 Secretary may set debt payment schedule, release funds in certain hardship cases.
- 74.20A.170 Secretary may release lien or order or return seized property—Effect.
- 74.20A.180 Secretary may make demand, file and serve liens, when payments appear in jeopardy.
- 74.20A.188 Request for assistance on automated enforcement of interstate case—Certification required.
- 74.20A.200 Judicial relief after administrative remedies exhausted.
- 74.20A.220 Charging off child support debts as uncollectible—Compromise—Waiver of any bar to collection.
- 74.20A.230 Employee debtor rights protected—Remedies.
- 74.20A.240 Assignment of earnings to be honored—Effect—Processing fee.
- 74.20A.250 Secretary empowered to act as attorney, endorse drafts.
- 74.20A.260 Industrial insurance disability payments subject to collection by office of support enforcement.
- 74.20A.270 Department claim for support moneys—Notice—Answer—Adjudicative proceeding—Judicial review—Moneys not subject to claim.
- 74.20A.275 Support payments in possession of third parties—Collection.
- 74.20A.280 Department to respect privacy of recipients.
- 74.20A.290 Applicant for adjudicative proceeding must advise department of current address.
- 74.20A.300 Health insurance coverage required.
- 74.20A.310 Federal and state cooperation—Rules—Construction.
- 74.20A.320 License suspension program—Noncompliance with a child support order—Certification of noncompliance—Notice, adjudicative proceeding—Stay of certification—Rules.
- 74.20A.330 License suspension—Agreements between department and licensing entities—Identification of responsible parents.
- 74.20A.350 Noncompliance—Notice—Fines—License suspension—Hearings—Rules.
- 74.20A.360 Records access—Confidentiality—Nonliability—Penalty for noncompliance.
- 74.20A.370 Financial institution data matches.
- 74.20A.900 Severability—Alternative when method of notification held invalid.
- 74.20A.910 Savings clause.

Birth certificate—Establishing paternity: RCW 70.58.080.

Child support enforcement: Chapter 26.18 RCW.

Child support registry: Chapter 26.23 RCW.

74.20A.010 Purpose—Remedies additional. Common law and statutory procedures governing the remedies for enforcement of support for financially dependent minor children by responsible parents have not proven sufficiently effective or efficient to cope with the increasing incidence of financial dependency. The increasing workload of courts, prosecuting attorneys, and the attorney general has made such remedies uncertain, slow and inadequate, thereby resulting in a growing burden on the financial resources of the state, which is constrained to provide public assistance grants

for basic maintenance requirements when parents fail to meet their primary obligations. The state of Washington, therefore, exercising its police and sovereign power, declares that the common law and statutory remedies pertaining to family desertion and nonsupport of minor dependent children shall be augmented by additional remedies directed to the real and personal property resources of the responsible parents. In order to render resources more immediately available to meet the needs of minor children, it is the legislative intent that the remedies herein provided are in addition to, and not in lieu of, existing law. It is declared to be the public policy of this state that this chapter be construed and administered to the end that children shall be maintained from the resources of responsible parents, thereby relieving, at least in part, the burden presently borne by the general citizenry through welfare programs. [1971 ex.s. c 164 § 1.]

74.20A.020 Definitions. Unless a different meaning is plainly required by the context, the following words and phrases as hereinafter used in this chapter and chapter 74.20 RCW shall have the following meanings:

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

(2) "Secretary" means the secretary of the department of social and health services, the secretary's designee or authorized representative.

(3) "Dependent child" means any person:

(a) Under the age of eighteen who is not self-supporting, married, or a member of the armed forces of the United States; or

(b) Over the age of eighteen for whom a court order for support exists.

(4) "Support obligation" means the obligation to provide for the necessary care, support, and maintenance, including medical expenses, of a dependent child or other person as required by statutes and the common law of this or another state.

(5) "Superior court order" means any judgment, decree, or order of the superior court of the state of Washington, or a court of comparable jurisdiction of another state, establishing the existence of a support obligation and ordering payment of a set or determinable amount of support moneys to satisfy the support obligation. For purposes of RCW 74.20A.055, orders for support which were entered under the uniform reciprocal enforcement of support act by a state where the responsible parent no longer resides shall not preclude the department from establishing an amount to be paid as current and future support.

(6) "Administrative order" means any determination, finding, decree, or order for support pursuant to RCW 74.20A.055, or by an agency of another state pursuant to a substantially similar administrative process, establishing the existence of a support obligation and ordering the payment of a set or determinable amount of support moneys to satisfy the support obligation.

(7) "Responsible parent" means a natural parent, adoptive parent, or stepparent of a dependent child or a person who has signed an affidavit acknowledging paternity which has been filed with the state office of vital statistics.

(8) "Stepparent" means the present spouse of the person who is either the mother, father, or adoptive parent of a

dependent child, and such status shall exist until terminated as provided for in RCW 26.16.205.

(9) "Support moneys" means any moneys or in-kind providings paid to satisfy a support obligation whether denominated as child support, spouse support, alimony, maintenance, or any other such moneys intended to satisfy an obligation for support of any person or satisfaction in whole or in part of arrears or delinquency on such an obligation.

(10) "Support debt" means any delinquent amount of support moneys which is due, owing, and unpaid under a superior court order or an administrative order, a debt for the payment of expenses for the reasonable or necessary care, support, and maintenance, including medical expenses, of a dependent child or other person for whom a support obligation is owed; or a debt under RCW 74.20A.100 or 74.20A.270. Support debt also includes any accrued interest, fees, or penalties charged on a support debt, and attorneys fees and other costs of litigation awarded in an action to establish and enforce a support obligation or debt.

(11) "State" means any state or political subdivision, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico.

(12) "Account" means a demand deposit account, checking or negotiable withdrawal order account, savings account, time deposit account, or money-market mutual fund account.

(13) "Child support order" means a superior court order or an administrative order.

(14) "Financial institution" means:

(a) A depository institution, as defined in section 3(c) of the federal deposit insurance act;

(b) An institution-affiliated party, as defined in section 3(u) of the federal deposit insurance act;

(c) Any federal or state credit union, as defined in section 101 of the federal credit union act, including an institution-affiliated party of such credit union, as defined in section 206(r) of the federal deposit insurance act; or

(d) Any benefit association, insurance company, safe deposit company, money-market mutual fund, or similar entity.

(15) "License" means a license, certificate, registration, permit, approval, or other similar document issued by a licensing entity to a licensee evidencing admission to or granting authority to engage in a profession, occupation, business, industry, recreational pursuit, or the operation of a motor vehicle. "License" does not mean the tax registration or certification issued under Title 82 RCW by the department of revenue.

(16) "Licensee" means any individual holding a license, certificate, registration, permit, approval, or other similar document issued by a licensing entity evidencing admission to or granting authority to engage in a profession, occupation, business, industry, recreational pursuit, or the operation of a motor vehicle.

(17) "Licensing entity" includes any department, board, commission, or other organization authorized to issue, renew, suspend, or revoke a license authorizing an individual to engage in a business, occupation, profession, industry, recreational pursuit, or the operation of a motor vehicle, and includes the Washington state supreme court, to the extent that a rule has been adopted by the court to implement suspension of licenses related to the practice of law.

(18) "Noncompliance with a child support order" for the purposes of the license suspension program authorized under RCW 74.20A.320 means a responsible parent has:

(a) Accumulated arrears totaling more than six months of child support payments;

(b) Failed to make payments pursuant to a written agreement with the department towards a support arrearage in an amount that exceeds six months of payments; or

(c) Failed to make payments required by a superior court order or administrative order towards a support arrearage in an amount that exceeds six months of payments.

(19) "Noncompliance with a residential or visitation order" means that a court has found the parent in contempt of court under RCW 26.09.160(3) for failure to comply with a residential provision of a court-ordered parenting plan. [1997 c 58 § 805; 1990 1st ex.s. c 2 § 15. Prior: 1989 c 175 § 151; 1989 c 55 § 1; 1985 c 276 § 4; 1979 ex.s. c 171 § 3; 1971 ex.s. c 164 § 2.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Birth certificate—Establishing paternity: RCW 70.58.080.

74.20A.030 Department subrogated to rights for support—Enforcement actions—Certain parents exempt.

(1) The department shall be subrogated to the right of any dependent child or children or person having the care, custody, and control of said child or children, if public assistance money is paid to or for the benefit of the child, or for the care and maintenance of a child, including a child with a developmental disability if the child has been placed into care as a result of an action under chapter 13.34 RCW, under a state-funded program, or a program funded under Title IV-A or IV-E of the federal social security act as amended by the personal responsibility and work opportunity reconciliation act of 1996, to prosecute or maintain any support action or execute any administrative remedy existing under the laws of the state of Washington to obtain reimbursement of moneys expended, based on the support obligation of the responsible parent established by a child support order. Distribution of any support moneys shall be made in accordance with RCW 26.23.035.

(2) The department may initiate, continue, maintain, or execute an action to establish, enforce, and collect a support obligation, including establishing paternity and performing related services, under this chapter and chapter 74.20 RCW, or through the attorney general or prosecuting attorney under chapter 26.09, 26.18, 26.20, 26.21, 26.23, or 26.26 RCW or other appropriate statutes or the common law of this state, for so long as and under such conditions as the department may establish by regulation.

(3) Public assistance moneys shall be exempt from collection action under this chapter except as provided in RCW 74.20A.270.

(4) No collection action shall be taken against parents of children eligible for admission to, or children who have been discharged from, a residential habilitation center as defined by RCW 71A.10.020(8) unless the child with a developmental disability is placed as a result of an action under chapter 13.34 RCW. The child support obligation shall be calculated pursuant to chapter 26.19 RCW. [2004 c 183 § 5; 2000 c 86 § 7; 1997 c 58 § 934; 1993 sp.s. c 24 § 926; 1989 c 360 § 14. Prior: 1988 c 275 § 20; 1988 c 176 § 913; 1987 c 435 § 31; 1985 c 276 § 5; 1984 c 260 § 40; 1979 ex.s. c 171 § 4; 1979 c 141 § 371; 1973 1st ex.s. c 183 § 4; 1971 ex.s. c 164 § 3.]

Effective date—2004 c 183: See note following RCW 13.34.160.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—Effective dates—1993 sp.s. c 24: See notes following RCW 28A.310.020.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Severability—1988 c 176: See RCW 71A.10.900.

Effective date—1987 c 435: See RCW 26.23.900.

Severability—1984 c 260: See RCW 26.18.900.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.035 Augmentation of paternity establishment services. The department of social and health services shall augment its present paternity establishment services through the hiring of additional assistant attorneys general, or contracting with prosecutors or private attorneys licensed in the state of Washington in those judicial districts experiencing delay or an accumulation of unserved paternity cases. The employment of private attorneys shall be limited in scope to renewable six-month periods in judicial districts where the prosecutor or the attorney general cannot provide adequate, cost-effective service. The department of social and health services shall provide a written report of the circumstances requiring employment of private attorneys to the judiciary committees of the senate and house of representatives and provide copies of such reports to the office of the attorney general and to the Washington association of prosecuting attorneys. [1987 c 441 § 3.]

Legislative findings—1987 c 441: "The state of Washington through the department of social and health services is required by state and federal statutes to provide paternity establishment services. These statutes require that reasonable efforts to establish paternity be made, if paternity of the child is in question, in all public assistance cases and whenever such services are requested in nonassistance cases.

The increasing number of children being born out of wedlock together with improved awareness of the benefits to the child and society of having paternity established have resulted in a greater demand on the existing judicial paternity establishment system." [1987 c 441 § 1.]

74.20A.040 Notice of support debt—Service or mailing—Contents—Action on, when. (1) The secretary may issue a notice of a support debt accrued and/or accruing based upon RCW 74.20A.030, assignment of a support debt or a request for support enforcement services under RCW 74.20.040 (2) or (3), to enforce and collect a support debt created by a superior court order or administrative order. The payee under the order shall be informed when a notice of support debt is issued under this section.

(2) The notice may be served upon the debtor in the manner prescribed for the service of a summons in a civil action or be mailed to the debtor at his last known address by certified mail, return receipt requested, demanding payment within twenty days of the date of receipt.

(3) The notice of debt shall include:

(a) A statement of the support debt accrued and/or accruing, computable on the amount required to be paid under any superior court order to which the department is subrogated or is authorized to enforce and collect under RCW 74.20A.030, has an assigned interest, or has been authorized to enforce pursuant to RCW 74.20.040 (2) or (3);

(b) A statement that the property of the debtor is subject to collection action;

(c) A statement that the property is subject to lien and foreclosure, distraint, seizure and sale, or order to withhold and deliver; and

(d) A statement that the net proceeds will be applied to the satisfaction of the support debt.

(4) Action to collect a support debt by lien and foreclosure, or distraint, seizure and sale, or order to withhold and deliver shall be lawful after twenty days from the date of service upon the debtor or twenty days from the receipt or refusal by the debtor of said notice of debt.

(5) The secretary shall not be required to issue or serve such notice of support debt prior to taking collection action under this chapter when a responsible parent's support order:

(a) Contains language directing the parent to make support payments to the Washington state support registry; and

(b) Includes a statement that income-withholding action under this chapter may be taken without further notice to the responsible parent, as provided in RCW 26.23.050(1). [1989 c 360 § 8; 1985 c 276 § 2; 1973 1st ex.s. c 183 § 5; 1971 ex.s. c 164 § 4.]

74.20A.055 Notice and finding of financial responsibility of responsible parent—Service—Hearing—Decisions. (1) The secretary may, if there is no order that establishes the responsible parent's support obligation or specifically relieves the responsible parent of a support obligation or pursuant to an establishment of paternity under chapter 26.26 RCW, serve on the responsible parent or parents and custodial parent a notice and finding of financial responsibility requiring the parents to appear and show cause in an adjudicative proceeding why the finding of responsibility and/or the amount thereof is incorrect, should not be finally ordered, but should be rescinded or modified. This notice and finding shall relate to the support debt accrued and/or accruing under this chapter and/or RCW 26.16.205, including periodic payments to be made in the future. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. A custodian who has physical custody of a child has the same rights that a custodial parent has under this section.

(2) The notice and finding of financial responsibility shall be served in the same manner prescribed for the service of a summons in a civil action or may be served on the responsible parent by certified mail, return receipt requested. The receipt shall be prima facie evidence of service. The notice shall be served upon the debtor within sixty days from the date the state assumes responsibility for the support of the

dependent child or children on whose behalf support is sought. If the notice is not served within sixty days from such date, the department shall lose the right to reimbursement of payments made after the sixty-day period and before the date of notification: PROVIDED, That if the department exercises reasonable efforts to locate the debtor and is unable to do so the entire sixty-day period is tolled until such time as the debtor can be located. The notice may be served upon the custodial parent who is the nonassistance applicant or public assistance recipient by first class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent.

(3) The notice and finding of financial responsibility shall set forth the amount the department has determined the responsible parent owes, the support debt accrued and/or accruing, and periodic payments to be made in the future. The notice and finding shall also include:

(a) A statement of the name of the custodial parent and the name of the child or children for whom support is sought;

(b) A statement of the amount of periodic future support payments as to which financial responsibility is alleged;

(c) A statement that the responsible parent or custodial parent may object to all or any part of the notice and finding, and file an application for an adjudicative proceeding to show cause why the terms set forth in the notice should not be ordered;

(d) A statement that, if neither the responsible parent nor the custodial parent files in a timely fashion an application for an adjudicative proceeding, the support debt and payments stated in the notice and finding, including periodic support payments in the future, shall be assessed and determined and ordered by the department and that this debt and amounts due under the notice shall be subject to collection action;

(e) A statement that the property of the debtor, without further advance notice or hearing, will be subject to lien and foreclosure, distraint, seizure and sale, order to withhold and deliver, notice of payroll deduction or other collection action to satisfy the debt and enforce the support obligation established under the notice.

(4) A responsible parent or custodial parent who objects to the notice and finding of financial responsibility may file an application for an adjudicative proceeding within twenty days of the date of service of the notice or thereafter as provided under this subsection.

(a) If the responsible parent or custodial parent files the application within twenty days, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application stays collection action pending the entry of a final administrative order;

(b) If both the responsible parent and the custodial parent fail to file an application within twenty days, the notice and finding shall become a final administrative order. The amounts for current and future support and the support debt stated in the notice are final and subject to collection, except as provided under (c) and (d) of this subsection;

(c) If the responsible parent or custodial parent files the application more than twenty days after, but within one year

of the date of service, the office of administrative hearings shall schedule an adjudicative proceeding to hear the parent's or parents' objection and determine the support obligation for the entire period covered by the notice and finding of financial responsibility. The filing of the application does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action;

(d) If the responsible parent or custodial parent files the application more than one year after the date of service, the office of administrative hearings shall schedule an adjudicative proceeding at which the parent who requested the late hearing must show good cause for failure to file a timely application. The filing of the application does not stay future collection action and does not affect prior collection action:

(i) If the presiding officer finds that good cause exists, the presiding officer shall proceed to hear the parent's objection to the notice and determine the support obligation;

(ii) If the presiding officer finds that good cause does not exist, the presiding officer shall treat the application as a petition for prospective modification of the amount for current and future support established under the notice and finding. In the modification proceeding, the presiding officer shall set current and future support under chapter 26.19 RCW. The petitioning parent need show neither good cause nor a substantial change of circumstances to justify modification of current and future support;

(e) If the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard, the division of child support may file an application for adjudicative proceeding more than twenty days after the date of service of the notice. The office of administrative hearings shall schedule an adjudicative proceeding and provide notice of the hearing to the responsible parent and the custodial parent. The presiding officer shall determine the support obligation for the entire period covered by the notice, based upon credible evidence presented by the division of child support, the responsible parent, or the custodial parent, or may determine that the support obligation set forth in the notice is correct. The division of child support demonstrates good cause by showing that the responsible parent's support obligation was based upon imputed median net income, the grant standard, or the family need standard. The filing of the application by the division of child support does not stay further collection action, pending the entry of a final administrative order, and does not affect any prior collection action.

(f) The department shall retain and/or shall not refund support money collected more than twenty days after the date of service of the notice. Money withheld as the result of collection action shall be delivered to the department. The department shall distribute such money, as provided in published rules.

(5) If an application for an adjudicative proceeding is filed, the presiding or reviewing officer shall determine the past liability and responsibility, if any, of the alleged responsible parent and shall also determine the amount of periodic payments to be made in the future, which amount is not limited by the amount of any public assistance payment made to or for the benefit of the child. If deviating from the child support schedule in making these determinations, the presiding or reviewing officer shall apply the standards contained in the

child support schedule and enter written findings of fact supporting the deviation.

(6) If either the responsible parent or the custodial parent fails to attend or participate in the hearing or other stage of an adjudicative proceeding, upon a showing of valid service, the presiding officer shall enter an order of default against each party who did not appear and may enter an administrative order declaring the support debt and payment provisions stated in the notice and finding of financial responsibility to be assessed and determined and subject to collection action. The parties who appear may enter an agreed settlement or consent order, which may be different than the terms of the department's notice. Any party who appears may choose to proceed to the hearing, after the conclusion of which the presiding officer or reviewing officer may enter an order that is different than the terms stated in the notice, if the obligation is supported by credible evidence presented by any party at the hearing.

(7) The final administrative order establishing liability and/or future periodic support payments shall be superseded upon entry of a superior court order for support to the extent the superior court order is inconsistent with the administrative order.

(8) Debts determined pursuant to this section, accrued and not paid, are subject to collection action under this chapter without further necessity of action by a presiding or reviewing officer. [2002 c 199 § 5; 1997 c 58 § 940; 1996 c 21 § 1; 1991 c 367 § 46; 1990 1st ex.s. c 2 § 21; 1989 c 175 § 152; 1988 c 275 § 10; 1982 c 189 § 8; 1979 ex.s. c 171 § 12; 1973 1st ex.s. c 183 § 25.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

Effective dates—Severability—1990 1st ex.s. c 2: See notes following RCW 26.09.100.

Effective date—1989 c 175: See note following RCW 34.05.010.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Effective date—1982 c 189: See note following RCW 34.12.020.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules (as amended by 2002 c 199). (1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state registrar of vital statistics before July 1, 1997, the division of child support may serve a notice and finding of parental responsibility on him and the custodial parent. Procedures for and responsibility resulting from acknowledgments filed after July 1, 1997, are in subsections (8) and (9) of this section. Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested, on the alleged father. The custodial parent shall be served by first class mail to the last known address. If the custodial parent is not the nonassistance applicant or public assistance recipient, service shall be in the same manner as for the responsible parent. The notice shall have attached to it a copy of the affidavit or certification of birth record information advising of the existence of a filed affidavit, provided by the state registrar of vital statistics, and shall state that:

(a) The alleged father or custodial parent may file an application for an adjudicative proceeding at which ~~(he)~~ they both will be required to appear and show cause why the amount stated in the finding of financial responsibility as to support is incorrect and should not be ordered;

(b) An alleged father or mother, if she is also the custodial parent, may request that a blood or genetic test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the division of child support initiate an action in superior court to determine the existence of the parent-child relationship; and

(c) If neither the alleged father ~~((does not request))~~ nor the custodial parent requests that a blood or genetic test be administered or file [files] an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under *RCW 26.26.060 that the parent-child relationship does not exist.

(2) An alleged father or custodial parent who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood or genetic tests if advanced by the department. A custodian who is not the parent of a child and who has physical custody of a child has the same notice and hearing rights that a custodial parent has under this section.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the alleged father is later found not to be a responsible parent.

(4) An alleged father ~~((who denies being a responsible parent))~~ or the mother, if she is also the custodial parent, may request that a blood or genetic test be administered at any time. The request for testing shall be in writing, or as the department may specify by rule, and served on the division of child support ~~((personally or by registered or certified mail))~~. If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's and mother's, if she is also the custodial parent, last known address.

(5) If the test excludes the alleged father from being a natural parent, the division of child support shall file a copy of the results with the state registrar of vital statistics and shall dismiss any pending administrative collection proceedings based upon the affidavit in issue. The state registrar of vital statistics shall remove the alleged father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name as stated on the birth certificate, or any other name which the mother may select.

(6) The alleged father or mother, if she is also the custodial parent, may, within twenty days after the date of receipt of the test results, request the division of child support to initiate an action under *RCW 26.26.060 to determine the existence of the parent-child relationship. If the division of child support initiates a superior court action at the request of the alleged father or mother and the decision of the court is that the alleged father is a natural parent, the ~~((alleged father))~~ parent who requested the test shall be liable for court costs incurred.

(7) If the alleged father or mother, if she is also the custodial parent, does not request the division of child support to initiate a superior court action, or ~~((if the alleged father))~~ fails to appear and cooperate with blood or genetic testing, the notice of parental responsibility shall become final for all intents and purposes and may be overturned only by a subsequent superior court order entered under *RCW 26.26.060.

(8)(a) If an alleged father has signed an affidavit acknowledging paternity that has been filed with the state registrar of vital statistics after July 1, 1997, within sixty days from the date of filing of the acknowledgment:

(i) The division of child support may serve a notice and finding of parental responsibility on him and the custodial parent as set forth under this section; and

(ii) The alleged father or any other signatory may rescind his acknowledgment of paternity. The rescission shall be notarized and delivered to the state registrar of vital statistics personally or by registered or certified mail. The state registrar shall remove the father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name

as stated on the birth certificate or any other name that the mother may select. The state registrar shall file rescission notices in a sealed file. All future paternity actions on behalf of the child in question shall be performed under court order.

(b) If ~~neither~~ the alleged father ~~((does not))~~ nor the custodial parent files an application for an adjudicative proceeding or ~~((rescind his))~~ rescinds the acknowledgment of paternity, the amount of support stated in the notice and finding of parental responsibility becomes final, subject only to a subsequent determination under *RCW 26.26.060 that the parent-child relationship does not exist.

(c) An alleged father or custodial parent who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt and the amount of the current and future support obligation.

(i) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department.

(ii) If the application for an adjudicative proceeding is not filed within twenty days of the service of the notice, any amounts collected under the notice shall be neither refunded nor returned if the alleged father is later found not to be a responsible parent.

(d) If an alleged father or mother, if she is also the custodial parent, makes a request for genetic testing, the department shall proceed as set forth under RCW 74.20.360.

(e) If ~~neither~~ the alleged father ~~((does not))~~ nor the custodial parent requests an adjudicative proceeding, or if ~~neither~~ the alleged father ~~((fails to rescind his))~~ nor the mother rescinds the filed acknowledgment of paternity, the notice of parental responsibility becomes final for all intents and purposes and may be overturned only by a subsequent superior court order entered under *RCW 26.26.060.

(9) Affidavits acknowledging paternity that are filed after July 1, 1997, are subject to requirements of chapters 26.26 and 70.58 RCW.

(10) The department and the department of health may adopt rules to implement the requirements under this section. [2002 c 199 § 6; 1997 c 58 § 941. Prior: 1994 c 230 § 19; 1994 c 146 § 5; 1989 c 55 § 3.]

*Reviser's note: RCW 26.26.060 was repealed by 2002 c 302 § 711. Later enactment, see RCW 26.26.500 through 26.26.630.

74.20A.056 Notice and finding of financial responsibility pursuant to an affidavit of paternity—Procedure for contesting—Rules (as amended by 2002 c 302). (1) If an alleged father has signed an affidavit acknowledging paternity which has been filed with the state registrar of vital statistics before July 1, 1997, the division of child support may serve a notice and finding of parental responsibility on him. ~~((Procedures for and responsibility resulting from acknowledgments filed after July 1, 1997, are in subsections (8) and (9) of this section.))~~ Service of the notice shall be in the same manner as a summons in a civil action or by certified mail, return receipt requested. The notice shall have attached to it a copy of the affidavit or certification of birth record information advising of the existence of a filed affidavit, provided by the state registrar of vital statistics, and shall state that:

(a) The alleged father may file an application for an adjudicative proceeding at which he will be required to appear and show cause why the amount stated in the finding of financial responsibility as to support is incorrect and should not be ordered;

(b) An alleged father may request that a blood or genetic test be administered to determine whether such test would exclude him from being a natural parent and, if not excluded, may subsequently request that the division of child support initiate an action in superior court to determine the existence of the parent-child relationship; and

(c) If the alleged father does not request that a blood or genetic test be administered or file an application for an adjudicative proceeding, the amount of support stated in the notice and finding of parental responsibility shall become final, subject only to a subsequent determination under ~~((RCW 26.26.060))~~ RCW 26.26.500 through 26.26.630 that the parent-child relationship does not exist.

(2) An alleged father who objects to the amount of support requested in the notice or who requests genetic tests may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the neces-

sity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt, the amount of the current and future support obligation, and the reimbursement of the costs of blood or genetic tests if advanced by the department.

(3) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department. If no application is filed within twenty days:

(a) The amounts in the notice shall become final and the debt created therein shall be subject to collection action; and

(b) Any amounts so collected shall neither be refunded nor returned if the alleged father is later found not to be a responsible parent.

(4) An alleged father who denies being a responsible parent may request that a blood or genetic test be administered at any time. The request for testing shall be in writing and served on the division of child support personally or by registered or certified mail. If a request for testing is made, the department shall arrange for the test and, pursuant to rules adopted by the department, may advance the cost of such testing. The department shall mail a copy of the test results by certified mail, return receipt requested, to the alleged father's last known address.

(5) If the test excludes the alleged father from being a natural parent, the division of child support shall file a copy of the results with the state registrar of vital statistics and shall dismiss any pending administrative collection proceedings based upon the affidavit in issue. The state registrar of vital statistics shall remove the alleged father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name as stated on the birth certificate, or any other name which the mother may select.

(6) The alleged father may, within twenty days after the date of receipt of the test results, request the division of child support to initiate an action under ~~((RCW 26.26.060))~~ RCW 26.26.500 through 26.26.630 to determine the existence of the parent-child relationship. If the division of child support initiates a superior court action at the request of the alleged father and the decision of the court is that the alleged father is a natural parent, the alleged father shall be liable for court costs incurred.

(7) If the alleged father does not request the division of child support to initiate a superior court action, or if the alleged father fails to appear and cooperate with blood or genetic testing, the notice of parental responsibility shall become final for all intents and purposes and may be overturned only by a subsequent superior court order entered under ~~((RCW 26.26.060))~~ RCW 26.26.500 through 26.26.630.

~~((8))~~ (8)(a) Subsections (1) through (7) of this section do not apply to acknowledgments of paternity filed with the state registrar of vital statistics after July 1, 1997.

~~((b))~~ (b) If an ((alleged)) acknowledged father has signed an ((affidavit acknowledging)) acknowledgment of paternity that has been filed with the state registrar of vital statistics after July 1, 1997((, within sixty days from the date of filing of the acknowledgment)):

~~((i))~~ (i) The division of child support may serve a notice and finding of ((parental responsibility on him as set forth under this section)) financial responsibility under RCW 74.20A.055 based on the acknowledgment. The division of child support shall attach a copy of the acknowledgment or certification of the birth record information advising of the existence of a filed acknowledgment of paternity to the notice; ((and))

~~((ii))~~ (ii) The notice shall include a statement that the ((alleged)) acknowledged father or any other signatory may ((rescind his acknowledgment of paternity. The rescission shall be notarized and delivered to the state registrar of vital statistics personally or by registered or certified mail. The state registrar shall remove the father's name from the birth certificate and change the child's surname to be the same as the mother's maiden name as stated on the birth certificate or any other name that the mother may select. The state registrar shall file rescission notices in a sealed file. All future paternity actions on behalf of the child in question shall be performed under court order)) commence a proceeding in court to rescind or challenge the acknowledgment or denial of paternity under RCW 26.26.330 and 26.26.335; and

~~((iii))~~ (iii) The party commencing the action to rescind or challenge the acknowledgment or denial must serve notice on the division of child support and the office of the prosecuting attorney in the county in which the proceeding is commenced. Commencement of a proceeding to rescind or challenge the acknowledgment or denial stays the establishment of the notice and finding of financial responsibility, if the notice has not yet become a final order.

~~((b))~~ (c) If the ((alleged)) acknowledged father or other party to the notice does not file an application for an adjudicative proceeding or ((rescind his)) the signatories to the acknowledgment or denial do not commence a proceeding to rescind or challenge the acknowledgment of paternity, the

amount of support stated in the notice and finding of ~~((parental))~~ financial responsibility becomes final, subject only to a subsequent determination under ~~((RCW 26.26.060))~~ RCW 26.26.500 through 26.26.630 that the parent-child relationship does not exist. The division of child support does not refund nor return any amounts collected under a notice that becomes final under this section or RCW 74.20A.055, even if a court later determines that the acknowledgment is void.

~~((e))~~ (d) An ~~((alleged))~~ acknowledged father or other party to the notice who objects to the amount of support requested in the notice may file an application for an adjudicative proceeding up to twenty days after the date the notice was served. An application for an adjudicative proceeding may be filed within one year of service of the notice and finding of parental responsibility without the necessity for a showing of good cause or upon a showing of good cause thereafter. An adjudicative proceeding under this section shall be pursuant to RCW 74.20A.055. The only issues shall be the amount of the accrued debt and the amount of the current and future support obligation.

(i) If the application for an adjudicative proceeding is filed within twenty days of service of the notice, collection action shall be stayed pending a final decision by the department.

(ii) If the application for an adjudicative proceeding is not filed within twenty days of the service of the notice, any amounts collected under the notice shall be neither refunded nor returned if the alleged father is later found not to be a responsible parent.

~~((d))~~ If an alleged father makes a request for genetic testing, the department shall proceed as set forth under RCW 74.20.360.)

(e) If the ~~((alleged))~~ acknowledged father or other party to the notice does not request ~~((an))~~ a timely adjudicative proceeding, or if ~~((the alleged father fails to rescind his filed acknowledgment of paternity))~~ no timely action is brought to rescind or challenge the acknowledgment or denial after service of the notice, the notice of ~~((parental))~~ financial responsibility becomes final for all intents and purposes and may be overturned only by a subsequent superior court order entered under ~~((RCW 26.26.060))~~ RCW 26.26.500 through 26.26.630.

(9) ~~((Affidavits acknowledging))~~ Acknowledgments of paternity that are filed after July 1, 1997, are subject to requirements of chapters 26.26, the uniform parentage act, and 70.58 RCW.

(10) The department and the department of health may adopt rules to implement the requirements under this section. [2002 c 302 § 707; 1997 c 58 § 941. Prior: 1994 c 230 § 19; 1994 c 146 § 5; 1989 c 55 § 3.]

Reviser's note: RCW 74.20A.056 was amended twice during the 2002 legislative session, each without reference to the other. For rule of construction concerning sections amended more than once during the same legislative session, see RCW 1.12.025.

Application—Construction—Short title—Severability—2002 c 302: See RCW 26.26.903, 26.26.911, and 26.26.912.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Birth certificate—Establishing paternity: RCW 70.58.080.

74.20A.057 Jurisdiction over responsible parent. A support obligation arising under the statutes or common law of this state binds the responsible parent, present in this state, regardless of the presence or residence of the custodian or children. The obligor is presumed to have been present in the state of Washington during the period for which support is sought until otherwise shown. The department may establish an administrative order pursuant to RCW 74.20A.055 that is based upon any support obligation imposed or impossible under the statutes or common law of any state in which the obligor was present during the period for which support is sought. [1985 c 276 § 15.]

74.20A.059 Modification of administrative orders establishing child support—Petition—Grounds—Procedure. (1) The department, the physical custodian, or the responsible parent may petition for a prospective modification of a final administrative order if:

(a) The administrative order has not been superseded by a superior court order; and

(b) There has been a substantial change of circumstances, except as provided under RCW 74.20A.055(4)(d).

(2) An order of child support may be modified one year or more after it has been entered without showing a substantial change of circumstances:

(a) If the order in practice works a severe economic hardship on either party or the child; or

(b) If a party requests an adjustment in an order for child support that was based on guidelines which determined the amount of support according to the child's age, and the child is no longer in the age category on which the current support amount was based; or

(c) If a child is a full-time student and reasonably expected to complete secondary school or the equivalent level of vocational or technical training before the child becomes nineteen years of age upon a finding that there is a need to extend support beyond the eighteenth birthday.

(3) An order may be modified without showing a substantial change of circumstances if the requested modification is to:

(a) Require health insurance coverage for a child covered by the order; or

(b) Modify an existing order for health insurance coverage.

(4) Support orders may be adjusted once every twenty-four months based upon changes in the income of the parents without a showing of substantially changed circumstances.

(5)(a) All administrative orders entered on, before, or after September 1, 1991, may be modified based upon changes in the child support schedule established in chapter 26.19 RCW without a substantial change of circumstances. The petition may be filed based on changes in the child support schedule after twelve months has expired from the entry of the administrative order or the most recent modification order setting child support, whichever is later. However, if a party is granted relief under this provision, twenty-four months must pass before another petition for modification may be filed pursuant to subsection (4) of this section.

(b) If, pursuant to subsection (4) of this section or (a) of this subsection, the order modifies a child support obligation by more than thirty percent and the change would cause significant hardship, the change may be implemented in two equal increments, one at the time of the entry of the order and the second six months from the entry of the order. Twenty-four months must pass following the second change before a petition for modification under subsection (4) of this section may be filed.

(6) An increase in the wage or salary of the parent or custodian who is receiving the support transfer payments as defined in *section 24 of this act is not a substantial change in circumstances for purposes of modification under subsection (1)(b) of this section. An obligor's voluntary unemployment or voluntary underemployment, by itself, is not a substantial change of circumstances.

(7) The department shall file the petition and a supporting affidavit with the secretary or the secretary's designee when the department petitions for modification.

(8) The responsible parent or the physical custodian shall follow the procedures in this chapter for filing an application for an adjudicative proceeding to petition for modification.

(9) Upon the filing of a proper petition or application, the secretary or the secretary's designee shall issue an order directing each party to appear and show cause why the order should not be modified.

(10) If the presiding or reviewing officer finds a modification is appropriate, the officer shall modify the order and set current and future support under chapter 26.19 RCW. [1991 c 367 § 47.]

***Reviser's note:** "Section 24 of this act" was vetoed by the governor.

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

74.20A.060 Assertion of lien—Effect. (1) The secretary may assert a lien upon the real or personal property of a responsible parent:

(a) When a support payment is past due, if the parent's support order contains notice that liens may be enforced against real and personal property, or notice that action may be taken under this chapter;

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055;

(d) Twenty-one days after service of a notice and finding of parental responsibility;

(e) Twenty-one days after service of a notice of support owed under RCW 26.23.110; or

(f) When appropriate under RCW 74.20A.270.

(2) The division of child support may use uniform interstate lien forms adopted by the United States department of health and human services to assert liens on a responsible parent's real and personal property located in another state.

(3) The claim of the department for a support debt, not paid when due, shall be a lien against all property of the debtor with priority of a secured creditor. This lien shall be separate and apart from, and in addition to, any other lien created by, or provided for, in this title. The lien shall attach to all real and personal property of the debtor on the date of filing of such statement with the county auditor of the county in which such property is located.

(4) Whenever a support lien has been filed and there is in the possession of any person, firm, corporation, association, political subdivision or department of the state having notice of said lien any property which may be subject to the support lien, such property shall not be paid over, released, sold, transferred, encumbered or conveyed, except as provided for by the exemptions contained in RCW 74.20A.090 and 74.20A.130, unless:

(a) A written release or waiver signed by the secretary has been delivered to said person, firm, corporation, association, political subdivision or department of the state; or

(b) A determination has been made in an adjudicative proceeding pursuant to RCW 74.20A.055 or by a superior court ordering release of said support lien on the basis that no debt exists or that the debt has been satisfied. [1997 c 58 § 906. Prior: 1989 c 360 § 9; 1989 c 175 § 153; 1979 ex.s. c 171 § 5; 1973 1st ex.s. c 183 § 7; 1971 ex.s. c 164 § 6.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—1989 c 360 §§ 9, 10, 16, and 39: "(1) Sections 9, 10, and 16 of this act are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [May 12, 1989].

(2) Section 39 of this act shall take effect July 1, 1990." [1989 c 360 § 43.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.070 Service of lien. (1) The secretary may at any time after filing of a support lien serve a copy of the lien upon any person, firm, corporation, association, political subdivision, or department of the state in possession of earnings, or deposits or balances held in any bank account of any nature which are due, owing, or belonging to said debtor.

(2) The support lien shall be served upon the person, firm, corporation, association, political subdivision, or department of the state:

(a) In the manner prescribed for the service of summons in a civil action;

(b) By certified mail, return receipt requested; or

(c) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, or department of the state to accept service by electronic means.

(3) No lien filed under RCW 74.20A.060 shall have any effect against earnings or bank deposits or balances unless it states the amount of the support debt accrued and unless service upon the person, firm, corporation, association, political subdivision, or department of the state in possession of earnings or bank accounts, deposits or balances is accomplished pursuant to this section. [1997 c 130 § 6; 1973 1st ex.s. c 183 § 8; 1971 ex.s. c 164 § 7.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

74.20A.080 Order to withhold and deliver—Issuance and service—Contents—Effect—Duties of person served—Processing fee. (1) The secretary may issue to any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States, an order to withhold and deliver property of any kind, including but not restricted to earnings which are or might become due, owing, or belonging to the debtor, when the secretary has reason to believe that there is in the possession of such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States property which is or might become due, owing, or belonging to said debtor. Such order to withhold and deliver may be issued:

(a) At any time, if a responsible parent's support order:

(i) Contains notice that withholding action may be taken against earnings, wages, or assets without further notice to the parent; or

(ii) Includes a statement that other income-withholding action under this chapter may be taken without further notice to the responsible parent;

(b) Twenty-one days after service of a notice of support debt under RCW 74.20A.040;

(c) Twenty-one days after service of a notice and finding of parental responsibility under RCW 74.20A.056;

(d) Twenty-one days after service of a notice of support owed under RCW 26.23.110;

(e) Twenty-one days after service of a notice and finding of financial responsibility under RCW 74.20A.055; or

(f) When appropriate under RCW 74.20A.270.

(2) The order to withhold and deliver shall:

(a) State the amount to be withheld on a periodic basis if the order to withhold and deliver is being served to secure payment of monthly current support;

(b) State the amount of the support debt accrued;

(c) State in summary the terms of RCW 74.20A.090 and 74.20A.100;

(d) Be served:

(i) In the manner prescribed for the service of a summons in a civil action;

(ii) By certified mail, return receipt requested;

(iii) By electronic means if there is an agreement between the secretary and the person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States to accept service by electronic means;

(iv) By regular mail to a responsible parent's employer unless the division of child support reasonably believes that service of process in the manner prescribed in (d)(i) or (ii) of this subsection is required for initiating an action to ensure employer compliance with the withholding requirement; or

(v) By regular mail to an address if designated by the financial institution as a central levy or garnishment address, and if the notice is clearly identified as a levy or garnishment order. Before the division of child support may initiate an action for noncompliance with a withholding action against a financial institution, the division of child support must serve the order to withhold and deliver on the financial institution in the manner described in (d)(i) or (ii) of this subsection.

(3) The division of child support may use uniform interstate withholding forms adopted by the United States department of health and human services to take withholding actions under this section when the responsible parent is owed money or property that is located in this state or in another state.

(4) Any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States upon whom service has been made is hereby required to:

(a) Answer said order to withhold and deliver within twenty days, exclusive of the day of service, under oath and in writing, and shall make true answers to the matters inquired of therein; and

(b) Provide further and additional answers when requested by the secretary.

(5) The returned answer or a payment remitted to the division of child support by the employer constitutes proof of service of the order to withhold and deliver in the case where the order was served by regular mail.

(6) Any such person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States in possession of any property which may be subject to the claim of the department shall:

(a)(i) Immediately withhold such property upon receipt of the order to withhold and deliver; and

(ii) Within seven working days deliver the property to the secretary;

(iii) Continue to withhold earnings payable to the debtor at each succeeding disbursement interval as provided for in RCW 74.20A.090, and deliver amounts withheld from earnings to the secretary within seven working days of the date earnings are payable to the debtor;

(iv) Deliver amounts withheld from periodic payments to the secretary within seven working days of the date the payments are payable to the debtor;

(v) Inform the secretary of the date the amounts were withheld as requested under this section; or

(b) Furnish to the secretary a good and sufficient bond, satisfactory to the secretary, conditioned upon final determination of liability.

(7) An order to withhold and deliver served under this section shall not expire until:

(a) Released in writing by the division of child support;

(b) Terminated by court order;

(c) A person or entity, other than an employer as defined in Title 50 RCW, who has received the order to withhold and deliver does not possess property of or owe money to the debtor; or

(d) An employer who has received the order to withhold and deliver no longer employs, contracts, or owes money to the debtor under a contract of employment, express or implied.

(8) Where money is due and owing under any contract of employment, express or implied, or is held by any person, firm, corporation, or association, political subdivision, or department of the state, or agency, subdivision, or instrumentality of the United States subject to withdrawal by the debtor, such money shall be delivered by remittance payable to the order of the secretary.

(9) Delivery to the secretary of the money or other property held or claimed shall satisfy the requirement and serve as full acquittance of the order to withhold and deliver.

(10) A person, firm, corporation, or association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the order to withhold and deliver under this chapter is not civilly liable to the debtor for complying with the order to withhold and deliver under this chapter.

(11) The secretary may hold the money or property delivered under this section in trust for application on the indebtedness involved or for return, without interest, in accordance with final determination of liability or nonliability.

(12) Exemptions contained in RCW 74.20A.090 apply to orders to withhold and deliver issued under this section.

(13) The secretary shall also, on or before the date of service of the order to withhold and deliver, mail or cause to be mailed a copy of the order to withhold and deliver to the debtor at the debtor's last known post office address, or, in the alternative, a copy of the order to withhold and deliver shall be served on the debtor in the same manner as a summons in a civil action on or before the date of service of the order or within two days thereafter. The copy of the order shall be mailed or served together with a concise explanation of the

right to petition for judicial review. This requirement is not jurisdictional, but, if the copy is not mailed or served as in this section provided, or if any irregularity appears with respect to the mailing or service, the superior court, in its discretion on motion of the debtor promptly made and supported by affidavit showing that the debtor has suffered substantial injury due to the failure to mail the copy, may set aside the order to withhold and deliver and award to the debtor an amount equal to the damages resulting from the secretary's failure to serve on or mail to the debtor the copy.

(14) An order to withhold and deliver issued in accordance with this section has priority over any other wage assignment, garnishment, attachment, or other legal process.

(15) The division of child support shall notify any person, firm, corporation, association, or political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States required to withhold and deliver the earnings of a debtor under this action that they may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would otherwise be exempt under RCW 74.20A.090. The processing fee shall not exceed ten dollars for the first disbursement to the department and one dollar for each subsequent disbursement under the order to withhold and deliver. [2002 c 199 § 7; 2000 c 86 § 8; 1998 c 160 § 1. Prior: 1997 c 130 § 7; 1997 c 58 § 907; 1994 c 230 § 20; prior: 1989 c 360 § 10; 1989 c 175 § 154; 1985 c 276 § 6; 1979 ex.s. c 171 § 6; 1973 1st ex.s. c 183 § 9; 1971 ex.s. c 164 § 8.]

Effective date—1998 c 160 §§ 1, 5, and 8: "Sections 1, 5, and 8 of this act take effect October 1, 1998." [1998 c 160 § 9.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—1989 c 360 §§ 9, 10, 16, and 39: See note following RCW 74.20A.060.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.090 Certain amount of earnings exempt from lien or order—"Earnings" and "disposable earnings" defined. Whenever a support lien or order to withhold and deliver is served upon any person, firm, corporation, association, political subdivision, or department of the state asserting a support debt against earnings and there is in the possession of such person, firm, corporation, association, political subdivision, or department of the state, any such earnings, RCW 6.27.150 shall not apply, but fifty percent of the disposable earnings shall be exempt and may be disbursed to the debtor whether such earnings are paid, or to be paid weekly, monthly, or at other intervals and whether there be due the debtor earnings for one week or for a longer period. The lien or order to withhold and deliver shall continue to operate and require said person, firm, corporation, association, political subdivision, or department of the state to withhold the nonexempt portion of earnings at each succeeding earnings disbursement interval until the entire amount of the support debt stated in the lien or order to withhold and deliver has been withheld. As used in this chapter, the term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or other-

wise, and, notwithstanding any other provision of law making such payments exempt from garnishment, attachment, or other process to satisfy support obligation, specifically includes periodic payments pursuant to pension or retirement programs, or insurance policies of any type, but does not include payments made under Title 50 RCW, except as provided in RCW 50.40.020 and 50.40.050 or Title 74 RCW. Earnings shall specifically include all gain derived from capital, from labor, or from both combined, not including profit gained through sale or conversion of capital assets. The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amount required by law to be withheld. [1982 1st ex.s. c 18 § 12. Prior: 1982 c 201 § 21; 1979 ex.s. c 171 § 10; 1973 1st ex.s. c 183 § 10; 1971 ex.s. c 164 § 9.]

Severability—Conflict with federal requirements—1982 1st ex.s. c 18: See notes following RCW 50.12.200.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.095 Support enforcement services—Action against earnings within state—Notice. When providing support enforcement services, the office of support enforcement may take action, under this chapter and chapter 26.23 RCW, against a responsible parent's earnings or assets, located in, or subject to the jurisdiction of, the state of Washington regardless of the presence or residence of the responsible parent. If the responsible parent resides in another state or country, the office of support enforcement shall, unless otherwise authorized by state or federal law, serve a notice under RCW 74.20A.040 more than sixty days before taking collection action. [2000 c 86 § 9; 1991 c 367 § 48.]

Severability—Effective date—Captions not law—1991 c 367: See notes following RCW 26.09.015.

74.20A.100 Civil liability upon failure to comply with order or lien—Collection. (1) Any person, firm, corporation, association, political subdivision, or department of the state shall be liable to the department, or to the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act and issuing a notice, garnishment, or wage assignment attaching wages or earnings in satisfaction of a support obligation, in the amount that should have been withheld, together with costs, interest, and reasonable attorney fees if that person or entity:

(a) Fails to answer an order to withhold and deliver, or substantially similar action issued by the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act, within the time prescribed herein;

(b) Fails or refuses to deliver property pursuant to said order;

(c) After actual notice of filing of a support lien, pays over, releases, sells, transfers, or conveys real or personal property subject to a support lien to or for the benefit of the debtor or any other person;

(d) Fails or refuses to surrender property distrained under RCW 74.20A.130 upon demand; or

(e) Fails or refuses to honor an assignment of earnings presented by the secretary.

(2) The secretary is authorized to issue a notice of non-compliance under RCW 74.20A.350 or to proceed in superior

court to obtain a judgment for noncompliance under this section. [1997 c 296 § 15; 1997 c 58 § 895; 1989 c 360 § 5; 1985 c 276 § 7; 1973 1st ex.s. c 183 § 11; 1971 ex.s. c 164 § 10.]

Reviser's note: This section was amended by 1997 c 58 § 895 and by 1997 c 296 § 15, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

74.20A.110 Release of excess to debtor. Whenever any person, firm, corporation, association, political subdivision or department of the state has in its possession earnings, deposits, accounts, or balances in excess of the amount of the debt claimed by the department, such person, firm, corporation, association, political subdivision or department of the state may, without liability under this chapter, release said excess to the debtor. [1979 ex.s. c 171 § 7; 1971 ex.s. c 164 § 11.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.120 Banks, savings and loan associations, credit unions—Service on main office or branch, effect—Collection actions against community bank account, right to adjudicative proceeding. A lien, order to withhold and deliver, or any other notice or document authorized by this chapter or chapter 26.23 RCW may be served on the main office of a bank, savings and loan association, or credit union or on a branch office of such financial institution. Service on the main office shall be effective to attach the deposits of a responsible parent in the financial institution and compensation payable for personal services due the responsible parent from the financial institution. Service on a branch office shall be effective to attach the deposits, accounts, credits, or other personal property of the responsible parent, excluding compensation payable for personal services, in the possession or control of the particular branch served.

If the department initiates collection action under this chapter against a community bank account, the debtor or the debtor's spouse, upon service on the department of a timely application, has a right to an adjudicative proceeding governed by chapter 34.05 RCW, the Administrative Procedure Act, to establish that the funds in the account, or a portion of those funds, were the earnings of the nonobligated spouse, and are exempt from the satisfaction of the child support obligation of the debtor pursuant to RCW 26.16.200. [1989 c 360 § 30; 1989 c 175 § 155; 1983 1st ex.s. c 41 § 3; 1971 ex.s. c 164 § 12.]

Reviser's note: This section was amended by 1989 c 175 § 155 and by 1989 c 360 § 30, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

74.20A.130 Distraint, seizure and sale of property subject to liens under RCW 74.20A.060—Procedure. Whenever a support lien has been filed pursuant to RCW 74.20A.060, the secretary may collect the support debt stated in said lien by the distraint, seizure, and sale of the property

subject to said lien. Not less than ten days prior to the date of sale, the secretary shall cause a copy of the notice of sale to be transmitted by regular mail and by any form of mailing requiring a return receipt to the debtor and any person known to have or claim an interest in the property. Said notice shall contain a general description of the property to be sold and the time, date, and place of the sale. The notice of sale shall be posted in at least two public places in the county wherein the distraint has been made. The time of sale shall not be less than ten nor more than twenty days from the date of posting of such notices. Said sale shall be conducted by the secretary, who shall proceed to sell such property by parcel or by lot at a public auction, and who may set a minimum reasonable price to include the expenses of making a levy and of advertising the sale, and if the amount bid for such property at the sale is not equal to the price so fixed, the secretary may declare such property to be purchased by the department for such price, or may conduct another sale of such property pursuant to the provisions of this section. In the event of sale, the debtor's account shall be credited with the amount for which the property has been sold. Property acquired by the department as herein prescribed may be sold by the secretary at public or private sale, and the amount realized shall be placed in the state general fund to the credit of the department of social and health services. In all cases of sale, as aforesaid, the secretary shall issue a bill of sale or a deed to the purchaser and said bill of sale or deed shall be prima facie evidence of the right of the secretary to make such sale and conclusive evidence of the regularity of his proceeding in making the sale, and shall transfer to the purchaser all right, title, and interest of the debtor in said property. The proceeds of any such sale, except in those cases wherein the property has been acquired by the department, shall be first applied by the secretary to reimbursement of the costs of distraint and sale, and thereafter in satisfaction of the delinquent account. Any excess which shall thereafter remain in the hands of the secretary shall be refunded to the debtor. Sums so refundable to a debtor may be subject to seizure or distraint by any taxing authority of the state or its political subdivisions or by the secretary for new sums due and owing subsequent to the subject proceeding. Except as specifically provided in this chapter, there shall be exempt from distraint, seizure, and sale under this chapter such property as is exempt therefrom under the laws of this state. [1987 c 435 § 32; 1973 1st ex.s. c 183 § 12; 1971 ex.s. c 164 § 13.]

Effective date—1987 c 435: See RCW 26.23.900.

74.20A.140 Action for foreclosure of support lien—Satisfaction. Whenever a support lien has been filed, an action in foreclosure of lien upon real or personal property may be brought in the superior court of the county where real or personal property is or was located and the lien was filed and judgment shall be rendered in favor of the department for the amount due, with costs, and the court shall allow, as part of the costs, the moneys paid for making and filing the claim of lien, and a reasonable attorney's fee, and the court shall order any property upon which any lien provided for by this chapter is established, to be sold by the sheriff of the proper county to satisfy the lien and costs. The payment of the lien debt, costs and reasonable attorney fees, at any time before

sale, shall satisfy the judgment of foreclosure. Where the net proceeds of sale upon application to the debt claimed do not satisfy the debt in full, the department shall have judgment over for any deficiency remaining unsatisfied and further levy and sales upon other property of the judgment debtor may be made under the same execution. In all sales contemplated under this section, advertising of notice shall only be necessary for two weeks in a newspaper published in the county where said property is located, and if there be no newspaper therein, then in the most convenient newspaper having a circulation in such county. Remedies provided for herein are alternatives to remedies provided for in other sections of this chapter. [1973 1st ex.s. c 183 § 13; 1971 ex.s. c 164 § 14.]

74.20A.150 Satisfaction of lien after foreclosure proceedings instituted—Redemption. Any person owning real property, or any interest in real property, against which a support lien has been filed and foreclosure instituted, shall have the right to pay the amount due, together with expenses of the proceedings and reasonable attorney fees to the secretary and upon such payment the secretary shall restore said property to him and all further proceedings in the said foreclosure action shall cease. Said person shall also have the right within two hundred forty days after sale of property foreclosed under RCW 74.20A.140 to redeem said property by making payment to the purchaser in the amount paid by the purchaser plus interest thereon at the rate of six percent per annum. [1973 1st ex.s. c 183 § 14; 1971 ex.s. c 164 § 15.]

74.20A.160 Secretary may set debt payment schedule, release funds in certain hardship cases. With respect to any arrearages on a support debt assessed under this chapter, the secretary may at any time consistent with the income, earning capacity and resources of the debtor, set or reset a level and schedule of payments to be paid upon a support debt. The secretary may, upon petition of the debtor providing sufficient evidence of hardship, after consideration of the child support schedule adopted under *RCW 26.19.040, release or refund moneys taken pursuant to RCW 74.20A.080 to provide for the reasonable necessities of the responsible parent or parents and minor children in the home of the responsible parent. Nothing in this section shall be construed to require the secretary to take any action which would require collection of less than the obligation for current support required under a superior court order or an administrative order or to take any action which would result in a bar of collection of arrearages from the debtor by reason of the statute of limitations. [1988 c 275 § 11; 1985 c 276 § 8; 1979 ex.s. c 171 § 8; 1971 ex.s. c 164 § 16.]

*Reviser's note: RCW 26.19.040 was repealed by 1991 sp.s. c 28 § 8, effective September 1, 1991.

Effective dates—Severability—1988 c 275: See notes following RCW 26.19.001.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.170 Secretary may release lien or order or return seized property—Effect. The secretary may at any time release a support lien, or order to withhold and deliver, on all or part of the property of the debtor, or return seized property without liability, if assurance of payment is deemed

adequate by the secretary, or if said action will facilitate the collection of the debt, but said release or return shall not operate to prevent future action to collect from the same or other property. [1973 1st ex.s. c 183 § 15; 1971 ex.s. c 164 § 17.]

74.20A.180 Secretary may make demand, file and serve liens, when payments appear in jeopardy. If the secretary finds that the collection of any support debt, accrued under a support order, based upon subrogation or an authorization to enforce and collect under RCW 74.20A.030, or assignment of, or a request for support enforcement services to enforce and collect the amount of support ordered by any support order is in jeopardy, the secretary may make a written demand under RCW 74.20A.040 for immediate payment of the support debt and, upon failure or refusal immediately to pay said support debt, may file and serve liens pursuant to RCW 74.20A.060 and 74.20A.070, without regard to the twenty day period provided for in RCW 74.20A.040: PROVIDED, That no further action under RCW 74.20A.080, 74.20A.130, and 74.20A.140 may be taken until the notice requirements of RCW 74.20A.040 are met. [2000 c 86 § 10; 1985 c 276 § 9; 1973 1st ex.s. c 183 § 16; 1971 ex.s. c 164 § 18.]

74.20A.188 Request for assistance on automated enforcement of interstate case—Certification required. (1) Before the state may assist another state or jurisdiction with a high-volume automated administrative enforcement of an interstate case, the requesting state must certify that:

(a) The requesting state has met all due process requirements for the establishment of the support order;

(b) The requesting state has met all due process requirements for the enforcement of the support order, including that the obligor has been notified that another state may take action against the obligor's wages, earnings, assets, or benefits, and may enforce against the obligor's real and personal property under the child support statutes of this state or any other state without further notice; and

(c) The amount of arrears transmitted by the requesting state is due under the support order.

(2) Receipt of a request for assistance on automated enforcement of an interstate case by the state constitutes certification under this section. [2000 c 86 § 11.]

74.20A.200 Judicial relief after administrative remedies exhausted. Any person against whose property a support lien has been filed or an order to withhold and deliver has been served pursuant to this chapter may apply for relief to the superior court of the county wherein the property is located. It is the intent of this chapter that jurisdictional and constitutional issues, if any, shall be subject to review, but that administrative remedies be exhausted prior to judicial review. [1985 c 276 § 10; 1979 ex.s. c 171 § 9; 1973 1st ex.s. c 183 § 18; 1971 ex.s. c 164 § 20.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.220 Charging off child support debts as uncollectible—Compromise—Waiver of any bar to collection. Any support debt due the department from a responsible parent may be written off and cease to be accounted as

an asset if the secretary finds there are no cost-effective means of collecting the debt.

The department may accept offers of compromise of disputed claims or may grant partial or total charge-off of support arrears owed to the department up to the total amount of public assistance paid to or for the benefit of the persons for whom the support obligation was incurred. The department shall adopt rules as to the considerations to be made in the granting or denial of partial or total charge-off and offers of compromise of disputed claims of debt for support arrears. The rights of the payee under an order for support shall not be prejudiced if the department accepts an offer of compromise, or grants a partial or total charge-off under this section.

The responsible parent owing a support debt may execute a written extension or waiver of any statute which may bar or impair the collection of the debt and the extension or waiver shall be effective according to its terms. [1989 c 360 § 4; 1989 c 78 § 2; 1979 ex.s. c 171 § 16; 1973 1st ex.s. c 183 § 20; 1971 ex.s. c 164 § 22.]

Reviser's note: This section was amended by 1989 c 78 § 2 and by 1989 c 360 § 4, each without reference to the other. Both amendments are incorporated in the publication of this section pursuant to RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.230 Employee debtor rights protected—Remedies. No employer shall discharge or discipline an employee or refuse to hire a person for reason that an assignment of earnings has been presented in settlement of a support debt or that a support lien or order to withhold and deliver has been served against said employee's earnings. If an employer discharges or disciplines an employee or refuses to hire a person in violation of this section, the employee or person shall have a cause of action against the employer. The employer shall be liable for double the amount of lost wages and any other damages suffered as a result of the violation and for costs and reasonable attorney fees, and shall be subject to a civil penalty of not more than two thousand five hundred dollars for each violation. The employer may also be ordered to hire, rehire, or reinstate the aggrieved individual. [1985 c 276 § 11; 1973 1st ex.s. c 183 § 21; 1971 ex.s. c 164 § 23.]

74.20A.240 Assignment of earnings to be honored—Effect—Processing fee. Any person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States employing a person owing a support debt or obligation, shall honor, according to its terms, a duly executed assignment of earnings presented by the secretary as a plan to satisfy or retire a support debt or obligation. This requirement to honor the assignment of earnings and the assignment of earnings itself shall be applicable whether said earnings are to be paid presently or in the future and shall continue in force and effect until released in writing by the secretary. Payment of moneys pursuant to an assignment of earnings presented by the secretary shall serve as full acquittance under any contract of employment. A person, firm, corporation, association, political subdivision, department of the state, or agency, subdivision, or instrumentality of the United States that complies with the assignment of earnings under this chapter is not civ-

ily liable to the debtor for complying with the assignment of earnings under this chapter. The secretary shall be released from liability for improper receipt of moneys under an assignment of earnings upon return of any moneys so received.

An assignment of earnings presented by the secretary in accordance with this section has priority over any other wage assignment, garnishment, attachment, or other legal process except for another wage assignment, garnishment, attachment, or other legal process for support moneys.

The employer may deduct a processing fee from the remainder of the debtor's earnings, even if the remainder would be exempt under RCW 74.20A.090. The processing fee shall not exceed fifteen dollars from the first disbursement to the department and one dollar for each subsequent disbursement under the assignment of earnings. [1997 c 296 § 16; 1994 c 230 § 21; 1985 c 276 § 12; 1973 1st ex.s. c 183 § 22; 1971 ex.s. c 164 § 24.]

74.20A.250 Secretary empowered to act as attorney, endorse drafts. Whenever the secretary has been authorized under RCW 74.20.040 to take action to establish, enforce, and collect support moneys, the custodial parent and the child or children are deemed, without the necessity of signing any document, to have appointed the secretary as his or her true and lawful attorney in fact to act in his or her name, place, and stead to perform the specific act of endorsing any and all drafts, checks, money orders or other negotiable instruments representing support payments which are received on behalf of said child or children to effect proper and lawful distribution of the support moneys in accordance with 42 U.S.C. Sec. 657. [1985 c 276 § 13; 1979 ex.s. c 171 § 20; 1973 1st ex.s. c 183 § 23; 1971 ex.s. c 164 § 25.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.260 Industrial insurance disability payments subject to collection by office of support enforcement. Disability payments made pursuant to Title 51 RCW shall be classified as earnings and shall be subject to collection action by the office for support enforcement under this chapter and all other applicable state statutes. [1987 c 435 § 34; 1973 1st ex.s. c 183 § 24.]

Effective date—1987 c 435: See RCW 26.23.900.

74.20A.270 Department claim for support moneys—Notice—Answer—Adjudicative proceeding—Judicial review—Moneys not subject to claim. (1) The secretary may issue a notice of retained support or notice to recover a support payment to any person:

(a) Who is in possession of support moneys, or who has had support moneys in his or her possession at some time in the past, which support moneys were or are claimed by the department as the property of the department by assignment, subrogation, or by operation of law or legal process under chapter 74.20A RCW;

(b) Who has received a support payment erroneously directed to the wrong payee, or issued by the department in error; or

(c) Who is in possession of a support payment obtained through the internal revenue service tax refund offset process,

which payment was later reclaimed from the department by the internal revenue service as a result of an amended tax return filed by the obligor or the obligor's spouse.

(2) The notice shall state the legal basis for the claim and shall provide sufficient detail to enable the person to identify the support moneys in issue.

(3) The department shall serve the notice by certified mail, return receipt requested, or in the manner of a summons in a civil action.

(4) The amounts claimed in the notice shall become assessed, determined, and subject to collection twenty days from the date of service of the notice unless within those twenty days the person in possession of the support moneys:

(a) Acknowledges the department's right to the moneys and executes an agreed settlement providing for repayment of the moneys; or

(b) Requests an adjudicative proceeding to determine the rights to ownership of the support moneys in issue. The hearing shall be held pursuant to this section, chapter 34.05 RCW, the Administrative Procedure Act, and the rules of the department. The burden of proof to establish ownership of the support moneys claimed is on the department.

(5) After the twenty-day period, a person served with a notice under this section may, at any time within one year from the date of service of the notice of support debt, petition the secretary or the secretary's designee for an adjudicative proceeding upon a showing of any of the grounds enumerated in RCW 4.72.010 or superior court civil rule 60. A copy of the petition shall also be served on the department. The filing of the petition shall not stay any collection action being taken, but the debtor may petition the secretary or the secretary's designee for an order staying collection action pending the final administrative order. Any such moneys held and/or taken by collection action after the date of any such stay shall be held by the department pending the final order, to be disbursed in accordance with the final order.

(6) If the debtor fails to attend or participate in the hearing or other stage of an adjudicative proceeding, the presiding officer shall, upon showing of valid service, enter an order declaring the amount of support moneys, as claimed in the notice, to be assessed and determined and subject to collection action.

(7) The department may take action to collect an obligation established under this section using any remedy available under this chapter or chapter 26.09, 26.18, 26.23, or 74.20 RCW for the collection of child support.

(8) If, at any time, the superior court enters judgment for an amount of debt at variance with the amount determined by the final order in an adjudicative proceeding, the judgment shall supersede the final administrative order. The department may take action pursuant to chapter 74.20 or 74.20A RCW to obtain such a judgment or to collect moneys determined by such a judgment to be due and owing.

(9) If a person owing a debt established under this section is receiving public assistance, the department may collect the debt by offsetting up to ten percent of the grant payment received by the person. No collection action may be taken against the earnings of a person receiving cash public assistance to collect a debt assessed under this section.

(10) Payments not credited against the department's debt pursuant to RCW 74.20.101 may not be assessed or collected

under this section. [1997 c 58 § 896. Prior: 1989 c 360 § 35; 1989 c 175 § 156; 1985 c 276 § 14; 1984 c 260 § 41; 1979 ex.s. c 171 § 18.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1984 c 260: See RCW 26.18.900.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.275 Support payments in possession of third parties—Collection. (1) If a person or entity not entitled to child support payments wrongfully or negligently retains child support payments owed to another or to the Washington state support registry, those payments retain their character as child support payments and may be collected by the division of child support using any remedy available to the division of child support under Washington law for the collection of child support.

(2) Child support moneys subject to collection under this section may be collected for the duration of the statute of limitations as it applies to the support order governing the support obligations, and any legislative or judicial extensions thereto.

(3) This section applies to the following:

(a) Cases in which an employer or other entity obligated to withhold child support payments from the parent's pay, bank, or escrow account, or from any other asset or distribution of money to the parent, has withheld those payments and failed to remit them to the payee;

(b) Cases in which child support moneys have been paid to the wrong person or entity in error;

(c) Cases in which child support recipients have retained child support payments in violation of a child support assignment executed or arising by operation of law in exchange for the receipt of public assistance; and

(d) Any other case in which child support payments are retained by a party not entitled to them.

(4) This section does not apply to fines levied under RCW 74.20A.350(3)(b). [1997 c 58 § 892.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

74.20A.280 Department to respect privacy of recipients. While discharging its responsibilities to enforce the support obligations of responsible parents, the department shall respect the right of privacy of recipients of public assistance and of other persons. Any inquiry about sexual activity shall be limited to that necessary to identify and locate possible fathers and to gather facts needed in the adjudication of parentage. [1987 c 441 § 2; 1979 ex.s. c 171 § 23.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.290 Applicant for adjudicative proceeding must advise department of current address. Whenever any person files an application for an adjudicative proceeding under RCW 74.20A.055 or 74.20A.270, after the department has notified the person of the requirements of this section, it

shall be the responsibility of the person to notify the department of the person's mailing address at the time the application for an adjudicative proceeding is made and also to notify the department of any subsequent change of mailing address during the pendency of the administrative proceeding and any judicial review. Whenever the person has a duty under this section to advise the department of the person's mailing address, mailing by the department by certified mail to the person's last known address constitutes service as required by chapters 74.20A and 34.05 RCW. [1989 c 175 § 157; 1979 ex.s. c 171 § 21.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

74.20A.300 Health insurance coverage required. (1)

Whenever a support order is entered or modified under this chapter, the department shall require the responsible parent to maintain or provide health insurance coverage for any dependent child as provided under RCW 26.09.105.

(2) "Health insurance coverage" as used in this section does not include medical assistance provided under chapter 74.09 RCW.

(3) A parent ordered to provide health insurance coverage shall provide proof of such coverage or proof that such coverage is unavailable to the department within twenty days of the entry of the order.

(4) Every order requiring a parent to provide health insurance coverage shall be entered in compliance with *RCW 26.23.050 and be subject to direct enforcement as provided under chapter 26.18 RCW. [1994 c 230 § 22; 1989 c 416 § 6.]

***Reviser's note:** The reference to RCW 26.23.050 appears to refer to the amendments made by 1989 c 416 § 8 that were subsequently vetoed by the governor.

74.20A.310 Federal and state cooperation—Rules—

Construction. In furtherance of the policy of the state to cooperate with the federal government in the administration of the child support enforcement program, the department may adopt such rules and regulations as may become necessary to entitle the state to participate in federal funds, unless such rules would be expressly prohibited by law. Any section or provision of law dealing with the child support program which may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling the state to receive federal funds. If any law dealing with the child support enforcement program is ruled to be in conflict with federal requirements which are a prescribed condition of the allocation of federal funds, such conflicting law is declared to be inoperative solely to the extent of the conflict. [1989 c 416 § 7.]

74.20A.320 License suspension program—Noncompliance with a child support order—Certification of noncompliance—Notice, adjudicative proceeding—Stay of certification—Rules. (1) The department may serve upon a responsible parent a notice informing the responsible parent of the department's intent to submit the parent's name to the department of licensing and any appropriate licensing entity as a licensee who is not in compliance with a child support order. The department shall attach a copy of the responsible

parent's child support order to the notice. Service of the notice must be by certified mail, return receipt requested. If service by certified mail is not successful, service shall be by personal service.

(2) The notice of noncompliance must include the address and telephone number of the department's division of child support office that issues the notice and must inform the responsible parent that:

(a) The parent may request an adjudicative proceeding to contest the issue of compliance with the child support order. The only issues that may be considered at the adjudicative proceeding are whether the parent is required to pay child support under a child support order and whether the parent is in compliance with that order;

(b) A request for an adjudicative proceeding shall be in writing and must be received by the department within twenty days of the date of service of the notice;

(c) If the parent requests an adjudicative proceeding within twenty days of service, the department will stay action to certify the parent to the department of licensing and any licensing entity for noncompliance with a child support order pending entry of a written decision after the adjudicative proceeding;

(d) If the parent does not request an adjudicative proceeding within twenty days of service and remains in noncompliance with a child support order, the department will certify the parent's name to the department of licensing and any appropriate licensing entity for noncompliance with a child support order;

(e) The department will stay action to certify the parent to the department of licensing and any licensing entity for noncompliance if the parent agrees to make timely payments of current support and agrees to a reasonable payment schedule for payment of the arrears. It is the parent's responsibility to contact in person or by mail the department's division of child support office indicated on the notice within twenty days of service of the notice to arrange for a payment schedule. The department may stay certification for up to thirty days after contact from a parent to arrange for a payment schedule;

(f) If the department certifies the responsible parent to the department of licensing and a licensing entity for noncompliance with a child support order, the licensing entity will suspend or not renew the parent's license and the department of licensing will suspend or not renew any driver's license that the parent holds until the parent provides the department of licensing and the licensing entity with a release from the department stating that the responsible parent is in compliance with the child support order;

(g) If the department certifies the responsible parent as a person who is in noncompliance with a child support order, the department of fish and wildlife will suspend the fishing license, hunting license, commercial fishing license, or any other license issued under chapters 77.32, 77.28 *[75.28], and *75.25 RCW that the responsible parent may possess. Notice from the department of licensing that a responsible parent's driver's license has been suspended shall serve as notice of the suspension of a license issued under chapters 77.32 and *75.25 RCW;

(h) Suspension of a license will affect insurability if the responsible parent's insurance policy excludes coverage for acts occurring after the suspension of a license;

(i) If after receiving the notice of noncompliance with a child support order, the responsible parent files a motion to modify support with the court or requests the department to amend a support obligation established by an administrative decision, or if a motion for modification of a court or administrative order for child support is pending, the department or the court may stay action to certify the parent to the department of licensing and any licensing entity for noncompliance with a child support order. A stay shall not exceed six months unless the department finds good cause. The responsible parent has the obligation to notify the department that a modification proceeding is pending and provide a copy of the motion or request for modification; and

(j) If the responsible parent subsequently becomes in compliance with the child support order, the department will promptly provide the parent with a release stating that the parent is in compliance with the order, and the parent may request that the licensing entity or the department of licensing reinstate the suspended license.

(3) A responsible parent may request an adjudicative proceeding upon service of the notice described in subsection (1) of this section. The request for an adjudicative proceeding must be received by the department within twenty days of service. The request must be in writing and indicate the current mailing address and daytime phone number, if available, of the responsible parent. The proceedings under this subsection shall be conducted in accordance with the requirements of chapter 34.05 RCW. The issues that may be considered at the adjudicative proceeding are limited to whether:

(a) The person named as the responsible parent is the responsible parent;

(b) The responsible parent is required to pay child support under a child support order; and

(c) The responsible parent is in compliance with the order.

(4) The decision resulting from the adjudicative proceeding must be in writing and inform the responsible parent of his or her rights to review. The parent's copy of the decision may be sent by regular mail to the parent's most recent address of record.

(5) If a responsible parent contacts the department's division of child support office indicated on the notice of noncompliance within twenty days of service of the notice and requests arrangement of a payment schedule, the department shall stay the certification of noncompliance during negotiation of the schedule for payment of arrears. In no event shall the stay continue for more than thirty days from the date of contact by the parent. The department shall establish a schedule for payment of arrears that is fair and reasonable, and that considers the financial situation of the responsible parent and the needs of all children who rely on the responsible parent for support. At the end of the thirty days, if no payment schedule has been agreed to in writing and the department has acted in good faith, the department shall proceed with certification of noncompliance.

(6) If a responsible parent timely requests an adjudicative proceeding pursuant to subsection (4) of this section, the department may not certify the name of the parent to the

department of licensing or a licensing entity for noncompliance with a child support order unless the adjudicative proceeding results in a finding that the responsible parent is not in compliance with the order.

(7) The department may certify to the department of licensing and any appropriate licensing entity the name of a responsible parent who is not in compliance with a child support order or a residential or visitation order if:

(a) The responsible parent does not timely request an adjudicative proceeding upon service of a notice issued under subsection (1) of this section and is not in compliance with a child support order twenty-one days after service of the notice;

(b) An adjudicative proceeding results in a decision that the responsible parent is not in compliance with a child support order;

(c) The court enters a judgment on a petition for judicial review that finds the responsible parent is not in compliance with a child support order;

(d) The department and the responsible parent have been unable to agree on a fair and reasonable schedule of payment of the arrears;

(e) The responsible parent fails to comply with a payment schedule established pursuant to subsection (5) of this section; or

**The department shall send by regular mail a copy of any certification of noncompliance filed with the department of licensing or a licensing entity to the responsible parent at the responsible parent's most recent address of record.

(8) The department of licensing and a licensing entity shall, without undue delay, notify a responsible parent certified by the department under subsection (7) of this section that the parent's driver's license or other license has been suspended because the parent's name has been certified by the department as a responsible parent who is not in compliance with a child support order or a residential or visitation order.

(9) When a responsible parent who is served notice under subsection (1) of this section subsequently complies with the child support order, or when the department receives a court order under ***section 886 of this act stating that the parent is in compliance with a residential or visitation order, the department shall promptly provide the parent with a release stating that the responsible parent is in compliance with the order. A copy of the release shall be transmitted by the department to the appropriate licensing entities.

(10) The department may adopt rules to implement and enforce the requirements of this section. The department shall deliver a copy of rules adopted to implement and enforce this section to the legislature by June 30, 1998.

(11) Nothing in this section prohibits a responsible parent from filing a motion to modify support with the court or from requesting the department to amend a support obligation established by an administrative decision. If there is a reasonable likelihood that a pending motion or request will significantly change the amount of the child support obligation, the department or the court may stay action to certify the responsible parent to the department of licensing and any licensing entity for noncompliance with a child support order. A stay shall not exceed six months unless the department finds good cause to extend the stay. The responsible parent has the obligation to notify the department that a modifica-

tion proceeding is pending and provide a copy of the motion or request for modification.

(12) The department of licensing and a licensing entity may renew, reinstate, or otherwise extend a license in accordance with the licensing entity's or the department of licensing's rules after the licensing entity or the department of licensing receives a copy of the release specified in subsection (9) of this section. The department of licensing and a licensing entity may waive any applicable requirement for reissuance, renewal, or other extension if it determines that the imposition of that requirement places an undue burden on the person and that waiver of the requirement is consistent with the public interest.

(13) The procedures in chapter 58, Laws of 1997, constitute the exclusive administrative remedy for contesting the establishment of noncompliance with a child support order and suspension of a license under this section, and satisfy the requirements of RCW 34.05.422. [1997 c 58 § 802.]

Reviser's note: *(1) Chapters 75.25 and 75.28 RCW were recodified, repealed, or decodified by 2000 c 107. See Comparative Table for that chapter in the Table of Disposition of Former RCW Sections, Volume 0.

***(2) Subsection (7)(f) of this section was vetoed by the governor. The vetoed language is as follows:

"(f) The department is ordered to certify the responsible parent by a court order under section 887 of this act."

****(3) Section 886 of this act was vetoed by the governor.

Effective dates—1997 c 58: "(2) Sections 801 through 887, 889, and 890 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 1997.

(3) Sections 701 through 704 of this act take effect January 1, 1998.

(4) Section 944 of this act takes effect October 1, 1998." [1997 c 58 § 1013.]

***Reviser's note:** Subsection (1) of this section was vetoed by the governor. The vetoed language is as follows:

"(1) Sections 1, 2, 101 through 110, 201 through 207, 301 through 329, 401 through 404, 501 through 506, 601, 705, 706, 888, 891 through 943, 945 through 948, and 1002 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately."

Intent—1997 c 58: "It is the intent of the legislature to provide a strong incentive for persons owing child support to make timely payments, and to cooperate with the department of social and health services to establish an appropriate schedule for the payment of any arrears. To further ensure that child support obligations are met, sections 801 through 890 of this act establish a program by which certain licenses may be suspended or not renewed if a person is one hundred eighty days or more in arrears on child support payments.

In the implementation and management of this program, it is the legislature's intent that the objective of the department of social and health services be to obtain payment in full of arrears, or where that is not possible, to enter into agreements with delinquent obligors to make timely support payments and make reasonable payments towards the arrears. The legislature intends that if the obligor refuses to cooperate in establishing a fair and reasonable payment schedule for arrears or refuses to make timely support payments, the department shall proceed with certification to a licensing entity or the department of licensing that the person is not in compliance with a child support order." [1997 c 58 § 801.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

74.20A.330 License suspension—Agreements between department and licensing entities—Identification of responsible parents. (1) The department and all of the various licensing entities subject to RCW 74.20A.320 shall enter into such agreements as are necessary to carry out

the requirements of the license suspension program established in RCW 74.20A.320.

(2) The department and all licensing entities subject to RCW 74.20A.320 shall compare data to identify responsible parents who may be subject to the provisions of chapter 58, Laws of 1997. The comparison may be conducted electronically, or by any other means that is jointly agreeable between the department and the particular licensing entity. The data shared shall be limited to those items necessary to [for] implementation of chapter 58, Laws of 1997. The purpose of the comparison shall be to identify current licensees who are not in compliance with a child support order, and to provide to the department the following information regarding those licensees:

- (a) Name;
- (b) Date of birth;
- (c) Address of record;
- (d) Federal employer identification number and social security number;
- (e) Type of license;
- (f) Effective date of license or renewal;
- (g) Expiration date of license; and
- (h) Active or inactive status. [1997 c 58 § 803.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Effective dates—Intent—1997 c 58: See notes following RCW 74.20A.320.

74.20A.350 Noncompliance—Notice—Fines—License suspension—Hearings—Rules. (1) The division of child support may issue a notice of noncompliance to any person, firm, entity, or agency of state or federal government that the division believes is not complying with:

- (a) A notice of payroll deduction issued under chapter 26.23 RCW;
- (b) A lien, order to withhold and deliver, or assignment of earnings issued under this chapter;
- (c) Any other wage assignment, garnishment, attachment, or withholding instrument properly served by the agency or firm providing child support enforcement services for another state, under Title IV-D of the federal social security act;
- (d) A subpoena issued by the division of child support, or the agency or firm providing child support enforcement for another state, under Title IV-D of the federal social security act;
- (e) An information request issued by the division of child support, or the agency or firm providing child support enforcement for another state under Title IV-D of the federal social security act, to an employer or entity required to respond to such requests under RCW 74.20A.360; or
- (f) The duty to report newly hired employees imposed by RCW 26.23.040.

(2) Liability for noncompliance with a wage withholding, garnishment, order to withhold and deliver, or any other lien or attachment issued to secure payment of child support is governed by RCW 26.23.090 and 74.20A.100, except that liability for noncompliance with remittance time frames is governed by subsection (3) of this section.

(3) The division of child support may impose fines of up to one hundred dollars per occurrence for:

(a) Noncompliance with a subpoena or an information request issued by the division of child support, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act;

(b) Noncompliance with the required time frames for remitting withheld support moneys to the Washington state support registry, or the agency or firm providing child support enforcement services for another state, except that no liability shall be established for failure to make timely remittance unless the division of child support has provided the person, firm, entity, or agency of state or federal government with written warning:

(i) Explaining the duty to remit withheld payments promptly;

(ii) Explaining the potential for fines for delayed submission; and

(iii) Providing a contact person within the division of child support with whom the person, firm, entity, or agency of state or federal government may seek assistance with child support withholding issues.

(4) The division of child support may assess fines according to RCW 26.23.040 for failure to comply with employer reporting requirements.

(5) The division of child support may suspend licenses for failure to comply with a subpoena issued under RCW 74.20.225.

(6) The division of child support may serve a notice of noncompliance by personal service or by any method of mailing requiring a return receipt.

(7) The liability asserted by the division of child support in the notice of noncompliance becomes final and collectible on the twenty-first day after the date of service, unless within that time the person, firm, entity, or agency of state or federal government:

(a) Initiates an action in superior court to contest the notice of noncompliance;

(b) Requests a hearing by delivering a hearing request to the division of child support in accordance with rules adopted by the secretary under this section; or

(c) Contacts the division of child support and negotiates an alternate resolution to the asserted noncompliance or demonstrates that the person, firm, entity, or agency of state or federal government has complied with the child support processes.

(8) The notice of noncompliance shall contain:

(a) A full and fair disclosure of the rights and obligations created by this section; and

(b) Identification of the:

(i) Child support process with respect to which the division of child support is alleging noncompliance; and

(ii) State child support enforcement agency issuing the original child support process.

(9) In an administrative hearing convened under subsection (7)(b) of this section, the presiding officer shall determine whether or not, and to what extent, liability for noncompliance exists under this section, and shall enter an order containing these findings. If liability does exist, the presiding officer shall include language in the order advising the parties

to the proceeding that the liability may be collected by any means available to the division of child support under subsection (12) of this section without further notice to the liable party.

(10) Hearings under this section are governed by the administrative procedure act, chapter 34.05 RCW.

(11) After the twenty days following service of the notice, the person, firm, entity, or agency of state or federal government may petition for a late hearing. A petition for a late hearing does not stay any collection action to recover the debt. A late hearing is available upon a showing of any of the grounds stated in civil rule 60 for the vacation of orders.

(12) The division of child support may collect any obligation established under this section using any of the remedies available under chapter 26.09, 26.18, 26.21, 26.23, 74.20, or 74.20A RCW for the collection of child support.

(13) The division of child support may enter agreements for the repayment of obligations under this section. Agreements may:

(a) Suspend the obligation imposed by this section conditioned on future compliance with child support processes. Such suspension shall end automatically upon any failure to comply with a child support process. Amounts suspended become fully collectible without further notice automatically upon failure to comply with a child support process;

(b) Resolve amounts due under this section and provide for repayment.

(14) The secretary may adopt rules to implement this section. [1997 c 58 § 893.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

74.20A.360 Records access—Confidentiality—Nonliability—Penalty for noncompliance. (1) Notwithstanding any other provision of Washington law, the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act may access records of the following nature, in the possession of any agency or entity listed in this section:

(a) Records of state and local agencies, including but not limited to:

(i) The state registrar, including but not limited to records of birth, marriage, and death;

(ii) Tax and revenue records, including, but not limited to, information on residence addresses, employers, and assets;

(iii) Records concerning real and titled personal property;

(iv) Records of occupational, professional, and recreational licenses and records concerning the ownership and control of corporations, partnerships, and other business entities;

(v) Employment security records;

(vi) Records of agencies administering public assistance programs; and

(vii) Records of the department of corrections, and of county and municipal correction or confinement facilities;

(b) Records of public utilities and cable television companies relating to persons who owe or are owed support, or against whom a support obligation is sought, including names and addresses of the individuals, and employers' names and addresses pursuant to RCW 74.20.225 and RCW 74.20A.120; and

(c) Records held by financial institutions, pursuant to RCW 74.20A.370.

(2) Upon the request of the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the social security act, any employer shall provide information as to the employment, earnings, benefits, and residential address and phone number of any employee.

(3) Entities in possession of records described in subsection (1)(a) and (c) of this section must provide information and records upon the request of the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act. The division of child support may enter into agreements providing for electronic access to these records.

(4) Public utilities and cable television companies must provide the information in response to a judicial or administrative subpoena issued by the division of child support, the Washington state support registry, or the agency or firm providing child support enforcement services for another state under Title IV-D of the federal social security act.

(5) Entities responding to information requests and subpoenas under this section are not liable for disclosing information pursuant to the request or subpoena.

(6) The division of child support shall maintain all information gathered under this section confidential and shall only disclose this information as provided under RCW 26.23.120.

(7) The division of child support may impose fines for noncompliance with this section using the notice of noncompliance under RCW 74.20A.350. [1997 c 58 § 897.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

74.20A.370 Financial institution data matches. (1) Each calendar quarter financial institutions doing business in the state of Washington shall report to the department the name, record address, social security number or other taxpayer identification number, and other information determined necessary by the department for each individual who maintains an account at such institution and is identified by the department as owing a support debt.

(2) The department and financial institutions shall enter into agreements to develop and operate a data match system, using automated data exchanges to the extent feasible, to minimize the cost of providing information required under subsection (1) of this section.

(3) The department may pay a reasonable fee to a financial institution for conducting the data match not to exceed the actual costs incurred.

(4) A financial institution is not liable for any disclosure of information to the department under this section.

(2004 Ed.)

(5) The division of child support shall maintain all information gathered under this section confidential and shall only disclose this information as provided under RCW 26.23.120. [1997 c 58 § 899.]

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

74.20A.900 Severability—Alternative when method of notification held invalid. If any provision of this chapter or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of this chapter which can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

If any method of notification provided for in this chapter is held invalid, service as provided for by the laws of the state of Washington for service of process in a civil action shall be substituted for the method held invalid. [1971 ex.s. c 164 § 27.]

Civil procedure—Commencement of actions: Chapter 4.28 RCW.

74.20A.910 Savings clause. The repeal of RCW 74.20A.050 and the amendment of RCW 74.20A.030 and 74.20A.250 by this 1979 act is not intended to affect any existing or accrued right, any action or proceeding already taken or instituted, any administrative action already taken, or any rule, regulation, or order already promulgated. The repeal and amendments are not intended to revive any law heretofore repealed. [1979 ex.s. c 171 § 27.]

Severability—1979 ex.s. c 171: See note following RCW 74.20.300.

Chapter 74.25 RCW

JOB OPPORTUNITIES AND BASIC SKILLS TRAINING PROGRAM

Sections

- 74.25.010 State policy—Legislative findings.
- 74.25.040 Volunteer work—Child care or other work—Training.

74.25.010 State policy—Legislative findings.

Reviser's note: RCW 74.25.010 was amended by 1997 c 59 § 29 without reference to its repeal by 1997 c 58 § 322. It has been decodified for publication purposes under RCW 1.12.025.

74.25.040 Volunteer work—Child care or other work—Training. (1) Recipients of temporary assistance for needy families who are employed or participating in a work activity under *section 312 of this act may volunteer or work in a licensed child care facility. Licensed child care facilities participating in this effort shall provide care for the recipient's children and provide for the development of positive child care skills.

(2) The department shall train two hundred fifty recipients of temporary assistance for needy families to become family child care providers or child care center teachers. The department shall offer the training in rural and urban communities. The department shall adopt rules to implement the child care training program in this section.

(3) Recipients trained under this section shall provide child care services to clients of the department for two years following the completion of their child care training. [1997 c 59 § 30; 1997 c 58 § 405; 1994 c 299 § 8.]

Reviser's note: *(1) Section 312 of this act was vetoed by the governor.

(2) This section was amended by 1997 c 58 § 405 and by 1997 c 59 § 30, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Intent—1997 c 58: See note following RCW 74.13.0903.

Short title—Part headings, captions, table of contents not law—Exemptions and waivers from federal law—Conflict with federal requirements—Severability—1997 c 58: See RCW 74.08A.900 through 74.08A.904.

Intent—Finding—Severability—Conflict with federal requirements—1994 c 299: See notes following RCW 74.12.400.

Chapter 74.25A RCW

EMPLOYMENT PARTNERSHIP PROGRAM

Sections

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| 74.25A.005 | Legislative findings. |
| 74.25A.010 | Employment partnership program—Created—Goals. |
| 74.25A.020 | Pilot projects—Grants to be used as wage subsidies—Criteria. |
| 74.25A.030 | Employer eligibility—Conditions. |
| 74.25A.040 | Diversion of grants to worker-owned businesses. |
| 74.25A.045 | Local employment partnership council. |
| 74.25A.050 | Program participants—Eligibility for assistance programs. |
| 74.25A.060 | Program participants—Benefits and salary not to be diminished. |
| 74.25A.070 | Program participants—Classification under federal job training law. |
| 74.25A.080 | Department of social and health services to seek federal funds. |
| 74.25A.900 | Intent—Finding—Severability—Conflict with federal requirements—1994 c 299. |

74.25A.005 Legislative findings. The legislature finds that the restructuring in the Washington economy has created rising public assistance caseloads and declining real wages for Washington workers. There is a profound need to develop partnership programs between the private and public sectors to create new jobs with adequate salaries and promotional opportunities for chronically unemployed and underemployed citizens of the state. Most public assistance recipients want to become financially independent through paid employment. A voluntary program which utilizes public wage subsidies and employer matching salaries has provided a beneficial financial incentive allowing public assistance recipients transition to permanent full-time employment. [1994 c 299 § 19; 1986 c 172 § 1. Formerly RCW 50.63.010.]

Report—1994 c 299: "The department of social and health services shall report to the appropriate committees of the house of representatives and senate on the implementation of this employment partnership program for recipients of aid to families with dependent children by October 1, 1995." [1994 c 299 § 27.]

74.25A.010 Employment partnership program—Created—Goals. The employment partnership program is created to develop a series of geographically distributed model projects to provide permanent full-time employment for low-income and unemployed persons. The program shall be administered by the department of social and health services. The department shall contract for the program through local public or private nonprofit organizations. The goals of the program are as follows:

(1) To reduce inefficiencies in administration and provide model coordination of agencies with responsibilities for employment and human service delivery to unemployed persons;

(2) To create voluntary financial incentives to simultaneously reduce unemployment and welfare caseloads;

(3) To provide other state and federal support services to the client population to enable economic independence;

(4) To improve partnerships between the public and private sectors designed to move recipients of public assistance into productive employment; and

(5) To provide employers with information on federal targeted jobs tax credit and other state and federal tax incentives for participation in the program. [1994 c 299 § 20; 1986 c 172 § 2. Formerly RCW 50.63.020.]

74.25A.020 Pilot projects—Grants to be used as wage subsidies—Criteria. The secretary of the department of social and health services shall establish pilot projects that enable grants to be used as a wage subsidy. The department of social and health services shall comply with applicable federal statutes and regulations, and shall seek any waivers from the federal government necessary to operate the employment partnership program. The projects shall be available on an individual case-by-case basis or subject to the limitations outlined in RCW 74.25A.040 for the start-up or reopening of a plant under worker ownership. The projects shall be subject to the following criteria:

(1) It shall be a voluntary program and no person may have any sanction applied for failure to participate.

(2) Employment positions established by this chapter shall not be created as the result of, nor result in, any of the following:

(a) Displacement of current employees, including overtime currently worked by these employees;

(b) The filling of positions that would otherwise be promotional opportunities for current employees;

(c) The filling of a position, before compliance with applicable personnel procedures or provisions of collective bargaining agreements;

(d) The filling of a position created by termination, layoff, or reduction in workforce;

(e) The filling of a work assignment customarily performed by a worker in a job classification within a recognized collective bargaining unit in that specific work site, or the filling of a work assignment in any bargaining unit in which funded positions are vacant or in which regular employees are on layoff;

(f) A strike, lockout, or other bona fide labor dispute, or violation of any existing collective bargaining agreement between employees and employers;

(g) Decertification of any collective bargaining unit.

(3) Wages shall be paid at the usual and customary rate of comparable jobs and may include a training wage if permitted by applicable federal statutes and regulations;

(4) A recoupment process shall recover state supplemented wages from an employer when a job does not last six months following the subsidization period for reasons other than the employee voluntarily quitting or being fired for good cause as determined by the local employment partnership council under rules prescribed by the secretary;

(5) Job placements shall have promotional opportunities or reasonable opportunities for wage increases;

(6) Other necessary support services such as training, day care, medical insurance, and transportation shall be provided to the extent possible;

(7) Employers shall provide monetary matching funds of at least fifty percent of total wages;

(8) Wages paid to participants shall be a minimum of five dollars an hour; and

(9) The projects shall target the populations in the priority and for the purposes set forth in *RCW 74.25.020, to the extent that necessary support services are available. [1994 c 299 § 21; 1986 c 172 § 3. Formerly RCW 50.63.030.]

***Reviser's note:** The 1994 c 299 amendments to RCW 74.25.020 were vetoed by the governor. RCW 74.25.020 was subsequently repealed by 1997 c 58 § 322.

74.25A.030 Employer eligibility—Conditions. An employer, before becoming eligible to fill a position under the employment partnership program, shall certify to the local employment partnership council that the employment, offer of employment, or work activity complies with the following conditions:

(1) The conditions of work are reasonable and not in violation of applicable federal, state, or local safety and health standards;

(2) The assignments are not in any way related to political, electoral, or partisan activities;

(3) The employer shall provide industrial insurance coverage as required by Title 51 RCW;

(4) The employer shall provide unemployment compensation coverage as required by Title 50 RCW;

(5) The employment partnership program participants hired following the completion of the program shall be provided benefits equal to those provided to other employees including social security coverage, sick leave, the opportunity to join a collective bargaining unit, and medical benefits. [1994 c 299 § 22; 1986 c 172 § 4. Formerly RCW 50.63.040.]

74.25A.040 Diversion of grants to worker-owned businesses. Grants may be diverted for the start-up or retention of worker-owned businesses if:

(1) A feasibility study or business plan is completed on the proposed business; and

(2) The project is approved by the loan committee of the *Washington state development loan fund as created by RCW 43.168.110. [1986 c 172 § 5. Formerly RCW 50.63.050.]

***Reviser's note:** The "Washington state development loan fund" was renamed the "rural Washington loan fund" pursuant to 1999 c 164 § 504.

74.25A.045 Local employment partnership council. A local employment partnership council shall be established in each pilot project area to assist the department of social and health services in the administration of this chapter and to allow local flexibility in dealing with the particular needs of each pilot project area. Each council shall be primarily responsible for recruiting and encouraging participation of employment providers in the project site. Each council shall be composed of nine members who shall be appointed by the county legislative authority of the county in which the pilot

(2004 Ed.)

project operates. Councilmembers shall be residents of or employers in the pilot project area in which they are appointed and shall serve three-year terms. The council shall have two members who are current or former recipients of the aid to families with dependent children or temporary assistance for needy families programs or food stamp or benefits program, two members who represent labor, and five members who represent the local business community. In addition, one person representing the local community service office of the department of social and health services, one person representing a community action agency or other non-profit service provider, and one person from a local city or county government shall serve as nonvoting members. [1998 c 79 § 17; 1997 c 59 § 31; 1994 c 299 § 23.]

74.25A.050 Program participants—Eligibility for assistance programs. Participants shall be considered recipients of temporary assistance for needy families and remain eligible for medicaid benefits even if the participant does not receive a residual grant. Work supplementation participants shall be eligible for (1) the thirty-dollar plus one-third of earned income exclusion from income, (2) the work related expense disregard, and (3) any applicable child care expense disregard deemed available to recipient of aid in computing his or her grant under this chapter, unless prohibited by federal law. [1997 c 59 § 32; 1994 c 299 § 24; 1986 c 172 § 6. Formerly RCW 50.63.060.]

74.25A.060 Program participants—Benefits and salary not to be diminished. An applicant or recipient of aid under this chapter who participates in the employment partnership program shall be guaranteed that the value of the benefits available to him or her before entry into the program shall not be diminished. In addition, a participant employed under this chapter shall be treated in the same manner as are regular employees, and the participant's salary shall be the amount that he or she would have received if employed in that position and not participating under this chapter. [1986 c 172 § 7. Formerly RCW 50.63.070.]

74.25A.070 Program participants—Classification under federal job training law. Applicants for and recipients of aid under this chapter are "individuals in special need" of training as described in section 2 of the federal job training partnership act, 29 U.S.C. Sec. 1501 et seq., "individuals who require special assistance" as provided in section 123 of that act, and "most in need" of employment and training opportunities as described in section 141 of that act. [1986 c 172 § 8. Formerly RCW 50.63.080.]

74.25A.080 Department of social and health services to seek federal funds. The department of social and health services shall seek any federal funds available for implementation of this chapter, including, but not limited to, funds available under Title IV of the federal social security act (42 U.S.C. Sec. 601 et seq.) for the job opportunities and basic skills program. [1994 c 299 § 25; 1986 c 172 § 9. Formerly RCW 50.63.090.]

74.25A.900 Intent—Finding—Severability—Conflict with federal requirements—1994 c 299. See notes following RCW 74.12.400.

Chapter 74.26 RCW
SERVICES FOR CHILDREN WITH
MULTIPLE HANDICAPS

Sections

| | |
|-----------|---|
| 74.26.010 | Legislative intent. |
| 74.26.020 | Eligibility criteria. |
| 74.26.030 | Program plan for services—Local agency support. |
| 74.26.040 | Administrative responsibility—Regulations. |
| 74.26.050 | Contracts for services—Supervision. |
| 74.26.060 | Program costs—Liability of insurers. |

74.26.010 Legislative intent. In recognition of the fact that there is a small population of children with multiple disabilities and specific and continuing medical needs now being served in high-daily-cost hospitals that could be more appropriately and cost-efficiently served in alternative residential alternatives, it is the intent of the legislature to establish a controlled program to develop and review an alternative service delivery system for certain multiply handicapped children who have continuing intensive medical needs but who are not required to continue in residence in a hospital setting. [1980 c 106 § 1.]

74.26.020 Eligibility criteria. (1) To be eligible for services under this alternative program, a person must meet all the following criteria:

(a) The individual must be under twenty-two years of age;

(b) The individual must be under the care of a physician and such physician must diagnose the child's condition as sufficiently serious to warrant eligibility;

(c) The individual must be presently residing in, or in immediate jeopardy of residing in, a hospital or other residential medical facility for the purpose of receiving intensive support medical services; and

(d) The individual must fall within one of the four functional/medical definitional categories listed in subsection (2) of this section.

(2) Functional/medical definitional categories:

(a) Respiratory impaired; with an acquired or congenital defect of the oropharynx, trachea, bronchial tree, or lung requiring continuing dependency on a respiratory assistive device in order to allow the disease process to heal or the individual to grow to a sufficient size to live as a normal person;

(b) Respiratory with multiple physical impairments; with acquired or congenital defects of the central nervous system or multiple organ systems requiring continued dependency on a respiratory assistive device and/or other medical, surgical, and physical therapy treatments in order to allow the disease process to heal or the individual to gain sufficient size to permit surgical correction of the defect or the individual to grow large and strong enough and acquire sufficient skills in self-care to allow survival in a nonmedical/therapy intensive environment;

(c) Multiply physically impaired; with congenital or acquired defects of multiple systems and at least some central

nervous system impairment that causes loss of urine and stool sphincter control as well as paralysis or loss or reduction of two or more extremities, forcing the individual to be dependent on a wheelchair or other total body mobility device, also requiring medical, surgical, and physical therapy intervention in order to allow the individual to grow to a size that permits surgical correction of the defects or allows the individual to grow large and strong enough and acquire sufficient skills in self-care to allow survival in a nonmedical/therapy intensive environment;

(d) Static encephalopathies; with severe brain insults of acquired or congenital origin causing the individual to be medically diagnosed as totally dependent for all bodily and social functions except cardiorespiratory so that the individual requires continuous long-term daily medical/nursing care. [1980 c 106 § 2.]

74.26.030 Program plan for services—Local agency support. (1) A written individual program plan shall be developed for each child served under this controlled program by the division of developmental disabilities in cooperation with the child's parents or if available, legal guardians, and under the supervision of the child's primary health care provider.

(2) The plan shall provide for the systematic provision of all required services. The services to be available as required by the child's individual needs shall include: (a) Nursing care, including registered and licensed practical nurses, and properly trained nurse's aides; (b) physicians, including surgeons, general and family practitioners, and specialists in the child's particular diagnosis on either a referral, consultive, or on-going treatment basis; (c) respiratory therapists and devices; (d) dental care of both routine and emergent nature; (e) on-going nutritional consultation from a trained professional; (f) communication disorder therapy; (g) physical and occupational habilitation and rehabilitation therapy and devices; (h) special and regular education; (i) recreation therapy; (j) psychological counseling; and (k) transportation.

(3) A portion of these required services can be provided from state and local agencies having primary responsibility for such services, but the ultimate responsibility for ensuring and coordinating the delivery of all necessary services shall rest with the division of developmental disabilities. [1980 c 106 § 3.]

74.26.040 Administrative responsibility—Regulations. The department of social and health services, division of developmental disabilities, shall bear all administrative responsibility for the effective and rapid implementation of this controlled program. The division shall promulgate regulations within sixty days after June 12, 1980, to provide minimum standards and qualifications for the following program elements:

- (1) Residential services;
- (2) Medical services;
- (3) Day program;
- (4) Facility requirements and accessibility for all buildings in which the program is to be conducted;
- (5) Staff qualifications;
- (6) Staff training;

- (7) Program evaluation; and
- (8) Protection of client's rights, confidentiality, and informed consent. [1980 c 106 § 4.]

74.26.050 Contracts for services—Supervision. The division of developmental disabilities shall implement this controlled program through a "request-for-proposal" method and subsequent contracts for services with any local, county, or state agency demonstrating a probable ability to meet the program's goals. The proposals must demonstrate an ability to provide or insure the provision of all services set forth in RCW 74.26.030 if necessary for the children covered by the proposals.

The division of developmental disabilities shall thoroughly supervise, review, and audit fiscal and program performance for the individuals served under this control program. A comparison of all costs incurred by all public agencies for each individual prior to the implementation of this program and all costs incurred after one year under this program shall be made and reported back to the legislature in the 1982 session. [1980 c 106 § 5.]

74.26.060 Program costs—Liability of insurers. This program or any components necessary to the child shall be available to eligible children at no cost to their parents provided that any medical insurance benefits available to the child for his/her medical condition shall remain liable for payment for his/her cost of care. [1980 c 106 § 6.]

Chapter 74.29 RCW

REHABILITATION SERVICES FOR INDIVIDUALS WITH DISABILITIES

(Formerly: Vocational rehabilitation and services for handicapped persons)

Sections

| | |
|-----------|---|
| 74.29.005 | Purpose. |
| 74.29.010 | Definitions. |
| 74.29.020 | Powers and duties of state agency. |
| 74.29.037 | Cooperative agreements with state and local agencies. |
| 74.29.050 | Acceptance of federal aid—Generally. |
| 74.29.055 | Acceptance of federal aid—Construction of chapter when part thereof in conflict with federal requirements which are condition precedent to allocation of federal funds. |
| 74.29.080 | Rehabilitation and job support services—Procedure—Register of eligible individuals and organizations. |

Department of social and health services (including division of vocational rehabilitation): Chapter 43.20A RCW.

Investment of industrial insurance funds in student loans for vocational training and education: RCW 51.44.100.

74.29.005 Purpose. The purposes of this chapter are (1) to rehabilitate individuals with disabilities who have a barrier to employment so that they may prepare for and engage in a gainful occupation; (2) to provide persons with physical, mental, or sensory disabilities with a program of services which will result in greater opportunities for them to enter more fully into life in the community; (3) to promote activities which will assist individuals with disabilities to become self-sufficient and self-supporting; and (4) to encourage and develop community rehabilitation programs, job support services, and other resources needed by individuals with disabilities. [1993 c 213 § 1; 1969 ex.s. c 223 § 28A.10.005. Prior: 1967 c 118 § 1. Formerly RCW 28A.10.005, 28.10.005.]

74.29.010 Definitions. (1) "Individual with disabilities" means an individual:

(a) Who has a physical, mental, or sensory disability, which requires vocational rehabilitation services to prepare for, enter into, engage in, retain, or engage in and retain gainful employment consistent with his or her capacities and abilities; or

(b) Who has a physical, mental, or sensory impairment whose ability to function independently in the family or community or whose ability to obtain, maintain, or advance in employment is substantially limited and for whom the delivery of vocational rehabilitation or independent living services will improve the ability to function, continue functioning, or move towards functioning independently in the family or community or to continue in employment.

(2) "Individual with severe disabilities" means an individual with disabilities:

(a) Who has a physical, mental, or sensory impairment that seriously limits one or more functional capacities, such as mobility, communication, self-care, self-direction, interpersonal skills, work tolerance, or work skills, in terms of employment outcome, and/or independence and participation in family or community life;

(b) Whose rehabilitation can be expected to require multiple rehabilitation services over an extended period of time; and

(c) Who has one or more physical, mental, or sensory disabilities resulting from amputation, arthritis, autism, blindness, burn injury, cancer, cerebral palsy, cystic fibrosis, deafness, head injury, heart disease, hemiplegia, hemophilia, respiratory or pulmonary dysfunction, mental retardation, mental illness, multiple sclerosis, muscular dystrophy, musculoskeletal disorders, neurological disorders (including stroke and epilepsy), paraplegia, quadriplegia, other spinal cord conditions, sickle cell anemia, specific learning disability, end-stage renal disease, or another disability or combination of disabilities determined on the basis of an assessment for determining eligibility and rehabilitation needs to cause comparable substantial functional limitation.

(3) "Physical, mental, or sensory disability" means a physical, mental, or sensory condition which materially limits, contributes to limiting or, if not corrected or accommodated, will probably result in limiting an individual's activities or functioning.

(4) "Rehabilitation services" means goods or services provided to: (a) Determine eligibility and rehabilitation needs of individuals with disabilities, and/or (b) enable individuals with disabilities to attain or retain employment and/or independence, and/or (c) contribute substantially to the rehabilitation of a group of individuals with disabilities. To the extent federal funds are available, goods and services may include, but are not limited to, the establishment, construction, development, operation and maintenance of community rehabilitation programs and independent living centers, as well as special demonstration projects.

(5) "Independence" means a reasonable degree of restoration from dependency upon others to self-direction and greater control over circumstances of one's life for personal needs and care and includes but is not limited to the ability to live in one's home.

(6) "Job support services" means ongoing goods and services provided after vocational rehabilitation, subject to available funds, that support an individual with severe disabilities in employment. Such services include, but are not limited to, extraordinary supervision or job coaching.

(7) "State agency" means the department of social and health services. [1993 c 213 § 2; 1970 ex.s. c 18 § 52; 1969 ex.s. c 223 § 28A.10.010. Prior: 1967 ex.s. c 8 § 41; 1967 c 118 § 2; 1957 c 223 § 1; 1933 c 176 § 2; RRS § 4925-2. Formerly RCW 28A.10.010, 28.10.010.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

74.29.020 Powers and duties of state agency. Subject to available funds, and consistent with federal law and regulations the state agency shall:

- (1) Develop statewide rehabilitation programs;
- (2) Provide vocational rehabilitation services, independent living services, and/or job support services to individuals with disabilities or severe disabilities;
- (3) Disburse all funds provided by law and may receive, accept and disburse such gifts, grants, conveyances, devises and bequests of real and personal property from public or private sources, as may be made from time to time, in trust or otherwise, whenever the terms and conditions thereof will aid in carrying out rehabilitation services as specified by law and the regulations of the state agency; and may sell, lease or exchange real or personal property according to the terms and conditions thereof. Any money so received shall be deposited in the state treasury for investment, reinvestment or expenditure in accordance with the conditions of its receipt and RCW 43.88.180;
- (4) Appoint and fix the compensation and prescribe the duties, of the personnel necessary for the administration of this chapter, unless otherwise provided by law;
- (5) Make exploratory studies, do reviews, and research relative to rehabilitation;
- (6) Coordinate with the state rehabilitation advisory council and the state independent living advisory council on the administration of the programs;
- (7) Report to the governor and to the legislature on the administration of this chapter, as requested; and
- (8) Adopt rules, in accord with chapter 34.05 RCW, necessary to carry out the purposes of this chapter. [1993 c 213 § 3; 1969 ex.s. c 223 § 28A.10.020. Prior: 1967 ex.s. c 8 § 42; 1967 c 118 § 6; 1963 c 135 § 1; 1957 c 223 § 3; 1933 c 176 § 3; RRS § 4925-3. Formerly RCW 28A.10.020, 28.10.030.]

74.29.037 Cooperative agreements with state and local agencies. The state agency may establish cooperative agreements with other state and local agencies. [1993 c 213 § 6; 1969 ex.s. c 223 § 28A.10.037. Prior: 1967 ex.s. c 8 § 45; 1967 c 118 § 7. Formerly RCW 28A.10.037, 28.10.037.]

74.29.050 Acceptance of federal aid—Generally. The state of Washington does hereby:

- (1) Accept the provisions and maximum possible benefits resulting from any acts of congress which provide benefits for the purposes of this chapter;

(2) Designate the state treasurer as custodian of all moneys received by the state from appropriations made by the congress of the United States for purposes of this chapter, and authorize the state treasurer to make disbursements therefrom upon the order of the state agency; and

(3) Empower and direct the state agency to cooperate with the federal government in carrying out the provisions of this chapter or of any federal law or regulation pertaining to vocational rehabilitation, and to comply with such conditions as may be necessary to assure the maximum possible benefits resulting from any such federal law or regulation. [1969 ex.s. c 223 § 28A.10.050. Prior: 1967 ex.s. c 8 § 43; 1967 c 118 § 9; 1957 c 223 § 5; 1955 c 371 § 1; 1933 c 176 § 5; RRS § 4925-5. Formerly RCW 28A.10.050, 28.10.050.]

74.29.055 Acceptance of federal aid—Construction of chapter when part thereof in conflict with federal requirements which are condition precedent to allocation of federal funds. If any part of this chapter shall be found to be in conflict with federal requirements which are a condition precedent to the allocation of federal funds to the state, such conflicting part of this chapter is hereby declared to be inoperative solely to the extent of such conflict, and such findings or determination shall not affect the operation of the remainder of this chapter. [1969 ex.s. c 223 § 28A.10.055. Prior: 1967 c 118 § 10. Formerly RCW 28A.10.055, 28.10.055.]

74.29.080 Rehabilitation and job support services—Procedure—Register of eligible individuals and organizations. (1) Determination of eligibility and need for rehabilitation services and determination of eligibility for job support services shall be made by the state agency for each individual according to its established rules, policies, procedures, and standards.

(2) The state agency may purchase, from any source, rehabilitation services and job support services for individuals with disabilities, subject to the individual's income or other resources that are available to contribute to the cost of such services.

(3) The state agency shall maintain registers of individuals and organizations which meet required standards and qualify to provide rehabilitation services and job support services to individuals with disabilities. Eligibility of such individuals and organizations shall be based upon standards and criteria promulgated by the state agency. [1993 c 213 § 4; 1983 1st ex.s. c 41 § 16; 1979 c 151 § 11; 1972 ex.s. c 15 § 1; 1970 ex.s. c 18 § 53; 1970 ex.s. c 15 § 23; 1969 ex.s. c 223 § 28A.10.080. Prior: 1969 c 105 § 2; 1967 ex.s. c 8 § 46; 1967 c 118 § 8. Formerly RCW 28A.10.080, 28.10.080.]

Severability—1983 1st ex.s. c 41: See note following RCW 26.09.060.

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

Severability—1970 ex.s. c 15: See note following RCW 28A.230.160.

Chapter 74.32 RCW

ADVISORY COMMITTEES ON VENDOR RATES

Sections

- 74.32.100 Advisory committee on vendor rates—Created—Members—Chairman.
- 74.32.110 Advisory committee on vendor rates—"Vendor rates" defined.

- 74.32.120 Advisory committee on vendor rates—Meetings—Travel expenses.
- 74.32.130 Advisory committee on vendor rates—Powers and duties.
- 74.32.140 Investigation to determine if additional requirements or standards affecting vendor group.
- 74.32.150 Investigation to determine if additional requirements or standards affecting vendor group—Scope of investigation.
- 74.32.160 Investigation to determine if additional requirements or standards affecting vendor group—Changes investigated regardless of source.
- 74.32.170 Investigation to determine if additional requirements or standards affecting vendor group—Prevailing wage scales and fringe benefit programs to be considered.
- 74.32.180 Investigation to determine if additional requirements or standards affecting vendor group—Additional factors to be accounted for.

74.32.100 Advisory committee on vendor rates—Created—Members—Chairman. There is hereby created a governor's advisory committee on vendor rates. The committee shall be composed of nine members appointed by the governor. In addition, the secretary of the department of social and health services or his designee shall be an ex officio member of the committee. Members shall be selected on the basis of their interest in problems related to the department of social and health services, and no less than two members shall be licensed certified public accountants. The members shall serve at the pleasure of the governor. The governor shall select one member to serve as chairman of the committee and he shall serve as such at the pleasure of the governor. [1971 ex.s. c 87 § 1; 1969 ex.s. c 203 § 1.]

74.32.110 Advisory committee on vendor rates—"Vendor rates" defined. The term "vendor rates" as used throughout RCW 74.32.100 through 74.32.130 shall include, but not be limited to, the cost reimbursement basis upon which all participating hospital organizations receive compensation. [1969 ex.s. c 203 § 2.]

74.32.120 Advisory committee on vendor rates—Meetings—Travel expenses. The committee shall meet at least a total of three and no more than twelve times per year at such specific times and places as may be determined by the chairman. Members shall be entitled to reimbursement for travel expenses as provided for in RCW 43.03.050 and 43.03.060, as now existing or hereafter amended. [1975-'76 2nd ex.s. c 34 § 170; 1969 ex.s. c 203 § 3.]

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

74.32.130 Advisory committee on vendor rates—Powers and duties. The committee shall have the following powers and duties:

(1) Study and review the methods and procedures for establishing the rates and/or fees of all vendors of goods, services and care purchased by the department of social and health services including all medical and welfare care and services.

(2) Provide each professional and trade association or other representative groups of each of the service areas, the opportunity to present to the committee their evidence for justifying the methods of computing and the justification for the rates and/or fees they propose.

(3) The committee shall have the authority to request vendors to appoint a fiscal intermediary to provide the com-

mittee with an evaluation and justification of the method of establishing rates and/or fees.

(4) Prepare and submit a written report to the governor, at least sixty days prior to each session of the legislature, which contains its findings and recommendations concerning the methods and procedures for establishing rates and/or fees and the specific rates and/or fees that should be paid by the department of social and health services to the various designated vendors. This report shall include the suggested effective dates of the recommended rates and/or fees when appropriate.

The vendors shall furnish adequate documented evidence related to the cost of providing their particular services, care or supplies, in the form, to the extent and at such times as the committee may determine.

The chairman of this committee, shall have the same authority as provided in RCW 74.04.290 as it is now or hereafter amended. [1971 ex.s. c 87 § 2; 1969 ex.s. c 203 § 4.]

74.32.140 Investigation to determine if additional requirements or standards affecting vendor group. Before completing its recommendations regarding rates, the governor's committee on vendor rates shall conduct an extensive investigation to determine the nature and extent of any additional requirements or standards established which affect any vendor group if the same have not been fully considered and provided for in the committee's last recommendations, and shall similarly determine the nature and effect of any additional requirements or standards which are expected to be imposed during the period covered by the committee's recommendations. [1971 ex.s. c 298 § 1.]

74.32.150 Investigation to determine if additional requirements or standards affecting vendor group—Scope of investigation. The additional requirements and standards referred to in RCW 74.32.140 shall include but shall not be limited to changes in minimum wage or overtime provisions, changes in building code or facility requirements for occupancy or licensing, and changes in requirements for staffing, available equipment, or methods and procedures. [1971 ex.s. c 298 § 2.]

74.32.160 Investigation to determine if additional requirements or standards affecting vendor group—Changes investigated regardless of source. The committee shall investigate such changes whether their source is or may be federal, state, or local governmental agencies, departments and officers, and shall give full consideration to the cost of such changes and expected changes in the vendor rates recommended. [1971 ex.s. c 298 § 3.]

74.32.170 Investigation to determine if additional requirements or standards affecting vendor group—Prevailing wage scales and fringe benefit programs to be considered. The committee shall also consider prevailing wage scales and fringe benefit programs affecting the vendor's industry or affecting related or associated industries or vendor classes, and shall consider in its rate recommendations a scale of competitive wages, to assure the availability of nec-

essary personnel in each vendor program. [1971 ex.s. c 298 § 4.]

74.32.180 Investigation to determine if additional requirements or standards affecting vendor group—Additional factors to be accounted for. The committee shall further fully account in its recommended rate structure for the effect of changes in payroll and property taxes[,] accurate costs of insurance, and increased or lowered costs of borrowing money. [1971 ex.s. c 298 § 5.]

Chapter 74.34 RCW

ABUSE OF VULNERABLE ADULTS

Sections

| | |
|-----------|--|
| 74.34.005 | Findings. |
| 74.34.020 | Definitions. |
| 74.34.021 | Vulnerable adult—Definition. |
| 74.34.025 | Limitation on recovery for protective services and benefits. |
| 74.34.035 | Reports—Mandated and permissive—Contents—Confidentiality. |
| 74.34.040 | Reports—Contents—Identity confidential. |
| 74.34.050 | Immunity from liability. |
| 74.34.053 | Failure to report—False reports—Penalties. |
| 74.34.063 | Response to reports—Timing—Reports to law enforcement agencies—Notification to licensing authority. |
| 74.34.067 | Investigations—Interviews—Ongoing case planning—Conclusion of investigation. |
| 74.34.068 | Investigation results—Report—Rules. |
| 74.34.070 | Cooperative agreements for services. |
| 74.34.080 | Injunctions. |
| 74.34.090 | Data collection system—Confidentiality. |
| 74.34.095 | Confidential information—Disclosure. |
| 74.34.110 | Protection of vulnerable adults—Petition for protective order. |
| 74.34.120 | Protection of vulnerable adults—Hearing. |
| 74.34.130 | Protection of vulnerable adults—Judicial relief. |
| 74.34.140 | Protection of vulnerable adults—Execution of protective order. |
| 74.34.145 | Protection of vulnerable adults—Notice of criminal penalties for violation—Enforcement under RCW 26.50.110. |
| 74.34.150 | Protection of vulnerable adults—Department may seek relief. |
| 74.34.160 | Protection of vulnerable adults—Proceedings are supplemental. |
| 74.34.165 | Rules. |
| 74.34.170 | Services of department discretionary—Funding. |
| 74.34.180 | Retaliation against whistleblowers and residents—Remedies—Rules. |
| 74.34.200 | Abandonment, abuse, financial exploitation, or neglect of a vulnerable adult—Cause of action for damages—Legislative intent. |
| 74.34.205 | Abandonment, abuse, or neglect—Exceptions. |
| 74.34.210 | Order for protection or action for damages—Standing—Jurisdiction. |
| 74.34.900 | Severability—1984 c 97. |
| 74.34.901 | Severability—1986 c 187. |

Domestic violence prevention, authority of department of social and health services to seek relief on behalf of vulnerable adults: RCW 26.50.021.

Patients in nursing homes and hospitals, abuse: Chapter 70.124 RCW.

74.34.005 Findings. The legislature finds and declares that:

(1) Some adults are vulnerable and may be subjected to abuse, neglect, financial exploitation, or abandonment by a family member, care provider, or other person who has a relationship with the vulnerable adult;

(2) A vulnerable adult may be home bound or otherwise unable to represent himself or herself in court or to retain legal counsel in order to obtain the relief available under this chapter or other protections offered through the courts;

(3) A vulnerable adult may lack the ability to perform or obtain those services necessary to maintain his or her well-being because he or she lacks the capacity for consent;

(4) A vulnerable adult may have health problems that place him or her in a dependent position;

(5) The department and appropriate agencies must be prepared to receive reports of abandonment, abuse, financial exploitation, or neglect of vulnerable adults;

(6) The department must provide protective services in the least restrictive environment appropriate and available to the vulnerable adult. [1999 c 176 § 2.]

Findings—Purpose—1999 c 176: "The legislature finds that the provisions for the protection of vulnerable adults found in chapters 26.44, 70.124, and 74.34 RCW contain different definitions for abandonment, abuse, exploitation, and neglect. The legislature finds that combining the sections of these chapters that pertain to the protection of vulnerable adults would better serve this state's population of vulnerable adults. The purpose of chapter 74.34 RCW is to provide the department and law enforcement agencies with the authority to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults and to provide protective services and legal remedies to protect these vulnerable adults." [1999 c 176 § 1.]

Severability—1999 c 176: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1999 c 176 § 36.]

Conflict with federal requirements—1999 c 176: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. Rules adopted under this act must meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1999 c 176 § 37.]

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

(1) "Abandonment" means action or inaction by a person or entity with a duty of care for a vulnerable adult that leaves the vulnerable person without the means or ability to obtain necessary food, clothing, shelter, or health care.

(2) "Abuse" means the willful action or inaction that inflicts injury, unreasonable confinement, intimidation, or punishment on a vulnerable adult. In instances of abuse of a vulnerable adult who is unable to express or demonstrate physical harm, pain, or mental anguish, the abuse is presumed to cause physical harm, pain, or mental anguish. Abuse includes sexual abuse, mental abuse, physical abuse, and exploitation of a vulnerable adult, which have the following meanings:

(a) "Sexual abuse" means any form of nonconsensual sexual contact, including but not limited to unwanted or inappropriate touching, rape, sodomy, sexual coercion, sexually explicit photographing, and sexual harassment. Sexual abuse includes any sexual contact between a staff person, who is not also a resident or client, of a facility or a staff person of a program authorized under chapter 71A.12 RCW, and a vulnerable adult living in that facility or receiving service from a program authorized under chapter 71A.12 RCW, whether or not it is consensual.

(b) "Physical abuse" means the willful action of inflicting bodily injury or physical mistreatment. Physical abuse includes, but is not limited to, striking with or without an

object, slapping, pinching, choking, kicking, showing, prodding, or the use of chemical restraints or physical restraints unless the restraints are consistent with licensing requirements, and includes restraints that are otherwise being used inappropriately.

(c) "Mental abuse" means any willful action or inaction of mental or verbal abuse. Mental abuse includes, but is not limited to, coercion, harassment, inappropriately isolating a vulnerable adult from family, friends, or regular activity, and verbal assault that includes ridiculing, intimidating, yelling, or swearing.

(d) "Exploitation" means an act of forcing, compelling, or exerting undue influence over a vulnerable adult causing the vulnerable adult to act in a way that is inconsistent with relevant past behavior, or causing the vulnerable adult to perform services for the benefit of another.

(3) "Consent" means express written consent granted after the vulnerable adult or his or her legal representative has been fully informed of the nature of the services to be offered and that the receipt of services is voluntary.

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

(5) "Facility" means a residence licensed or required to be licensed under chapter 18.20 RCW, boarding homes; chapter 18.51 RCW, nursing homes; chapter 70.128 RCW, adult family homes; chapter 72.36 RCW, soldiers' homes; or chapter 71A.20 RCW, residential habilitation centers; or any other facility licensed by the department.

(6) "Financial exploitation" means the illegal or improper use of the property, income, resources, or trust funds of the vulnerable adult by any person for any person's profit or advantage.

(7) "Individual provider" means a person under contract with the department to provide services in the home under chapter 74.09 or 74.39A RCW.

(8) "Mandated reporter" is an employee of the department; law enforcement officer; social worker; professional school personnel; individual provider; an employee of a facility; an operator of a facility; an employee of a social service, welfare, mental health, adult day health, adult day care, home health, home care, or hospice agency; county coroner or medical examiner; Christian Science practitioner; or health care provider subject to chapter 18.130 RCW.

(9) "Neglect" means (a) a pattern of conduct or inaction by a person or entity with a duty of care that fails to provide the goods and services that maintain physical or mental health of a vulnerable adult, or that fails to avoid or prevent physical or mental harm or pain to a vulnerable adult; or (b) an act or omission that demonstrates a serious disregard of consequences of such a magnitude as to constitute a clear and present danger to the vulnerable adult's health, welfare, or safety.

(10) "Permissive reporter" means any person, employee of a financial institution, attorney, or volunteer in a facility or program providing services for vulnerable adults.

(11) "Protective services" means any services provided by the department to a vulnerable adult with the consent of the vulnerable adult, or the legal representative of the vulnerable adult, who has been abandoned, abused, financially exploited, neglected, or in a state of self-neglect. These services may include, but are not limited to case management,

social casework, home care, placement, arranging for medical evaluations, psychological evaluations, day care, or referral for legal assistance.

(12) "Self-neglect" means the failure of a vulnerable adult, not living in a facility, to provide for himself or herself the goods and services necessary for the vulnerable adult's physical or mental health, and the absence of which impairs or threatens the vulnerable adult's well-being. This definition may include a vulnerable adult who is receiving services through home health, hospice, or a home care agency, or an individual provider when the neglect is not a result of inaction by that agency or individual provider.

(13) "Vulnerable adult" includes a person:

(a) Sixty years of age or older who has the functional, mental, or physical inability to care for himself or herself; or

(b) Found incapacitated under chapter 11.88 RCW; or

(c) Who has a developmental disability as defined under RCW 71A.10.020; or

(d) Admitted to any facility; or

(e) Receiving services from home health, hospice, or home care agencies licensed or required to be licensed under chapter 70.127 RCW; or

(f) Receiving services from an individual provider. [2003 c 230 § 1; 1999 c 176 § 3; 1997 c 392 § 523; 1995 1st sp.s. c 18 § 84; 1984 c 97 § 8.]

Effective date—2003 c 230: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 12, 2003]." [2003 c 230 § 3.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.34.021 Vulnerable adult—Definition. For the purposes of this chapter, the term "vulnerable adult" includes persons receiving services from any individual who for compensation serves as a personal aide to a person who self-directs his or her own care in his or her home under chapter 336, Laws of 1999. [1999 c 336 § 6.]

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

74.34.025 Limitation on recovery for protective services and benefits. The cost of benefits and services provided to a vulnerable adult under this chapter with state funds only does not constitute an obligation or lien and is not recoverable from the recipient of the services or from the recipient's estate, whether by lien, adjustment, or any other means of recovery. [1999 c 176 § 4; 1997 c 392 § 304.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

74.34.035 Reports—Mandated and permissive—Contents—Confidentiality. (1) When there is reasonable cause to believe that abandonment, abuse, financial exploita-

tion, or neglect of a vulnerable adult has occurred, mandated reporters shall immediately report to the department.

(2) When there is reason to suspect that sexual assault has occurred, mandated reporters shall immediately report to the appropriate law enforcement agency and to the department.

(3) When there is reason to suspect that physical assault has occurred or there is reasonable cause to believe that an act has caused fear of imminent harm:

(a) Mandated reporters shall immediately report to the department; and

(b) Mandated reporters shall immediately report to the appropriate law enforcement agency, except as provided in subsection (4) of this section.

(4) A mandated reporter is not required to report to a law enforcement agency, unless requested by the injured vulnerable adult or his or her legal representative or family member, an incident of physical assault between vulnerable adults that causes minor bodily injury and does not require more than basic first aid, unless:

(a) The injury appears on the back, face, head, neck, chest, breasts, groin, inner thigh, buttock, genital, or anal area;

(b) There is a fracture;

(c) There is a pattern of physical assault between the same vulnerable adults or involving the same vulnerable adults; or

(d) There is an attempt to choke a vulnerable adult.

(5) Permissive reporters may report to the department or a law enforcement agency when there is reasonable cause to believe that a vulnerable adult is being or has been abandoned, abused, financially exploited, or neglected.

(6) No facility, as defined by this chapter, agency licensed or required to be licensed under chapter 70.127 RCW, or facility or agency under contract with the department to provide care for vulnerable adults may develop policies or procedures that interfere with the reporting requirements of this chapter.

(7) Each report, oral or written, must contain as much as possible of the following information:

(a) The name and address of the person making the report;

(b) The name and address of the vulnerable adult and the name of the facility or agency providing care for the vulnerable adult;

(c) The name and address of the legal guardian or alternate decision maker;

(d) The nature and extent of the abandonment, abuse, financial exploitation, neglect, or self-neglect;

(e) Any history of previous abandonment, abuse, financial exploitation, neglect, or self-neglect;

(f) The identity of the alleged perpetrator, if known; and

(g) Other information that may be helpful in establishing the extent of abandonment, abuse, financial exploitation, neglect, or the cause of death of the deceased vulnerable adult.

(8) Unless there is a judicial proceeding or the person consents, the identity of the person making the report under this section is confidential. [2003 c 230 § 2; 1999 c 176 § 5.]

Effective date—2003 c 230: See note following RCW 74.34.020.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.040 Reports—Contents—Identity confidential.

The reports made under *RCW 74.34.030 shall contain the following information if known:

(1) Identification of the vulnerable adult;

(2) The nature and extent of the suspected abuse, neglect, exploitation, or abandonment;

(3) Evidence of previous abuse, neglect, exploitation, or abandonment;

(4) The name and address of the person making the report; and

(5) Any other helpful information.

Unless there is a judicial proceeding or the person consents, the identity of the person making the report is confidential. [1986 c 187 § 2; 1984 c 97 § 10.]

***Reviser's note:** RCW 74.34.030 was repealed by 1999 c 176 § 35.

74.34.050 Immunity from liability. (1) A person participating in good faith in making a report under this chapter or testifying about alleged abuse, neglect, abandonment, financial exploitation, or self-neglect of a vulnerable adult in a judicial or administrative proceeding under this chapter is immune from liability resulting from the report or testimony. The making of permissive reports as allowed in this chapter does not create any duty to report and no civil liability shall attach for any failure to make a permissive report as allowed under this chapter.

(2) Conduct conforming with the reporting and testifying provisions of this chapter shall not be deemed a violation of any confidential communication privilege. Nothing in this chapter shall be construed as superseding or abridging remedies provided in chapter 4.92 RCW. [1999 c 176 § 6; 1997 c 386 § 34; 1986 c 187 § 3; 1984 c 97 § 11.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Application—Effective date—1997 c 386: See notes following RCW 74.14D.010.

74.34.053 Failure to report—False reports—Penalties. (1) A person who is required to make a report under this chapter and who knowingly fails to make the report is guilty of a gross misdemeanor.

(2) A person who intentionally, maliciously, or in bad faith makes a false report of alleged abandonment, abuse, financial exploitation, or neglect of a vulnerable adult is guilty of a misdemeanor. [1999 c 176 § 7.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.063 Response to reports—Timing—Reports to law enforcement agencies—Notification to licensing authority. (1) The department shall initiate a response to a report, no later than twenty-four hours after knowledge of the report, of suspected abandonment, abuse, financial exploitation, neglect, or self-neglect of a vulnerable adult.

(2) When the initial report or investigation by the department indicates that the alleged abandonment, abuse, financial exploitation, or neglect may be criminal, the department shall make an immediate report to the appropriate law enforcement

agency. The department and law enforcement will coordinate in investigating reports made under this chapter. The department may provide protective services and other remedies as specified in this chapter.

(3) The law enforcement agency or the department shall report the incident in writing to the proper county prosecutor or city attorney for appropriate action whenever the investigation reveals that a crime may have been committed.

(4) The department and law enforcement may share information contained in reports and findings of abandonment, abuse, financial exploitation, and neglect of vulnerable adults, consistent with RCW 74.04.060, 42.17.310, and other applicable confidentiality laws.

(5) The department shall notify the proper licensing authority concerning any report received under this chapter that alleges that a person who is professionally licensed, certified, or registered under Title 18 RCW has abandoned, abused, financially exploited, or neglected a vulnerable adult. [1999 c 176 § 8.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.067 Investigations—Interviews—Ongoing case planning—Conclusion of investigation. (1) Where appropriate, an investigation by the department may include a private interview with the vulnerable adult regarding the alleged abandonment, abuse, financial exploitation, neglect, or self-neglect.

(2) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(3) The department may conduct ongoing case planning and consultation with: (a) Those persons or agencies required to report under this chapter or submit a report under this chapter; (b) consultants designated by the department; and (c) designated representatives of Washington Indian tribes if client information exchanged is pertinent to cases under investigation or the provision of protective services. Information considered privileged by statute and not directly related to reports required by this chapter must not be divulged without a valid written waiver of the privilege.

(4) The department shall prepare and keep on file a report of each investigation conducted by the department for a period of time in accordance with policies established by the department.

(5) If the department determines that the vulnerable adult has suffered from abuse, neglect, self-neglect, abandonment, or financial exploitation, and lacks the ability or capacity to consent, and needs the protection of a guardian, the department may bring a guardianship action under chapter 11.88 RCW as an interested person.

(6) When the investigation is completed and the department determines that an incident of abandonment, abuse, financial exploitation, neglect, or self-neglect has occurred, the department shall inform the vulnerable adult of their right to refuse protective services, and ensure that, if necessary, appropriate protective services are provided to the vulnerable

(2004 Ed.)

adult, with the consent of the vulnerable adult. The vulnerable adult has the right to withdraw or refuse protective services.

(7) The department may photograph a vulnerable adult or their environment for the purpose of providing documentary evidence of the physical condition of the vulnerable adult or his or her environment. When photographing the vulnerable adult, the department shall obtain permission from the vulnerable adult or his or her legal representative unless immediate photographing is necessary to preserve evidence. However, if the legal representative is alleged to have abused, neglected, abandoned, or exploited the vulnerable adult, consent from the legal representative is not necessary. No such consent is necessary when photographing the physical environment.

(8) When the investigation is complete and the department determines that the incident of abandonment, abuse, financial exploitation, or neglect has occurred, the department shall inform the facility in which the incident occurred, consistent with confidentiality requirements concerning the vulnerable adult, witnesses, and complainants. [1999 c 176 § 9.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.068 Investigation results—Report—Rules. (1) After the investigation is complete, the department may provide a written report of the outcome of the investigation to an agency or program described in this subsection when the department determines from its investigation that an incident of abuse, abandonment, financial exploitation, or neglect occurred. Agencies or programs that may be provided this report are home health, hospice, or home care agencies, or after January 1, 2002, any in-home services agency licensed under chapter 70.127 RCW, a program authorized under chapter 71A.12 RCW, an adult day care or day health program, regional support networks authorized under chapter 71.24 RCW, or other agencies. The report may contain the name of the vulnerable adult and the alleged perpetrator. The report shall not disclose the identity of the person who made the report or any witness without the written permission of the reporter or witness. The department shall notify the alleged perpetrator regarding the outcome of the investigation. The name of the vulnerable adult must not be disclosed during this notification.

(2) The department may also refer a report or outcome of an investigation to appropriate state or local governmental authorities responsible for licensing or certification of the agencies or programs listed in subsection (1) of this section.

(3) The department shall adopt rules necessary to implement this section. [2001 c 233 § 2.]

Finding—2001 c 233: "The legislature recognizes that vulnerable adults, while living in their own homes, may be abused, neglected, financially exploited, or abandoned by individuals entrusted to provide care for them. The individuals who abuse, neglect, financially exploit, or abandon vulnerable adults may be employed by, under contract with, or volunteering for an agency or program providing care for vulnerable adults. The legislature has given the department of social and health services the responsibility to investigate complaints of abandonment, abuse, financial exploitation, or neglect of vulnerable adults and to provide protective services and other legal remedies to protect these vulnerable adults. The legislature finds that in order to continue to protect vulnerable adults, the department of social and health services be given the authority to release report information and to

release the results of an investigation to the agency or program with which the individual investigated is employed, contracted, or engaged as a volunteer." [2001 c 233 § 1.]

74.34.070 Cooperative agreements for services. The department may develop cooperative agreements with community-based agencies providing services for vulnerable adults. The agreements shall cover: (1) The appropriate roles and responsibilities of the department and community-based agencies in identifying and responding to reports of alleged abuse; (2) the provision of case-management services; (3) standardized data collection procedures; and (4) related coordination activities. [1999 c 176 § 10; 1997 c 386 § 35; 1995 1st sp.s. c 18 § 87; 1984 c 97 § 13.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.34.080 Injunctions. If access is denied to an employee of the department seeking to investigate an allegation of abandonment, abuse, financial exploitation, or neglect of a vulnerable adult by an individual, the department may seek an injunction to prevent interference with the investigation. The court shall issue the injunction if the department shows that:

(1) There is reasonable cause to believe that the person is a vulnerable adult and is or has been abandoned, abused, financially exploited, or neglected; and

(2) The employee of the department seeking to investigate the report has been denied access. [1999 c 176 § 11; 1984 c 97 § 14.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.090 Data collection system—Confidentiality. The department shall maintain a system for statistical data collection, accessible for bona fide research only as the department by rule prescribes. The identity of any person is strictly confidential. [1984 c 97 § 15.]

74.34.095 Confidential information—Disclosure. (1) The following information is confidential and not subject to disclosure, except as provided in this section:

(a) A report of abandonment, abuse, financial exploitation, or neglect made under this chapter;

(b) The identity of the person making the report; and

(c) All files, reports, records, communications, and working papers used or developed in the investigation or provision of protective services.

(2) Information considered confidential may be disclosed only for a purpose consistent with this chapter or as authorized by chapter 18.20, 18.51, or 74.39A RCW, or as authorized by the long-term care ombudsman programs under federal law or state law, chapter 43.190 RCW.

(3) A court or presiding officer in an administrative proceeding may order disclosure of confidential information only if the court, or presiding officer in an administrative proceeding, determines that disclosure is essential to the administration of justice and will not endanger the life or safety of the vulnerable adult or individual who made the report. The

court or presiding officer in an administrative hearing may place restrictions on such disclosure as the court or presiding officer deems proper. [2000 c 87 § 4; 1999 c 176 § 17.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.110 Protection of vulnerable adults—Petition for protective order. An action known as a petition for an order for protection of a vulnerable adult in cases of abandonment, abuse, financial exploitation, or neglect is created.

(1) A vulnerable adult may seek relief from abandonment, abuse, financial exploitation, or neglect, or the threat thereof, by filing a petition for an order for protection in superior court.

(2) A petition shall allege that the petitioner is a vulnerable adult and that the petitioner has been abandoned, abused, financially exploited, or neglected, or is threatened with abandonment, abuse, financial exploitation, or neglect by respondent.

(3) A petition shall be accompanied by affidavit made under oath stating the specific facts and circumstances which demonstrate the need for the relief sought.

(4) A petition for an order may be made whether or not there is a pending lawsuit, complaint, petition, or other action between the parties.

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

(6) An action under this section shall be filed in the county where the petitioner resides; except that if the petitioner has left the residence as a result of abandonment, abuse, financial exploitation, or neglect, or in order to avoid abandonment, abuse, financial exploitation, or neglect, the petitioner may bring an action in the county of either the previous or new residence.

(7) The filing fee for the petition may be waived at the discretion of the court. [1999 c 176 § 12; 1986 c 187 § 5.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.120 Protection of vulnerable adults—Hearing. The court shall order a hearing on a petition under RCW 74.34.110 not later than fourteen days from the date of filing the petition. Personal service shall be made upon the respondent not less than five court days before the hearing. If timely service cannot be made, the court may set a new hearing date. A petitioner may move for temporary relief under chapter 7.40 RCW. [1986 c 187 § 6.]

74.34.130 Protection of vulnerable adults—Judicial relief. The court may order relief as it deems necessary for the protection of the petitioner, including, but not limited to the following:

(1) Restraining respondent from committing acts of abandonment, abuse, neglect, or financial exploitation;

(2) Excluding the respondent from petitioner's residence for a specified period or until further order of the court;

(3) Prohibiting contact by respondent for a specified period or until further order of the court;

(4) Prohibiting the respondent from knowingly coming within, or knowingly remaining within, a specified distance from a specified location;

(5) Requiring an accounting by respondent of the disposition of petitioner's income or other resources;

(6) Restraining the transfer of property for a specified period not exceeding ninety days; and

(7) Requiring the respondent to pay the filing fee and court costs, including service fees, and to reimburse the petitioner for costs incurred in bringing the action, including a reasonable attorney's fee.

Any relief granted by an order for protection, other than a judgment for costs, shall be for a fixed period not to exceed one year. The clerk of the court shall enter any order for protection issued under this section into the judicial information system. [2000 c 119 § 27; 2000 c 51 § 2; 1999 c 176 § 13; 1986 c 187 § 7.]

Reviser's note: This section was amended by 2000 c 51 § 2 and by 2000 c 119 § 27, each without reference to the other. Both amendments are incorporated in the publication of this section under RCW 1.12.025(2). For rule of construction, see RCW 1.12.025(1).

Application—2000 c 119: See note following RCW 26.50.021.

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.140 Protection of vulnerable adults—Execution of protective order. When an order for protection under RCW 74.34.130 is issued upon request of the petitioner, the court may order a peace officer to assist in the execution of the order of protection. [1986 c 187 § 8.]

74.34.145 Protection of vulnerable adults—Notice of criminal penalties for violation—Enforcement under RCW 26.50.110. (1) An order for protection of a vulnerable adult issued under this chapter which restrains the respondent or another person from committing acts of abuse, prohibits contact with the petitioner, excludes the person from any specified location, or prohibits the person from coming within a specified distance from a location, shall prominently bear on the front page of the order the legend: VIOLATION OF THIS ORDER WITH ACTUAL NOTICE OF ITS TERMS IS A CRIMINAL OFFENSE UNDER CHAPTER 26.50 RCW AND WILL SUBJECT A VIOLATOR TO ARREST.

(2) Whenever an order for protection of a vulnerable adult is issued under this chapter, and the respondent or person to be restrained knows of the order, a violation of a provision restraining the person from committing acts of abuse, prohibiting contact with the petitioner, excluding the person from any specified location, or prohibiting the person from coming within a specified distance of a location, shall be punishable under RCW 26.50.110, regardless of whether the person is a family or household member as defined in RCW 26.50.010. [2000 c 119 § 2.]

Application—2000 c 119: See note following RCW 26.50.021.

74.34.150 Protection of vulnerable adults—Department may seek relief. The department of social and health services, in its discretion, may seek relief under RCW 74.34.110 through 74.34.140 on behalf of and with the consent of any vulnerable adult. Neither the department of social and health services nor the state of Washington shall be liable for failure to seek relief on behalf of any persons under this section. [1986 c 187 § 9.]

74.34.160 Protection of vulnerable adults—Proceedings are supplemental. Any proceeding under RCW 74.34.110 through 74.34.150 is in addition to any other civil or criminal remedies. [1986 c 187 § 11.]

74.34.165 Rules. The department may adopt rules relating to the reporting, investigation, and provision of protective services in in-home settings, consistent with the objectives of this chapter. [1999 c 176 § 18.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.170 Services of department discretionary—Funding. The provision of services under RCW *74.34.030, 74.34.040, 74.34.050, and **74.34.100 through 74.34.160 are discretionary and the department shall not be required to expend additional funds beyond those appropriated. [1986 c 187 § 10.]

Reviser's note: *(1) RCW 74.34.030 was repealed by 1999 c 176 § 35. ***(2) RCW 74.34.100 was recodified as RCW 74.34.015 pursuant to 1995 1st sp.s. c 18 § 89, effective July 1, 1995. RCW 74.34.015 was subsequently repealed by 1999 c 176 § 35.

74.34.180 Retaliation against whistleblowers and residents—Remedies—Rules. (1) An employee or contractor who is a whistleblower and who as a result of being a whistleblower has been subjected to workplace reprisal or retaliatory action, has the remedies provided under chapter 49.60 RCW. RCW 4.24.500 through 4.24.520, providing certain protection to persons who communicate to government agencies, apply to complaints made under this section. The identity of a whistleblower who complains, in good faith, to the department or the department of health about suspected abandonment, abuse, financial exploitation, or neglect by any person in a facility, licensed or required to be licensed, or care provided in a facility or in a home setting, by any person associated with a hospice, home care, or home health agency licensed under chapter 70.127 RCW or other in-home provider, may remain confidential if requested. The identity of the whistleblower shall subsequently remain confidential unless the department determines that the complaint was not made in good faith.

(2)(a) An attempt to expel a resident from a facility, or any type of discriminatory treatment of a resident who is a consumer of hospice, home health, home care services, or other in-home services by whom, or upon whose behalf, a complaint substantiated by the department or the department of health has been submitted to the department or the department of health or any proceeding instituted under or related to this chapter within one year of the filing of the complaint or the institution of the action, raises a rebuttable presumption that the action was in retaliation for the filing of the complaint.

(b) The presumption is rebutted by credible evidence establishing the alleged retaliatory action was initiated prior to the complaint.

(c) The presumption is rebutted by a review conducted by the department that shows that the resident or consumer's needs cannot be met by the reasonable accommodations of the facility due to the increased needs of the resident.

(3) For the purposes of this section:

(a) "Whistleblower" means a resident or a person with a mandatory duty to report under this chapter, or any person licensed under Title 18 RCW, who in good faith reports alleged abandonment, abuse, financial exploitation, or neglect to the department, or the department of health, or to a law enforcement agency;

(b) "Workplace reprisal or retaliatory action" means, but is not limited to: Denial of adequate staff to perform duties; frequent staff changes; frequent and undesirable office changes; refusal to assign meaningful work; unwarranted and unsubstantiated report of misconduct under Title 18 RCW; letters of reprimand or unsatisfactory performance evaluations; demotion; denial of employment; or a supervisor or superior encouraging coworkers to behave in a hostile manner toward the whistleblower. The protections provided to whistleblowers under this chapter shall not prevent a facility or an agency licensed under chapter 70.127 RCW from: (i) Terminating, suspending, or disciplining a whistleblower for other lawful purposes; or (ii) for facilities licensed under chapter 70.128 RCW, reducing the hours of employment or terminating employment as a result of the demonstrated inability to meet payroll requirements. The department shall determine if the facility cannot meet payroll in cases in which a whistleblower has been terminated or had hours of employment reduced because of the inability of a facility to meet payroll; and

(c) "Reasonable accommodation" by a facility to the needs of a prospective or current resident has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations.

(4) This section does not prohibit a facility or an agency licensed under chapter 70.127 RCW from exercising its authority to terminate, suspend, or discipline any employee who engages in workplace reprisal or retaliatory action against a whistleblower.

(5) The department shall adopt rules to implement procedures for filing, investigation, and resolution of whistleblower complaints that are integrated with complaint procedures under this chapter.

(6)(a) Any vulnerable adult who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination may not for that reason alone be considered abandoned, abused, or neglected.

(b) Any vulnerable adult may not be considered abandoned, abused, or neglected under this chapter by any health care provider, facility, facility employee, agency, agency employee, or individual provider who participates in good faith in the withholding or withdrawing of life-sustaining treatment from a vulnerable adult under chapter 70.122 RCW, or who acts in accordance with chapter 7.70 RCW or other state laws to withhold or withdraw treatment, goods, or services.

(7) The department, and the department of health for facilities, agencies, or individuals it regulates, shall adopt rules designed to discourage whistleblower complaints made in bad faith or for retaliatory purposes. [1999 c 176 § 14; 1997 c 392 § 202.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

74.34.200 Abandonment, abuse, financial exploitation, or neglect of a vulnerable adult—Cause of action for damages—Legislative intent. (1) In addition to other remedies available under the law, a vulnerable adult who has been subjected to abandonment, abuse, financial exploitation, or neglect either while residing in a facility or in the case of a person residing at home who receives care from a home health, hospice, or home care agency, or an individual provider, shall have a cause of action for damages on account of his or her injuries, pain and suffering, and loss of property sustained thereby. This action shall be available where the defendant is or was a corporation, trust, unincorporated association, partnership, administrator, employee, agent, officer, partner, or director of a facility, or of a home health, hospice, or home care agency licensed or required to be licensed under chapter 70.127 RCW, as now or subsequently designated, or an individual provider.

(2) It is the intent of the legislature, however, that where there is a dispute about the care or treatment of a vulnerable adult, the parties should use the least formal means available to try to resolve the dispute. Where feasible, parties are encouraged but not mandated to employ direct discussion with the health care provider, use of the long-term care ombudsman or other intermediaries, and, when necessary, recourse through licensing or other regulatory authorities.

(3) In an action brought under this section, a prevailing plaintiff shall be awarded his or her actual damages, together with the costs of the suit, including a reasonable attorney's fee. The term "costs" includes, but is not limited to, the reasonable fees for a guardian, guardian ad litem, and experts, if any, that may be necessary to the litigation of a claim brought under this section. [1999 c 176 § 15; 1995 1st sp.s. c 18 § 85.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.34.205 Abandonment, abuse, or neglect—Exceptions. (1) Any vulnerable adult who relies upon and is being provided spiritual treatment in lieu of medical treatment in accordance with the tenets and practices of a well-recognized religious denomination may not for that reason alone be considered abandoned, abused, or neglected.

(2) Any vulnerable adult may not be considered abandoned, abused, or neglected under this chapter by any health care provider, facility, facility employee, agency, agency employee, or individual provider who participates in good faith in the withholding or withdrawing of life-sustaining treatment from a vulnerable adult under chapter 70.122 RCW, or who acts in accordance with chapter 7.70 RCW or other state laws to withhold or withdraw treatment, goods, or services. [1999 c 176 § 16.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

74.34.210 Order for protection or action for damages—Standing—Jurisdiction. A petition for an order for

protection or an action for damages under this chapter may be brought by the plaintiff, or where necessary, by his or her family members and/or guardian or legal fiduciary, or as otherwise provided under this chapter. The death of the plaintiff shall not deprive the court of jurisdiction over a petition or claim brought under this chapter. Upon petition, after the death of the vulnerable person, the right to initiate or maintain the action shall be transferred to the executor or administrator of the deceased, for the benefit of the surviving spouse, child or children, or other heirs set forth in chapter 4.20 RCW. [1995 1st sp.s. c 18 § 86.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.34.900 Severability—1984 c 97. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1984 c 97 § 18.]

74.34.901 Severability—1986 c 187. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1986 c 187 § 12.]

Chapter 74.36 RCW

FUNDING FOR COMMUNITY PROGRAMS FOR THE AGING

Sections

| | |
|-----------|--|
| 74.36.100 | Department to participate in and administer Federal Older Americans Act of 1965. |
| 74.36.110 | Community programs and projects for the aging—Allotments for—Purpose. |
| 74.36.120 | Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval. |
| 74.36.130 | Community programs and projects for the aging—State funding, limitations—Payments, type. |

State council on aging: RCW 43.20A.680.

74.36.100 Department to participate in and administer Federal Older Americans Act of 1965. The department of social and health services is authorized to take advantage of and participate in the Federal Older Americans Act of 1965 (Public Law 89-73, 89th Congress, 79 Stat. 220) and to accept, administer and disburse any federal funds that may be available under said act. [1970 ex.s. c 18 § 27; 1967 ex.s. c 33 § 1.]

Effective date—Severability—1970 ex.s. c 18: See notes following RCW 43.20A.010.

74.36.110 Community programs and projects for the aging—Allotments for—Purpose. The secretary of the department of social and health services or his designee is authorized to allot for such purposes all or a portion of whatever state funds the legislature appropriates or are otherwise made available for the purpose of matching local funds dedicated to community programs and projects for the aging. The purpose of RCW 74.36.110 through 74.36.130 is to stimulate and assist local communities to obtain federal funds made

(2004 Ed.)

available under the Federal Older Americans Act of 1965 as amended. [1971 ex.s. c 169 § 10.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

74.36.120 Community programs and projects for the aging—Standards for eligibility and approval—Informal hearing on denial of approval. (1) The secretary or his designee shall adopt and set forth standards for determining the eligibility and approval of community projects and priorities therefor, and shall have final authority to approve or deny such projects and funding requested under RCW 74.36.110 through 74.36.130.

(2) Only community project proposals submitted by local public agencies, by private nonprofit agencies or organizations, or by public or other nonprofit institutions of higher education, shall be eligible for approval.

(3) Any community project applicant whose application for approval is denied will be afforded an opportunity for an informal hearing before the secretary or his designee, but the administrative procedure act, chapter 34.05 RCW, shall not apply. [1971 ex.s. c 169 § 11.]

74.36.130 Community programs and projects for the aging—State funding, limitations—Payments, type. (1) State funds made available under RCW 74.36.110 through 74.36.130 for any project shall not exceed fifty per centum of the nonfederal share of the costs. To the extent that federal law permits, and the secretary or his designee deems appropriate, the local community share and/or the state share may be in the form of cash or in-kind resources.

(2) Payments made under RCW 74.36.110 through 74.36.130 may be made in advance or by way of reimbursement, and in such installments and on such conditions as the secretary or his designee may determine, including provisions for adequate accounting systems, reasonable record retention periods and financial audits. [1971 ex.s. c 169 § 12.]

Moneys in possession of secretary not subject to certain proceedings: RCW 74.13.070.

Chapter 74.38 RCW

SENIOR CITIZENS SERVICES ACT

Sections

| | |
|-----------|--|
| 74.38.010 | Legislative recognition—Public policy. |
| 74.38.020 | Definitions. |
| 74.38.030 | Administration of community based services program—Area plans—Annual state plan—Determination of low income eligible persons. |
| 74.38.040 | Scope and extent of community based services program. |
| 74.38.050 | Availability of services for persons other than those of low income—Utilization of volunteers and public assistance recipients—Private agencies—Well-adult clinics—Fee schedule, exceptions. |
| 74.38.060 | Expansion of federal programs authorized. |
| 74.38.061 | Expansion of federal programs authorized. |
| 74.38.070 | Reduced utility rates for low-income senior citizens and other low-income citizens. |
| 74.38.900 | Short title. |
| 74.38.905 | Severability—1975-'76 2nd ex.s. c 131. |

74.38.010 Legislative recognition—Public policy. The legislature recognizes the need for the development and

[Title 74 RCW—page 135]

expansion of alternative services and forms of care for senior citizens. Such services should be designed to restore individuals to, or maintain them at, the level of independent living they are capable of attaining. These alternative services and forms of care should be designed to both complement the present forms of institutional care and create a system whereby appropriate services can be rendered according to the care needs of an individual. The provision of service should continue until the client is able to function independently, moves to an institution, moves from the state, dies, or withdraws from the program.

Therefore, it shall be the policy of this state to develop, expand, or maintain those programs which provide an alternative to institutional care when that form of care is premature, unnecessary, or inappropriate. [1977 ex.s. c 321 § 1; 1975-'76 2nd ex.s. c 131 § 1.]

74.38.020 Definitions. As used in this chapter, the following words and phrases shall have the following meaning unless the content clearly requires otherwise:

(1) "Area agency" means an agency, other than a state agency, designated by the department to carry out programs or services approved by the department in a designated geographical area of the state.

(2) "Area plan" means the document submitted annually by an area agency to the department for approval which sets forth (a) goals and measurable objectives, (b) review of past expenditures and accounting of revenue for the previous year, (c) estimated revenue and expenditures for the ensuing year, and (d) the planning, coordination, administration, social services, and evaluation activities to be undertaken to carry out the purposes of the Older Americans Act of 1965 (42 U.S.C. Sec. 3024 et seq.), as now or hereafter amended.

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

(4) "Office" shall mean the office on aging which is the organizational unit within the department responsible for coordinating and administering aging problems.

(5) "Eligible persons" means senior citizens who are:

(a) Sixty-five years of age or more; or

(b) Sixty years of age or more and are either (i) nonemployed, or (ii) employed for twenty hours per week or less; and

(c) In need of services to enable them to remain in their customary homes because of physical, mental, or other debilitating impairments.

(6) "Low income" means initial resources or subsequent income at or below forty percent of the state median income as promulgated by the secretary of the United States department of health, education and welfare for Title XX of the Social Security Act, or, in the alternative, a level determined by the department and approved by the legislature.

(7) "Income" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended; except, that money received from RCW 74.38.060 shall be excluded from this definition.

(8) "Resource" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended.

(9) "Need" shall have the same meaning as in chapter 74.04 RCW, as now or hereafter amended. [1989 1st ex.s. c 9 § 817; 1977 ex.s. c 321 § 2; 1975-'76 2nd ex.s. c 131 § 2.]

Effective date—Severability—1989 1st ex.s. c 9: See RCW 43.70.910 and 43.70.920.

74.38.030 Administration of community based services program—Area plans—Annual state plan—Determination of low income eligible persons. (1) The program of community based services authorized under this chapter shall be administered by the department. Such services may be provided by the department or through purchase of service contracts, vendor payments or direct client grants.

The department shall, under stipend or grant programs provided under RCW 74.38.060, utilize, to the maximum staffing level possible, eligible persons in its administration, supervision, and operation.

(2) The department shall be responsible for planning, coordination, monitoring and evaluation of services provided under this chapter but shall avoid duplication of services.

(3) The department may designate area agencies in cities of not less than twenty thousand population or in regional areas within the state. These agencies shall submit area plans, as required by the department. They shall also submit, in the manner prescribed by the department, such other program or fiscal data as may be required.

(4) The department shall develop an annual state plan pursuant to the Older Americans Act of 1965, as now or hereafter amended. This plan shall include, but not be limited to:

(a) Area agencies' programs and services approved by the department;

(b) Other programs and services authorized by the department; and

(c) Coordination of all programs and services.

(5) The department shall establish rules and regulations for the determination of low income eligible persons. Such determination shall be related to need based on the initial resources and subsequent income of the person entering into a program or service. This determination shall not prevent the eligible person from utilizing a program or service provided by the department or area agency. However, if the determination is that such eligible person is nonlow income, the provision of RCW 74.38.050 shall be applied as of the date of such determination. [1975-'76 2nd ex.s. c 131 § 3.]

74.38.040 Scope and extent of community based services program. The community based services for low-income eligible persons provided by the department or the respective area agencies may include:

(1) Access services designed to provide identification of eligible persons, assessment of individual needs, reference to the appropriate service, and follow-up service where required. These services shall include information and referral, outreach, transportation and counseling;

(2) Day care offered on a regular, recurrent basis. General nursing, rehabilitation, personal care, nutritional services, social casework, mental health as provided pursuant to chapter 71.24 RCW and/or limited transportation services may be made available within this program;

(3) In-home care for persons, including basic health care; performance of various household tasks and other necessary chores, or, a combination of these services;

(4) Counseling on death for the terminally ill and care and attendance at the time of death; except, that this is not to

include reimbursement for the use of life-sustaining mechanisms;

(5) Health services which will identify health needs and which are designed to avoid institutionalization; assist in securing admission to medical institutions or other health related facilities when required; and, assist in obtaining health services from public or private agencies or providers of health services. These services shall include health screening and evaluation, in-home services, health education, and such health appliances which will further the independence and well-being of the person;

(6) The provision of low cost, nutritionally sound meals in central locations or in the person's home in the instance of incapacity. Also, supportive services may be provided in nutritional education, shopping assistance, diet counseling and other services to sustain the nutritional well-being of these persons;

(7) The provisions of services to maintain a person's home in a state of adequate repair, insofar as is possible, for their safety and comfort. These services shall be limited, but may include housing counseling, minor repair and maintenance, and moving assistance when such repair will not attain standards of health and safety, as determined by the department;

(8) Civil legal services, as limited by RCW 2.50.100, for counseling and representation in the areas of housing, consumer protection, public entitlements, property, and related fields of law;

(9) Long-term care ombudsman programs for residents of all long-term care facilities. [1983 c 290 § 14; 1977 ex.s. c 321 § 3; 1975-'76 2nd ex.s. c 131 § 4.]

Severability—1983 c 290: See RCW 43.190.900.

74.38.050 Availability of services for persons other than those of low income—Utilization of volunteers and public assistance recipients—Private agencies—Well-adult clinics—Fee schedule, exceptions. The services provided in RCW 74.38.040 may be provided to nonlow income eligible persons: PROVIDED, That the department and the area agencies on aging shall utilize volunteer workers and public assistant recipients to the maximum extent possible to provide the services provided in RCW 74.38.040: PROVIDED, FURTHER, That the department and the area agencies shall utilize the bid procedure pursuant to chapter 43.19 RCW for providing such services to low income and nonlow income persons whenever the services to be provided are available through private agencies at a cost savings to the department. The department shall establish a fee schedule based on the ability to pay and graduated to full recovery of the cost of the service provided; except, that nutritional services, health screening, services under the long-term care ombudsman program under chapter 43.190 RCW and access services provided in RCW 74.38.040 shall not be based on need and no fee shall be charged; except further, notwithstanding any other provision of this chapter, that well adult clinic services may be provided in lieu of health screening services if such clinics use the fee schedule established by this section. [1983 c 290 § 15; 1979 ex.s. c 147 § 1; 1977 ex.s. c 321 § 4; 1975-'76 2nd ex.s. c 131 § 5.]

Severability—1983 c 290: See RCW 43.190.900.

(2004 Ed.)

Effective date—1979 ex.s. c 147: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect July 1, 1979." [1979 ex.s. c 147 § 4.]

74.38.060 Expansion of federal programs authorized. The department may expand the foster grandparent, senior companion and retired senior volunteer programs funded under the Federal Volunteer Agency (ACTION) (P.L. 93-113 Title II), or its successor agency, which provide senior citizens with volunteer stipends, out-of-pocket expenses, or wages to perform services in the community. [1975-'76 2nd ex.s. c 131 § 6.]

RSVP funding: RCW 43.63A.275.

74.38.061 Expansion of federal programs authorized. The department may expand the foster grandparent, senior companion, and retired senior volunteer programs funded under the Federal Volunteer Agency (ACTION) (P.L. 93-113 Title II), or its successor agency, which provide senior citizens with volunteer stipends, out-of-pocket expenses, or wages to perform services in the community. [1977 ex.s. c 321 § 5.]

74.38.070 Reduced utility rates for low-income senior citizens and other low-income citizens. Notwithstanding any other provision of law, any county, city, town, public utility district or other municipal corporation, or quasi municipal corporation providing utility services may provide such services at reduced rates for low-income senior citizens or other low-income citizens: PROVIDED, That, for the purposes of this section, "low-income senior citizen" or "other low-income citizen" shall be defined by appropriate ordinance or resolution adopted by the governing body of the county, city, town, public utility district or other municipal corporation, or quasi municipal corporation providing the utility services. Any reduction in rates granted in whatever manner to low-income senior citizens or other low-income citizens in one part of a service area shall be uniformly extended to low-income senior citizens or other low-income citizens in all other parts of the service area. [2002 c 270 § 1; 1998 c 300 § 8; 1990 c 164 § 1; 1988 c 44 § 1; 1980 c 160 § 1; 1979 c 116 § 1.]

Findings—Intent—1998 c 300: See RCW 19.29A.005.

Construction—Severability—1998 c 300: See RCW 19.29A.900 and 19.29A.901.

74.38.900 Short title. Sections 1 through 6 of this act shall be known and may be cited as the "Senior Citizens Services Act". [1975-'76 2nd ex.s. c 131 § 7.]

74.38.905 Severability—1975-'76 2nd ex.s. c 131. If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1975-'76 2nd ex.s. c 131 § 10.]

Chapter 74.39 RCW

LONG-TERM CARE SERVICE OPTIONS

Sections

| | |
|-----------|---|
| 74.39.001 | Finding. |
| 74.39.005 | Purpose. |
| 74.39.007 | Definitions. |
| 74.39.010 | Option—Flexibility—Title XIX of the federal social security act. |
| 74.39.020 | Opportunities—Increase of federal funds—Title XIX of the federal social security act. |
| 74.39.030 | Community options program entry system—Waiver—Respite services. |
| 74.39.041 | Community residential options—Nursing facility eligible clients. |
| 74.39.050 | Individuals with functional disabilities—Self-directed care. |
| 74.39.060 | Personal aide providers—Registration. |
| 74.39.070 | Personal aide—Qualification exemptions. |
| 74.39.900 | Severability—1989 c 427. |

74.39.001 Finding. The legislature finds that:

Washington's chronically functionally disabled population is growing at a rapid pace. This growth, along with economic and social changes and the coming age wave, presents opportunities for the development of long-term care community services networks and enhanced volunteer participation in those networks, and creates a need for different approaches to currently fragmented long-term care programs. The legislature further recognizes that persons with functional disabilities should receive long-term care services that encourage individual dignity, autonomy, and development of their fullest human potential. [1989 c 427 § 1.]

74.39.005 Purpose. The purpose of this chapter is to:

(1) Establish a balanced range of health, social, and supportive services that deliver long-term care services to chronically, functionally disabled persons of all ages;

(2) Ensure that functional ability shall be the determining factor in defining long-term care service needs and that these needs will be determined by a uniform system for comprehensively assessing functional disability;

(3) Ensure that services are provided in the most independent living situation consistent with individual needs;

(4) Ensure that long-term care service options shall be developed and made available that enable functionally disabled persons to continue to live in their homes or other community residential facilities while in the care of their families or other volunteer support persons;

(5) Ensure that long-term care services are coordinated in a way that minimizes administrative cost, eliminates unnecessarily complex organization, minimizes program and service duplication, and maximizes the use of financial resources in directly meeting the needs of persons with functional limitations;

(6) Develop a systematic plan for the coordination, planning, budgeting, and administration of long-term care services now fragmented between the division of developmental disabilities, division of mental health, aging and adult services administration, division of children and family services, division of vocational rehabilitation, office on AIDS, division of health, and bureau of alcohol and substance abuse;

(7) Encourage the development of a statewide long-term care case management system that effectively coordinates the plan of care and services provided to eligible clients;

(8) Ensure that individuals and organizations affected by or interested in long-term care programs have an opportunity to participate in identification of needs and priorities, policy development, planning, and development, implementation, and monitoring of state supported long-term care programs;

(9) Support educational institutions in Washington state to assist in the procurement of federal support for expanded research and training in long-term care; and

(10) Facilitate the development of a coordinated system of long-term care education that is clearly articulated between all levels of higher education and reflective of both in-home care needs and institutional care needs of functionally disabled persons. [1995 1st sp.s. c 18 § 10; 1989 c 427 § 2.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39.007 Definitions. The definitions in this section apply throughout RCW 74.39.007, 74.39.050, 74.39.060, 74.39.070, 43.190.060, and section 1, chapter 336, Laws of 1999 unless the context clearly requires otherwise.

(1) "Self-directed care" means the process in which an adult person, who is prevented by a functional disability from performing a manual function related to health care that an individual would otherwise perform for himself or herself, chooses to direct and supervise a paid personal aide to perform those tasks.

(2) "Personal aide" means an individual, working privately or as an individual provider under contract or agreement with the department of social and health services, who acts at the direction of an adult person with a functional disability living in his or her own home and provides that person with health care services that a person without a functional disability can perform. [1999 c 336 § 2.]

Finding—Intent—1999 c 336: "(1) The legislature finds that certain aspects of health licensure laws have the unintended consequence of limiting the right of persons with functional disabilities to care for themselves in their own home, and of securing assistance from other persons in performing routine health-related tasks that persons without these disabilities customarily perform.

(2) It is the intent of the legislature to clarify the right of adults with functional disabilities to choose to self-direct their own health-related tasks through personal aides, and to describe the circumstances under which self-directed care may take place in the home setting. The legislature declares that it is in the public interest to preserve the autonomy and dignity of persons with functional disabilities to care for themselves in their own homes, among the continuum of options for health care services where the judgment and control over the care rests with the individual." [1999 c 336 § 1.]

74.39.010 Option—Flexibility—Title XIX of the federal social security act. A valuable option available to Washington state to achieve the goals of RCW 74.39.001 and 74.39.005 is the flexibility in personal care and other long-term care services encouraged by the federal government under Title XIX of the federal social security act. These services include options to expand community-based long-term care services, such as adult family homes, congregate care facilities, respite, chore services, hospice, and case management. [1989 c 427 § 3.]

74.39.020 Opportunities—Increase of federal funds—Title XIX of the federal social security act. Title XIX of the federal social security act offers valuable opportu-

nities to increase federal funds available to provide community-based long-term care services to functionally disabled persons in their homes, and in noninstitutional residential facilities, such as adult family homes and congregate care facilities. [1989 c 427 § 9.]

74.39.030 Community options program entry system—Waiver—Respite services. The department shall request an amendment to its community options program entry system waiver under section 1905(c) of the federal social security act to include respite services as a service available under the waiver. [1989 c 427 § 11.]

74.39.041 Community residential options—Nursing facility eligible clients. (1) To the extent of available funds and subject to any conditions placed on appropriations for this purpose, the department may provide one or more home and community-based waiver programs in accordance with section 1915(c) of the federal social security act for Washington residents who have a gross income in excess of three hundred percent of the federal supplemental security income benefit level. The waiver services provided in accordance with this section may differ from, and shall operate with a separate limit or limits on total enrollment than, those provided for persons who are categorically needy as defined in Title XIX of the federal social security act. The department shall adopt rules to establish eligibility criteria, applicable income standards, and the specific waiver services to be provided. Total annual enrollment levels and the services to be provided shall be as specified in the waiver agreement or agreements with the federal government, subject to any conditions on appropriations for this purpose.

(2) If a nursing facility resident becomes eligible for home and community-based waiver service alternatives to nursing facility care, but chooses to continue to reside in a nursing facility, the department must allow that choice. However, if the resident is a medicaid recipient, the resident must require a nursing facility level of care.

(3) If a recipient of home and community-based waiver services may continue to receive home and community-based waiver services, despite an otherwise disqualifying level of income, but chooses to seek admission to a nursing facility, the department must allow that choice. However, if the resident is a medicaid recipient, the resident must require a nursing facility level of care.

(4) The department will fully disclose to all individuals eligible for waiver services under this section the services available in different long-term care settings. [2001 c 269 § 2.]

74.39.050 Individuals with functional disabilities—Self-directed care. (1) An adult person with a functional disability living in his or her own home may direct and supervise a paid personal aide in the performance of a health care task.

(2) The following requirements shall guide the provision of self-directed care under chapter 336, Laws of 1999:

(a) Health care tasks are those medical, nursing, or home health services that enable the person to maintain independence, personal hygiene, and safety in his or her own home, (2004 Ed.)

and that are services that a person without a functional disability would customarily and personally perform without the assistance of a licensed health care provider.

(b) The individual who chooses to self-direct a health care task is responsible for initiating self-direction by informing the health care professional who has ordered the treatment which involves that task of the individual's intent to perform that task through self-direction.

(c) When state funds are used to pay for self-directed tasks, a description of those tasks will be included in the client's comprehensive assessment, and subject to review with each annual reassessment.

(d) When a licensed health care provider orders treatment involving a health care task to be performed through self-directed care, the responsibility to ascertain that the patient understands the treatment and will be able to follow through on the self-directed care task is the same as it would be for a patient who performs the health care task for himself or herself, and the licensed health care provider incurs no additional liability when ordering a health care task which is to be performed through self-directed care.

(e) The role of the personal aide in self-directed care is limited to performing the physical aspect of health care tasks under the direction of the person for whom the tasks are being done. This shall not affect the ability of a personal aide to provide other home care services, such as personal care or homemaker services, which enable the client to remain at home.

(f) The responsibility to initiate self-directed health care tasks, to possess the necessary knowledge and training for those tasks, and to exercise judgment regarding the manner of their performance rests and remains with the person who has chosen to self-direct those tasks, including the decision to employ and dismiss a personal aide. [1999 c 336 § 3.]

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

74.39.060 Personal aide providers—Registration. Any individual who, for compensation, serves as a personal aide provider under contract or agreement with the department of social and health services, to a person who self-directs his or her own care in his or her own home, shall register with the department of social and health services. [1999 c 336 § 4.]

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

74.39.070 Personal aide—Qualification exemptions. A personal aide, in the performance of a health care task, who is directed and supervised by a person with a functional disability in his or her own home, is exempt from any legal requirement to qualify and be credentialed by the department of health as a health care provider under Title 18 RCW to the extent of the responsibilities provided and health care tasks performed under chapter 336, Laws of 1999. [1999 c 336 § 8.]

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

74.39.900 Severability—1989 c 427. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the

provision to other persons or circumstances is not affected. [1989 c 427 § 43.]

Chapter 74.39A RCW
LONG-TERM CARE SERVICES
OPTIONS—EXPANSION

Sections

| | |
|------------|--|
| 74.39A.005 | Findings. |
| 74.39A.007 | Purpose and intent. |
| 74.39A.009 | Definitions. |
| 74.39A.010 | Assisted living services and enhanced adult residential care—Contracts—Rules. |
| 74.39A.020 | Adult residential care—Contracts—Rules. |
| 74.39A.030 | Expansion of home and community services—Payment rates. |
| 74.39A.040 | Department assessment of and assistance to hospital patients in need of long-term care. |
| 74.39A.050 | Quality improvement principles. |
| 74.39A.060 | Toll-free telephone number for complaints—Investigation and referral—Rules—Discrimination or retaliation prohibited. |
| 74.39A.070 | Rules for qualifications and training requirements—Requirement that contractors comply with federal and state regulations. |
| 74.39A.080 | Department authority to take actions in response to noncompliance or violations. |
| 74.39A.090 | Discharge planning—Contracts for case management services and reassessment and reauthorization—Assessment of case management roles and quality of in-home care services—Plan of care model language. |
| 74.39A.095 | Case management services—Agency on aging oversight—Plan of care—Termination of contract—Rejection of individual provider. |
| 74.39A.100 | Chore services—Legislative finding, intent. |
| 74.39A.110 | Chore services—Legislative policy and intent regarding available funds—Levels of service. |
| 74.39A.120 | Chore services—Expenditure limitation—Priorities—Rule on patient resource limit. |
| 74.39A.130 | Chore services—Department to develop program. |
| 74.39A.140 | Chore services—Employment of public assistance recipients. |
| 74.39A.150 | Chore services for disabled persons—Eligibility. |
| 74.39A.160 | Transfer of assets—Penalties. |
| 74.39A.170 | Recovery of payments—Transfer of assets rules for eligibility—Disclosure of estate recovery costs, terms, and conditions. |
| 74.39A.180 | Authority to pay for probate actions and collection of bad debts. |
| 74.39A.190 | Community long-term care training and education steering committee. |
| 74.39A.200 | Training curricula, materials—In public domain—Exceptions. |
| 74.39A.210 | Disclosure of employee information—Employer immunity—Rebuttable presumption. |
| 74.39A.220 | Findings—2002 c 3 (Initiative Measure No. 775). |
| 74.39A.230 | Authority created. |
| 74.39A.240 | Definitions. |
| 74.39A.250 | Authority duties. |
| 74.39A.260 | Department duties. |
| 74.39A.270 | Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions. |
| 74.39A.280 | Powers. |
| 74.39A.290 | Performance review. |
| 74.39A.300 | Funding. |
| 74.39A.900 | Section captions—1993 c 508. |
| 74.39A.901 | Conflict with federal requirements. |
| 74.39A.902 | Severability—1993 c 508. |
| 74.39A.903 | Effective date—1993 c 508. |

74.39A.005 Findings. The legislature finds that the aging of the population and advanced medical technology have resulted in a growing number of persons who require assistance. The primary resource for long-term care continues to be family and friends. However, these traditional caregivers are increasingly employed outside the home. There is a growing demand for improvement and expansion of home and community-based long-term care services to support and complement the services provided by these informal caregivers.

The legislature further finds that the public interest would best be served by a broad array of long-term care services that support persons who need such services at home or in the community whenever practicable and that promote individual autonomy, dignity, and choice.

The legislature finds that as other long-term care options become more available, the relative need for nursing home beds is likely to decline. The legislature recognizes, however, that nursing home care will continue to be a critical part of the state's long-term care options, and that such services should promote individual dignity, autonomy, and a homelike environment.

The legislature finds that many recipients of in-home services are vulnerable and their health and well-being are dependent on their caregivers. The quality, skills, and knowledge of their caregivers are often the key to good care. The legislature finds that the need for well-trained caregivers is growing as the state's population ages and clients' needs increase. The legislature intends that current training standards be enhanced. [2000 c 121 § 9; 1993 c 508 § 1.]

74.39A.007 Purpose and intent. It is the legislature's intent that:

(1) Long-term care services administered by the department of social and health services include a balanced array of health, social, and supportive services that promote individual choice, dignity, and the highest practicable level of independence;

(2) Home and community-based services be developed, expanded, or maintained in order to meet the needs of consumers and to maximize effective use of limited resources;

(3) Long-term care services be responsive and appropriate to individual need and also cost-effective for the state;

(4) Nursing home care is provided in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident and timely discharge to a less restrictive care setting when appropriate; and

(5) State health planning for nursing home bed supply take into account increased availability of other home and community-based service options. [1993 c 508 § 2.]

74.39A.009 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply throughout this chapter.

(1) "Adult family home" means a home licensed under chapter 70.128 RCW.

(2) "Adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.020 to provide personal care services.

(3) "Assisted living services" means services provided by a boarding home that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services, and the resident is housed in a private apartment-like unit.

(4) "Boarding home" means a facility licensed under chapter 18.20 RCW.

(5) "Cost-effective care" means care provided in a setting of an individual's choice that is necessary to promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice, in an environment that is appropriate to the care and safety needs of the individual, and such care cannot be provided at a lower cost in any other setting. But this in no way precludes an individual from choosing a different residential setting to achieve his or her desired quality of life.

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

(7) "Enhanced adult residential care" means services provided by a boarding home that is licensed under chapter 18.20 RCW and that has a contract with the department under RCW 74.39A.010 to provide personal care services, intermittent nursing services, and medication administration services.

(8) "Functionally disabled person" is synonymous with chronic functionally disabled and means a person who because of a recognized chronic physical or mental condition or disease, including chemical dependency, is impaired to the extent of being dependent upon others for direct care, support, supervision, or monitoring to perform activities of daily living. "Activities of daily living", in this context, means self-care abilities related to personal care such as bathing, eating, using the toilet, dressing, and transfer. Instrumental activities of daily living may also be used to assess a person's functional abilities as they are related to the mental capacity to perform activities in the home and the community such as cooking, shopping, house cleaning, doing laundry, working, and managing personal finances.

(9) "Home and community services" means adult family homes, in-home services, and other services administered or provided by contract by the department directly or through contract with area agencies on aging or similar services provided by facilities and agencies licensed by the department.

(10) "Long-term care" is synonymous with chronic care and means care and supports delivered indefinitely, intermittently, or over a sustained time to persons of any age disabled by chronic mental or physical illness, disease, chemical dependency, or a medical condition that is permanent, not reversible or curable, or is long-lasting and severely limits their mental or physical capacity for self-care. The use of this definition is not intended to expand the scope of services, care, or assistance by any individuals, groups, residential care settings, or professions unless otherwise expressed by law.

(11) "Nursing home" means a facility licensed under chapter 18.51 RCW.

(12) "Secretary" means the secretary of social and health services.

(13) "Tribally licensed boarding home" means a boarding home licensed by a federally recognized Indian tribe which home provides services similar to boarding homes licensed under chapter 18.20 RCW. [2004 c 142 § 14; 1997 c 392 § 103.]

Effective dates—2004 c 142: See note following RCW 18.20.020.

Short title—1997 c 392: "This act shall be known and may be cited as the Clara act." [1997 c 392 § 101.]

Findings—1997 c 392: "The legislature finds and declares that the state's current fragmented categorical system for administering services to persons with disabilities and the elderly is not client and family-centered and has created significant organizational barriers to providing high quality, safe,

(2004 Ed.)

and effective care and support. The present fragmented system results in uncoordinated enforcement of regulations designed to protect the health and safety of disabled persons, lacks accountability due to the absence of management information systems' client tracking data, and perpetuates difficulty in matching client needs and services to multiple categorical funding sources.

The legislature further finds that Washington's chronically functionally disabled population of all ages is growing at a rapid pace due to a population of the very old and increased incidence of disability due in large measure to technological improvements in acute care causing people to live longer. Further, to meet the significant and growing long-term care needs into the near future, rapid, fundamental changes must take place in the way we finance, organize, and provide long-term care services to the chronically functionally disabled.

The legislature further finds that the public demands that long-term care services be safe, client and family-centered, and designed to encourage individual dignity, autonomy, and development of the fullest human potential at home or in other residential settings, whenever practicable." [1997 c 392 § 102.]

Construction—Conflict with federal requirements—1997 c 392: "Any section or provision of this act that may be susceptible to more than one construction shall be interpreted in favor of the construction most likely to comply with federal laws entitling this state to receive federal funds for the various programs of the department of health or the department of social and health services. If any section of this act is found to be in conflict with federal requirements that are a prescribed condition of the allocation of federal funds to the state, or to any departments or agencies thereof, the conflicting part is declared to be inoperative solely to the extent of the conflict. The rules issued under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1997 c 392 § 504.]

Part headings and captions not law—1997 c 392: "Part headings and captions used in this act are not part of the law." [1997 c 392 § 531.]

74.39A.010 Assisted living services and enhanced adult residential care—Contracts—Rules. (1) To the extent of available funding, the department of social and health services may contract with licensed boarding homes under chapter 18.20 RCW and tribally licensed boarding homes for assisted living services and enhanced adult residential care. The department shall develop rules for facilities that contract with the department for assisted living services or enhanced adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW 74.39A.050 and consistent with chapter 70.129 RCW;

(b) Standards for resident living areas consistent with RCW 74.39A.030;

(c) Training requirements for providers and their staff.

(2) The department's rules shall provide that services in assisted living and enhanced adult residential care:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include, but not be limited to, personal care, nursing services, medication administration, and supportive services that promote independence and self-sufficiency;

(c) Are of sufficient scope to assure that each resident who chooses to remain in the assisted living or enhanced adult residential care may do so, to the extent that the care provided continues to be cost-effective and safe and promote the most appropriate level of physical, mental, and psychosocial well-being consistent with client choice;

(d) Are directed first to those persons most likely, in the absence of enhanced adult residential care or assisted living services, to need hospital, nursing facility, or other out-of-home placement; and

(e) Are provided in compliance with applicable facility and professional licensing laws and rules.

(3) When a facility contracts with the department for assisted living services or enhanced adult residential care, only services and facility standards that are provided to or in behalf of the assisted living services or enhanced adult residential care client shall be subject to the department's rules. [1995 1st sp.s. c 18 § 14; 1993 c 508 § 3.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.020 Adult residential care—Contracts—

Rules. (1) To the extent of available funding, the department of social and health services may contract for adult residential care.

(2) The department shall, by rule, develop terms and conditions for facilities that contract with the department for adult residential care to establish:

(a) Facility service standards consistent with the principles in RCW 74.39A.050 and consistent with chapter 70.129 RCW; and

(b) Training requirements for providers and their staff.

(3) The department shall, by rule, provide that services in adult residential care facilities:

(a) Recognize individual needs, privacy, and autonomy;

(b) Include personal care and other services that promote independence and self-sufficiency and aging in place;

(c) Are directed first to those persons most likely, in the absence of adult residential care services, to need hospital, nursing facility, or other out-of-home placement; and

(d) Are provided in compliance with applicable facility and professional licensing laws and rules.

(4) When a facility contracts with the department for adult residential care, only services and facility standards that are provided to or in behalf of the adult residential care client shall be subject to the adult residential care rules.

(5) To the extent of available funding, the department may also contract under this section with a tribally licensed boarding home for the provision of services of the same nature as the services provided by adult residential care facilities. The provisions of subsections (2)(a) and (b) and (3)(a) through (d) of this section apply to such a contract. [2004 c 142 § 15; 1995 1st sp.s. c 18 § 15.]

Effective dates—2004 c 142: See note following RCW 18.20.020.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.030 Expansion of home and community services—Payment rates. (1) To the extent of available funding, the department shall expand cost-effective options for home and community services for consumers for whom the state participates in the cost of their care.

(2) In expanding home and community services, the department shall: (a) Take full advantage of federal funding available under Title XVIII and Title XIX of the federal social security act, including home health, adult day care, waiver options, and state plan services; and (b) be authorized to use funds available under its community options program entry system waiver granted under section 1915(c) of the federal social security act to expand the availability of in-home, adult residential care, adult family homes, enhanced adult residential care, and assisted living services. By June 30, 1997, the department shall undertake to reduce the nursing

home medicaid census by at least one thousand six hundred by assisting individuals who would otherwise require nursing facility services to obtain services of their choice, including assisted living services, enhanced adult residential care, and other home and community services. If a resident, or his or her legal representative, objects to a discharge decision initiated by the department, the resident shall not be discharged if the resident has been assessed and determined to require nursing facility services. In contracting with nursing homes and boarding homes for enhanced adult residential care placements, the department shall not require, by contract or through other means, structural modifications to existing building construction.

(3)(a) The department shall by rule establish payment rates for home and community services that support the provision of cost-effective care. In the event of any conflict between any such rule and a collective bargaining agreement entered into under RCW 74.39A.270 and 74.39A.300, the collective bargaining agreement prevails.

(b) The department may authorize an enhanced adult residential care rate for nursing homes that temporarily or permanently convert their bed use for the purpose of providing enhanced adult residential care under chapter 70.38 RCW, when the department determines that payment of an enhanced rate is cost-effective and necessary to foster expansion of contracted enhanced adult residential care services. As an incentive for nursing homes to permanently convert a portion of its nursing home bed capacity for the purpose of providing enhanced adult residential care, the department may authorize a supplemental add-on to the enhanced adult residential care rate.

(c) The department may authorize a supplemental assisted living services rate for up to four years for facilities that convert from nursing home use and do not retain rights to the converted nursing home beds under chapter 70.38 RCW, if the department determines that payment of a supplemental rate is cost-effective and necessary to foster expansion of contracted assisted living services. [2002 c 3 § 10 (Initiative Measure No. 775, approved November 6, 2001); 1995 1st sp.s. c 18 § 2.]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

Conflict with federal requirements—1995 1st sp.s. c 18: "If any part of this act is found to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state." [1995 1st sp.s. c 18 § 74.]

Severability—1995 1st sp.s. c 18: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 1st sp.s. c 18 § 119.]

Effective date—1995 1st sp.s. c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 1st sp.s. c 18 § 120.]

74.39A.040 Department assessment of and assistance to hospital patients in need of long-term care. The department shall work in partnership with hospitals in assisting

patients and their families to find long-term care services of their choice. The department shall not delay hospital discharges but shall assist and support the activities of hospital discharge planners. The department also shall coordinate with home health and hospice agencies whenever appropriate. The role of the department is to assist the hospital and to assist patients and their families in making informed choices by providing information regarding home and community options to individuals who are hospitalized and likely to need long-term care.

(1) To the extent of available funds, the department shall assess individuals who:

(a) Are medicaid clients, medicaid applicants, or eligible for both medicare and medicaid; and

(b) Apply or are likely to apply for admission to a nursing facility.

(2) For individuals who are reasonably expected to become medicaid recipients within one hundred eighty days of admission to a nursing facility, the department shall, to the extent of available funds, offer an assessment and information regarding appropriate in-home and community services.

(3) When the department finds, based on assessment, that the individual prefers and could live appropriately and cost-effectively at home or in some other community-based setting, the department shall:

(a) Advise the individual that an in-home or other community service is appropriate;

(b) Develop, with the individual or the individual's representative, a comprehensive community service plan;

(c) Inform the individual regarding the availability of services that could meet the applicant's needs as set forth in the community service plan and explain the cost to the applicant of the available in-home and community services relative to nursing facility care; and

(d) Discuss and evaluate the need for on-going involvement with the individual or the individual's representative.

(4) When the department finds, based on assessment, that the individual prefers and needs nursing facility care, the department shall:

(a) Advise the individual that nursing facility care is appropriate and inform the individual of the available nursing facility vacancies;

(b) If appropriate, advise the individual that the stay in the nursing facility may be short term; and

(c) Describe the role of the department in providing nursing facility case management. [1995 1st sp.s. c 18 § 6.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.050 Quality improvement principles. The department's system of quality improvement for long-term care services shall use the following principles, consistent with applicable federal laws and regulations:

(1) The system shall be client-centered and promote privacy, independence, dignity, choice, and a home or home-like environment for consumers consistent with chapter 392, Laws of 1997.

(2) The goal of the system is continuous quality improvement with the focus on consumer satisfaction and outcomes for consumers. This includes that when conducting licensing or contract inspections, the department shall inter-

view an appropriate percentage of residents, family members, resident case managers, and advocates in addition to interviewing providers and staff.

(3) Providers should be supported in their efforts to improve quality and address identified problems initially through training, consultation, technical assistance, and case management.

(4) The emphasis should be on problem prevention both in monitoring and in screening potential providers of service.

(5) Monitoring should be outcome based and responsive to consumer complaints and based on a clear set of health, quality of care, and safety standards that are easily understandable and have been made available to providers, residents, and other interested parties.

(6) Prompt and specific enforcement remedies shall also be implemented without delay, pursuant to RCW 74.39A.080, RCW 70.128.160, chapter 18.51 RCW, or chapter 74.42 RCW, for providers found to have delivered care or failed to deliver care resulting in problems that are serious, recurring, or uncorrected, or that create a hazard that is causing or likely to cause death or serious harm to one or more residents. These enforcement remedies may also include, when appropriate, reasonable conditions on a contract or license. In the selection of remedies, the safety, health, and well-being of residents shall be of paramount importance.

(7) To the extent funding is available, all long-term care staff directly responsible for the care, supervision, or treatment of vulnerable persons should be screened through background checks in a uniform and timely manner to ensure that they do not have a criminal history that would disqualify them from working with vulnerable persons. Whenever a state conviction record check is required by state law, persons may be employed or engaged as volunteers or independent contractors on a conditional basis according to law and rules adopted by the department.

(8) No provider or staff, or prospective provider or staff, with a stipulated finding of fact, conclusion of law, an agreed order, or finding of fact, conclusion of law, or final order issued by a disciplining authority, a court of law, or entered into a state registry finding him or her guilty of abuse, neglect, exploitation, or abandonment of a minor or a vulnerable adult as defined in chapter 74.34 RCW shall be employed in the care of and have unsupervised access to vulnerable adults.

(9) The department shall establish, by rule, a state registry which contains identifying information about personal care aides identified under this chapter who have substantiated findings of abuse, neglect, financial exploitation, or abandonment of a vulnerable adult as defined in RCW 74.34.020. The rule must include disclosure, disposition of findings, notification, findings of fact, appeal rights, and fair hearing requirements. The department shall disclose, upon request, substantiated findings of abuse, neglect, financial exploitation, or abandonment to any person so requesting this information.

(10) The department shall by rule develop training requirements for individual providers and home care agency providers. Effective March 1, 2002, individual providers and home care agency providers must satisfactorily complete department-approved orientation, basic training, and continuing education within the time period specified by the depart-

ment in rule. The department shall adopt rules by March 1, 2002, for the implementation of this section based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190. The department shall deny payment to an individual provider or a home care provider who does not complete the training requirements within the time limit specified by the department by rule.

(11) In an effort to improve access to training and education and reduce costs, especially for rural communities, the coordinated system of long-term care training and education must include the use of innovative types of learning strategies such as internet resources, videotapes, and distance learning using satellite technology coordinated through community colleges or other entities, as defined by the department.

(12) The department shall create an approval system by March 1, 2002, for those seeking to conduct department-approved training. In the rule-making process, the department shall adopt rules based on the recommendations of the community long-term care training and education steering committee established in RCW 74.39A.190.

(13) The department shall establish, by rule, training, background checks, and other quality assurance requirements for personal aides who provide in-home services funded by medicaid personal care as described in RCW 74.09.520, community options program entry system waiver services as described in RCW 74.39A.030, or chore services as described in RCW 74.39A.110 that are equivalent to requirements for individual providers.

(14) Under existing funds the department shall establish internally a quality improvement standards committee to monitor the development of standards and to suggest modifications.

(15) Within existing funds, the department shall design, develop, and implement a long-term care training program that is flexible, relevant, and qualifies towards the requirements for a nursing assistant certificate as established under chapter 18.88A RCW. This subsection does not require completion of the nursing assistant certificate training program by providers or their staff. The long-term care teaching curriculum must consist of a fundamental module, or modules, and a range of other available relevant training modules that provide the caregiver with appropriate options that assist in meeting the resident's care needs. Some of the training modules may include, but are not limited to, specific training on the special care needs of persons with developmental disabilities, dementia, mental illness, and the care needs of the elderly. No less than one training module must be dedicated to workplace violence prevention. The nursing care quality assurance commission shall work together with the department to develop the curriculum modules. The nursing care quality assurance commission shall direct the nursing assistant training programs to accept some or all of the skills and competencies from the curriculum modules towards meeting the requirements for a nursing assistant certificate as defined in chapter 18.88A RCW. A process may be developed to test persons completing modules from a caregiver's class to verify that they have the transferable skills and competencies for entry into a nursing assistant training program. The department may review whether facilities can develop their own related long-term care training programs. The department

may develop a review process for determining what previous experience and training may be used to waive some or all of the mandatory training. The department of social and health services and the nursing care quality assurance commission shall work together to develop an implementation plan by December 12, 1998. [2004 c 140 § 6; 2000 c 121 § 10; 1999 c 336 § 5; 1998 c 85 § 1; 1997 c 392 § 209; 1995 1st sp.s. c 18 § 12.]

Finding—Intent—1999 c 336: See note following RCW 74.39.007.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.060 Toll-free telephone number for complaints—Investigation and referral—Rules—Discrimination or retaliation prohibited. (1) The aging and adult services administration of the department shall establish and maintain a toll-free telephone number for receiving complaints regarding a facility that the administration licenses or with which it contracts for long-term care services.

(2) All facilities that are licensed by, or that contract with the aging and adult services administration to provide chronic long-term care services shall post in a place and manner clearly visible to residents and visitors the department's toll-free complaint telephone number and the toll-free number and program description of the long-term care ombudsman as provided by RCW 43.190.050.

(3) The aging and adult services administration shall investigate complaints if the subject of the complaint is within its authority unless the department determines that: (a) The complaint is intended to willfully harass a licensee or employee of the licensee; or (b) there is no reasonable basis for investigation; or (c) corrective action has been taken as determined by the ombudsman or the department.

(4) The aging and adult services administration shall refer complaints to appropriate state agencies, law enforcement agencies, the attorney general, the long-term care ombudsman, or other entities if the department lacks authority to investigate or if its investigation reveals that a follow-up referral to one or more of these entities is appropriate.

(5) The department shall adopt rules that include the following complaint investigation protocols:

(a) Upon receipt of a complaint, the department shall make a preliminary review of the complaint, assess the severity of the complaint, and assign an appropriate response time. Complaints involving imminent danger to the health, safety, or well-being of a resident must be responded to within two days. When appropriate, the department shall make an on-site investigation within a reasonable time after receipt of the complaint or otherwise ensure that complaints are responded to.

(b) The complainant must be: Promptly contacted by the department, unless anonymous or unavailable despite several attempts by the department, and informed of the right to discuss the alleged violations with the inspector and to provide other information the complainant believes will assist the inspector; informed of the department's course of action; and informed of the right to receive a written copy of the investigation report.

(c) In conducting the investigation, the department shall interview the complainant, unless anonymous, and shall use its best efforts to interview the vulnerable adult or adults allegedly harmed, and, consistent with the protection of the vulnerable adult shall interview facility staff, any available independent sources of relevant information, including if appropriate the family members of the vulnerable adult.

(d) Substantiated complaints involving harm to a resident, if an applicable law or rule has been violated, shall be subject to one or more of the actions provided in RCW 74.39A.080 or 70.128.160. Whenever appropriate, the department shall also give consultation and technical assistance to the provider.

(e) After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license or contract suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents and to enforce compliance with this chapter.

(f) Substantiated complaints of neglect, abuse, exploitation, or abandonment of residents, or suspected criminal violations, shall also be referred by the department to the appropriate law enforcement agencies, the attorney general, and appropriate professional disciplining authority.

(6) The department may provide the substance of the complaint to the licensee or contractor before the completion of the investigation by the department unless such disclosure would reveal the identity of a complainant, witness, or resident who chooses to remain anonymous. Neither the substance of the complaint provided to the licensee or contractor nor any copy of the complaint or related report published, released, or made otherwise available shall disclose, or reasonably lead to the disclosure of, the name, title, or identity of any complainant, or other person mentioned in the complaint, except that the name of the provider and the name or names of any officer, employee, or agent of the department conducting the investigation shall be disclosed after the investigation has been closed and the complaint has been substantiated. The department may disclose the identity of the complainant if such disclosure is requested in writing by the complainant. Nothing in this subsection shall be construed to interfere with the obligation of the long-term care ombudsman program or department staff to monitor the department's licensing, contract, and complaint investigation files for long-term care facilities.

(7) The resident has the right to be free of interference, coercion, discrimination, and reprisal from a facility in exer-

cising his or her rights, including the right to voice grievances about treatment furnished or not furnished. A facility that provides long-term care services shall not discriminate or retaliate in any manner against a resident, employee, or any other person on the basis or for the reason that such resident or any other person made a complaint to the department, the attorney general, law enforcement agencies, or the long-term care ombudsman, provided information, or otherwise cooperated with the investigation of such a complaint. Any attempt to discharge a resident against the resident's wishes, or any type of retaliatory treatment of a resident by whom or upon whose behalf a complaint substantiated by the department has been made to the department, the attorney general, law enforcement agencies, or the long-term care ombudsman, within one year of the filing of the complaint, raises a rebuttable presumption that such action was in retaliation for the filing of the complaint. "Retaliatory treatment" means, but is not limited to, monitoring a resident's phone, mail, or visits; involuntary seclusion or isolation; transferring a resident to a different room unless requested or based upon legitimate management reasons; withholding or threatening to withhold food or treatment unless authorized by a terminally ill resident or his or her representative pursuant to law; or persistently delaying responses to a resident's request for service or assistance. A facility that provides long-term care services shall not willfully interfere with the performance of official duties by a long-term care ombudsman. The department shall sanction and may impose a civil penalty of not more than three thousand dollars for a violation of this subsection. [2001 c 193 § 1; 1999 c 176 § 34; 1997 c 392 § 210; 1995 1st sp.s. c 18 § 13.]

Findings—Purpose—Severability—Conflict with federal requirements—1999 c 176: See notes following RCW 74.34.005.

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.070 Rules for qualifications and training requirements—Requirement that contractors comply with federal and state regulations. (1) The department shall, by rule, establish reasonable minimum qualifications and training requirements to assure that assisted living service, enhanced adult residential care service, and adult residential care providers with whom the department contracts are capable of providing services consistent with this chapter. The rules shall apply only to residential capacity for which the state contracts.

(2) The department shall not contract for assisted living, enhanced adult residential care, or adult residential care services with a provider if the department finds that the provider or any partner, officer, director, managerial employee, or owner of five percent or more of the provider has a history of significant noncompliance with federal or state regulations, rules, or laws in providing care or services to vulnerable adults or to children. [1995 1st sp.s. c 18 § 16.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.080 Department authority to take actions in response to noncompliance or violations. (1) The department is authorized to take one or more of the actions listed in subsection (2) of this section in any case in which the department finds that a provider of assisted living services, adult residential care services, or enhanced adult residential care services has:

(a) Failed or refused to comply with the requirements of this chapter or the rules adopted under this chapter;

(b) Operated without a license or under a revoked license;

(c) Knowingly, or with reason to know, made a false statement of material fact on his or her application for license or any data attached thereto, or in any matter under investigation by the department; or

(d) Willfully prevented or interfered with any inspection or investigation by the department.

(2) When authorized by subsection (1) of this section, the department may take one or more of the following actions:

(a) Refuse to issue a contract;

(b) Impose reasonable conditions on a contract, such as correction within a specified time, training, and limits on the type of clients the provider may admit or serve;

(c) Impose civil penalties of not more than one hundred dollars per day per violation;

(d) Suspend, revoke, or refuse to renew a contract; or

(e) Suspend admissions to the facility by imposing stop placement on contracted services.

(3) When the department orders stop placement, the facility shall not admit any person admitted by contract until the stop placement order is terminated. The department may approve readmission of a resident to the facility from a hospital or nursing home during the stop placement. The department shall terminate the stop placement when: (a) The violations necessitating the stop placement have been corrected; and (b) the provider exhibits the capacity to maintain correction of the violations previously found deficient. However, if upon the revisit the department finds new violations that the department reasonably believes will result in a new stop placement, the previous stop placement shall remain in effect until the new stop placement is imposed.

After a department finding of a violation for which a stop placement has been imposed, the department shall make an on-site revisit of the provider within fifteen working days from the request for revisit, to ensure correction of the violation. For violations that are serious or recurring or uncorrected following a previous citation, and create actual or threatened harm to one or more residents' well-being, including violations of residents' rights, the department shall make an on-site revisit as soon as appropriate to ensure correction of the violation. Verification of correction of all other violations may be made by either a department on-site revisit or by written or photographic documentation found by the department to be credible. This subsection does not prevent the department from enforcing license suspensions or revocations. Nothing in this subsection shall interfere with or diminish the department's authority and duty to ensure that the provider adequately cares for residents, including to make departmental on-site revisits as needed to ensure that the provider protects residents, and to enforce compliance with this chapter.

(4) Chapter 34.05 RCW applies to department actions under this section, except that orders of the department imposing contracts suspension, stop placement, or conditions for continuation of a contract are effective immediately upon notice and shall continue pending any hearing. [2001 c 193 § 3; 1996 c 193 § 1; 1995 1st sp.s. c 18 § 17.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.090 Discharge planning—Contracts for case management services and reassessment and reauthorization—Assessment of case management roles and quality of in-home care services—Plan of care model language.

(1) The legislature intends that any staff reassigned by the department as a result of shifting of the reauthorization responsibilities by contract outlined in this section shall be dedicated for discharge planning and assisting with discharge planning and information on existing discharge planning cases. Discharge planning, as directed in this section, is intended for residents and patients identified for discharge to long-term care pursuant to RCW 70.41.320, 74.39A.040, and 74.42.058. The purpose of discharge planning is to protect residents and patients from the financial incentives inherent in keeping residents or patients in a more expensive higher level of care and shall focus on care options that are in the best interest of the patient or resident.

(2) The department shall contract with area agencies on aging:

(a) To provide case management services to consumers receiving home and community services in their own home; and

(b) To reassess and reauthorize home and community services in home or in other settings for consumers consistent with the intent of this section:

(i) Who have been initially authorized by the department to receive home and community services; and

(ii) Who, at the time of reassessment and reauthorization, are receiving home and community services in their own home.

(3) In the event that an area agency on aging is unwilling to enter into or satisfactorily fulfill a contract or an individual consumer's need for case management services will be met through an alternative delivery system, the department is authorized to:

(a) Obtain the services through competitive bid; and

(b) Provide the services directly until a qualified contractor can be found.

(4) The department shall include, in its oversight and monitoring of area agency on aging performance, assessment of case management roles undertaken by area agencies on aging in this section. The scope of oversight and monitoring includes, but is not limited to, assessing the degree and quality of the case management performed by area agency on aging staff for elderly and disabled persons in the community.

(5) Area agencies on aging shall assess the quality of the in-home care services provided to consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider or home care agency. Quality indicators may include, but are not limited to, home care con-

sumers satisfaction surveys, how quickly home care consumers are linked with home care workers, and whether the plan of care under RCW 74.39A.095 has been honored by the agency or the individual provider.

(6) The department shall develop model language for the plan of care established in RCW 74.39A.095. The plan of care shall be in clear language, and written at a reading level that will ensure the ability of consumers to understand the rights and responsibilities expressed in the plan of care. [2004 c 141 § 3; 1999 c 175 § 2; 1995 1st sp.s. c 18 § 38.]

Findings—1999 c 175: "(1) The legislature finds that the quality of long-term care services provided to, and protection of, Washington's low-income elderly and disabled residents is of great importance to the state. The legislature further finds that revised in-home care policies are needed to more effectively address concerns about the quality of these services.

(2) The legislature finds that consumers of in-home care services frequently are in contact with multiple health and long-term care providers in the public and private sector. The legislature further finds that better coordination between these health and long-term care providers, and case managers, can increase the consumer's understanding of their plan of care, maximize the health benefits of coordinated care, and facilitate cost efficiencies across health and long-term care systems." [1999 c 175 § 1.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.095 Case management services—Agency on aging oversight—Plan of care—Termination of contract—Rejection of individual provider. (1) In carrying out case management responsibilities established under RCW 74.39A.090 for consumers who are receiving services under the medicaid personal care, community options programs entry system or chore services program through an individual provider, each area agency on aging shall provide oversight of the care being provided to consumers receiving services under this section to the extent of available funding. Case management responsibilities incorporate this oversight, and include, but are not limited to:

(a) Verification that any individual provider who has not been referred to a consumer by the authority established under chapter 3, Laws of 2002 has met any training requirements established by the department;

(b) Verification of a sample of worker time sheets;

(c) Monitoring the consumer's plan of care to verify that it adequately meets the needs of the consumer, through activities such as home visits, telephone contacts, and responses to information received by the area agency on aging indicating that a consumer may be experiencing problems relating to his or her home care;

(d) Reassessment and reauthorization of services;

(e) Monitoring of individual provider performance. If, in the course of its case management activities, the area agency on aging identifies concerns regarding the care being provided by an individual provider who was referred by the authority, the area agency on aging must notify the authority regarding its concerns; and

(f) Conducting criminal background checks or verifying that criminal background checks have been conducted for any individual provider who has not been referred to a consumer by the authority.

(2) The area agency on aging case manager shall work with each consumer to develop a plan of care under this section that identifies and ensures coordination of health and long-term care services that meet the consumer's needs. In

(2004 Ed.)

developing the plan, they shall utilize, and modify as needed, any comprehensive community service plan developed by the department as provided in RCW 74.39A.040. The plan of care shall include, at a minimum:

(a) The name and telephone number of the consumer's area agency on aging case manager, and a statement as to how the case manager can be contacted about any concerns related to the consumer's well-being or the adequacy of care provided;

(b) The name and telephone numbers of the consumer's primary health care provider, and other health or long-term care providers with whom the consumer has frequent contacts;

(c) A clear description of the roles and responsibilities of the area agency on aging case manager and the consumer receiving services under this section;

(d) The duties and tasks to be performed by the area agency on aging case manager and the consumer receiving services under this section;

(e) The type of in-home services authorized, and the number of hours of services to be provided;

(f) The terms of compensation of the individual provider;

(g) A statement by the individual provider that he or she has the ability and willingness to carry out his or her responsibilities relative to the plan of care; and

(h)(i) Except as provided in (h)(ii) of this subsection, a clear statement indicating that a consumer receiving services under this section has the right to waive any of the case management services offered by the area agency on aging under this section, and a clear indication of whether the consumer has, in fact, waived any of these services.

(ii) The consumer's right to waive case management services does not include the right to waive reassessment or reauthorization of services, or verification that services are being provided in accordance with the plan of care.

(3) Each area agency on aging shall retain a record of each waiver of services included in a plan of care under this section.

(4) Each consumer has the right to direct and participate in the development of their plan of care to the maximum practicable extent of their abilities and desires, and to be provided with the time and support necessary to facilitate that participation.

(5) A copy of the plan of care must be distributed to the consumer's primary care provider, individual provider, and other relevant providers with whom the consumer has frequent contact, as authorized by the consumer.

(6) The consumer's plan of care shall be an attachment to the contract between the department, or their designee, and the individual provider.

(7) If the department or area agency on aging case manager finds that an individual provider's inadequate performance or inability to deliver quality care is jeopardizing the health, safety, or well-being of a consumer receiving service under this section, the department or the area agency on aging may take action to terminate the contract between the department and the individual provider. If the department or the area agency on aging has a reasonable, good faith belief that the health, safety, or well-being of a consumer is in imminent jeopardy, the department or area agency on aging may summarily suspend the contract pending a fair hearing. The con-

sumer may request a fair hearing to contest the planned action of the case manager, as provided in chapter 34.05 RCW. When the department or area agency on aging terminates or summarily suspends a contract under this subsection, it must provide oral and written notice of the action taken to the authority. The department may by rule adopt guidelines for implementing this subsection.

(8) The department or area agency on aging may reject a request by a consumer receiving services under this section to have a family member or other person serve as his or her individual provider if the case manager has a reasonable, good faith belief that the family member or other person will be unable to appropriately meet the care needs of the consumer. The consumer may request a fair hearing to contest the decision of the case manager, as provided in chapter 34.05 RCW. The department may by rule adopt guidelines for implementing this subsection. [2004 c 141 § 1; 2002 c 3 § 11 (Initiative Measure No. 775, approved November 6, 2001); 2000 c 87 § 5; 1999 c 175 § 3.]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

Findings—1999 c 175: See note following RCW 74.39A.090.

74.39A.100 Chore services—Legislative finding, intent. The legislature finds that it is desirable to provide a coordinated and comprehensive program of in-home services for certain citizens in order that such persons may remain in their own homes, obtain employment if possible, and maintain a closer contact with the community. Such a program will seek to prevent mental and psychological deterioration which our citizens might otherwise experience. The legislature intends that the services will be provided in a fashion which promotes independent living. [1980 c 137 § 1; 1973 1st ex.s. c 51 § 1. Formerly RCW 74.08.530.]

74.39A.110 Chore services—Legislative policy and intent regarding available funds—Levels of service. It is the intent of the legislature that chore services be provided to eligible persons within the limits of funds appropriated for that purpose. Therefore, the department shall provide services only to those persons identified as at risk of being placed in a long-term care facility in the absence of such services. The department shall not provide chore services to any individual who is eligible for, and whose needs can be met by another community service administered by the department. Chore services shall be provided to the extent necessary to maintain a safe and healthful living environment. It is the policy of the state to encourage the development of volunteer chore services in local communities as a means of meeting chore care service needs and directing financial resources. In determining eligibility for chore services, the department shall consider the following:

- (1) The kind of services needed;
- (2) The degree of service need, and the extent to which an individual is dependent upon such services to remain in his or her home or return to his or her home;
- (3) The availability of personal or community resources which may be utilized to meet the individual's need; and
- (4) Such other factors as the department considers necessary to insure service is provided only to those persons whose chore service needs cannot be met by relatives, friends, non-

profit organizations, other persons, or by other programs or resources.

In determining the level of services to be provided under this chapter, the client shall be assessed using an instrument designed by the department to determine the level of functional disability, the need for service and the person's risk of long-term care facility placement. [1995 1st sp.s. c 18 § 36; 1989 c 427 § 5; 1981 1st ex.s. c 6 § 16. Formerly RCW 74.08.545.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Severability—1989 c 427: See RCW 74.39.900.

Effective date—Severability—1981 1st ex.s. c 6: See notes following RCW 74.04.005.

74.39A.120 Chore services—Expenditure limitation—Priorities—Rule on patient resource limit. (1) The department shall establish a monthly dollar lid for each region on chore services expenditures within the legislative appropriation. Priority for services shall be given to the following situations:

- (a) People who were receiving chore personal care services as of June 30, 1995;
- (b) People for whom chore personal care services are necessary to return to the community from a nursing home;
- (c) People for whom chore personal care services are necessary to prevent unnecessary nursing home placement; and
- (d) People for whom chore personal care services are necessary as a protective measure based on referrals resulting from an adult protective services investigation.

(2) The department shall require a client to participate in the cost of chore services as a necessary precondition to receiving chore services paid for by the state. The client shall retain an amount equal to one hundred percent of the federal poverty level, adjusted for household size, for maintenance needs. The department shall consider the remaining income as the client participation amount for chore services except for those persons whose participation is established under *RCW 74.08.570.

(3) The department shall establish, by rule, the maximum amount of resources a person may retain and be eligible for chore services. [1995 1st sp.s. c 18 § 37.]

***Reviser's note:** RCW 74.08.570 was recodified as RCW 74.39A.150 pursuant to 1995 1st sp.s. c 18 § 34.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.130 Chore services—Department to develop program. (1) The department is authorized to develop a program to provide for chore services under this chapter.

(2) The department may provide assistance in the recruiting of providers of the services enumerated in RCW 74.39A.120 and seek to assure the timely provision of services in emergency situations.

(3) The department shall assure that all providers of the chore services under this chapter are compensated for the delivery of the services on a prompt and regular basis. [1995 1st sp.s. c 18 § 40; 1989 c 427 § 6; 1983 c 3 § 189; 1980 c 137 § 2; 1973 1st ex.s. c 51 § 3. Formerly RCW 74.08.550.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Severability—1989 c 427: See RCW 74.39.900.

74.39A.140 Chore services—Employment of public assistance recipients. In developing the program set forth in *RCW 74.08.550, the department shall, to the extent possible, and consistent with federal law, enlist the services of persons receiving grants under the provisions of chapter 74.08 RCW and chapter 74.12 RCW to carry out the services enumerated under **RCW 74.08.541. To this end, the department shall establish appropriate rules and regulations designed to determine eligibility for employment under this section, as well as regulations designed to notify persons receiving such grants of eligibility for such employment. The department shall further establish a system of compensation to persons employed under the provisions of this section which provides that any grants they receive under chapter 74.08 RCW or chapter 74.12 RCW shall be diminished by such percentage of the compensation received under this section as the department shall establish by rules and regulations. [1983 c 3 § 190; 1973 1st ex.s. c 51 § 4. Formerly RCW 74.08.560.]

Reviser's note: *(1) RCW 74.08.550 was recodified as RCW 74.39A.130 pursuant to 1995 1st sp.s. c 18 § 34, effective July 1, 1995.

** (2) RCW 74.08.541 was repealed by 1995 1st sp.s. c 18 § 35, effective July 1, 1995.

74.39A.150 Chore services for disabled persons—Eligibility. (1) An otherwise eligible disabled person shall not be deemed ineligible for chore services under this chapter if the person's gross income from employment, adjusted downward by the cost of the chore services to be provided and the disabled person's work expenses, does not exceed the maximum eligibility standard established by the department for such chore services. The department shall establish a methodology for client participation that allows such disabled persons to be employed.

(2) If a disabled person arranges for chore services through an individual provider arrangement, the client's contribution shall be counted as first dollar toward the total amount owed to the provider for chore services rendered.

(3) As used in this section:

(a) "Gross income" means total earned wages, commissions, salary, and any bonus;

(b) "Work expenses" includes:

(i) Payroll deductions required by law or as a condition of employment, in amounts actually withheld;

(ii) The necessary cost of transportation to and from the place of employment by the most economical means, except rental cars; and

(iii) Expenses of employment necessary for continued employment, such as tools, materials, union dues, transportation to service customers if not furnished by the employer, and uniforms and clothing needed on the job and not suitable for wear away from the job;

(c) "Employment" means any work activity for which a recipient receives monetary compensation;

(d) "Disabled" means:

(i) Permanently and totally disabled as defined by the department and as such definition is approved by the federal social security administration for federal matching funds;

(ii) Eighteen years of age or older;

(iii) A resident of the state of Washington; and

(iv) Willing to submit to such examinations as are deemed necessary by the department to establish the extent and nature of the disability. [1995 1st sp.s. c 18 § 41; 1989 c 427 § 7; 1980 c 137 § 3. Formerly RCW 74.08.570.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Severability—1989 c 427: See RCW 74.39.900.

74.39A.160 Transfer of assets—Penalties. (1) A person who receives an asset from an applicant for or recipient of long-term care services for less than fair market value shall be subject to a civil fine payable to the department if:

(a) The applicant for or recipient of long-term care services transferred the asset for the purpose of qualifying for state or federal coverage for long-term care services and the person who received the asset was aware, or should have been aware, of this purpose;

(b) Such transfer establishes a period of ineligibility for such service under state or federal laws or regulations; and

(c) The department provides coverage for such services during the period of ineligibility because the failure to provide such coverage would result in an undue hardship for the applicant or recipient.

(2) The civil fine imposed under this section shall be imposed in a judicial proceeding initiated by the department and shall equal (a) up to one hundred fifty percent of the amount the department expends for the care of the applicant or recipient during the period of ineligibility attributable to the amount transferred to the person subject to the civil fine plus (b) the department's court costs and legal fees.

(3) Transfers subject to a civil fine under this section shall be considered null and void and a fraudulent conveyance as to the department. The department shall have the right to petition a court to set aside such transfers and require all assets transferred returned to the applicant or recipient. [1995 1st sp.s. c 18 § 55.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.170 Recovery of payments—Transfer of assets rules for eligibility—Disclosure of estate recovery costs, terms, and conditions. (1) All payments made in state-funded long-term care shall be recoverable as if they were medical assistance payments subject to recovery under 42 U.S.C. Sec. 1396p and chapter 43.20B RCW, but without regard to the recipient's age.

(2) In determining eligibility for state-funded long-term care services programs, the department shall impose the same rules with respect to the transfer of assets for less than fair market value as are imposed under 42 U.S.C. 1396p with respect to nursing home and home and community services.

(3) It is the responsibility of the department to fully disclose in advance verbally and in writing, in easy to understand language, the terms and conditions of estate recovery to all persons offered long-term care services subject to recovery of payments.

(4) In disclosing estate recovery costs to potential clients, and to family members at the consent of the client, the department shall provide a written description of the community service options.

(5) The department of social and health services shall develop an implementation plan for notifying the client or his or her legal representative at least quarterly of the types of services used and the cost of those services (debt) that will be charged against the estate. The estate planning implementation plan shall be submitted by December 12, 1999, to the appropriate standing committees of the house of representatives and the senate, and to the joint legislative and executive task force on long-term care. [1999 c 354 § 1; 1995 1st sp.s. c 18 § 56.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Recovery for state-funded long-term care—Legislative intent: RCW 43.20B.090.

74.39A.180 Authority to pay for probate actions and collection of bad debts. Notwithstanding any other provision of law:

(1) In order to facilitate and ensure compliance with the federal social security act, Title XIX, as now existing or hereafter amended, later enactment to be adopted by reference by the director by rule, and other state laws mandating recovery of assets from estates of persons receiving long-term care services, the secretary of the department, with the approval of the office of the attorney general, may pay the reasonable and proper fees of attorneys admitted to practice before courts of this state, and associated professionals such as guardians, who are engaged in probate practice for the purpose of maintaining actions under Title 11 RCW, to the end that assets are not wasted, but are rather collected and preserved, and used for the care of the client or the reimbursement of the department pursuant to this chapter or chapter 43.20B RCW.

(2) The department may hire such other agencies and professionals on a contingency basis or otherwise as are necessary and cost-effective to collect bad debts owed to the department for long-term care services. [1995 1st sp.s. c 18 § 57.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.39A.190 Community long-term care training and education steering committee. (1) The secretary shall appoint a steering committee for community long-term care training and education to advise the department on the development of criteria for training materials, the development of competency tests, the development of criteria for trainers, and the development of exemptions from training. The community long-term care training and education steering committee shall also review the effectiveness of the training program or programs, including the qualifications and availability of the trainers. The steering committee shall advise the department on flexible and innovative learning strategies that accomplish the training goals, such as competency and outcome-based models and distance learning. The steering committee shall review and recommend the most appropriate length of time between an employee's date of first hire and the start of the employee's basic training.

(2) The steering committee shall, at a minimum, consist of a representative from each of the following: Each of the statewide boarding home associations, two adult family home associations, each of the statewide home care associations, the long-term care ombudsman program, the area agencies on aging, the department of health representing the nursing care quality assurance commission, and a consumer, or their nonprovider designee, from a boarding home, adult family home, home care served by an agency, and home care served by an individual provider. A majority of the members currently serving constitute a quorum.

(3) Nothing in this chapter shall prevent the adult family home advisory committee from enhancing training requirements for adult family providers and resident managers, regulated under *chapter 18.48 RCW, at the cost of those providers and resident managers.

(4) Establishment of the steering committee does not prohibit the department from utilizing other advisory activities that the department deems necessary for program development. However, when the department obtains input from other advisory sources, the department shall present the information to the steering committee for their review.

(5) Each member of the steering committee shall serve without compensation. Consumer representatives may be reimbursed for travel expenses as authorized in RCW 43.03.060.

(6) The steering committee recommendations must implement the intent of RCW 74.39A.050(14) to create training that includes skills and competencies that are transferable to nursing assistant training.

(7) The steering committee shall cease to exist July 1, 2003. [2002 c 233 § 4; 2000 c 121 § 8.]

***Reviser's note:** Chapter 18.48 RCW was repealed in its entirety by 2002 c 223 § 2.

Effective date—2002 c 233: See note following RCW 18.20.270.

74.39A.200 Training curricula, materials—In public domain—Exceptions. All training curricula and material, except competency testing material, developed by or for the department and used in part or in whole for the purpose of improving provider and caregiver knowledge and skill are in the public domain unless otherwise protected by copyright law and are subject to disclosure under chapter 42.17 RCW. Any training curricula and material developed by a private entity through a contract with the department are also considered part of the public domain and shall be shared subject to copyright restrictions. Any proprietary curricula and material developed by a private entity for the purposes of training staff in facilities licensed under chapter 18.20 or 70.128 RCW or individual providers and home care agency providers under this chapter and approved for training by the department are not part of the public domain. [2000 c 121 § 11.]

74.39A.210 Disclosure of employee information—Employer immunity—Rebuttable presumption. An employer providing home and community services, including facilities licensed under chapters 18.51, 18.20, and 70.128 RCW, an employer of a program authorized under RCW 71A.12.040(10), or an in-home services agency employer licensed under chapter 70.127 RCW, who discloses information about a former or current employee to a prospective

home and community services employer, nursing home employer, or are an in-home services agency employer, is presumed to be acting in good faith and is immune from civil and criminal liability for such disclosure or its consequences if the disclosed information relates to: (1) The employee's ability to perform his or her job; (2) the diligence, skill, or reliability with which the employee carried out the duties of his or her job; or (3) any illegal or wrongful act committed by the employee when related to his or her ability to care for a vulnerable adult. For purposes of this section, the presumption of good faith may only be rebutted upon a showing by clear and convincing evidence that the information disclosed by the employer was knowingly false or made with reckless disregard for the truth of the information disclosed. Should the employee successfully rebut the presumption of good faith standard in a court of competent jurisdiction, and therefore be the prevailing party, the prevailing party shall be entitled to recover reasonable attorneys' fees against the employer. Nothing in this section shall affect or limit any other state, federal, or constitutional right otherwise available. [2001 c 319 § 13.]

74.39A.220 Findings—2002 c 3 (Initiative Measure No. 775). The people of the state of Washington find as follows:

(1) Thousands of Washington seniors and persons with disabilities live independently in their own homes, which they prefer and is less costly than institutional care such as nursing homes.

(2) Many Washington seniors and persons with disabilities currently receive long-term in-home care services from individual providers hired directly by them under the medicare personal care, community options programs entry system, or chore services program.

(3) Quality long-term in-home care services allow Washington seniors, persons with disabilities, and their families the choice of allowing seniors and persons with disabilities to remain in their homes, rather than forcing them into institutional care such as nursing homes. Long-term in-home care services are also less costly, saving Washington taxpayers significant amounts through lower reimbursement rates.

(4) The quality of long-term in-home care services in Washington would benefit from improved regulation, higher standards, better accountability, and improved access to such services. The quality of long-term in-home care services would further be improved by a well-trained, stable individual provider work force earning reasonable wages and benefits.

(5) Washington seniors and persons with disabilities would benefit from the establishment of an authority that has the power and duty to regulate and improve the quality of long-term in-home care services.

(6) The authority should ensure that the quality of long-term in-home care services provided by individual providers is improved through better regulation, higher standards, increased accountability, and the enhanced ability to obtain services. The authority should also encourage stability in the individual provider work force through collective bargaining and by providing training opportunities. [2002 c 3 § 1 (Initiative Measure No. 775, approved November 6, 2001).]

(2004 Ed.)

Captions not law—2002 c 3 (Initiative Measure No. 775): "Captions used in this act are not any part of the law." [2002 c 3 § 16 (Initiative Measure No. 775, approved November 6, 2001).]

Severability—2002 c 3 (Initiative Measure No. 775): "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2002 c 3 § 17 (Initiative Measure No. 775, approved November 6, 2001).]

74.39A.230 Authority created. (1) The home care quality authority is established to regulate and improve the quality of long-term in-home care services by recruiting, training, and stabilizing the work force of individual providers.

(2) The authority consists of a board of nine members appointed by the governor. Five board members shall be current and/or former consumers of long-term in-home care services provided for functionally disabled persons, at least one of whom shall be a person with a developmental disability; one board member shall be a representative of the developmental disabilities planning council; one board member shall be a representative of the governor's committee on disability issues and employment; one board member shall be a representative of the state council on aging; and one board member shall be a representative of the Washington state association of area agencies on aging. Each board member serves a term of three years. If a vacancy occurs, the governor will make an appointment to become immediately effective for the unexpired term. Each board member is eligible for reappointment and may serve no more than two consecutive terms. In making appointments, the governor will take into consideration any nominations or recommendations made by the groups or agencies represented. [2002 c 3 § 2 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.240 Definitions. The definitions in this section apply throughout RCW 74.39A.030 and 74.39A.095 and 74.39A.220 through 74.39A.300, 41.56.026, 70.127.041, and 74.09.740 unless the context clearly requires otherwise.

(1) "Authority" means the home care quality authority.

(2) "Board" means the board created under RCW 74.39A.230.

(3) "Consumer" means a person to whom an individual provider provides any such services.

(4) "Individual provider" means a person, including a personal aide, who has contracted with the department to provide personal care or respite care services to functionally disabled persons under the medicare personal care, community options program entry system, chore services program, or respite care program, or to provide respite care or residential services and support to persons with developmental disabilities under chapter 71A.12 RCW, or to provide respite care as defined in RCW 74.13.270. [2002 c 3 § 3 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.250 Authority duties. (1) The authority must carry out the following duties:

(a) Establish qualifications and reasonable standards for accountability for and investigate the background of individual providers and prospective individual providers, except in cases where, after the department has sought approval of any appropriate amendments or waivers under RCW 74.09.740, federal law or regulation requires that such qualifications and standards for accountability be established by another entity in order to preserve eligibility for federal funding. Qualifications established must include compliance with the minimum requirements for training and satisfactory criminal background checks as provided in RCW 74.39A.050 and confirmation that the individual provider or prospective individual provider is not currently listed on any long-term care abuse and neglect registry used by the department at the time of the investigation;

(b) Undertake recruiting activities to identify and recruit individual providers and prospective individual providers;

(c) Provide training opportunities, either directly or through contract, for individual providers, prospective individual providers, consumers, and prospective consumers;

(d) Provide assistance to consumers and prospective consumers in finding individual providers and prospective individual providers through the establishment of a referral registry of individual providers and prospective individual providers. Before placing an individual provider or prospective individual provider on the referral registry, the authority shall determine that:

(i) The individual provider or prospective individual provider has met the minimum requirements for training set forth in RCW 74.39A.050;

(ii) The individual provider or prospective individual provider has satisfactorily undergone a criminal background check conducted within the prior twelve months; and

(iii) The individual provider or prospective individual provider is not listed on any long-term care abuse and neglect registry used by the department;

(e) Remove from the referral registry any individual provider or prospective individual provider the authority determines not to meet the qualifications set forth in (d) of this subsection or to have committed misfeasance or malfeasance in the performance of his or her duties as an individual provider. The individual provider or prospective individual provider, or the consumer to which the individual provider is providing services, may request a fair hearing to contest the removal from the referral registry, as provided in chapter 34.05 RCW;

(f) Provide routine, emergency, and respite referrals of individual providers and prospective individual providers to consumers and prospective consumers who are authorized to receive long-term in-home care services through an individual provider;

(g) Give preference in the recruiting, training, referral, and employment of individual providers and prospective individual providers to recipients of public assistance or other low-income persons who would qualify for public assistance in the absence of such employment; and

(h) Cooperate with the department, area agencies on aging, and other federal, state, and local agencies to provide the services described and set forth in this section. If, in the course of carrying out its duties, the authority identifies concerns regarding the services being provided by an individual

provider, the authority must notify the relevant area agency or department case manager regarding such concerns.

(2) In determining how best to carry out its duties, the authority must identify existing individual provider recruitment, training, and referral resources made available to consumers by other state and local public, private, and nonprofit agencies. The authority may coordinate with the agencies to provide a local presence for the authority and to provide consumers greater access to individual provider recruitment, training, and referral resources in a cost-effective manner. Using requests for proposals or similar processes, the authority may contract with the agencies to provide recruitment, training, and referral services if the authority determines the agencies can provide the services according to reasonable standards of performance determined by the authority. The authority must provide an opportunity for consumer participation in the determination of the standards. [2002 c 3 § 4 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.260 Department duties. The department must perform criminal background checks for individual providers and prospective individual providers and ensure that the authority has ready access to any long-term care abuse and neglect registry used by the department. [2002 c 3 § 5 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.270 Collective bargaining—Circumstances in which individual providers are considered public employees—Exceptions. (1) Solely for the purposes of collective bargaining and as expressly limited under subsections (2) and (3) of this section, the governor is the public employer, as defined in chapter 41.56 RCW, of individual providers, who, solely for the purposes of collective bargaining, are public employees as defined in chapter 41.56 RCW. To accommodate the role of the state as payor for the community-based services provided under this chapter and to ensure coordination with state employee collective bargaining under chapter 41.80 RCW and the coordination necessary to implement RCW 74.39A.300, the public employer shall be represented for bargaining purposes by the governor or the governor's designee appointed under chapter 41.80 RCW. The governor or governor's designee shall periodically consult with the authority during the collective bargaining process to allow the authority to communicate issues relating to the long-term in-home care services received by consumers.

(2) Chapter 41.56 RCW governs the collective bargaining relationship between the governor and individual providers, except as otherwise expressly provided in this chapter and except as follows:

(a) The only unit appropriate for the purpose of collective bargaining under RCW 41.56.060 is a statewide unit of all individual providers;

(b) The showing of interest required to request an election under RCW 41.56.060 is ten percent of the unit, and any intervener seeking to appear on the ballot must make the same showing of interest;

(c) The mediation and interest arbitration provisions of RCW 41.56.430 through 41.56.470 and 41.56.480 apply, except that:

(i) With respect to commencement of negotiations between the governor and the bargaining representative of individual providers, negotiations shall be commenced by May 1st of any year prior to the year in which an existing collective bargaining agreement expires;

(ii) With respect to factors to be taken into consideration by an interest arbitration panel, the panel shall consider the financial ability of the state to pay for the compensation and fringe benefit provisions of a collective bargaining agreement; and

(iii) The decision of the arbitration panel is not binding on the legislature and, if the legislature does not approve the request for funds necessary to implement the compensation and fringe benefit provisions of the arbitrated collective bargaining agreement, is not binding on the authority or the state;

(d) Individual providers do not have the right to strike; and

(e) Individual providers who are related to, or family members of, consumers or prospective consumers are not, for that reason, exempt from this chapter or chapter 41.56 RCW.

(3) Individual providers who are public employees solely for the purposes of collective bargaining under subsection (1) of this section are not, for that reason, employees of the state, its political subdivisions, or an area agency on aging for any purpose. Chapter 41.56 RCW applies only to the governance of the collective bargaining relationship between the employer and individual providers as provided in subsections (1) and (2) of this section.

(4) Consumers and prospective consumers retain the right to select, hire, supervise the work of, and terminate any individual provider providing services to them. Consumers may elect to receive long-term in-home care services from individual providers who are not referred to them by the authority.

(5) In implementing and administering this chapter, neither the authority nor any of its contractors may reduce or increase the hours of service for any consumer below or above the amount determined to be necessary under any assessment prepared by the department or an area agency on aging.

(6) Except as expressly limited in this section and RCW 74.39A.300, the wages, hours, and working conditions of individual providers are determined solely through collective bargaining as provided in this chapter. No agency or department of the state, other than the authority, may establish policies or rules governing the wages or hours of individual providers. However, this subsection does not modify:

(a) The department's authority to establish a plan of care for each consumer and to determine the hours of care that each consumer is eligible to receive;

(b) The department's authority to terminate its contracts with individual providers who are not adequately meeting the needs of a particular consumer, or to deny a contract under RCW 74.39A.095(8);

(c) The consumer's right to assign hours to one or more individual providers selected by the consumer within the maximum hours determined by his or her plan of care;

(d) The consumer's right to select, hire, terminate, supervise the work of, and determine the conditions of employment for each individual provider providing services to the consumer under this chapter;

(e) The department's obligation to comply with the federal medicaid statute and regulations and the terms of any community-based waiver granted by the federal department of health and human services and to ensure federal financial participation in the provision of the services; and

(f) The legislature's right to make programmatic modifications to the delivery of state services under this title, including standards of eligibility of consumers and individual providers participating in the programs under this title, and the nature of services provided. The governor shall not enter into, extend, or renew any agreement under this chapter that does not expressly reserve the legislative rights described in this subsection (6)(f).

(7)(a) The state, the department, the authority, the area agencies on aging, or their contractors under this chapter may not be held vicariously or jointly liable for the action or inaction of any individual provider or prospective individual provider, whether or not that individual provider or prospective individual provider was included on the authority's referral registry or referred to a consumer or prospective consumer. The existence of a collective bargaining agreement, the placement of an individual provider on the referral registry, or the development or approval of a plan of care for a consumer who chooses to use the services of an individual provider and the provision of case management services to that consumer, by the department or an area agency on aging, does not constitute a special relationship with the consumer.

(b) The members of the board are immune from any liability resulting from implementation of this chapter.

(8) Nothing in this section affects the state's responsibility with respect to unemployment insurance for individual providers. However, individual providers are not to be considered, as a result of the state assuming this responsibility, employees of the state. [2004 c 3 § 1; 2002 c 3 § 6 (Initiative Measure No. 775, approved November 6, 2001).]

Severability—2004 c 3: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2004 c 3 § 8.]

Effective date—2004 c 3: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 9, 2004]." [2004 c 3 § 9.]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.280 Powers. In carrying out its duties under chapter 3, Laws of 2002, the authority may:

(1) Make and execute contracts and all other instruments necessary or convenient for the performance of its duties or exercise of its powers, including contracts with public and private agencies, organizations, corporations, and individuals to pay them for services rendered or furnished;

(2) Offer and provide recruitment, training, and referral services to providers of long-term in-home care services other than individual providers and prospective individual providers, for a fee to be determined by the authority;

(3) Issue rules under the administrative procedure act, chapter 34.05 RCW, as necessary for the purpose and policies of chapter 3, Laws of 2002;

(4) Establish offices, employ and discharge employees, agents, and contractors as necessary, and prescribe their duties and powers and fix their compensation, incur expenses, and create such liabilities as are reasonable and proper for the administration of chapter 3, Laws of 2002;

(5) Solicit and accept for use any grant of money, services, or property from the federal government, the state, or any political subdivision or agency thereof, including federal matching funds under Title XIX of the federal social security act, and do all things necessary to cooperate with the federal government, the state, or any political subdivision or agency thereof in making an application for any grant;

(6) Coordinate its activities and cooperate with similar agencies in other states;

(7) Establish technical advisory committees to assist the board;

(8) Keep records and engage in research and the gathering of relevant statistics;

(9) Acquire, hold, or dispose of real or personal property or any interest therein, and construct, lease, or otherwise provide facilities for the activities conducted under this chapter, provided that the authority may not exercise any power of eminent domain;

(10) Sue and be sued in its own name;

(11) Delegate to the appropriate persons the power to execute contracts and other instruments on its behalf and delegate any of its powers and duties if consistent with the purposes of this chapter; and

(12) Do other acts necessary or convenient to execute the powers expressly granted to it. [2002 c 3 § 7 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.290 Performance review. (1) The joint legislative audit and review committee will conduct a performance review of the authority every two years and submit the review to the legislature and the governor. The first review will be submitted before December 1, 2006.

(2) The performance review will include an evaluation of the health, welfare, and satisfaction with services provided of the consumers receiving long-term in-home care services from individual providers under chapter 3, Laws of 2002, including the degree to which all required services have been delivered, the degree to which consumers receiving services from individual providers have ultimately required additional or more intensive services, such as home health care, or have been placed in other residential settings or nursing homes, the promptness of response to consumer complaints, and any other issue the committee deems relevant.

(3) The performance review will provide an explanation of the full cost of individual provider services, including the administrative costs of the authority, unemployment compensation, social security and medicare payroll taxes paid by the department, and area agency on aging home care oversight costs.

(4) The performance review will make recommendations to the legislature and the governor for any amendments to

chapter 3, Laws of 2002 that will further ensure the well-being of consumers and prospective consumers under chapter 3, Laws of 2002, and the most efficient means of delivering required services. In addition, the first performance review will include findings and recommendations regarding the appropriateness of the authority's assumption of responsibility for verification of hours worked by individual providers, payment of individual providers, and other duties. [2002 c 3 § 8 (Initiative Measure No. 775, approved November 6, 2001).]

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.300 Funding. (1) Upon meeting the requirements of subsection (2) of this section, the governor must submit, as a part of the proposed biennial or supplemental operating budget submitted to the legislature under RCW 43.88.030, a request for funds necessary to administer chapter 3, Laws of 2002 and to implement the compensation and fringe benefits provisions of a collective bargaining agreement entered into under RCW 74.39A.270 or for legislation necessary to implement such agreement.

(2) A request for funds necessary to implement the compensation and fringe benefits provisions of a collective bargaining agreement entered into under RCW 74.39A.270 shall not be submitted by the governor to the legislature unless such request:

(a) Has been submitted to the director of financial management by October 1st prior to the legislative session at which the request is to be considered; and

(b) Has been certified by the director of financial management as being feasible financially for the state or reflects the binding decision of an arbitration panel reached under RCW 74.39A.270(2)(c).

(3) The legislature must approve or reject the submission of the request for funds as a whole. If the legislature rejects or fails to act on the submission, any such agreement will be reopened solely for the purpose of renegotiating the funds necessary to implement the agreement.

(4) When any increase in individual provider wages or benefits is negotiated or agreed to, no increase in wages or benefits negotiated or agreed to under this chapter will take effect unless and until, before its implementation, the department has determined that the increase is consistent with federal law and federal financial participation in the provision of services under Title XIX of the federal social security act.

(5) The governor shall periodically consult with the joint committee on employment relations established by RCW 41.80.010 regarding appropriations necessary to implement the compensation and fringe benefits provisions of any collective bargaining agreement and, upon completion of negotiations, advise the committee on the elements of the agreement and on any legislation necessary to implement such agreement.

(6) After the expiration date of any collective bargaining agreement entered into under RCW 74.39A.270, all of the terms and conditions specified in any such agreement remain in effect until the effective date of a subsequent agreement, not to exceed one year from the expiration date stated in the agreement, except as provided in RCW 74.39A.270(6)(f).

(7) If, after the compensation and benefit provisions of an agreement are approved by the legislature, a significant revenue shortfall occurs resulting in reduced appropriations, as declared by proclamation of the governor or by resolution of the legislature, both parties shall immediately enter into collective bargaining for a mutually agreed upon modification of the agreement. [2004 c 3 § 2; 2002 c 3 § 9 (Initiative Measure No. 775, approved November 6, 2001).]

Severability—Effective date—2004 c 3: See notes following RCW 74.39A.270.

Findings—Captions not law—Severability—2002 c 3 (Initiative Measure No. 775): See RCW 74.39A.220 and notes following.

74.39A.900 Section captions—1993 c 508. Section captions as used in this act constitute no part of the law. [1993 c 508 § 10.]

74.39A.901 Conflict with federal requirements. If any part of this chapter or a collective bargaining agreement under this chapter is found by a court of competent jurisdiction to be in conflict with federal requirements that are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this chapter or the agreement is inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and this finding does not affect the operation of the remainder of this chapter or the agreement in its application to the agencies concerned. The rules under this chapter shall meet federal requirements that are a necessary condition to the receipt of federal funds by the state. [2004 c 3 § 5; 1993 c 508 § 11.]

Severability—Effective date—2004 c 3: See notes following RCW 74.39A.270.

74.39A.902 Severability—1993 c 508. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1993 c 508 § 12.]

74.39A.903 Effective date—1993 c 508. This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 18, 1993]. [1993 c 508 § 13.]

Chapter 74.41 RCW

RESPITE CARE SERVICES

Sections

| | |
|-----------|---|
| 74.41.010 | Legislative findings. |
| 74.41.020 | Intent. |
| 74.41.030 | Definitions. |
| 74.41.040 | Administration—Rules—Program standards. |
| 74.41.050 | Family caregiver long-term care information and support services—Respite services, evaluation of need, caregiver abilities. |
| 74.41.060 | Respite care program—Criteria. |
| 74.41.070 | Family caregiver long-term care information and support services—Data. |
| 74.41.080 | Health care practitioners and facilities not impaired. |
| 74.41.090 | Entitlement not created. |

(2004 Ed.)

74.41.010 Legislative findings. The legislature recognizes that:

(1) Most care provided for functionally disabled adults is delivered by family members or friends who are not compensated for their services. Family involvement is a crucial element for avoiding or postponing institutionalization of the disabled adult.

(2) Family or other caregivers who provide continuous care in the home are frequently under substantial stress, physical, psychological, and financial. The stress, if unrelieved by family or community support to the caregiver, may lead to premature or unnecessary nursing home placement.

(3) Respite care and other community-based supportive services for the caregiver and for the disabled adult could relieve some of the stresses, maintain and strengthen the family structure, and postpone or prevent institutionalization.

(4) With family and friends providing the primary care for the disabled adult, supplemented by community health and social services, long-term care may be less costly than if the individual were institutionalized. [1984 c 158 § 1.]

74.41.020 Intent. It is the intent of the legislature to provide a comprehensive program of long-term care information and support, including in-home and out-of-home respite care services, for family and other unpaid caregivers who provide the daily services required when caring for adults with functional disabilities. The family caregiver long-term care information and support services shall:

(1) Provide information, relief, and support to family or other unpaid caregivers of adults with functional disabilities;

(2) Encourage family and other nonpaid individuals to provide care for adults with functional disabilities at home, and thus offer a viable alternative to placement in a long-term care facility;

(3) Ensure that respite care is made generally available on a sliding-fee basis to eligible participants in the program according to priorities established by the department;

(4) Be provided in the least restrictive setting available consistent with the individually assessed needs of the adults with functional disabilities;

(5) Include services appropriate to the needs of persons caring for individuals with dementing illnesses; and

(6) Provide unpaid family and other unpaid caregivers with services that enable them to make informed decisions about current and future care plans, solve day-to-day caregiving problems, learn essential caregiving skills, and locate services that may strengthen their capacity to provide care. [2000 c 207 § 2; 1987 c 409 § 1; 1984 c 158 § 2.]

Short title—2000 c 207: "This act shall be known and cited as the Fred Mills act." [2000 c 207 § 1.]

74.41.030 Definitions. Unless the context clearly indicates otherwise, the definitions in this section apply throughout this chapter.

(1) "Family caregiver long-term care information and support services" means providing long-term care information and support services to unpaid family and other unpaid caregivers of adults with functional disabilities, including but not limited to providing: (a) Information about available public and private long-term care support services; (b) assistance in gaining access to an array of appropriate long-term

care family caregiver services; (c) promotion and implementation of support groups; (d) caregiver training to assist the nonpaid caregivers in making decisions and solving challenges relating to their caregiving roles; (e) respite care services; and (f) additional supportive long-term care services that may include but not be limited to translating/interpreter services, specialized transportation, coordination of health care services, help purchasing needed supplies, durable goods, or equipment, and other forms of information and support necessary to maintain the unpaid caregiving activity.

(2) "Respite care services" means relief care for families or other caregivers of adults with functional disabilities, eligibility for which shall be determined by the department by rule. The services provide temporary care or supervision of adults with functional disabilities in substitution for the caregiver. The term includes adult day services.

(3) "Eligible participant for family caregiver long-term care information and support services" means an adult who needs substantially continuous care or supervision by reason of his or her functional disability and may be at risk of placement into a long-term care facility.

(4) "Eligible participant for respite care services" means an adult who needs substantially continuous care or supervision by reason of his or her functional disability and is also assessed as requiring placement into a long-term care facility in the absence of an unpaid family or other unpaid caregiver.

(5) "Unpaid caregiver" means a spouse, relative, or friend who has primary responsibility for the care of an adult with a functional disability and who does not receive financial compensation for the care. To be eligible for respite care and for family caregiver support services, the caregiver is considered the client.

(6) "Adult day services" means nonmedical services to persons who live with their families, cannot be left unsupervised, and are at risk of being placed in a twenty-four-hour care facility if their families do not receive some relief from constant care.

(7) "Department" means the department of social and health services. [2000 c 207 § 3; 1987 c 409 § 2; 1984 c 158 § 3.]

Short title—2000 c 207: See note following RCW 74.41.020.

74.41.040 Administration—Rules—Program standards. The department shall administer this chapter and shall establish such rules and standards as the department deems necessary in carrying out this chapter. The department shall not require the development of plans of care or discharge plans by nursing homes providing respite care service under this chapter.

The department shall develop standards for the respite program in conjunction with the selected area agencies on aging. The program standards shall serve as the basis for soliciting bids, entering into subcontracts, and developing sliding fee scales to be used in determining the ability of eligible participants to participate in paying for respite care. [1987 c 409 § 3; 1984 c 158 § 4.]

74.41.050 Family caregiver long-term care information and support services—Respite services, evaluation of need, caregiver abilities. The department shall contract

with area agencies on aging or other appropriate agencies to conduct family caregiver long-term care information and support services to the extent of available funding. The responsibilities of the agencies shall include but not be limited to: (1) Administering a program of family caregiver long-term care information and support services; and (2) negotiating rates of payment, administering sliding-fee scales to enable eligible participants to participate in paying for respite care, and arranging for respite care information, training, and other support services. In evaluating the need for respite services, consideration shall be given to the mental and physical ability of the caregiver to perform necessary caregiver functions. [2000 c 207 § 4; 1989 c 427 § 8; 1987 c 409 § 4; 1984 c 158 § 5.]

Short title—2000 c 207: See note following RCW 74.41.020.

Severability—1989 c 427: See RCW 74.39.900.

74.41.060 Respite care program—Criteria. The department shall insure that the respite care program is designed to meet the following criteria:

(1) Make maximum use of services which provide care to the greatest number of eligible participants with the fewest number of staff consistent with adequate care;

(2) Provide for use of one-on-one care when necessary;

(3) Provide for both day care and overnight care;

(4) Provide personal care to continue at the same level which the caregiver ordinarily provides to the eligible participant; and

(5) Provide for the utilization of family home settings. [1984 c 158 § 6.]

74.41.070 Family caregiver long-term care information and support services—Data. The area agencies on aging administering family caregiver long-term care information and support services shall maintain data which indicates demand for family caregiver long-term care information and support services. [2000 c 207 § 5; 1998 c 245 § 151; 1987 c 409 § 5; 1984 c 158 § 7.]

Short title—2000 c 207: See note following RCW 74.41.020.

74.41.080 Health care practitioners and facilities not impaired. Nothing in this chapter shall impair the practice of any licensed health care practitioner or licensed health care facility. [1984 c 158 § 8.]

74.41.090 Entitlement not created. Nothing in this chapter creates or provides any individual with an entitlement to services or benefits. It is the intent of the legislature that services under this chapter shall be made available only to the extent of the availability and level of appropriation made by the legislature. [1987 c 409 § 6.]

Chapter 74.42 RCW

NURSING HOMES—RESIDENT CARE, OPERATING STANDARDS

Sections

| | |
|-----------|--|
| 74.42.010 | Definitions. |
| 74.42.020 | Minimum standards. |
| 74.42.030 | Resident to receive statement of rights, rules, services, and charges. |

| | |
|-----------|--|
| 74.42.040 | Resident's rights regarding medical condition, care, and treatment. |
| 74.42.050 | Residents to be treated with consideration, respect—Complaints. |
| 74.42.055 | Discrimination against medicaid recipients prohibited. |
| 74.42.056 | Department assessment of medicaid eligible individuals—Requirements. |
| 74.42.057 | Notification regarding resident likely to become medicaid eligible. |
| 74.42.058 | Department case management services. |
| 74.42.060 | Management of residents' financial affairs. |
| 74.42.070 | Privacy. |
| 74.42.080 | Confidentiality of records. |
| 74.42.090 | Work tasks by residents. |
| 74.42.100 | Personal mail. |
| 74.42.110 | Freedom of association—Limits. |
| 74.42.120 | Personal possessions. |
| 74.42.130 | Individual financial records. |
| 74.42.140 | Prescribed plan of care—Treatment, medication, diet services. |
| 74.42.150 | Plan of care—Goals—Program—Responsibilities—Review. |
| 74.42.160 | Nursing care. |
| 74.42.170 | Rehabilitative services. |
| 74.42.180 | Social services. |
| 74.42.190 | Activities program—Recreation areas, equipment. |
| 74.42.200 | Supervision of health care by physician—When required. |
| 74.42.210 | Pharmacist services. |
| 74.42.220 | Contracts for professional services from outside the agency. |
| 74.42.225 | Self-medication programs for residents—Educational program—Implementation. |
| 74.42.230 | Physician or authorized practitioner to prescribe medication. |
| 74.42.240 | Administering medication. |
| 74.42.250 | Medication stop orders—Procedure for developmentally disabled. |
| 74.42.260 | Drug storage, security, inventory. |
| 74.42.270 | Drug disposal. |
| 74.42.280 | Adverse drug reaction. |
| 74.42.285 | Immunizations—Rules. |
| 74.42.290 | Meal intervals—Food handling—Utensils—Disposal. |
| 74.42.300 | Nutritionist—Menus, special diets. |
| 74.42.310 | Staff duties at meals. |
| 74.42.320 | Sanitary procedures for food preparation. |
| 74.42.330 | Food storage. |
| 74.42.340 | Administrative support—Purchasing—Inventory control. |
| 74.42.350 | Organization chart. |
| 74.42.360 | Adequate staff. |
| 74.42.370 | Licensed administrator. |
| 74.42.380 | Director of nursing services. |
| 74.42.390 | Communication system. |
| 74.42.400 | Engineering and maintenance personnel. |
| 74.42.410 | Laundry services. |
| 74.42.420 | Resident record system. |
| 74.42.430 | Written policy guidelines. |
| 74.42.440 | Facility rated capacity not to be exceeded. |
| 74.42.450 | Residents limited to those the facility qualified to care for—Transfer or discharge of residents—Appeal of department discharge decision—Reasonable accommodation. |
| 74.42.460 | Organization plan and procedures. |
| 74.42.470 | Infected employees. |
| 74.42.480 | Living areas. |
| 74.42.490 | Room requirements—Waiver. |
| 74.42.500 | Toilet and bathing facilities. |
| 74.42.510 | Room for dining, recreation, social activities—Waiver. |
| 74.42.520 | Therapy area. |
| 74.42.530 | Isolation areas. |
| 74.42.540 | Building requirements. |
| 74.42.550 | Handrails. |
| 74.42.560 | Emergency lighting for facilities housing developmentally disabled persons. |
| 74.42.570 | Health and safety requirements. |
| 74.42.580 | Penalties for violation of standards. |
| 74.42.600 | Department inspections—Notice of noncompliance—Penalties—Coordination with department of health. |
| 74.42.620 | Departmental rules. |
| 74.42.630 | Conflict with federal requirements. |
| 74.42.900 | Severability—1979 ex.s. c 211. |
| 74.42.910 | Construction—Conflict with federal requirements. |
| 74.42.920 | Chapter 74.42 RCW suspended—Effective date delayed until January 1, 1981. |

Effective date—Chapter 74.42 RCW: See RCW 74.42.920.

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

(1) "Department" means the department of social and health services and the department's employees.

(2) "Facility" refers to a nursing home as defined in RCW 18.51.010.

(3) "Licensed practical nurse" means a person licensed to practice practical nursing under chapter 18.79 RCW.

(4) "Medicaid" means Title XIX of the Social Security Act enacted by the social security amendments of 1965 (42 U.S.C. Sec. 1396; 79 Stat. 343), as amended.

(5) "Nursing care" means that care provided by a registered nurse, an advanced registered nurse practitioner, a licensed practical nurse, or a nursing assistant in the regular performance of their duties.

(6) "Qualified therapist" means:

(a) An activities specialist who has specialized education, training, or experience specified by the department.

(b) An audiologist who is eligible for a certificate of clinical competence in audiology or who has the equivalent education and clinical experience.

(c) A mental health professional as defined in chapter 71.05 RCW.

(d) A mental retardation professional who is a qualified therapist or a therapist approved by the department and has specialized training or one year experience in treating or working with the mentally retarded or developmentally disabled.

(e) An occupational therapist who is a graduate of a program in occupational therapy or who has equivalent education or training.

(f) A physical therapist as defined in chapter 18.74 RCW.

(g) A social worker who is a graduate of a school of social work.

(h) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has equivalent education and clinical experience.

(7) "Registered nurse" means a person licensed to practice registered nursing under chapter 18.79 RCW.

(8) "Resident" means an individual residing in a nursing home, as defined in RCW 18.51.010.

(9) "Physician assistant" means a person practicing pursuant to chapters 18.57A and 18.71A RCW.

(10) "Nurse practitioner" means a person licensed to practice advanced registered nursing under chapter 18.79 RCW. [1994 sp.s. c 9 § 750; 1993 c 508 § 4; 1979 ex.s. c 211 § 1.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

Section captions—Severability—Effective date—1993 c 508: See RCW 74.39A.900 through 74.39A.903.

74.42.020 Minimum standards. The standards in RCW 74.42.030 through 74.42.570 are the minimum standards for facilities licensed under chapter 18.51 RCW: PROVIDED, HOWEVER, That RCW 74.42.040, 74.42.140 through 74.42.280, 74.42.300, 74.42.360, 74.42.370, 74.42.380, 74.42.420 (2), (4), (5), (6) and (7), 74.42.430(3), 74.42.450 (2) and (3), 74.42.520, 74.42.530, 74.42.540,

74.42.570, and 74.42.580 shall not apply to any nursing home or institution conducted for those who rely upon treatment by prayer or spiritual means in accordance with the creed or tenets of any well-recognized church or religious denomination, or for any nursing home or institution operated for the exclusive care of members of a convent as defined in RCW 84.36.800 or rectory, monastery, or other institution operated for the care of members of the clergy. [1995 1st sp.s. c 18 § 68; 1982 c 120 § 1; 1980 c 184 § 6; 1979 ex.s. c 211 § 2.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.42.030 Resident to receive statement of rights, rules, services, and charges. Each resident or guardian or legal representative, if any, shall be fully informed and receive in writing, in a language the resident or his or her representative understands, the following information:

- (1) The resident's rights and responsibilities in the facility;
- (2) Rules governing resident conduct;
- (3) Services, items, and activities available in the facility; and
- (4) Charges for services, items, and activities, including those not included in the facility's basic daily rate or not paid by medicaid.

The facility shall provide this information before admission, or at the time of admission in case of emergency, and as changes occur during the resident's stay. The resident and his or her representative must be informed in writing in advance of changes in the availability or charges for services, items, or activities, or of changes in the facility's rules. Except in unusual circumstances, thirty days' advance notice must be given prior to the change. The resident or legal guardian or representative shall acknowledge in writing receipt of this information.

The written information provided by the facility pursuant to this section, and the terms of any admission contract executed between the facility and an individual seeking admission to the facility, must be consistent with the requirements of this chapter and chapter 18.51 RCW and, for facilities certified under medicaid or medicare, with the applicable federal requirements. [1997 c 392 § 212; 1979 ex.s. c 211 § 3.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

74.42.040 Resident's rights regarding medical condition, care, and treatment. The facility shall insure that each resident and guardian, if any:

- (1) Is fully informed by a physician about his or her health and medical condition unless the physician decides that informing the resident is medically contraindicated and the physician documents this decision in the resident's record;
- (2) Has the opportunity to participate in his or her total care and treatment;
- (3) Has the opportunity to refuse treatment; and
- (4) Gives informed, written consent before participating in experimental research. [1979 ex.s. c 211 § 4.]

74.42.050 Residents to be treated with consideration, respect—Complaints. (1) Residents shall be treated with consideration, respect, and full recognition of their dignity and individuality. Residents shall be encouraged and assisted in the exercise of their rights as residents of the facility and as citizens.

(2) A resident or guardian, if any, may submit complaints or recommendations concerning the policies of the facility to the staff and to outside representatives of the resident's choice. No facility may restrain, interfere, coerce, discriminate, or retaliate in any manner against a resident who submits a complaint or recommendation. [1979 ex.s. c 211 § 5.]

74.42.055 Discrimination against medicaid recipients prohibited. (1) The purpose of this section is to prohibit discrimination against medicaid recipients by nursing homes which have contracted with the department to provide skilled or intermediate nursing care services to medicaid recipients.

(2) A nursing facility shall readmit a resident, who has been hospitalized or on therapeutic leave, immediately to the first available bed in a semiprivate room if the resident:

- (a) Requires the services provided by the facility; and
- (b) Is eligible for medicaid nursing facility services.

(3) It shall be unlawful for any nursing home which has a medicaid contract with the department:

- (a) To require, as a condition of admission, assurance from the patient or any other person that the patient is not eligible for or will not apply for medicaid;
- (b) To deny or delay admission or readmission of a person to a nursing home because of his or her status as a medicaid recipient;

(c) To transfer a patient, except from a private room to another room within the nursing home, because of his or her status as a medicaid recipient;

(d) To transfer a patient to another nursing home because of his or her status as a medicaid recipient;

(e) To discharge a patient from a nursing home because of his or her status as a medicaid recipient; or

(f) To charge any amounts in excess of the medicaid rate from the date of eligibility, except for any supplementation permitted by the department pursuant to RCW 18.51.070.

(4) Any nursing home which has a medicaid contract with the department shall maintain one list of names of persons seeking admission to the facility, which is ordered by the date of request for admission. This information shall be retained for one year from the month admission was requested. However, except as provided in subsection (2) of this section, a nursing facility is permitted to give preferential admission to individuals who seek admission from a boarding home, licensed under chapter 18.20 RCW, or from independent retirement housing, provided the nursing facility is owned by the same entity that owns the boarding home or independent housing which are located within the same proximate geographic area; and provided further, the purpose of such preferential admission is to allow continued provision of: (a) Culturally or faith-based services, or (b) services provided by a continuing care retirement community as defined in RCW 70.38.025.

(5) The department may assess monetary penalties of a civil nature, not to exceed three thousand dollars for each violation of this section.

(6) Because it is a matter of great public importance to protect senior citizens who need medicaid services from discriminatory treatment in obtaining long-term health care, any violation of this section shall be construed for purposes of the application of the consumer protection act, chapter 19.86 RCW, to constitute an unfair or deceptive act or practice or unfair method of competition in the conduct of trade or commerce.

(7) It is not an act of discrimination under this chapter to refuse to admit a patient if admitting that patient would prevent the needs of the other patients residing in that facility from being met at that facility, or if the facility's refusal is consistent with subsection (4) of this section. [2004 c 34 § 1; 1987 c 476 § 30; 1985 c 284 § 3.]

Effective date—2004 c 34: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 22, 2004]." [2004 c 34 § 2.]

74.42.056 Department assessment of medicaid eligible individuals—Requirements. A nursing facility shall not admit any individual who is medicaid eligible unless that individual has been assessed by the department. Appropriate hospital discharge shall not be delayed pending the assessment.

To ensure timely hospital discharge of medicaid eligible persons, the date of the request for a department long-term care assessment, or the date that nursing home care actually begins, whichever is later, shall be deemed the effective date of the initial service and payment authorization. The department shall respond promptly to such requests.

A nursing facility admitting an individual without a request for a department assessment shall not be reimbursed by the department and shall not be allowed to collect payment from a medicaid eligible individual for any care rendered before the date the facility makes a request to the department for an assessment. The date on which a nursing facility makes a request for a department long-term care assessment, or the date that nursing home care actually begins, whichever is later, shall be deemed the effective date of initial service and payment authorization for admissions regardless of the source of referral.

A medicaid eligible individual residing in a nursing facility who is transferred to an acute care hospital shall not be required to have a department assessment under this section prior to returning to the same or another nursing facility. [1995 1st sp.s. c 18 § 7.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.42.057 Notification regarding resident likely to become medicaid eligible. If a nursing facility has reason to know that a resident is likely to become financially eligible for medicaid benefits within one hundred eighty days, the nursing facility shall notify the patient or his or her representative and the department. The department may:

(1) Assess any such resident to determine if the resident prefers and could live appropriately at home or in some other community-based setting; and

(2) Provide case management services to the resident. [1995 1st sp.s. c 18 § 8.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.42.058 Department case management services.

(1) To the extent of available funding, the department shall provide case management services to assist nursing facility residents, in conjunction and partnership with nursing facility staff. The purpose of the case management services is to assist residents and their families to assess the appropriateness and availability of home and community services that could meet the resident's needs so that the resident and family can make informed choices.

(2) To the extent of available funding, the department shall provide case management services to nursing facility residents who are:

(a) Medicaid funded;

(b) Dually medicaid and medicare eligible;

(c) Medicaid applicants; and

(d) Likely to become financially eligible for medicaid within one hundred eighty days, pursuant to RCW 74.42.057. [1995 1st sp.s. c 18 § 9.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.42.060 Management of residents' financial affairs.

The facility shall allow a resident or the resident's guardian to manage the resident's financial affairs. The facility may assist a resident in the management of his or her financial affairs if the resident requests assistance in writing and the facility complies with the record-keeping requirements of RCW 74.42.130 and the provisions of *chapter . . . (Senate Bill No. 2335), Laws of 1979. [1979 ex.s. c 211 § 6.]

***Reviser's note:** Senate Bill No. 2335 was not enacted during the 1979 legislative sessions. A similar bill was enacted in 1980 and became 1980 c 177, which is codified primarily in chapter 74.46 RCW.

74.42.070 Privacy. Residents shall be given privacy during treatment and care of personal needs. Married residents shall be given privacy during visits with their spouses. If both husband and wife are residents of the facility, the facility shall permit the husband and wife to share a room, unless medically contraindicated. [1979 ex.s. c 211 § 7.]

74.42.080 Confidentiality of records. Residents' records, including information in an automatic data bank, shall be treated confidentially. The facility shall not release information from a resident's record to a person not otherwise authorized by law to receive the information without the resident's or the resident's guardian's written consent. [1979 ex.s. c 211 § 8.]

74.42.090 Work tasks by residents. No resident may be required to perform services for the facility; except that a resident may be required to perform work tasks specified or included in the comprehensive plan of care. [1979 ex.s. c 211 § 9.]

74.42.100 Personal mail. The facility shall not open the personal mail that residents send or receive. [1979 ex.s. c 211 § 10.]

74.42.110 Freedom of association—Limits. Residents shall be allowed to communicate, associate, meet privately with individuals of their choice, and participate in social, religious, and community group activities unless this infringes on the rights of other residents. [1979 ex.s. c 211 § 11.]

74.42.120 Personal possessions. The facility shall allow residents to have personal possessions as space or security permits. [1979 ex.s. c 211 § 12.]

74.42.130 Individual financial records. The facility shall keep a current, written financial record for each resident. The record shall include written receipts for all personal possessions and funds received by or deposited with the facility and for all disbursements made to or for the resident. The resident or guardian and the resident's family shall have access to the financial record. [1979 ex.s. c 211 § 13.]

74.42.140 Prescribed plan of care—Treatment, medication, diet services. The facility shall care for residents by providing residents with authorized medical services which shall include treatment, medication, and diet services, and any other services contained in the comprehensive plan of care or otherwise prescribed by the attending physician. [1979 ex.s. c 211 § 14.]

74.42.150 Plan of care—Goals—Program—Responsibilities—Review. (1) Under the attending physician's instructions, qualified facility staff will establish and maintain a comprehensive plan of care for each resident which shall be kept on file by the facility and be evaluated through review and assessment by the department. The comprehensive plan contains:

- (a) Goals for each resident to accomplish;
- (b) An integrated program of treatment, therapies and activities to help each resident achieve those goals; and
- (c) The persons responsible for carrying out the programs in the plan.

(2) Qualified facility staff shall review the comprehensive plan of care at least quarterly. [1980 c 184 § 7; 1979 ex.s. c 211 § 15.]

74.42.160 Nursing care. The facility shall provide the nursing care required for the classification given each resident. The nursing care shall help each resident to achieve and maintain the highest possible degree of function, self-care, and independence to the extent medically possible. [1979 ex.s. c 211 § 16.]

74.42.170 Rehabilitative services. (1) The facility shall provide rehabilitative services itself or arrange for the provision of rehabilitative services with qualified outside resources for each resident whose comprehensive plan of care requires the provision of rehabilitative services.

(2) The rehabilitative service personnel shall be qualified therapists, qualified therapists' assistants, or mental health

professionals. Other support personnel under appropriate supervision may perform the duties of rehabilitative service personnel.

(3) The rehabilitative services shall be designed to maintain and improve the resident's ability to function independently; prevent, as much as possible, advancement of progressive disabilities; and restore maximum function. [1979 ex.s. c 211 § 17.]

74.42.180 Social services. (1) The facility shall provide social services, or arrange for the provision of social services with qualified outside resources, for each resident whose comprehensive plan of care requires the provision of social services.

(2) The facility shall designate one staff member qualified by training or experience to be responsible for arranging for social services in the facility or with qualified outside resources and integrating social services with other elements of the plan of care. [1979 ex.s. c 211 § 18.]

74.42.190 Activities program—Recreation areas, equipment. The facility shall have an activities program designed to encourage each resident to maintain normal activity and help each resident return to self care. A staff member qualified by experience or training in directing group activities shall be responsible for the activities program. The facility shall provide adequate recreation areas with sufficient equipment and materials to support the program. [1979 ex.s. c 211 § 19.]

74.42.200 Supervision of health care by physician—When required. The health care of each resident shall be under the continuing supervision of a physician: PROVIDED, That a resident of a facility licensed pursuant to chapter 18.51 RCW but not certified by the federal government under Title XVIII or Title XIX of the Social Security Act as now or hereafter amended shall not be required to receive the continuing supervision of a health care practitioner licensed pursuant to chapter 18.22, 18.25, 18.32, 18.57, 18.71, and 18.83 RCW, nor shall the state of Washington require such continuing supervision as a condition of licensing. The physician shall see the resident whenever necessary, and as required and/or consistent with state and federal regulations. [1980 c 184 § 8; 1979 ex.s. c 211 § 20.]

74.42.210 Pharmacist services. The facility shall either employ a licensed pharmacist responsible for operating the facility's pharmacy or have a written agreement with a licensed pharmacist who will advise the facility on ordering, storage, administration, disposal, and recordkeeping of drugs and biologicals. [1979 ex.s. c 211 § 21.]

74.42.220 Contracts for professional services from outside the agency. (1) If the facility does not employ a qualified professional to furnish required services, the facility shall have a written contract with a qualified professional or agency outside the facility to furnish the required services. The terms of the contract, including terms about responsibilities, functions, and objectives, shall be specified. The con-

tract shall be signed by the administrator, or the administrator's representative, and the qualified professional.

(2) All contracts for these services shall require the standards in RCW 74.42.010 through 74.42.570 to be met. [1980 c 184 § 9; 1979 ex.s. c 211 § 22.]

74.42.225 Self-medication programs for residents—Educational program—Implementation. The department shall develop an educational program for attending and staff physicians and patients on self-medication. The department shall actively encourage the implementation of such self-medication programs for residents. [1980 c 184 § 18.]

74.42.230 Physician or authorized practitioner to prescribe medication. (1) The resident's attending or staff physician or authorized practitioner approved by the attending physician shall order all medications for the resident. The order may be oral or written and shall be limited by time. An "authorized practitioner," as used in this section, is a registered nurse under chapter 18.79 RCW when authorized by the nursing care quality assurance commission, an osteopathic physician assistant under chapter 18.57A RCW when authorized by the committee of osteopathic examiners, or a physician assistant under chapter 18.71A RCW when authorized by the medical quality assurance commission.

(2) An oral order shall be given only to a licensed nurse, pharmacist, or another physician. The oral order shall be recorded and signed immediately by the person receiving the order. The attending physician shall sign the record of the oral order in a manner consistent with good medical practice. [1994 sp.s. c 9 § 751; 1982 c 120 § 2; 1979 ex.s. c 211 § 23.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

74.42.240 Administering medication. (1) No staff member may administer any medication to a resident unless the staff member is licensed to administer medication: PROVIDED, That nothing herein shall be construed as prohibiting graduate nurses or student nurses from administering medications when permitted to do so under chapter 18.79 RCW and rules adopted thereunder.

(2) The facility may only allow a resident to give himself or herself medication with the attending physician's permission.

(3) Medication shall only be administered to or used by the resident for whom it is ordered. [1994 sp.s. c 9 § 752; 1989 c 372 § 5; 1979 ex.s. c 211 § 24.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

74.42.250 Medication stop orders—Procedure for developmentally disabled. (1) When the physician's order for medication does not include a specific time limit or a specific number of dosages, the facility shall notify the physician that the medication will be stopped at a date certain unless the medication is ordered continued by the physician. The facility shall so notify the physician every thirty days.

(2) A facility for the developmentally disabled shall have an automatic stop order on all drugs, unless such stoppage will place the patient in jeopardy. [1979 ex.s. c 211 § 25.]

(2004 Ed.)

74.42.260 Drug storage, security, inventory. (1) The facility shall store drugs under proper conditions of sanitation, temperature, light, moisture, ventilation, segregation, and security. Poisons, drugs used externally, and drugs taken internally shall be stored on separate shelves or in separate cabinets at all locations. When medication is stored in a refrigerator containing other items, the medication shall be kept in a separate compartment with proper security. All drugs shall be kept under lock and key unless an authorized individual is in attendance.

(2) The facility shall meet the drug security requirements of federal and state laws that apply to storerooms, pharmacies, and living units.

(3) If there is a drug storeroom separate from the pharmacy, the facility shall keep a perpetual inventory of receipts and issues of all drugs from that storeroom. [1979 ex.s. c 211 § 26.]

74.42.270 Drug disposal. Any drug that is discontinued or outdated and any container with a worn, illegible, or missing label shall be properly disposed. [1979 ex.s. c 211 § 27.]

74.42.280 Adverse drug reaction. Medication errors and adverse drug reactions shall be recorded and reported immediately to the practitioner who ordered the drug. The facility shall report adverse drug reactions consistent with good medical practice. [1979 ex.s. c 211 § 28.]

74.42.285 Immunizations—Rules. (1) Long-term care facilities shall:

(a) Provide access on-site or make available elsewhere for all residents to obtain the influenza virus immunization on an annual basis;

(b) Require that each resident, or the resident's legal representative, upon admission to the facility, be informed verbally and in writing of the benefits of receiving the influenza virus immunization and, if not previously immunized against pneumococcal disease, the benefits of the pneumococcal immunization.

(2) As used in this section, "long-term care facility" is limited to nursing homes licensed under chapter 18.51 RCW.

(3) The department of social and health services shall adopt rules to implement this section.

(4) This section and rules adopted under this section shall not apply to nursing homes conducted for those who rely exclusively upon treatment by nonmedical religious healing methods, including prayer. [2002 c 256 § 2.]

Intent—Findings—2002 c 256: "It is the intent of the legislature to ensure that long-term care facilities are safe.

(1) The long-term care resident immunization act is intended to:

(a) Prevent and reduce the occurrence and severity of the influenza virus and pneumococcal disease by increasing the use of immunizations licensed by the food and drug administration;

(b) Avoid pain, suffering, and deaths that may result from the influenza virus and pneumococcal disease;

(c) Improve the well-being and quality of life of residents of long-term care facilities; and

(d) Reduce avoidable costs associated with treating the influenza virus and pneumococcal disease.

(2) The legislature finds that:

(a) Recent studies show that it is important to immunize older citizens against the influenza virus and pneumococcal disease;

(b) The centers for disease control and prevention recommend individuals living in long-term care facilities and those over age sixty-five receive immunizations against the influenza virus and pneumococcal disease;

(c) The influenza virus and pneumococcal disease have been identified as leading causes of death for citizens over age sixty-five; and

(d) Immunizations licensed by the food and drug administration are readily available and effective in reducing and preventing the severity of the influenza virus and pneumococcal disease." [2002 c 256 § 1.]

Short title—2002 c 256: "This act may be known and cited as the long-term care resident immunization act of 2002." [2002 c 256 § 3.]

74.42.290 Meal intervals—Food handling—Utensils—Disposal. (1) The facility shall serve at least three meals, or their equivalent, daily at regular times with not more than fourteen hours between a substantial evening meal and breakfast on the following day and not less than ten hours between breakfast and a substantial evening meal on the same day.

(2) Food shall be procured, stored, transported, and prepared under sanitary conditions in compliance with state and local regulations.

(3) Food of an appropriate quantity at an appropriate temperature shall be served in a form consistent with the needs of the resident;

(4) Special eating equipment and utensils shall be provided for residents who need them; and

(5) Food served and uneaten shall be discarded. [1979 ex.s. c 211 § 29.]

74.42.300 Nutritionist—Menus, special diets. (1) The facility shall have a staff member trained or experienced in food management and nutrition responsible for planning menus that meet the requirements of subsection (2) of this section and supervising meal preparation and service to insure that the menu plan is followed.

(2) The menu plans shall follow the orders of the resident's physician.

(3) The facility shall:

(a) Meet the nutritional needs of each resident;

(b) Have menus written in advance;

(c) Provide a variety of foods at each meal;

(d) Provide daily and weekly variations in the menus; and

(e) Adjust the menus for seasonal changes.

(4) If the facility has residents who require medically prescribed special diets, the menus for those residents shall be planned by a professionally qualified dietitian or reviewed and approved by the attending physician. The preparation and serving of meals shall be supervised to insure that the resident accepts the special diet. [1979 ex.s. c 211 § 30.]

74.42.310 Staff duties at meals. (1) A facility shall have sufficient personnel to supervise the residents, direct self-help dining skills, and to insure that each resident receives enough food.

(2) A facility shall provide table service for all residents, including residents in wheelchairs, who are capable and willing to eat at tables. [1980 c 184 § 10; 1979 ex.s. c 211 § 31.]

74.42.320 Sanitary procedures for food preparation. Facilities shall have effective sanitary procedures for the food preparation staff including procedures for cleaning food

preparation equipment and food preparation areas. [1979 ex.s. c 211 § 32.]

74.42.330 Food storage. The facility shall store dry or staple food items at an appropriate height above the floor in a ventilated room not subject to sewage or waste water back-flow or contamination by condensation, leakage, rodents or vermin. Perishable foods shall be stored at proper temperatures to conserve nutritive values. [1979 ex.s. c 211 § 33.]

74.42.340 Administrative support—Purchasing—Inventory control. (1) The facility shall provide adequate administrative support to efficiently meet the needs of residents and facilitate attainment of the facility's goals and objectives.

(2) The facility shall:

(a) Document the purchasing process;

(b) Adequately operate the inventory control system and stockroom;

(c) Have appropriate storage facilities for all supplies and surplus equipment; and

(d) Train and assist personnel to do purchase, supply, and property control functions. [1980 c 184 § 11; 1979 ex.s. c 211 § 34.]

74.42.350 Organization chart. The facility shall have and keep current an organization chart showing:

(1) The major operating programs of the facility;

(2) The staff divisions of the facility;

(3) The administrative personnel in charge of the programs and divisions; and

(4) The lines of authority, responsibility, and communication of administrative personnel. [1979 ex.s. c 211 § 35.]

74.42.360 Adequate staff. The facility shall have staff on duty twenty-four hours daily sufficient in number and qualifications to carry out the provisions of RCW 74.42.010 through 74.42.570 and the policies, responsibilities, and programs of the facility. [1979 ex.s. c 211 § 36.]

74.42.370 Licensed administrator. The facility shall have an administrator who is a licensed nursing home administrator under chapter 18.52 RCW. The administrator is responsible for managing the facility and implementing established policies and procedures. [1979 ex.s. c 211 § 37.]

74.42.380 Director of nursing services. (1) The facility shall have a director of nursing services. The director of nursing services shall be a registered nurse or an advanced registered nurse practitioner.

(2) The director of nursing services is responsible for:

(a) Coordinating the plan of care for each resident;

(b) Permitting only licensed personnel to administer medications: PROVIDED, That nothing herein shall be construed as prohibiting graduate nurses or student nurses from administering medications when permitted to do so under chapter 18.79 RCW and rules adopted under it: PROVIDED FURTHER, That nothing herein shall be construed as prohibiting persons certified under chapter 18.135 RCW from prac-

ting pursuant to the delegation and supervision requirements of chapter 18.135 RCW and rules adopted under it; and

(c) Insuring that the licensed practical nurses and the registered nurses comply with chapter 18.79 RCW, and persons certified under chapter 18.135 RCW comply with the provisions of that chapter and rules adopted under it. [1994 sp.s. c 9 § 753; 1989 c 372 § 6; 1985 c 284 § 2; 1979 ex.s. c 211 § 38.]

Severability—Headings and captions not law—Effective date—1994 sp.s. c 9: See RCW 18.79.900 through 18.79.902.

74.42.390 Communication system. The facility shall have a communication system, including telephone service, that insures prompt contact of on-duty personnel and prompt notification of responsible personnel in an emergency. [1979 ex.s. c 211 § 39.]

74.42.400 Engineering and maintenance personnel. The facility shall have sufficient trained and experienced personnel for necessary engineering and maintenance functions. [1979 ex.s. c 211 § 40.]

74.42.410 Laundry services. The facility shall manage laundry services to meet the residents' daily clothing and linen needs. The facility shall have available at all times enough linen for the proper care and comfort of the residents. [1979 ex.s. c 211 § 41.]

74.42.420 Resident record system. The facility shall maintain an organized record system containing a record for each resident. The record shall contain:

- (1) Identification information;
- (2) Admission information, including the resident's medical and social history;
- (3) A comprehensive plan of care and subsequent changes to the comprehensive plan of care;
- (4) Copies of initial and subsequent periodic examinations, assessments, evaluations, and progress notes made by the facility and the department;
- (5) Descriptions of all treatments, services, and medications provided for the resident since the resident's admission;
- (6) Information about all illnesses and injuries including information about the date, time, and action taken; and
- (7) A discharge summary.

Resident records shall be available to the staff members directly involved with the resident and to appropriate representatives of the department. The facility shall protect resident records against destruction, loss, and unauthorized use. The facility shall keep a resident's record after the resident is discharged as provided in RCW 18.51.300. [1979 ex.s. c 211 § 42.]

74.42.430 Written policy guidelines. The facility shall develop written guidelines governing:

- (1) All services provided by the facility;
- (2) Admission, transfer or discharge;
- (3) The use of chemical and physical restraints, the personnel authorized to administer restraints in an emergency, and procedures for monitoring and controlling the use of the restraints;

(2004 Ed.)

(4) Procedures for receiving and responding to residents' complaints and recommendations;

(5) Access to, duplication of, and dissemination of information from the resident's record;

(6) Residents' rights, privileges, and duties;

(7) Procedures if the resident is adjudicated incompetent or incapable of understanding his or her rights and responsibilities;

(8) When to recommend initiation of guardianship proceedings under chapter 11.88 RCW; and

(9) Emergencies;

(10) Procedures for isolation of residents with infectious diseases;

(11) Procedures for residents to refuse treatment and for the facility to document informed refusal.

The written guidelines shall be made available to the staff, residents, members of residents' families, and the public. [1980 c 184 § 12; 1979 ex.s. c 211 § 43.]

74.42.440 Facility rated capacity not to be exceeded. The facility may only admit individuals when the facility's rated capacity will not be exceeded and when the facility has the capability to provide adequate treatment, therapy, and activities. [1979 ex.s. c 211 § 44.]

74.42.450 Residents limited to those the facility qualified to care for—Transfer or discharge of residents—Appeal of department discharge decision—Reasonable accommodation. (1) The facility shall admit as residents only those individuals whose needs can be met by:

- (a) The facility;
 - (b) The facility cooperating with community resources;
- or
- (c) The facility cooperating with other providers of care affiliated or under contract with the facility.

(2) The facility shall transfer a resident to a hospital or other appropriate facility when a change occurs in the resident's physical or mental condition that requires care or service that the facility cannot provide. The resident, the resident's guardian, if any, the resident's next of kin, the attending physician, and the department shall be consulted at least fifteen days before a transfer or discharge unless the resident is transferred under emergency circumstances. The department shall use casework services or other means to insure that adequate arrangements are made to meet the resident's needs.

(3) A resident shall be transferred or discharged only for medical reasons, the resident's welfare or request, the welfare of other residents, or nonpayment. A resident may not be discharged for nonpayment if the discharge would be prohibited by the medicaid program.

(4) If a resident chooses to remain in the nursing facility, the department shall respect that choice, provided that if the resident is a medicaid recipient, the resident continues to require a nursing facility level of care.

(5) If the department determines that a resident no longer requires a nursing facility level of care, the resident shall not be discharged from the nursing facility until at least thirty days after written notice is given to the resident, the resident's surrogate decision maker and, if appropriate, a family member or the resident's representative. A form for requesting a

hearing to appeal the discharge decision shall be attached to the written notice. The written notice shall include at least the following:

- (a) The reason for the discharge;
 - (b) A statement that the resident has the right to appeal the discharge; and
 - (c) The name, address, and telephone number of the state long-term care ombudsman.
- (6) If the resident appeals a department discharge decision, the resident shall not be discharged without the resident's consent until at least thirty days after a final order is entered upholding the decision to discharge the resident.

(7) Before the facility transfers or discharges a resident, the facility must first attempt through reasonable accommodations to avoid the transfer or discharge unless the transfer or discharge is agreed to by the resident. The facility shall admit or retain only individuals whose needs it can safely and appropriately serve in the facility with available staff or through the provision of reasonable accommodations required by state or federal law. "Reasonable accommodations" has the meaning given to this term under the federal Americans with disabilities act of 1990, 42 U.S.C. Sec. 12101 et seq. and other applicable federal or state antidiscrimination laws and regulations. [1997 c 392 § 216; 1995 1st sp.s. c 18 § 64; 1979 ex.s. c 211 § 45.]

Short title—Findings—Construction—Conflict with federal requirements—Part headings and captions not law—1997 c 392: See notes following RCW 74.39A.009.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.42.460 Organization plan and procedures. The facility shall have a written staff organization plan and detailed written procedures to meet potential emergencies and disasters. The facility shall clearly communicate and periodically review the plan and procedures with the staff and residents. The plan and procedures shall be posted at suitable locations throughout the facility. [1979 ex.s. c 211 § 46.]

74.42.470 Infected employees. No employee with symptoms of a communicable disease may work in a facility. The facility shall have written guidelines that will help enforce this section. [1979 ex.s. c 211 § 47.]

74.42.480 Living areas. The facility shall design and equip the resident living areas for the comfort and privacy of each resident. [1979 ex.s. c 211 § 48.]

74.42.490 Room requirements—Waiver. Each resident's room shall:

- (1) Be equipped with or conveniently located near toilet and bathing facilities;
- (2) Be at or above grade level;
- (3) Contain a suitable bed for each resident and other appropriate furniture;
- (4) Have closet space that provides security and privacy for clothing and personal belongings;
- (5) Contain no more than four beds;
- (6) Have adequate space for each resident; and
- (7) Be equipped with a device for calling the staff member on duty.

The department may waive the space, occupancy, and certain equipment requirements of this section for an existing building constructed prior to January 1, 1980, or space and certain equipment for new intermediate care facilities for the mentally retarded for as long as the department considers appropriate if the department finds that the requirements would result in unreasonable hardship on the facility, the waiver serves the particular needs of the residents, and the waiver does not adversely affect the health and safety of the residents. [1980 c 184 § 13; 1979 ex.s. c 211 § 49.]

74.42.500 Toilet and bathing facilities. Toilet and bathing facilities shall be located in or near residents' rooms and shall be appropriate in number, size, and design to meet the needs of the residents. The facility shall provide an adequate supply of hot water at all times for resident use. Plumbing shall be equipped with control valves that automatically regulate the temperature of the hot water used by residents. [1979 ex.s. c 211 § 50.]

74.42.510 Room for dining, recreation, social activities—Waiver. The facility shall provide one or more areas not used for corridor traffic for dining, recreation, and social activities. A multipurpose room may be used if it is large enough to accommodate all of the activities without the activities interfering with each other: PROVIDED, That the department may waive the provisions of this section for facilities constructed prior to January 1, 1980. [1979 ex.s. c 211 § 51.]

74.42.520 Therapy area. The facility's therapy area shall be large enough and designed to accommodate the necessary equipment, conduct an examination, and provide treatment: PROVIDED, That developmentally disabled facilities shall not be subject to the provisions of this section if therapeutic services are obtained by contract with other facilities. [1979 ex.s. c 211 § 52.]

74.42.530 Isolation areas. The facility shall have isolation areas for residents with infectious diseases or make other provisions for isolating these residents. [1979 ex.s. c 211 § 53.]

74.42.540 Building requirements. (1) The facility shall be accessible to and usable by all residents, personnel, and the public, including individuals with disabilities: PROVIDED, That no substantial structural changes shall be required in any facilities constructed prior to January 1, 1980.

(2) The facility shall meet the requirements of American National Standards Institute (ANSI) standard No. A117.1 (1961), or, if applicable, the requirements of chapter 70.92 RCW if the requirements are stricter than ANSI standard No. A117.1 (1961), unless the department waives the requirements of ANSI standard No. A117.1 (1961) under subsection (3) of this section.

(3) The department may waive, for as long as the department considers appropriate, provisions of ANSI standard No. A117.1 (1961) if:

(a) The construction plans for the facility or a part of the facility were approved by the department before March 18, 1974;

(b) The provisions would result in unreasonable hardship on the facility if strictly enforced; and

(c) The waiver does not adversely affect the health and safety of the residents. [1979 ex.s. c 211 § 54.]

74.42.550 Handrails. The facility shall have handrails that are firmly attached to the walls in all corridors used by residents: PROVIDED, That the department may waive the provisions of this section in developmentally disabled facilities. [1979 ex.s. c 211 § 55.]

74.42.560 Emergency lighting for facilities housing developmentally disabled persons. If a living unit of a facility for the developmentally disabled houses more than fifteen residents, the living unit shall have emergency lighting with automatic switches for stairs and exits. [1979 ex.s. c 211 § 56.]

74.42.570 Health and safety requirements. The facility shall meet state and local laws, rules, regulations, and codes pertaining to health and safety. [1980 c 184 § 14; 1979 ex.s. c 211 § 57.]

74.42.580 Penalties for violation of standards. The department may deny, suspend, revoke, or refuse to renew a license or provisional license, assess monetary penalties of a civil nature, deny payment, seek receivership, order stop placement, appoint temporary management, order emergency closure, or order emergency transfer as provided in RCW 18.51.054 and 18.51.060 for violations of requirements of this chapter or, in the case of medicaid contractors, the requirements of Title XIX of the social security act, as amended, or rules adopted thereunder. Chapter 34.05 RCW shall apply to any such actions, except for receivership, and except that stop placement, appointment of temporary management, emergency closure, emergency transfer, and summary license suspension shall be effective pending any hearing, and except that denial of payment shall be effective pending any hearing when the department determines deficiencies jeopardize the health and safety of the residents or seriously limit the nursing home's capacity to provide adequate care. [1989 c 372 § 13; 1987 c 476 § 27; 1980 c 184 § 15; 1979 ex.s. c 211 § 58.]

74.42.600 Department inspections—Notice of non-compliance—Penalties—Coordination with department of health. (1) In addition to the inspection required by chapter 18.51 RCW, the department shall inspect the facility for compliance with resident rights and direct care standards of this chapter. The department may inspect any and all other provisions randomly, by exception profiles, or during complaint investigations.

(2) If the facility has not complied with all the requirements of this chapter, the department shall notify the facility in writing that the facility is in noncompliance and describe the reasons for the facility's noncompliance and the depart-

(2004 Ed.)

ment may impose penalties in accordance with RCW 18.51.060.

(3) To avoid unnecessary duplication in inspections, the department shall coordinate with the department of health when inspecting medicaid-certified or medicare-certified, or both, long-term care beds in hospitals for compliance with Title XVIII or XIX of the social security act. [1995 c 282 § 5; 1987 c 476 § 28; 1982 c 120 § 3; 1980 c 184 § 17; 1979 ex.s. c 211 § 60.]

74.42.620 Departmental rules. The department shall adopt rules pursuant to chapter 34.05 RCW necessary to carry out the policies and provisions of RCW 74.42.010 through 74.42.570. The department shall amend or repeal any rules that are in conflict with RCW 74.42.010 through 74.42.570. [1979 ex.s. c 211 § 62.]

74.42.630 Conflict with federal requirements. If any part of chapter 184, Laws of 1980 shall be found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, such conflicting part of this act is hereby declared to be inoperative solely to the extent of such conflict, and such finding or determination shall not affect the operation of the remainder of this act; the rules and regulations under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1980 c 184 § 21.]

74.42.900 Severability—1979 ex.s. c 211. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 211 § 69.]

74.42.910 Construction—Conflict with federal requirements. If any part of this act is found to be in conflict with federal requirements which are a prescribed condition to the allocation of federal funds to the state, the conflicting part of this act is hereby declared to be inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this act in its application to the agencies concerned. The rules under this act shall meet federal requirements which are a necessary condition to the receipt of federal funds by the state. [1979 ex.s. c 211 § 70.]

74.42.920 Chapter 74.42 RCW suspended—Effective date delayed until January 1, 1981. Chapter 74.42 RCW shall be suspended immediately, and its effective date delayed so that it shall take effect on January 1, 1981. [1980 c 184 § 19; 1979 ex.s. c 211 § 72.]

Effective date—1980 c 184 § 19: "Section 19 of this 1980 act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect immediately [April 4, 1980]." [1980 c 184 § 22.]

Chapter 74.46 RCW
NURSING FACILITY MEDICAID
PAYMENT SYSTEM

(Formerly: Nursing home auditing and cost reimbursement act of 1980)

Sections

| | |
|---|--|
| 74.46.010 | Short title—Purpose. |
| 74.46.020 | Definitions. |
| PART A REPORTING | |
| 74.46.030 | Principles of reporting requirements. |
| 74.46.040 | Due dates for cost reports. |
| 74.46.050 | Improperly completed or late cost report—Fines—Adverse rate actions—Rules. |
| 74.46.060 | Completing cost reports and maintaining records. |
| 74.46.080 | Requirements for retention of records by the contractor. |
| 74.46.090 | Retention of cost reports and resident assessment information by the department. |
| 74.46.091 | Additional reporting requirements for quality maintenance fee. |
| PART B AUDIT | |
| 74.46.100 | Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions. |
| PART C SETTLEMENT | |
| 74.46.155 | Reconciliation of medicaid resident days to billed days and medicaid payments—Payments due—Accrued interest—Withholding funds. |
| 74.46.165 | Proposed settlement report—Payment refunds—Overpayments—Determination of unused rate funds—Total and component payment rates. |
| PART D ALLOWABLE COSTS | |
| 74.46.190 | Principles of allowable costs. |
| 74.46.200 | Offset of miscellaneous revenues. |
| 74.46.220 | Payments to related organizations—Limits—Documentation. |
| 74.46.230 | Initial cost of operation. |
| 74.46.240 | Education and training. |
| 74.46.250 | Owner or relative—Compensation. |
| 74.46.270 | Disclosure and approval or rejection of cost allocation. |
| 74.46.280 | Management fees, agreements—Limitation on scope of services. |
| 74.46.290 | Expense for construction interest. |
| 74.46.300 | Operating leases of office equipment—Rules. |
| 74.46.310 | Capitalization. |
| 74.46.320 | Depreciation expense. |
| 74.46.330 | Depreciable assets. |
| 74.46.340 | Land, improvements—Depreciation. |
| 74.46.350 | Methods of depreciation. |
| 74.46.360 | Cost basis of land and depreciation base of depreciable assets. |
| 74.46.370 | Lives of assets. |
| 74.46.380 | Depreciable assets. |
| 74.46.390 | Gains and losses upon replacement of depreciable assets. |
| 74.46.410 | Unallowable costs. |
| PART E RATE SETTING | |
| 74.46.421 | Purpose of part E—Nursing facility medicaid payment rates. |
| 74.46.431 | Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules. |
| 74.46.433 | Variable return component rate allocation. |
| 74.46.435 | Property component rate allocation. |
| 74.46.437 | Financing allowance component rate allocation. |
| 74.46.439 | Facilities leased in arm's-length agreements—Recomputation of financing allowance—Reimbursement for annualized lease payments—Rate adjustment. |
| 74.46.441 | Public disclosure of rate-setting information. |
| 74.46.445 | Contractors—Rate adjustments. |
| 74.46.475 | Submitted cost report—Analysis and adjustment by department. |
| 74.46.485 | Case mix classification methodology. |
| 74.46.496 | Case mix weights—Determination—Revisions. |
| 74.46.501 | Average case mix indexes determined quarterly—Facility average case mix index—Medicaid average case mix index. |

| | |
|-----------|---|
| 74.46.506 | Direct care component rate allocations—Determination—Quarterly updates—Fines. |
| 74.46.508 | Direct care component rate allocation—Increases—Rules. |
| 74.46.511 | Therapy care component rate allocation—Determination. |
| 74.46.515 | Support services component rate allocation—Determination. |
| 74.46.521 | Operations component rate allocation—Determination. |
| 74.46.531 | Department may adjust component rates—Contractor may request—Errors or omissions. |
| 74.46.535 | Quality maintenance fee. |

PART F
BILLING/PAYMENT

| | |
|-----------|--------------------------|
| 74.46.600 | Billing period. |
| 74.46.610 | Billing procedure—Rules. |
| 74.46.620 | Payment. |
| 74.46.625 | Supplemental payments. |
| 74.46.630 | Charges to patients. |
| 74.46.640 | Suspension of payments. |
| 74.46.650 | Termination of payments. |

PART G
ADMINISTRATION

| | |
|-----------|--|
| 74.46.660 | Conditions of participation. |
| 74.46.680 | Change of ownership—Assignment of department's contract. |
| 74.46.690 | Change of ownership—Final reports—Settlement. |

PART H
PATIENT TRUST FUNDS

| | |
|-----------|--|
| 74.46.700 | Resident personal funds—Records—Rules. |
| 74.46.711 | Resident personal funds—Conveyance upon death of resident. |

PART I
MISCELLANEOUS

| | |
|-----------|--|
| 74.46.770 | Contractor appeals—Challenges of laws, rules, or contract provisions—Challenge based on federal law. |
| 74.46.780 | Appeals or exception procedure. |
| 74.46.790 | Denial, suspension, or revocation of license or provisional license—Penalties. |
| 74.46.800 | Rule-making authority. |
| 74.46.803 | Certificate of capital authorization—Rules. |
| 74.46.807 | Capital authorization—Determination. |
| 74.46.820 | Public disclosure. |
| 74.46.835 | AIDS pilot nursing facility—Payment for direct care. |
| 74.46.840 | Conflict with federal requirements. |
| 74.46.900 | Severability—1980 c 177. |
| 74.46.901 | Effective dates—1983 1st ex.s. c 67; 1980 c 177. |
| 74.46.902 | Section captions—1980 c 177. |
| 74.46.905 | Severability—1983 1st ex.s. c 67. |
| 74.46.906 | Effective date—1998 c 322 §§ 1-37, 40-49, and 52-54. |
| 74.46.907 | Severability—1998 c 322. |

74.46.010 Short title—Purpose. This chapter may be known and cited as the "nursing facility medicaid payment system."

The purposes of this chapter are to specify the manner by which legislative appropriations for medicaid nursing facility services are to be allocated as payment rates among nursing facilities, and to set forth auditing, billing, and other administrative standards associated with payments to nursing home facilities. [1998 c 322 § 1; 1980 c 177 § 1.]

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

(1) "Accrual method of accounting" means a method of accounting in which revenues are reported in the period when they are earned, regardless of when they are collected, and expenses are reported in the period in which they are incurred, regardless of when they are paid.

(2) "Appraisal" means the process of estimating the fair market value or reconstructing the historical cost of an asset acquired in a past period as performed by a professionally designated real estate appraiser with no pecuniary interest in

the property to be appraised. It includes a systematic, analytic determination and the recording and analyzing of property facts, rights, investments, and values based on a personal inspection and inventory of the property.

(3) "Arm's-length transaction" means a transaction resulting from good-faith bargaining between a buyer and seller who are not related organizations and have adverse positions in the market place. Sales or exchanges of nursing home facilities among two or more parties in which all parties subsequently continue to own one or more of the facilities involved in the transactions shall not be considered as arm's-length transactions for purposes of this chapter. Sale of a nursing home facility which is subsequently leased back to the seller within five years of the date of sale shall not be considered as an arm's-length transaction for purposes of this chapter.

(4) "Assets" means economic resources of the contractor, recognized and measured in conformity with generally accepted accounting principles.

(5) "Audit" or "department audit" means an examination of the records of a nursing facility participating in the medicaid payment system, including but not limited to: The contractor's financial and statistical records, cost reports and all supporting documentation and schedules, receivables, and resident trust funds, to be performed as deemed necessary by the department and according to department rule.

(6) "Bad debts" means amounts considered to be uncollectible from accounts and notes receivable.

(7) "Beneficial owner" means:

(a) Any person who, directly or indirectly, through any contract, arrangement, understanding, relationship, or otherwise has or shares:

(i) Voting power which includes the power to vote, or to direct the voting of such ownership interest; and/or

(ii) Investment power which includes the power to dispose, or to direct the disposition of such ownership interest;

(b) Any person who, directly or indirectly, creates or uses a trust, proxy, power of attorney, pooling arrangement, or any other contract, arrangement, or device with the purpose or effect of divesting himself or herself of beneficial ownership of an ownership interest or preventing the vesting of such beneficial ownership as part of a plan or scheme to evade the reporting requirements of this chapter;

(c) Any person who, subject to (b) of this subsection, has the right to acquire beneficial ownership of such ownership interest within sixty days, including but not limited to any right to acquire:

(i) Through the exercise of any option, warrant, or right;

(ii) Through the conversion of an ownership interest;

(iii) Pursuant to the power to revoke a trust, discretionary account, or similar arrangement; or

(iv) Pursuant to the automatic termination of a trust, discretionary account, or similar arrangement;

except that, any person who acquires an ownership interest or power specified in (c)(i), (ii), or (iii) of this subsection with the purpose or effect of changing or influencing the control of the contractor, or in connection with or as a participant in any transaction having such purpose or effect, immediately upon such acquisition shall be deemed to be the beneficial owner of the ownership interest which may be acquired through the exercise or conversion of such ownership interest or power;

(d) Any person who in the ordinary course of business is a pledgee of ownership interest under a written pledge agreement shall not be deemed to be the beneficial owner of such pledged ownership interest until the pledgee has taken all formal steps necessary which are required to declare a default and determines that the power to vote or to direct the vote or to dispose or to direct the disposition of such pledged ownership interest will be exercised; except that:

(i) The pledgee agreement is bona fide and was not entered into with the purpose nor with the effect of changing or influencing the control of the contractor, nor in connection with any transaction having such purpose or effect, including persons meeting the conditions set forth in (b) of this subsection; and

(ii) The pledgee agreement, prior to default, does not grant to the pledgee:

(A) The power to vote or to direct the vote of the pledged ownership interest; or

(B) The power to dispose or direct the disposition of the pledged ownership interest, other than the grant of such power(s) pursuant to a pledge agreement under which credit is extended and in which the pledgee is a broker or dealer.

(8) "Capitalization" means the recording of an expenditure as an asset.

(9) "Case mix" means a measure of the intensity of care and services needed by the residents of a nursing facility or a group of residents in the facility.

(10) "Case mix index" means a number representing the average case mix of a nursing facility.

(11) "Case mix weight" means a numeric score that identifies the relative resources used by a particular group of a nursing facility's residents.

(12) "Certificate of capital authorization" means a certification from the department for an allocation from the biennial capital financing authorization for all new or replacement building construction, or for major renovation projects, receiving a certificate of need or a certificate of need exemption under chapter 70.38 RCW after July 1, 2001.

(13) "Contractor" means a person or entity licensed under chapter 18.51 RCW to operate a medicare and medicaid certified nursing facility, responsible for operational decisions, and contracting with the department to provide services to medicaid recipients residing in the facility.

(14) "Default case" means no initial assessment has been completed for a resident and transmitted to the department by the cut-off date, or an assessment is otherwise past due for the resident, under state and federal requirements.

(15) "Department" means the department of social and health services (DSHS) and its employees.

(16) "Depreciation" means the systematic distribution of the cost or other basis of tangible assets, less salvage, over the estimated useful life of the assets.

(17) "Direct care" means nursing care and related care provided to nursing facility residents. Therapy care shall not be considered part of direct care.

(18) "Direct care supplies" means medical, pharmaceutical, and other supplies required for the direct care of a nursing facility's residents.

(19) "Entity" means an individual, partnership, corporation, limited liability company, or any other association of individuals capable of entering enforceable contracts.

(20) "Equity" means the net book value of all tangible and intangible assets less the recorded value of all liabilities, as recognized and measured in conformity with generally accepted accounting principles.

(21) "Essential community provider" means a facility which is the only nursing facility within a commuting distance radius of at least forty minutes duration, traveling by automobile.

(22) "Facility" or "nursing facility" means a nursing home licensed in accordance with chapter 18.51 RCW, excepting nursing homes certified as institutions for mental diseases, or that portion of a multiservice facility licensed as a nursing home, or that portion of a hospital licensed in accordance with chapter 70.41 RCW which operates as a nursing home.

(23) "Fair market value" means the replacement cost of an asset less observed physical depreciation on the date for which the market value is being determined.

(24) "Financial statements" means statements prepared and presented in conformity with generally accepted accounting principles including, but not limited to, balance sheet, statement of operations, statement of changes in financial position, and related notes.

(25) "Generally accepted accounting principles" means accounting principles approved by the financial accounting standards board (FASB).

(26) "Goodwill" means the excess of the price paid for a nursing facility business over the fair market value of all net identifiable tangible and intangible assets acquired, as measured in accordance with generally accepted accounting principles.

(27) "Grouper" means a computer software product that groups individual nursing facility residents into case mix classification groups based on specific resident assessment data and computer logic.

(28) "High labor-cost county" means an urban county in which the median allowable facility cost per case mix unit is more than ten percent higher than the median allowable facility cost per case mix unit among all other urban counties, excluding that county.

(29) "Historical cost" means the actual cost incurred in acquiring and preparing an asset for use, including feasibility studies, architect's fees, and engineering studies.

(30) "Home and central office costs" means costs that are incurred in the support and operation of a home and central office. Home and central office costs include centralized services that are performed in support of a nursing facility. The department may exclude from this definition costs that are nonduplicative, documented, ordinary, necessary, and related to the provision of care services to authorized patients.

(31) "Imprest fund" means a fund which is regularly replenished in exactly the amount expended from it.

(32) "Joint facility costs" means any costs which represent resources which benefit more than one facility, or one facility and any other entity.

(33) "Lease agreement" means a contract between two parties for the possession and use of real or personal property or assets for a specified period of time in exchange for specified periodic payments. Elimination (due to any cause other than death or divorce) or addition of any party to the contract, expiration, or modification of any lease term in effect on Jan-

uary 1, 1980, or termination of the lease by either party by any means shall constitute a termination of the lease agreement. An extension or renewal of a lease agreement, whether or not pursuant to a renewal provision in the lease agreement, shall be considered a new lease agreement. A strictly formal change in the lease agreement which modifies the method, frequency, or manner in which the lease payments are made, but does not increase the total lease payment obligation of the lessee, shall not be considered modification of a lease term.

(34) "Medical care program" or "medicaid program" means medical assistance, including nursing care, provided under RCW 74.09.500 or authorized state medical care services.

(35) "Medical care recipient," "medicaid recipient," or "recipient" means an individual determined eligible by the department for the services provided under chapter 74.09 RCW.

(36) "Minimum data set" means the overall data component of the resident assessment instrument, indicating the strengths, needs, and preferences of an individual nursing facility resident.

(37) "Net book value" means the historical cost of an asset less accumulated depreciation.

(38) "Net invested funds" means the net book value of tangible fixed assets employed by a contractor to provide services under the medical care program, including land, buildings, and equipment as recognized and measured in conformity with generally accepted accounting principles.

(39) "Nonurban county" means a county which is not located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government.

(40) "Operating lease" means a lease under which rental or lease expenses are included in current expenses in accordance with generally accepted accounting principles.

(41) "Owner" means a sole proprietor, general or limited partners, members of a limited liability company, and beneficial interest holders of five percent or more of a corporation's outstanding stock.

(42) "Ownership interest" means all interests beneficially owned by a person, calculated in the aggregate, regardless of the form which such beneficial ownership takes.

(43) "Patient day" or "resident day" means a calendar day of care provided to a nursing facility resident, regardless of payment source, which will include the day of admission and exclude the day of discharge; except that, when admission and discharge occur on the same day, one day of care shall be deemed to exist. A "medicaid day" or "recipient day" means a calendar day of care provided to a medicaid recipient determined eligible by the department for services provided under chapter 74.09 RCW, subject to the same conditions regarding admission and discharge applicable to a patient day or resident day of care.

(44) "Professionally designated real estate appraiser" means an individual who is regularly engaged in the business of providing real estate valuation services for a fee, and who is deemed qualified by a nationally recognized real estate appraisal educational organization on the basis of extensive practical appraisal experience, including the writing of real estate valuation reports as well as the passing of written

examinations on valuation practice and theory, and who by virtue of membership in such organization is required to subscribe and adhere to certain standards of professional practice as such organization prescribes.

(45) "Qualified therapist" means:

(a) A mental health professional as defined by chapter 71.05 RCW;

(b) A mental retardation professional who is a therapist approved by the department who has had specialized training or one year's experience in treating or working with the mentally retarded or developmentally disabled;

(c) A speech pathologist who is eligible for a certificate of clinical competence in speech pathology or who has the equivalent education and clinical experience;

(d) A physical therapist as defined by chapter 18.74 RCW;

(e) An occupational therapist who is a graduate of a program in occupational therapy, or who has the equivalent of such education or training; and

(f) A respiratory care practitioner certified under chapter 18.89 RCW.

(46) "Rate" or "rate allocation" means the medicaid per-patient-day payment amount for medicaid patients calculated in accordance with the allocation methodology set forth in part E of this chapter.

(47) "Real property," whether leased or owned by the contractor, means the building, allowable land, land improvements, and building improvements associated with a nursing facility.

(48) "Rebased rate" or "cost-rebased rate" means a facility-specific component rate assigned to a nursing facility for a particular rate period established on desk-reviewed, adjusted costs reported for that facility covering at least six months of a prior calendar year designated as a year to be used for cost-rebasing payment rate allocations under the provisions of this chapter.

(49) "Records" means those data supporting all financial statements and cost reports including, but not limited to, all general and subsidiary ledgers, books of original entry, and transaction documentation, however such data are maintained.

(50) "Related organization" means an entity which is under common ownership and/or control with, or has control of, or is controlled by, the contractor.

(a) "Common ownership" exists when an entity is the beneficial owner of five percent or more ownership interest in the contractor and any other entity.

(b) "Control" exists where an entity has the power, directly or indirectly, significantly to influence or direct the actions or policies of an organization or institution, whether or not it is legally enforceable and however it is exercisable or exercised.

(51) "Related care" means only those services that are directly related to providing direct care to nursing facility residents. These services include, but are not limited to, nursing direction and supervision, medical direction, medical records, pharmacy services, activities, and social services.

(52) "Resident assessment instrument," including federally approved modifications for use in this state, means a federally mandated, comprehensive nursing facility resident care

planning and assessment tool, consisting of the minimum data set and resident assessment protocols.

(53) "Resident assessment protocols" means those components of the resident assessment instrument that use the minimum data set to trigger or flag a resident's potential problems and risk areas.

(54) "Resource utilization groups" means a case mix classification system that identifies relative resources needed to care for an individual nursing facility resident.

(55) "Restricted fund" means those funds the principal and/or income of which is limited by agreement with or direction of the donor to a specific purpose.

(56) "Secretary" means the secretary of the department of social and health services.

(57) "Support services" means food, food preparation, dietary, housekeeping, and laundry services provided to nursing facility residents.

(58) "Therapy care" means those services required by a nursing facility resident's comprehensive assessment and plan of care, that are provided by qualified therapists, or support personnel under their supervision, including related costs as designated by the department.

(59) "Title XIX" or "medicaid" means the 1965 amendments to the social security act, P.L. 89-07, as amended and the medicaid program administered by the department.

(60) "Urban county" means a county which is located in a metropolitan statistical area as determined and defined by the United States office of management and budget or other appropriate agency or office of the federal government. [2001 1st sp.s. c 8 § 1; 1999 c 353 § 1; 1998 c 322 § 2; 1995 1st sp.s. c 18 § 90; 1993 sp.s. c 13 § 1; 1991 sp.s. c 8 § 11; 1989 c 372 § 17; 1987 c 476 § 6; 1985 c 361 § 16; 1982 c 117 § 1; 1980 c 177 § 2.]

Severability—2001 1st sp.s. c 8: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [2001 1st sp.s. c 8 § 21.]

Effective dates—2001 1st sp.s. c 8: "(1) Sections 1 through 19 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect July 1, 2001.

(2) Section 20 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect June 29, 2001." [2001 1st sp.s. c 8 § 22.]

Effective dates—1999 c 353: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions. Section 11 of this act takes effect immediately [May 17, 1999], and sections 1 through 10 and 12 through 17 take effect July 1, 1999." [1999 c 353 § 18.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective date—1993 sp.s. c 13: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1993." [1993 sp.s. c 13 § 21.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Savings—1985 c 361: "This act shall not be construed as affecting any existing right acquired or any obligation or liability incurred under the statutes amended or repealed by this act or any rule, regulation, or order adopted under those sections, nor as affecting any proceeding instituted under those sections." [1985 c 361 § 20.]

PART A
REPORTING

74.46.030 Principles of reporting requirements. The principle inherent within RCW 74.46.040 through 74.46.090 is that the department shall receive complete, annual reporting of costs and financial condition of the contractor prepared and presented in a standardized manner. [1980 c 177 § 3.]

74.46.040 Due dates for cost reports. (1) Not later than March 31st of each year, each contractor shall submit to the department an annual cost report for the period from January 1st through December 31st of the preceding year.

(2) Not later than one hundred twenty days following the termination or assignment of a contract, the terminating or assigning contractor shall submit to the department a cost report for the period from January 1st through the date the contract was terminated or assigned.

(3) Two extensions of not more than thirty days each may be granted by the department upon receipt of a written request setting forth the circumstances which prohibit the contractor from compliance with a report due date; except, that the department shall establish the grounds for extension in rule. Such request must be received by the department at least ten days prior to the due date. [1998 c 322 § 3; 1985 c 361 § 4; 1983 1st ex.s. c 67 § 1; 1980 c 177 § 4.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.050 Improperly completed or late cost report—Fines—Adverse rate actions—Rules. (1) If the cost report is not properly completed or if it is not received by the due date, all or part of any payments due under the contract may be withheld by the department until such time as the required cost report is properly completed and received.

(2) The department may impose civil fines, or take adverse rate action against contractors and former contractors who do not submit properly completed cost reports by the applicable due date. The department is authorized to adopt rules addressing fines and adverse rate actions including procedures, conditions, and the magnitude and frequency of fines. [1998 c 322 § 4; 1985 c 361 § 5; 1980 c 177 § 5.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.060 Completing cost reports and maintaining records. (1) Cost reports shall be prepared in a standard manner and form, as determined by the department. Costs reported shall be determined in accordance with generally accepted accounting principles, the provisions of this chapter, and such additional rules established by the department. In the event of conflict, rules adopted and instructions issued by the department take precedence over generally accepted accounting principles.

(2) The records shall be maintained on the accrual method of accounting and agree with or be reconcilable to the cost report. All revenue and expense accruals shall be reversed against the appropriate accounts unless they are received or paid, respectively, within one hundred twenty days after the accrual is made. However, if the contractor can document a good faith billing dispute with the supplier or vendor, the period may be extended, but only for those por-

tions of billings subject to good faith dispute. Accruals for vacation, holiday, sick pay, payroll, and real estate taxes may be carried for longer periods, provided the contractor follows generally accepted accounting principles and pays this type of accrual when due. [1998 c 322 § 5; 1985 c 361 § 6; 1983 1st ex.s. c 67 § 2; 1980 c 177 § 6.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.080 Requirements for retention of records by the contractor. (1) All records supporting the required cost reports, as well as trust funds established by RCW 74.46.700, shall be retained by the contractor for a period of four years following the filing of such reports at a location in the state of Washington specified by the contractor.

(2) The department may direct supporting records to be retained for a longer period if there remain unresolved questions on the cost reports. All such records shall be made available upon demand to authorized representatives of the department, the office of the state auditor, and the United States department of health and human services.

(3) When a contract is terminated or assigned, all payments due the terminating or assigning contractor will be withheld until accessibility and preservation of the records within the state of Washington are assured. [1998 c 322 § 6; 1985 c 361 § 7; 1983 1st ex.s. c 67 § 3; 1980 c 177 § 8.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.090 Retention of cost reports and resident assessment information by the department. The department will retain the required cost reports for a period of one year after final settlement or reconciliation, or the period required under chapter 40.14 RCW, whichever is longer. Resident assessment information and records shall be retained as provided elsewhere in statute or by department rule. [1998 c 322 § 7; 1985 c 361 § 8; 1980 c 177 § 9.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.091 Additional reporting requirements for quality maintenance fee. (Contingent expiration date.) (1) By July 1st of each year, each nursing facility operator shall file a report with the department of social and health services listing the patient days and the gross income for the prior calendar year for each nursing facility that he or she operates.

(2) By August 1, 2003, the department of social and health services shall submit for approval to the federal department of health and human services a request for a waiver pursuant to 42 C.F.R. 433.68. The waiver shall identify the nursing facilities that the department proposes to exempt from the quality maintenance fee. Those facilities shall include at least:

(a) Nursing facilities operated by any agency of the state of Washington;

(b) Nursing facilities operated by a public hospital district; and

(c) As many nursing facilities with no or disproportionately low numbers of medicaid-funded residents as, within the judgment of the department, may be exempted from the fee pursuant to 42 C.F.R. 433.68.

(3) The department of social and health services shall notify the department of revenue and the nursing facility

operator of the nursing facilities that would be exempted from the quality maintenance fee pursuant to the waiver request submitted to the federal department of health and human services. The nursing facilities included in the waiver request may withhold payment of the fee pending final action by the federal government on the request for waiver.

(4) If the request for waiver is approved, the department of social and health services shall notify the department of revenue and the nursing facility operator that no quality maintenance fee is due from the facility. If the request for waiver is denied, nursing facility operators who have withheld payment of the fee shall pay all such fees as have been withheld. No interest or penalties shall be due upon such withheld payments for the period during which final federal action was pending.

(5) The department of social and health services shall take whatever action is necessary to continue the waiver from the federal government.

(6) The department of social and health services may adopt such rules, in accordance with chapter 34.05 RCW, as necessary to provide for effective administration of this section and RCW 74.46.535. [2003 1st sp.s. c 16 § 4.]

Contingent expiration date—Severability—Effective date—2003 1st sp.s. c 16: See notes following RCW 82.71.020.

PART B AUDIT

74.46.100 Purposes of department audits—Examination—Incomplete or incorrect reports—Contractor's duties—Access to facility—Fines—Adverse rate actions.

(1) The purposes of department audits under this chapter are to ascertain, through department audit of the financial and statistical records of the contractor's nursing facility operation, that:

(a) Allowable costs for each year for each medicaid nursing facility are accurately reported;

(b) Cost reports accurately reflect the true financial condition, revenues, expenditures, equity, beneficial ownership, related party status, and records of the contractor;

(c) The contractor's revenues, expenditures, and costs of the building, land, land improvements, building improvements, and movable and fixed equipment are recorded in compliance with department requirements, instructions, and generally accepted accounting principles; and

(d) The responsibility of the contractor has been met in the maintenance and disbursement of patient trust funds.

(2) The department shall examine the submitted cost report, or a portion thereof, of each contractor for each nursing facility for each report period to determine if the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and rules as the department may adopt. The department shall determine the scope of the examination.

(3) If the examination finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing component rate allocations or in determining amounts to be recovered in direct care, therapy care, and support services under RCW 74.46.165 (3) and (4) or in any component rate result-

(2004 Ed.)

ing from undocumented or misreported costs. A schedule of the adjustments shall be provided to the contractor, including dollar amount and explanations for the adjustments. Adjustments shall be subject to review if desired by the contractor under the appeals or exception procedure established by the department.

(4) Examinations of resident trust funds and receivables shall be reported separately and in accordance with the provisions of this chapter and rules adopted by the department.

(5) The contractor shall:

(a) Provide access to the nursing facility, all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds. To ensure accuracy, the department may require the contractor to submit for departmental review any underlying financial statements or other records, including income tax returns, relating to the cost report directly or indirectly;

(b) Prepare a reconciliation of the cost report with (i) applicable federal income and federal and state payroll tax returns; and (ii) the records for the period covered by the cost report;

(c) Make available to the department's auditor an individual or individuals to respond to questions and requests for information from the auditor. The designated individual or individuals shall have sufficient knowledge of the issues, operations, or functions to provide accurate and reliable information.

(6) If an examination discloses material discrepancies, undocumented costs, or mishandling of resident trust funds, the department may open or reopen one or both of the two preceding cost report or resident trust fund periods, whether examined or unexamined, for indication of similar discrepancies, undocumented costs, or mishandling of resident trust funds.

(7) Any assets, liabilities, revenues, or expenses reported as allowable that are not supported by adequate documentation in the contractor's records shall be disallowed. Documentation must show both that costs reported were incurred during the period covered by the report and were related to resident care, and that assets reported were used in the provision of resident care.

(8) When access is required at the facility or at another location in the state, the department shall notify a contractor of its intent to examine all financial and statistical records, and all working papers that are in support of the cost report, receivables, and resident trust funds.

(9) The department is authorized to assess civil fines and take adverse rate action if a contractor, or any of its employees, does not allow access to the contractor's nursing facility records.

(10) Part B of this chapter, and rules adopted by the department pursuant thereto prior to January 1, 1998, shall continue to govern the medicaid nursing facility audit process for periods prior to January 1, 1997, as if these statutes and rules remained in full force and effect. [1998 c 322 § 8; 1985 c 361 § 9; 1983 1st ex.s. c 67 § 4; 1980 c 177 § 10.]

Savings—1985 c 361: See note following RCW 74.46.020.

PART C
SETTLEMENT

74.46.155 Reconciliation of medicaid resident days to billed days and medicaid payments—Payments due—Accrued interest—Withholding funds. (1) The department shall reconcile medicaid resident days to billed days and medicaid payments for each medicaid nursing facility for the preceding calendar year, or for that portion of the calendar year the provider's contract was in effect.

(2) The contractor shall make any payment owed the department, determined by the process of reconciliation, by the process of settlement at the lower of cost or rate in direct care, therapy care, and support services component rate allocations, as authorized in this chapter, within sixty days after notification and demand for payment is sent to the contractor.

(3) The department shall make any payment due the contractor within sixty days after it determines the underpayment exists and notification is sent to the contractor.

(4) Interest at the rate of one percent per month accrues against the department or the contractor on an unpaid balance existing sixty days after notification is sent to the contractor. Accrued interest shall be adjusted back to the date it began to accrue if the payment obligation is subsequently revised after administrative or judicial review.

(5) The department is authorized to withhold funds from the contractor's payment for services, and to take all other actions authorized by law, to recover amounts due and payable from the contractor, including any accrued interest. Neither a timely filed request to pursue any administrative appeals or exception procedure that the department may establish in rule, nor commencement of judicial review as may be available to the contractor in law, to contest a payment obligation determination shall delay recovery from the contractor or payment to the contractor. [1998 c 322 § 9.]

74.46.165 Proposed settlement report—Payment refunds—Overpayments—Determination of unused rate funds—Total and component payment rates. (1) Contractors shall be required to submit with each annual nursing facility cost report a proposed settlement report showing underspending or overspending in each component rate during the cost report year on a per-resident day basis. The department shall accept or reject the proposed settlement report, explain any adjustments, and issue a revised settlement report if needed.

(2) Contractors shall not be required to refund payments made in the operations, variable return, property, and financing allowance component rates in excess of the adjusted costs of providing services corresponding to these components.

(3) The facility will return to the department any overpayment amounts in each of the direct care, therapy care, and support services rate components that the department identifies following the audit and settlement procedures as described in this chapter, provided that the contractor may retain any overpayment that does not exceed 1.0% of the facility's direct care, therapy care, and support services component rate. However, no overpayments may be retained in a cost center to which savings have been shifted to cover a deficit, as provided in subsection (4) of this section. Facilities

that are not in substantial compliance for more than ninety days, and facilities that provide substandard quality of care at any time, during the period for which settlement is being calculated, will not be allowed to retain any amount of overpayment in the facility's direct care, therapy care, and support services component rate. The terms "not in substantial compliance" and "substandard quality of care" shall be defined by federal survey regulations.

(4) Determination of unused rate funds, including the amounts of direct care, therapy care, and support services to be recovered, shall be done separately for each component rate, and, except as otherwise provided in this subsection, neither costs nor rate payments shall be shifted from one component rate or corresponding service area to another in determining the degree of underspending or recovery, if any. In computing a preliminary or final settlement, savings in the support services cost center shall be shifted to cover a deficit in the direct care or therapy cost centers up to the amount of any savings, but no more than twenty percent of the support services component rate may be shifted. In computing a preliminary or final settlement, savings in direct care and therapy care may be shifted to cover a deficit in these two cost centers up to the amount of savings in each, regardless of the percentage of either component rate shifted. Contractor-retained overpayments up to one percent of direct care, therapy care, and support services rate components, as authorized in subsection (3) of this section, shall be calculated and applied after all shifting is completed.

(5) Total and component payment rates assigned to a nursing facility, as calculated and revised, if needed, under the provisions of this chapter and those rules as the department may adopt, shall represent the maximum payment for nursing facility services rendered to medicaid recipients for the period the rates are in effect. No increase in payment to a contractor shall result from spending above the total payment rate or in any rate component.

(6) *RCW 74.46.150 through 74.46.180, and rules adopted by the department prior to July 1, 1998, shall continue to govern the medicaid settlement process for periods prior to October 1, 1998, as if these statutes and rules remained in full force and effect.

(7) For calendar year 1998, the department shall calculate split settlements covering January 1, 1998, through September 30, 1998, and October 1, 1998, through December 31, 1998. For the period beginning October 1, 1998, rules specified in this chapter shall apply. The department shall, by rule, determine the division of calendar year 1998 adjusted costs for settlement purposes. [2001 1st sp.s. c 8 § 2; 1998 c 322 § 10.]

***Reviser's note:** RCW 74.46.150 through 74.46.180 were repealed by 1998 c 322 § 52, effective July 1, 1998.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

PART D
ALLOWABLE COSTS

74.46.190 Principles of allowable costs. (1) The substance of a transaction will prevail over its form.

(2) All documented costs which are ordinary, necessary, related to care of medical care recipients, and not expressly

unallowable under this chapter or department rule, are to be allowable. Costs of providing therapy care are allowable, subject to any applicable limit contained in this chapter, provided documentation establishes the costs were incurred for medical care recipients and other sources of payment to which recipients may be legally entitled, such as private insurance or medicare, were first fully utilized.

(3) The payment for property usage is to be independent of ownership structure and financing arrangements.

(4) Allowable costs shall not include costs reported by a contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the nursing facility in the period to be covered by the rate.

(5) Any costs deemed allowable under this chapter are subject to the provisions of RCW 74.46.421. The allowability of a cost shall not be construed as creating a legal right or entitlement to reimbursement of the cost. [1998 c 322 § 11; 1995 1st sp.s. c 18 § 96; 1983 1st ex.s. c 67 § 12; 1980 c 177 § 19.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.46.200 Offset of miscellaneous revenues. (1) Allowable costs shall be reduced by the contractor whenever the item, service, or activity covered by such costs generates revenue or financial benefits other than through the contractor's normal billing for care services; except that, unrestricted grants, gifts, and endowments, and interest therefrom, will not be deducted from the allowable costs of a nonprofit facility.

(2) Where goods or services are sold, the amount of the reduction shall be the actual cost relating to the item, service, or activity. In the absence of adequate documentation of cost, it shall be the full amount of the revenue received. Where financial benefits such as purchase discounts or rebates are received, the amount of the reduction shall be the amount of the discount or rebate. [1980 c 177 § 20.]

74.46.220 Payments to related organizations—Limits—Documentation. (1) Costs applicable to services, facilities, and supplies furnished by a related organization to the contractor shall be allowable only to the extent they do not exceed the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere.

(2) Documentation of costs to the related organization shall be made available to the department. Payments to or for the benefit of the related organization will be disallowed where the cost to the related organization cannot be documented. [1998 c 322 § 12; 1980 c 177 § 22.]

74.46.230 Initial cost of operation. (1) The necessary and ordinary one-time expenses directly incident to the preparation of a newly constructed or purchased building by a contractor for operation as a licensed facility shall be allowable costs. These expenses shall be limited to start-up and organizational costs incurred prior to the admission of the first patient.

(2) Start-up costs shall include, but not be limited to, administrative and nursing salaries, utility costs, taxes, insur-

(2004 Ed.)

ance, repairs and maintenance, and training; except, that they shall exclude expenditures for capital assets. These costs will be allowable in the operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care.

(3) Organizational costs are those necessary, ordinary, and directly incident to the creation of a corporation or other form of business of the contractor including, but not limited to, legal fees incurred in establishing the corporation or other organization and fees paid to states for incorporation; except, that they do not include costs relating to the issuance and sale of shares of capital stock or other securities. Such organizational costs will be allowable in the operations cost center if they are amortized over a period of not less than sixty months beginning with the month in which the first patient is admitted for care. [1998 c 322 § 13; 1993 sp.s. c 13 § 3; 1980 c 177 § 23.]

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

74.46.240 Education and training. (1) Necessary and ordinary expenses of on-the-job training and in-service training required for employee orientation and certification training directly related to the performance of duties assigned will be allowable costs.

(2) Necessary and ordinary expenses of recreational and social activity training conducted by the contractor for volunteers will be allowable costs. [1980 c 177 § 24.]

74.46.250 Owner or relative—Compensation. (1) Total compensation of an owner or relative of an owner shall be limited to ordinary compensation for necessary services actually performed.

(a) Compensation is ordinary if it is the amount usually paid for comparable services in a comparable facility to an unrelated employee, and does not exceed limits set out in this chapter.

(b) A service is necessary if it is related to patient care and would have had to be performed by another person if the owner or relative had not done it.

(2) The contractor, in maintaining customary time records adequate for audit, shall include such records for owners and relatives who receive compensation. [1980 c 177 § 25.]

74.46.270 Disclosure and approval or rejection of cost allocation. (1) The contractor shall disclose to the department:

(a) The nature and purpose of all costs which represent allocations of joint facility costs; and

(b) The methodology of the allocation utilized.

(2) Such disclosure shall demonstrate that:

(a) The services involved are necessary and nonduplicative; and

(b) Costs are allocated in accordance with benefits received from the resources represented by those costs.

(3) Such disclosure shall be made not later than September 30th for the following calendar year; except that a new contractor shall submit the first year's disclosure at least sixty days prior to the date the new contract becomes effective.

(4) The department shall by December 31st, for all disclosures that are complete and timely submitted, either approve or reject the disclosure. The department may request additional information or clarification.

(5) Acceptance of a disclosure or approval of a joint cost methodology by the department may not be construed as a determination that the allocated costs are allowable in whole or in part. However, joint facility costs not disclosed, allocated, and reported in conformity with this section and department rules are unallowable.

(6) An approved methodology may be revised or amended subject to approval as provided in rules and regulations adopted by the department. [1998 c 322 § 14; 1983 1st ex.s. c 67 § 13; 1980 c 177 § 27.]

74.46.280 Management fees, agreements—Limitation on scope of services. (1) Management fees will be allowed only if:

(a) A written management agreement both creates a principal/agent relationship between the contractor and the manager, and sets forth the items, services, and activities to be provided by the manager; and

(b) Documentation demonstrates that the services contracted for were actually delivered.

(2) To be allowable, fees must be for necessary, non-duplicative services.

(3) A management fee paid to or for the benefit of a related organization will be allowable to the extent it does not exceed the lower of the actual cost to the related organization of providing necessary services related to patient care under the agreement or the cost of comparable services purchased elsewhere. Where costs to the related organization represent joint facility costs, the measurement of such costs shall comply with RCW 74.46.270.

(4) A copy of the agreement must be received by the department at least sixty days before it is to become effective. A copy of any amendment to a management agreement must also be received by the department at least thirty days in advance of the date it is to become effective. Failure to meet these deadlines will result in the unallowability of cost incurred more than sixty days prior to submitting a management agreement and more than thirty days prior to submitting an amendment.

(5) The scope of services to be performed under a management agreement cannot be so extensive that the manager or managing entity is substituted for the contractor in fact, substantially relieving the contractor/licensee of responsibility for operating the facility. [1998 c 322 § 15; 1993 sp.s. c 13 § 4; 1980 c 177 § 28.]

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

74.46.290 Expense for construction interest. (1) Interest expense and loan origination fees relating to construction of a facility incurred during the period of construction shall be capitalized and amortized over the life of the facility pursuant to RCW 74.46.360. The period of construction shall extend from the date of the construction loan to the date the facility is put into service for patient care.

(2) For the purposes of this chapter, the period provided for in subsection (1) of this section shall not exceed the

project certificate of need time period pursuant to RCW 70.38.125. [1980 c 177 § 29.]

74.46.300 Operating leases of office equipment—Rules. Rental or lease costs under arm's-length operating leases of office equipment shall be allowable to the extent the cost is necessary and ordinary. The department may adopt rules to limit the allowability of office equipment leasing expenses. [1998 c 322 § 16; 1980 c 177 § 30.]

Effective dates—1980 c 177: See RCW 74.46.901.

74.46.310 Capitalization. The following costs shall be capitalized:

(1) Expenses for facilities or equipment with historical cost in excess of seven hundred fifty dollars per unit and a useful life of more than one year from the date of purchase; and

(2) Expenses for equipment with historical cost of seven hundred fifty dollars or less per unit if either:

(a) The item was acquired in a group purchase where the total cost exceeded seven hundred fifty dollars; or

(b) The item was part of the initial stock of the facility.

(3) Dollar limits in this section may be adjusted for economic trends and conditions by the department as established by rule and regulation. [1983 1st ex.s. c 67 § 16; 1980 c 177 § 31.]

74.46.320 Depreciation expense. Depreciation expense on depreciable assets which are required in the regular course of providing patient care will be an allowable cost. It shall be computed using the depreciation base, lives, and methods specified in this chapter. [1980 c 177 § 32.]

74.46.330 Depreciable assets. Tangible assets of the following types in which a contractor has an interest through ownership or leasing are subject to depreciation:

(1) Building - the basic structure or shell and additions thereto;

(2) Building fixed equipment - attachments to buildings, including, but not limited to, wiring, electrical fixtures, plumbing, elevators, heating system, and air conditioning system. The general characteristics of this equipment are:

(a) Affixed to the building and not subject to transfer; and

(b) A fairly long life, but shorter than the life of the building to which affixed;

(3) Major movable equipment including, but not limited to, beds, wheelchairs, desks, and x-ray machines. The general characteristics of this equipment are:

(a) A relatively fixed location in the building;

(b) Capable of being moved as distinguished from building equipment;

(c) A unit cost sufficient to justify ledger control;

(d) Sufficient size and identity to make control feasible by means of identification tags; and

(e) A minimum life greater than one year;

(4) Minor equipment including, but not limited to, waste baskets, bed pans, syringes, catheters, silverware, mops, and buckets which are properly capitalized. No depreciation shall be taken on items which are not properly capitalized as

directed in RCW 74.46.310. The general characteristics of minor equipment are:

- (a) In general, no fixed location and subject to use by various departments;
 - (b) Small in size and unit cost;
 - (c) Subject to inventory control;
 - (d) Large number in use; and
 - (e) Generally, a useful life of one to three years;
- (5) Land improvements including, but not limited to, paving, tunnels, underpasses, on-site sewer and water lines, parking lots, shrubbery, fences, and walls where replacement is the responsibility of the contractor; and
- (6) Leasehold improvements - betterments and additions made by the lessee to the leased property, which become the property of the lessor after the expiration of the lease. [1980 c 177 § 33.]

74.46.340 Land, improvements—Depreciation. Land is not depreciable. The cost of land includes but is not limited to, off-site sewer and water lines, public utility charges necessary to service the land, governmental assessments for street paving and sewers, the cost of permanent roadways and grading of a nondepreciable nature, and the cost of curbs and sidewalks, replacement of which is not the responsibility of the contractor. [1980 c 177 § 34.]

74.46.350 Methods of depreciation. (1) Buildings, land improvements, and fixed equipment shall be depreciated using the straight-line method of depreciation. For new or replacement building construction or for major renovations, either of which receives certificate of need approval or certificate of need exemption under chapter 70.38 RCW on or after July 1, 1999, the number of years used to depreciate fixed equipment shall be the same number of years as the life of the building to which it is affixed. Major-minor equipment shall be depreciated using either the straight-line method, the sum-of-the-years' digits method, or declining balance method not to exceed one hundred fifty percent of the straight line rate. Contractors who have elected to take either the sum-of-the-years' digits method or the declining balance method of depreciation on major-minor equipment may change to the straight-line method without permission of the department.

(2) The annual provision for depreciation shall be reduced by the portion allocable to use of the asset for purposes which are neither necessary nor related to patient care.

(3) No further depreciation shall be claimed after an asset has been fully depreciated unless a new depreciation base is established pursuant to RCW 74.46.360. [1999 c 353 § 13; 1980 c 177 § 35.]

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.360 Cost basis of land and depreciation base of depreciable assets. (1) For all partial or whole rate periods after December 31, 1984, the cost basis of land and depreciation base of depreciable assets shall be the historical cost of the contractor or lessor, when the assets are leased by the contractor, in acquiring the asset in an arm's-length transaction and preparing it for use, less goodwill, and less accumulated depreciation, if applicable, which has been incurred during periods that the assets have been used in or as a facility by

any contractor, such accumulated depreciation to be measured in accordance with subsections (4), (5), and (6) of this section and *RCW 74.46.350 and 74.46.370. If the department challenges the historical cost of an asset, or if the contractor cannot or will not provide the historical costs, the department will have the department of general administration, through an appraisal procedure, determine the fair market value of the assets at the time of purchase. The cost basis of land and depreciation base of depreciable assets will not exceed such fair market value.

(2) For new or replacement building construction or for substantial building additions requiring the acquisition of land and which commenced to operate on or after July 1, 1997, the department shall determine allowable land costs of the additional land acquired for the replacement construction or building additions to be the lesser of:

- (a) The contractor's or lessor's actual cost per square foot; or
- (b) The square foot land value as established by an appraisal that meets the latest publication of the Uniform Standards of Professional Appraisal Practice (USPAP) and the financial institutions reform, recovery, and enhancement act (FIRREA).

(3) Subject to the provisions of subsection (2) of this section, if, in the course of financing a project, an arm's-length lender has ordered a Uniform Standards of Professional Appraisal Practice appraisal on the land that meets financial institutions reform, recovery, and enhancement act standards and the arm's-length lender has accepted the ordered appraisal, the department shall accept the appraisal value as allowable land costs for calculation of payment.

If the contractor or lessor is unable or unwilling to provide or cause to be provided to the department, or the department is unable to obtain from the arm's-length lender, a lender-approved appraisal that meets the standards of the Uniform Standards of Professional Appraisal Practice and financial institutions reform, recovery, and enhancement act, the department shall order such an appraisal and accept the appraisal as the allowable land costs. If the department orders the Uniform Standards of Professional Appraisal Practice and financial institutions reform, recovery, and enhancement act appraisal, the contractor shall immediately reimburse the department for the costs incurred.

(4) The historical cost of depreciable and nondepreciable donated assets, or of depreciable and nondepreciable assets received through testate or intestate distribution, shall be the lesser of:

- (a) Fair market value at the date of donation or death; or
- (b) The historical cost base of the owner last contracting with the department, if any.

(5) Estimated salvage value of acquired, donated, or inherited assets shall be deducted from historical cost where the straight-line or sum-of-the-years' digits method of depreciation is used.

(6)(a) For facilities, other than those described under subsection (2) of this section, operating prior to July 1, 1997, where land or depreciable assets are acquired that were used in the medical care program subsequent to January 1, 1980, the cost basis or depreciation base of the assets will not exceed the net book value which did exist or would have existed had the assets continued in use under the previous

contract with the department; except that depreciation shall not be assumed to accumulate during periods when the assets were not in use in or as a facility.

(b) The provisions of (a) of this subsection shall not apply to the most recent arm's-length acquisition if it occurs at least ten years after the ownership of the assets has been previously transferred in an arm's-length transaction nor to the first arm's-length acquisition that occurs after January 1, 1980, for facilities participating in the medical care program prior to January 1, 1980. The new cost basis or depreciation base for such acquisitions shall not exceed the fair market value of the assets as determined by the department of general administration through an appraisal procedure. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such determination is shown to be arbitrary and capricious. For all partial or whole rate periods after July 17, 1984, this subsection is inoperative for any transfer of ownership of any asset, depreciable or nondepreciable, occurring on or after July 18, 1984, leaving (a) of this subsection to apply alone to such transfers: **PROVIDED, HOWEVER,** That this subsection shall apply to transfers of ownership of assets occurring prior to January 1, 1985, if the costs of such assets have never been reimbursed under medicaid cost reimbursement on an owner-operated basis or as a related-party lease: **PROVIDED FURTHER,** That for any contractor that can document in writing an enforceable agreement for the purchase of a nursing home dated prior to July 18, 1984, and submitted to the department prior to January 1, 1988, the cost basis of allowable land and the depreciation base of the nursing home, for rates established after July 18, 1984, shall not exceed the fair market value of the assets at the date of purchase as determined by the department of general administration through an appraisal procedure. For medicaid cost reimbursement purposes, an agreement to purchase a nursing home dated prior to July 18, 1984, is enforceable, even though such agreement contains no legal description of the real property involved, notwithstanding the statute of frauds or any other provision of law.

(c) In the case of land or depreciable assets leased by the same contractor since January 1, 1980, in an arm's-length lease, and purchased by the lessee/contractor, the lessee/contractor shall have the option:

(i) To have the provisions of subsection (b) of this section apply to the purchase; or

(ii) To have the reimbursement for property and financing allowance calculated pursuant to this chapter based upon the provisions of the lease in existence on the date of the purchase, but only if the purchase date meets one of the following criteria:

(A) The purchase date is after the lessor has declared bankruptcy or has defaulted in any loan or mortgage held against the leased property;

(B) The purchase date is within one year of the lease expiration or renewal date contained in the lease;

(C) The purchase date is after a rate setting for the facility in which the reimbursement rate set pursuant to this chapter no longer is equal to or greater than the actual cost of the lease; or

(D) The purchase date is within one year of any purchase option in existence on January 1, 1988.

(d) For all rate periods past or future where land or depreciable assets are acquired from a related organization, the contractor's cost basis and depreciation base shall not exceed the base the related organization had or would have had under a contract with the department.

(e) Where the land or depreciable asset is a donation or distribution between related organizations, the cost basis or depreciation base shall be the lesser of (i) fair market value, less salvage value, or (ii) the cost basis or depreciation base the related organization had or would have had for the asset under a contract with the department. [1999 c 353 § 2; 1997 c 277 § 1; 1991 sp.s. c 8 § 18; 1989 c 372 § 14. Prior: 1988 c 221 § 1; 1988 c 208 § 1; 1986 c 175 § 1; 1980 c 177 § 36.]

***Reviser's note:** RCW 74.46.350 and 74.46.370 were repealed by 1999 c 353 § 17, effective June 30, 2001.

Effective dates—1999 c 353: See note following RCW 74.46.020.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Effective dates—1980 c 177: See RCW 74.46.901.

74.46.370 Lives of assets. (1) Except for new buildings, major remodels, and major repair projects, as defined in subsection (2) of this section, the contractor shall use lives which reflect the estimated actual useful life of the asset and which shall be no shorter than guideline lives as established by the department. Lives shall be measured from the date on which the assets were first used in the medical care program or from the date of the most recent arm's-length acquisition of the asset, whichever is more recent. In cases where RCW 74.46.360(6)(a) does apply, the shortest life that may be used for buildings is the remaining useful life under the prior contract. In all cases, lives shall be extended to reflect periods, if any, when assets were not used in or as a facility.

(2) Effective July 1, 1997, for asset acquisitions and new facilities, major remodels, and major repair projects that begin operations on or after July 1, 1997, the department shall use the most current edition of Estimated Useful Lives of Depreciable Hospital Assets, or as it may be renamed, published by the American Hospital Publishing, Inc., an American hospital association company, for determining the useful life of new buildings, major remodels, and major repair projects, however, the shortest life that may be used for new buildings receiving certificate of need approval or certificate of need exemptions under chapter 70.38 RCW on or after July 1, 1999, is forty years. New buildings, major remodels, and major repair projects include those projects that meet or exceed the expenditure minimum established by the department of health pursuant to chapter 70.38 RCW.

(3) Building improvements, other than major remodels and major repairs, shall be depreciated over the remaining useful life of the building, as modified by the improvement.

(4) Improvements to leased property which are the responsibility of the contractor under the terms of the lease shall be depreciated over the useful life of the improvement.

(5) A contractor may change the estimate of an asset's useful life to a longer life for purposes of depreciation.

(6) For new or replacement building construction or for major renovations, either of which receives certificate of need approval or certificate of need exemption under chapter 70.38 RCW on or after July 1, 1999, the number of years used to depreciate fixed equipment shall be the same number of

years as the life of the building to which it is affixed. [1999 c 353 § 14; 1997 c 277 § 2; 1980 c 177 § 37.]

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.380 Depreciable assets. (1) Where depreciable assets are disposed of through sale, trade-in, scrapping, exchange, theft, wrecking, or fire or other casualty, depreciation shall no longer be taken on the assets. No further depreciation shall be taken on permanently abandoned assets.

(2) Where an asset has been retired from active use but is being held for stand-by or emergency service, and the department has determined that it is needed and can be effectively used in the future, depreciation may be taken. [1993 sp.s. c 13 § 5; 1991 sp.s. c 8 § 12; 1980 c 177 § 38.]

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

74.46.390 Gains and losses upon replacement of depreciable assets. If the retired asset is replaced, the gain or loss shall be applied against or added to the cost of the replacement asset, provided that a loss will only be so applied if the contractor has made a reasonable effort to recover at least the outstanding book value of the asset. [1980 c 177 § 39.]

74.46.410 Unallowable costs. (1) Costs will be unallowable if they are not documented, necessary, ordinary, and related to the provision of care services to authorized patients.

(2) Unallowable costs include, but are not limited to, the following:

(a) Costs of items or services not covered by the medical care program. Costs of such items or services will be unallowable even if they are indirectly reimbursed by the department as the result of an authorized reduction in patient contribution;

(b) Costs of services and items provided to recipients which are covered by the department's medical care program but not included in the medicaid per-resident day payment rate established by the department under this chapter;

(c) Costs associated with a capital expenditure subject to section 1122 approval (part 100, Title 42 C.F.R.) if the department found it was not consistent with applicable standards, criteria, or plans. If the department was not given timely notice of a proposed capital expenditure, all associated costs will be unallowable up to the date they are determined to be reimbursable under applicable federal regulations;

(d) Costs associated with a construction or acquisition project requiring certificate of need approval, or exemption from the requirements for certificate of need for the replacement of existing nursing home beds, pursuant to chapter 70.38 RCW if such approval or exemption was not obtained;

(e) Interest costs other than those provided by RCW 74.46.290 on and after January 1, 1985;

(f) Salaries or other compensation of owners, officers, directors, stockholders, partners, principals, participants, and others associated with the contractor or its home office, including all board of directors' fees for any purpose, except reasonable compensation paid for service related to patient care;

(g) Costs in excess of limits or in violation of principles set forth in this chapter;

(h) Costs resulting from transactions or the application of accounting methods which circumvent the principles of the payment system set forth in this chapter;

(i) Costs applicable to services, facilities, and supplies furnished by a related organization in excess of the lower of the cost to the related organization or the price of comparable services, facilities, or supplies purchased elsewhere;

(j) Bad debts of non-Title XIX recipients. Bad debts of Title XIX recipients are allowable if the debt is related to covered services, it arises from the recipient's required contribution toward the cost of care, the provider can establish that reasonable collection efforts were made, the debt was actually uncollectible when claimed as worthless, and sound business judgment established that there was no likelihood of recovery at any time in the future;

(k) Charity and courtesy allowances;

(l) Cash, assessments, or other contributions, excluding dues, to charitable organizations, professional organizations, trade associations, or political parties, and costs incurred to improve community or public relations;

(m) Vending machine expenses;

(n) Expenses for barber or beautician services not included in routine care;

(o) Funeral and burial expenses;

(p) Costs of gift shop operations and inventory;

(q) Personal items such as cosmetics, smoking materials, newspapers and magazines, and clothing, except those used in patient activity programs;

(r) Fund-raising expenses, except those directly related to the patient activity program;

(s) Penalties and fines;

(t) Expenses related to telephones, radios, and similar appliances in patients' private accommodations;

(u) Televisions acquired prior to July 1, 2001;

(v) Federal, state, and other income taxes;

(w) Costs of special care services except where authorized by the department;

(x) Expenses of an employee benefit not in fact made available to all employees on an equal or fair basis, for example, key-man insurance and other insurance or retirement plans;

(y) Expenses of profit-sharing plans;

(z) Expenses related to the purchase and/or use of private or commercial airplanes which are in excess of what a prudent contractor would expend for the ordinary and economic provision of such a transportation need related to patient care;

(aa) Personal expenses and allowances of owners or relatives;

(bb) All expenses of maintaining professional licenses or membership in professional organizations;

(cc) Costs related to agreements not to compete;

(dd) Amortization of goodwill, lease acquisition, or any other intangible asset, whether related to resident care or not, and whether recognized under generally accepted accounting principles or not;

(ee) Expenses related to vehicles which are in excess of what a prudent contractor would expend for the ordinary and economic provision of transportation needs related to patient care;

(ff) Legal and consultant fees in connection with a fair hearing against the department where a decision is rendered in favor of the department or where otherwise the determination of the department stands;

(gg) Legal and consultant fees of a contractor or contractors in connection with a lawsuit against the department;

(hh) Lease acquisition costs, goodwill, the cost of bed rights, or any other intangible assets;

(ii) All rental or lease costs other than those provided in RCW 74.46.300 on and after January 1, 1985;

(jj) Postsurvey charges incurred by the facility as a result of subsequent inspections under RCW 18.51.050 which occur beyond the first postsurvey visit during the certification survey calendar year;

(kk) Compensation paid for any purchased nursing care services, including registered nurse, licensed practical nurse, and nurse assistant services, obtained through service contract arrangement in excess of the amount of compensation paid for such hours of nursing care service had they been paid at the average hourly wage, including related taxes and benefits, for in-house nursing care staff of like classification at the same nursing facility, as reported in the most recent cost report period;

(ll) For all partial or whole rate periods after July 17, 1984, costs of land and depreciable assets that cannot be reimbursed under the Deficit Reduction Act of 1984 and implementing state statutory and regulatory provisions;

(mm) Costs reported by the contractor for a prior period to the extent such costs, due to statutory exemption, will not be incurred by the contractor in the period to be covered by the rate;

(nn) Costs of outside activities, for example, costs allocated to the use of a vehicle for personal purposes or related to the part of a facility leased out for office space;

(oo) Travel expenses outside the states of Idaho, Oregon, and Washington and the province of British Columbia. However, travel to or from the home or central office of a chain organization operating a nursing facility is allowed whether inside or outside these areas if the travel is necessary, ordinary, and related to resident care;

(pp) Moving expenses of employees in the absence of demonstrated, good-faith effort to recruit within the states of Idaho, Oregon, and Washington, and the province of British Columbia;

(qq) Depreciation in excess of four thousand dollars per year for each passenger car or other vehicle primarily used by the administrator, facility staff, or central office staff;

(rr) Costs for temporary health care personnel from a nursing pool not registered with the secretary of the department of health;

(ss) Payroll taxes associated with compensation in excess of allowable compensation of owners, relatives, and administrative personnel;

(tt) Costs and fees associated with filing a petition for bankruptcy;

(uu) All advertising or promotional costs, except reasonable costs of help wanted advertising;

(vv) Outside consultation expenses required to meet department-required minimum data set completion proficiency;

(ww) Interest charges assessed by any department or agency of this state for failure to make a timely refund of overpayments and interest expenses incurred for loans obtained to make the refunds;

(xx) All home office or central office costs, whether on or off the nursing facility premises, and whether allocated or not to specific services, in excess of the median of those adjusted costs for all facilities reporting such costs for the most recent report period; and

(yy) Tax expenses that a nursing facility has never incurred. [2001 1st sp.s. c 8 § 3; 1998 c 322 § 17; 1995 1st sp.s. c 18 § 97; 1993 sp.s. c 13 § 6; 1991 sp.s. c 8 § 15; 1989 c 372 § 2; 1986 c 175 § 3; 1983 1st ex.s. c 67 § 17; 1980 c 177 § 41.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective date—1993 sp.s. c 13: See note following RCW 74.46.020.

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

Effective date—1989 c 372 § 2: "Section 2 of this act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 c 372 § 19.]

PART E RATE SETTING

74.46.421 Purpose of part E—Nursing facility medic-aid payment rates. (1) The purpose of part E of this chapter is to determine nursing facility Medicaid payment rates that, in the aggregate for all participating nursing facilities, are in accordance with the biennial appropriations act.

(2)(a) The department shall use the nursing facility Medicaid payment rate methodologies described in this chapter to determine initial component rate allocations for each Medicaid nursing facility.

(b) The initial component rate allocations shall be subject to adjustment as provided in this section in order to assure that the statewide average payment rate to nursing facilities is less than or equal to the statewide average payment rate specified in the biennial appropriations act.

(3) Nothing in this chapter shall be construed as creating a legal right or entitlement to any payment that (a) has not been adjusted under this section or (b) would cause the statewide average payment rate to exceed the statewide average payment rate specified in the biennial appropriations act.

(4)(a) The statewide average payment rate for any state fiscal year under the nursing facility payment system, weighted by patient days, shall not exceed the annual statewide weighted average nursing facility payment rate identified for that fiscal year in the biennial appropriations act.

(b) If the department determines that the weighted average nursing facility payment rate calculated in accordance with this chapter is likely to exceed the weighted average nursing facility payment rate identified in the biennial appropriations act, then the department shall adjust all nursing facility payment rates proportional to the amount by which the weighted average rate allocations would otherwise exceed the budgeted rate amount. Any such adjustments shall only be made prospectively, not retrospectively, and shall be

applied proportionately to each component rate allocation for each facility. [2001 1st sp.s. c 8 § 4; 1999 c 353 § 3; 1998 c 322 § 18.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.431 Nursing facility medicaid payment rate allocations—Components—Minimum wage—Rules. (1) Effective July 1, 1999, nursing facility medicaid payment rate allocations shall be facility-specific and shall have seven components: Direct care, therapy care, support services, operations, property, financing allowance, and variable return. The department shall establish and adjust each of these components, as provided in this section and elsewhere in this chapter, for each medicaid nursing facility in this state.

(2) All component rate allocations for essential community providers as defined in this chapter shall be based upon a minimum facility occupancy of eighty-five percent of licensed beds, regardless of how many beds are set up or in use. For all facilities other than essential community providers, effective July 1, 2001, component rate allocations in direct care, therapy care, support services, variable return, operations, property, and financing allowance shall continue to be based upon a minimum facility occupancy of eighty-five percent of licensed beds. For all facilities other than essential community providers, effective July 1, 2002, the component rate allocations in operations, property, and financing allowance shall be based upon a minimum facility occupancy of ninety percent of licensed beds, regardless of how many beds are set up or in use.

(3) Information and data sources used in determining medicaid payment rate allocations, including formulas, procedures, cost report periods, resident assessment instrument formats, resident assessment methodologies, and resident classification and case mix weighting methodologies, may be substituted or altered from time to time as determined by the department.

(4)(a) Direct care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, direct care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2005, direct care component rate allocations.

(b) Direct care component rate allocations based on 1996 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(c) Direct care component rate allocations based on 1999 cost report data shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act. A different economic trends and conditions adjustment factor or factors may be defined in the biennial appropriations act for facilities whose direct care component rate is set equal to their adjusted June 30, 1998, rate, as provided in RCW 74.46.506(5)(i).

(5)(a) Therapy care component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 will be used for October 1, 1998, through June 30, 2001, therapy care component rate allocations; adjusted cost report data from 1999 will be used for July 1, 2001, through June 30, 2005, therapy care component rate allocations.

(b) Therapy care component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(6)(a) Support services component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, support services component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2005, support services component rate allocations.

(b) Support services component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(7)(a) Operations component rate allocations shall be established using adjusted cost report data covering at least six months. Adjusted cost report data from 1996 shall be used for October 1, 1998, through June 30, 2001, operations component rate allocations; adjusted cost report data from 1999 shall be used for July 1, 2001, through June 30, 2005, operations component rate allocations.

(b) Operations component rate allocations shall be adjusted annually for economic trends and conditions by a factor or factors defined in the biennial appropriations act.

(8) For July 1, 1998, through September 30, 1998, a facility's property and return on investment component rates shall be the facility's June 30, 1998, property and return on investment component rates, without increase. For October 1, 1998, through June 30, 1999, a facility's property and return on investment component rates shall be rebased utilizing 1997 adjusted cost report data covering at least six months of data.

(9) Total payment rates under the nursing facility medicaid payment system shall not exceed facility rates charged to the general public for comparable services.

(10) Medicaid contractors shall pay to all facility staff a minimum wage of the greater of the state minimum wage or the federal minimum wage.

(11) The department shall establish in rule procedures, principles, and conditions for determining component rate allocations for facilities in circumstances not directly addressed by this chapter, including but not limited to: The need to prorate inflation for partial-period cost report data, newly constructed facilities, existing facilities entering the medicaid program for the first time or after a period of absence from the program, existing facilities with expanded new bed capacity, existing medicaid facilities following a change of ownership of the nursing facility business, facilities banking beds or converting beds back into service, facilities temporarily reducing the number of set-up beds during a remodel, facilities having less than six months of either resident assessment, cost report data, or both, under the current contractor prior to rate setting, and other circumstances.

(12) The department shall establish in rule procedures, principles, and conditions, including necessary threshold

costs, for adjusting rates to reflect capital improvements or new requirements imposed by the department or the federal government. Any such rate adjustments are subject to the provisions of RCW 74.46.421.

(13) Effective July 1, 2001, medicaid rates shall continue to be revised downward in all components, in accordance with department rules, for facilities converting banked beds to active service under chapter 70.38 RCW, by using the facility's increased licensed bed capacity to recalculate minimum occupancy for rate setting. However, for facilities other than essential community providers which bank beds under chapter 70.38 RCW, after May 25, 2001, medicaid rates shall be revised upward, in accordance with department rules, in direct care, therapy care, support services, and variable return components only, by using the facility's decreased licensed bed capacity to recalculate minimum occupancy for rate setting, but no upward revision shall be made to operations, property, or financing allowance component rates.

(14) Facilities obtaining a certificate of need or a certificate of need exemption under chapter 70.38 RCW after June 30, 2001, must have a certificate of capital authorization in order for (a) the depreciation resulting from the capitalized addition to be included in calculation of the facility's property component rate allocation; and (b) the net invested funds associated with the capitalized addition to be included in calculation of the facility's financing allowance rate allocation. [2004 c 276 § 913; 2001 1st sp.s. c 8 § 5; 1999 c 353 § 4; 1998 c 322 § 19.]

Severability—Effective date—2004 c 276: See notes following RCW 43.330.167.

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.433 Variable return component rate allocation. (1) The department shall establish for each medicaid nursing facility a variable return component rate allocation. In determining the variable return allowance:

(a) The variable return array and percentage shall be assigned whenever rebasing of noncapital rate allocations is scheduled under RCW 46.46.431 [74.46.431] (4), (5), (6), and (7).

(b) To calculate the array of facilities for the July 1, 2001, rate setting, the department, without using peer groups, shall first rank all facilities in numerical order from highest to lowest according to each facility's examined and documented, but unlidged, combined direct care, therapy care, support services, and operations per resident day cost from the 1999 cost report period. However, before being combined with other per resident day costs and ranked, a facility's direct care cost per resident day shall be adjusted to reflect its facility average case mix index, to be averaged from the four calendar quarters of 1999, weighted by the facility's resident days from each quarter, under RCW 74.46.501(7)(b)(ii). The array shall then be divided into four quartiles, each containing, as nearly as possible, an equal number of facilities, and four percent shall be assigned to facilities in the lowest quartile, three percent to facilities in the next lowest quartile, two percent to facilities in the next highest quartile, and one percent to facilities in the highest quartile.

(c) The department shall, subject to (d) of this subsection, compute the variable return allowance by multiplying a facility's assigned percentage by the sum of the facility's direct care, therapy care, support services, and operations component rates determined in accordance with this chapter and rules adopted by the department.

(d) Effective July 1, 2001, if a facility's examined and documented direct care cost per resident day for the preceding report year is lower than its average direct care component rate weighted by medicaid resident days for the same year, the facility's direct care cost shall be substituted for its July 1, 2001, direct care component rate, and its variable return component rate shall be determined or adjusted each July 1st by multiplying the facility's assigned percentage by the sum of the facility's July 1, 2001, therapy care, support services, and operations component rates, and its direct care cost per resident day for the preceding year.

(2) The variable return rate allocation calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2001 1st sp.s. c 8 § 6; 1999 c 353 § 9.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.435 Property component rate allocation. (1) Effective July 1, 2001, the property component rate allocation for each facility shall be determined by dividing the sum of the reported allowable prior period actual depreciation, subject to RCW 74.46.310 through 74.46.380, adjusted for any capitalized additions or replacements approved by the department, and the retained savings from such cost center, by the greater of a facility's total resident days for the facility in the prior period or resident days as calculated on eighty-five percent facility occupancy. Effective July 1, 2002, the property component rate allocation for all facilities, except essential community providers, shall be set by using the greater of a facility's total resident days from the most recent cost report period or resident days calculated at ninety percent facility occupancy. If a capitalized addition or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the property component rate shall be adjusted to anticipated resident day level.

(2) A nursing facility's property component rate allocation shall be rebased annually, effective July 1st, in accordance with this section and this chapter.

(3) When a certificate of need for a new facility is requested, the department, in reaching its decision, shall take into consideration per-bed land and building construction costs for the facility which shall not exceed a maximum to be established by the secretary.

(4) Effective July 1, 2001, for the purpose of calculating a nursing facility's property component rate, if a contractor has elected to bank licensed beds prior to April 1, 2001, or elects to convert banked beds to active service at any time, under chapter 70.38 RCW, the department shall use the facility's new licensed bed capacity to recalculate minimum occupancy for rate setting and revise the property component rate, as needed, effective as of the date the beds are banked or converted to active service. However, in no case shall the depart-

ment use less than eighty-five percent occupancy of the facility's licensed bed capacity after banking or conversion. Effective July 1, 2002, in no case, other than essential community providers, shall the department use less than ninety percent occupancy of the facility's licensed bed capacity after conversion.

(5) The property component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2001 1st sp.s. c 8 § 7; 1999 c 353 § 10; 1998 c 322 § 29.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.437 Financing allowance component rate allocation. (1) Beginning July 1, 1999, the department shall establish for each medicaid nursing facility a financing allowance component rate allocation. The financing allowance component rate shall be rebased annually, effective July 1st, in accordance with the provisions of this section and this chapter.

(2) Effective July 1, 2001, the financing allowance shall be determined by multiplying the net invested funds of each facility by .10, and dividing by the greater of a nursing facility's total resident days from the most recent cost report period or resident days calculated on eighty-five percent facility occupancy. Effective July 1, 2002, the financing allowance component rate allocation for all facilities, other than essential community providers, shall be set by using the greater of a facility's total resident days from the most recent cost report period or resident days calculated at ninety percent facility occupancy. However, assets acquired on or after May 17, 1999, shall be grouped in a separate financing allowance calculation that shall be multiplied by .085. The financing allowance factor of .085 shall not be applied to the net invested funds pertaining to new construction or major renovations receiving certificate of need approval or an exemption from certificate of need requirements under chapter 70.38 RCW, or to working drawings that have been submitted to the department of health for construction review approval, prior to May 17, 1999. If a capitalized addition, renovation, replacement, or retirement of an asset will result in a different licensed bed capacity during the ensuing period, the prior period total resident days used in computing the financing allowance shall be adjusted to the greater of the anticipated resident day level or eighty-five percent of the new licensed bed capacity. Effective July 1, 2002, for all facilities, other than essential community providers, the total resident days used to compute the financing allowance after a capitalized addition, renovation, replacement, or retirement of an asset shall be set by using the greater of a facility's total resident days from the most recent cost report period or resident days calculated at ninety percent facility occupancy.

(3) In computing the portion of net invested funds representing the net book value of tangible fixed assets, the same assets, depreciation bases, lives, and methods referred to in RCW 74.46.330, 74.46.350, 74.46.360, 74.46.370, and 74.46.380, including owned and leased assets, shall be utilized, except that the capitalized cost of land upon which the facility is located and such other contiguous land which is reasonable and necessary for use in the regular course of pro-

viding resident care shall also be included. Subject to provisions and limitations contained in this chapter, for land purchased by owners or lessors before July 18, 1984, capitalized cost of land shall be the buyer's capitalized cost. For all partial or whole rate periods after July 17, 1984, if the land is purchased after July 17, 1984, capitalized cost shall be that of the owner of record on July 17, 1984, or buyer's capitalized cost, whichever is lower. In the case of leased facilities where the net invested funds are unknown or the contractor is unable to provide necessary information to determine net invested funds, the secretary shall have the authority to determine an amount for net invested funds based on an appraisal conducted according to RCW 74.46.360(1).

(4) Effective July 1, 2001, for the purpose of calculating a nursing facility's financing allowance component rate, if a contractor has elected to bank licensed beds prior to May 25, 2001, or elects to convert banked beds to active service at any time, under chapter 70.38 RCW, the department shall use the facility's new licensed bed capacity to recalculate minimum occupancy for rate setting and revise the financing allowance component rate, as needed, effective as of the date the beds are banked or converted to active service. However, in no case shall the department use less than eighty-five percent occupancy of the facility's licensed bed capacity after banking or conversion. Effective July 1, 2002, in no case, other than for essential community providers, shall the department use less than ninety percent occupancy of the facility's licensed bed capacity after conversion.

(5) The financing allowance rate allocation calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2001 1st sp.s. c 8 § 8; 1999 c 353 § 11.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.439 Facilities leased in arm's-length agreements—Recomputation of financing allowance—Reimbursement for annualized lease payments—Rate adjustment. (1) In the case of a facility that was leased by the contractor as of January 1, 1980, in an arm's-length agreement, which continues to be leased under the same lease agreement, and for which the annualized lease payment, plus any interest and depreciation expenses associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total resident days, minus the property component rate allocation, is more than the sum of the financing allowance and the variable return rate determined according to this chapter, the following shall apply:

(a) The financing allowance shall be recomputed substituting the fair market value of the assets as of January 1, 1982, as determined by the department of general administration through an appraisal procedure, less accumulated depreciation on the lessor's assets since January 1, 1982, for the net book value of the assets in determining net invested funds for the facility. A determination by the department of general administration of fair market value shall be final unless the procedure used to make such a determination is shown to be arbitrary and capricious.

(b) The sum of the financing allowance computed under (a) of this subsection and the variable return rate shall be

compared to the annualized lease payment, plus any interest and depreciation associated with contractor-owned assets, for the period covered by the prospective rates, divided by the contractor's total resident days, minus the property component rate. The lesser of the two amounts shall be called the alternate return on investment rate.

(c) The sum of the financing allowance and variable return rate determined according to this chapter or the alternate return on investment rate, whichever is greater, shall be added to the prospective rates of the contractor.

(2) In the case of a facility that was leased by the contractor as of January 1, 1980, in an arm's-length agreement, if the lease is renewed or extended under a provision of the lease, the treatment provided in subsection (1) of this section shall be applied, except that in the case of renewals or extensions made subsequent to April 1, 1985, reimbursement for the annualized lease payment shall be no greater than the reimbursement for the annualized lease payment for the last year prior to the renewal or extension of the lease.

(3) The alternate return on investment component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [1999 c 353 § 12.]

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.441 Public disclosure of rate-setting information. The department shall disclose to any member of the public all rate-setting information consistent with requirements of state and federal laws. [1998 c 322 § 20.]

74.46.445 Contractors—Rate adjustments. If a contractor experiences an increase in state or county property taxes as a result of new building construction, replacement building construction, or substantial building additions that require the acquisition of land, then the department shall adjust the contractor's prospective rates to cover the medicaid share of the tax increase. The rate adjustments shall only apply to construction and additions completed on or after July 1, 1997. The rate adjustments authorized by this section are effective on the first day after July 1, 1999, on which the increased tax payment is due. Rate adjustments made under this section are subject to all applicable cost limitations contained in this chapter. [1999 c 353 § 15.]

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.475 Submitted cost report—Analysis and adjustment by department. (1) The department shall analyze the submitted cost report or a portion thereof of each contractor for each report period to determine if the information is correct, complete, reported in conformance with department instructions and generally accepted accounting principles, the requirements of this chapter, and such rules as the department may adopt. If the analysis finds that the cost report is incorrect or incomplete, the department may make adjustments to the reported information for purposes of establishing payment rate allocations. A schedule of such adjustments shall be provided to contractors and shall include an explanation for the adjustment and the dollar amount of the adjustment. Adjustments shall be subject to review and appeal as provided in this chapter.

(2) The department shall accumulate data from properly completed cost reports, in addition to assessment data on each facility's resident population characteristics, for use in:

- (a) Exception profiling; and
- (b) Establishing rates.

(3) The department may further utilize such accumulated data for analytical, statistical, or informational purposes as necessary. [1998 c 322 § 21; 1985 c 361 § 13; 1983 1st ex.s. c 67 § 23.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.485 Case mix classification methodology. (1) The department shall employ the resource utilization group III case mix classification methodology. The department shall use the forty-four group index maximizing model for the resource utilization group III grouper version 5.10, but the department may revise or update the classification methodology to reflect advances or refinements in resident assessment or classification, subject to federal requirements.

(2) A default case mix group shall be established for cases in which the resident dies or is discharged for any purpose prior to completion of the resident's initial assessment. The default case mix group and case mix weight for these cases shall be designated by the department.

(3) A default case mix group may also be established for cases in which there is an untimely assessment for the resident. The default case mix group and case mix weight for these cases shall be designated by the department. [1998 c 322 § 22.]

74.46.496 Case mix weights—Determination—Revisions. (1) Each case mix classification group shall be assigned a case mix weight. The case mix weight for each resident of a nursing facility for each calendar quarter shall be based on data from resident assessment instruments completed for the resident and weighted by the number of days the resident was in each case mix classification group. Days shall be counted as provided in this section.

(2) The case mix weights shall be based on the average minutes per registered nurse, licensed practical nurse, and certified nurse aide, for each case mix group, and using the health care financing administration of the United States department of health and human services 1995 nursing facility staff time measurement study stemming from its multi-state nursing home case mix and quality demonstration project. Those minutes shall be weighted by statewide ratios of registered nurse to certified nurse aide, and licensed practical nurse to certified nurse aide, wages, including salaries and benefits, which shall be based on 1995 cost report data for this state.

(3) The case mix weights shall be determined as follows:

(a) Set the certified nurse aide wage weight at 1.000 and calculate wage weights for registered nurse and licensed practical nurse average wages by dividing the certified nurse aide average wage into the registered nurse average wage and licensed practical nurse average wage;

(b) Calculate the total weighted minutes for each case mix group in the resource utilization group III classification system by multiplying the wage weight for each worker classification by the average number of minutes that classifica-

tion of worker spends caring for a resident in that resource utilization group III classification group, and summing the products;

(c) Assign a case mix weight of 1.000 to the resource utilization group III classification group with the lowest total weighted minutes and calculate case mix weights by dividing the lowest group's total weighted minutes into each group's total weighted minutes and rounding weight calculations to the third decimal place.

(4) The case mix weights in this state may be revised if the health care financing administration updates its nursing facility staff time measurement studies. The case mix weights shall be revised, but only when direct care component rates are cost-rebased as provided in subsection (5) of this section, to be effective on the July 1st effective date of each cost-rebased direct care component rate. However, the department may revise case mix weights more frequently if, and only if, significant variances in wage ratios occur among direct care staff in the different caregiver classifications identified in this section.

(5) Case mix weights shall be revised when direct care component rates are cost-rebased every three years as provided in RCW 74.46.431(4)(a). [1998 c 322 § 23.]

74.46.501 Average case mix indexes determined quarterly—Facility average case mix index—Medicaid average case mix index. (1) From individual case mix weights for the applicable quarter, the department shall determine two average case mix indexes for each medicaid nursing facility, one for all residents in the facility, known as the facility average case mix index, and one for medicaid residents, known as the medicaid average case mix index.

(2)(a) In calculating a facility's two average case mix indexes for each quarter, the department shall include all residents or medicaid residents, as applicable, who were physically in the facility during the quarter in question (January 1st through March 31st, April 1st through June 30th, July 1st through September 30th, or October 1st through December 31st).

(b) The facility average case mix index shall exclude all default cases as defined in this chapter. However, the medicaid average case mix index shall include all default cases.

(3) Both the facility average and the medicaid average case mix indexes shall be determined by multiplying the case mix weight of each resident, or each medicaid resident, as applicable, by the number of days, as defined in this section and as applicable, the resident was at each particular case mix classification or group, and then averaging.

(4)(a) In determining the number of days a resident is classified into a particular case mix group, the department shall determine a start date for calculating case mix grouping periods as follows:

(i) If a resident's initial assessment for a first stay or a return stay in the nursing facility is timely completed and transmitted to the department by the cutoff date under state and federal requirements and as described in subsection (5) of this section, the start date shall be the later of either the first day of the quarter or the resident's facility admission or readmission date;

(ii) If a resident's significant change, quarterly, or annual assessment is timely completed and transmitted to the depart-

ment by the cutoff date under state and federal requirements and as described in subsection (5) of this section, the start date shall be the date the assessment is completed;

(iii) If a resident's significant change, quarterly, or annual assessment is not timely completed and transmitted to the department by the cutoff date under state and federal requirements and as described in subsection (5) of this section, the start date shall be the due date for the assessment.

(b) If state or federal rules require more frequent assessment, the same principles for determining the start date of a resident's classification in a particular case mix group set forth in subsection (4)(a) of this section shall apply.

(c) In calculating the number of days a resident is classified into a particular case mix group, the department shall determine an end date for calculating case mix grouping periods as follows:

(i) If a resident is discharged before the end of the applicable quarter, the end date shall be the day before discharge;

(ii) If a resident is not discharged before the end of the applicable quarter, the end date shall be the last day of the quarter;

(iii) If a new assessment is due for a resident or a new assessment is completed and transmitted to the department, the end date of the previous assessment shall be the earlier of either the day before the assessment is due or the day before the assessment is completed by the nursing facility.

(5) The cutoff date for the department to use resident assessment data, for the purposes of calculating both the facility average and the medicaid average case mix indexes, and for establishing and updating a facility's direct care component rate, shall be one month and one day after the end of the quarter for which the resident assessment data applies.

(6) A threshold of ninety percent, as described and calculated in this subsection, shall be used to determine the case mix index each quarter. The threshold shall also be used to determine which facilities' costs per case mix unit are included in determining the ceiling, floor, and price. If the facility does not meet the ninety percent threshold, the department may use an alternate case mix index to determine the facility average and medicaid average case mix indexes for the quarter. The threshold is a count of unique minimum data set assessments, and it shall include resident assessment instrument tracking forms for residents discharged prior to completing an initial assessment. The threshold is calculated by dividing a facility's count of residents being assessed by the average census for the facility. A daily census shall be reported by each nursing facility as it transmits assessment data to the department. The department shall compute a quarterly average census based on the daily census. If no census has been reported by a facility during a specified quarter, then the department shall use the facility's licensed beds as the denominator in computing the threshold.

(7)(a) Although the facility average and the medicaid average case mix indexes shall both be calculated quarterly, the facility average case mix index will be used only every three years in combination with cost report data as specified by RCW 74.46.431 and 74.46.506, to establish a facility's allowable cost per case mix unit. A facility's medicaid average case mix index shall be used to update a nursing facility's direct care component rate quarterly.

(b) The facility average case mix index used to establish each nursing facility's direct care component rate shall be based on an average of calendar quarters of the facility's average case mix indexes.

(i) For October 1, 1998, direct care component rates, the department shall use an average of facility average case mix indexes from the four calendar quarters of 1997.

(ii) For July 1, 2001, direct care component rates, the department shall use an average of facility average case mix indexes from the four calendar quarters of 1999.

(c) The medicaid average case mix index used to update or recalibrate a nursing facility's direct care component rate quarterly shall be from the calendar quarter commencing six months prior to the effective date of the quarterly rate. For example, October 1, 1998, through December 31, 1998, direct care component rates shall utilize case mix averages from the April 1, 1998, through June 30, 1998, calendar quarter, and so forth. [2001 1st sp.s. c 8 § 9; 1998 c 322 § 24.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

74.46.506 Direct care component rate allocations—Determination—Quarterly updates—Fines. (1) The direct care component rate allocation corresponds to the provision of nursing care for one resident of a nursing facility for one day, including direct care supplies. Therapy services and supplies, which correspond to the therapy care component rate, shall be excluded. The direct care component rate includes elements of case mix determined consistent with the principles of this section and other applicable provisions of this chapter.

(2) Beginning October 1, 1998, the department shall determine and update quarterly for each nursing facility serving medicaid residents a facility-specific per-resident day direct care component rate allocation, to be effective on the first day of each calendar quarter. In determining direct care component rates the department shall utilize, as specified in this section, minimum data set resident assessment data for each resident of the facility, as transmitted to, and if necessary corrected by, the department in the resident assessment instrument format approved by federal authorities for use in this state.

(3) The department may question the accuracy of assessment data for any resident and utilize corrected or substitute information, however derived, in determining direct care component rates. The department is authorized to impose civil fines and to take adverse rate actions against a contractor, as specified by the department in rule, in order to obtain compliance with resident assessment and data transmission requirements and to ensure accuracy.

(4) Cost report data used in setting direct care component rate allocations shall be 1996 and 1999, for rate periods as specified in RCW 74.46.431(4)(a).

(5) Beginning October 1, 1998, the department shall rebase each nursing facility's direct care component rate allocation as described in RCW 74.46.431, adjust its direct care component rate allocation for economic trends and conditions as described in RCW 74.46.431, and update its medicaid average case mix index, consistent with the following:

(a) Reduce total direct care costs reported by each nursing facility for the applicable cost report period specified in

RCW 74.46.431(4)(a) to reflect any department adjustments, and to eliminate reported resident therapy costs and adjustments, in order to derive the facility's total allowable direct care cost;

(b) Divide each facility's total allowable direct care cost by its adjusted resident days for the same report period, increased if necessary to a minimum occupancy of eighty-five percent; that is, the greater of actual or imputed occupancy at eighty-five percent of licensed beds, to derive the facility's allowable direct care cost per resident day;

(c) Adjust the facility's per resident day direct care cost by the applicable factor specified in RCW 74.46.431(4) (b) and (c) to derive its adjusted allowable direct care cost per resident day;

(d) Divide each facility's adjusted allowable direct care cost per resident day by the facility average case mix index for the applicable quarters specified by RCW 74.46.501(7)(b) to derive the facility's allowable direct care cost per case mix unit;

(e) Effective for July 1, 2001, rate setting, divide nursing facilities into at least two and, if applicable, three peer groups: Those located in nonurban counties; those located in high labor-cost counties, if any; and those located in other urban counties;

(f) Array separately the allowable direct care cost per case mix unit for all facilities in nonurban counties; for all facilities in high labor-cost counties, if applicable; and for all facilities in other urban counties, and determine the median allowable direct care cost per case mix unit for each peer group;

(g) Except as provided in (i) of this subsection, from October 1, 1998, through June 30, 2000, determine each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than eighty-five percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to eighty-five percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred fifteen percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred fifteen percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(iii) Any facility whose allowable cost per case mix unit is between eighty-five and one hundred fifteen percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(h) Except as provided in (i) of this subsection, from July 1, 2000, forward, and for all future rate setting, determine

each facility's quarterly direct care component rate as follows:

(i) Any facility whose allowable cost per case mix unit is less than ninety percent of the facility's peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to ninety percent of the facility's peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(ii) Any facility whose allowable cost per case mix unit is greater than one hundred ten percent of the peer group median established under (f) of this subsection shall be assigned a cost per case mix unit equal to one hundred ten percent of the peer group median, and shall have a direct care component rate allocation equal to the facility's assigned cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(iii) Any facility whose allowable cost per case mix unit is between ninety and one hundred ten percent of the peer group median established under (f) of this subsection shall have a direct care component rate allocation equal to the facility's allowable cost per case mix unit multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c);

(i)(i) Between October 1, 1998, and June 30, 2000, the department shall compare each facility's direct care component rate allocation calculated under (g) of this subsection with the facility's nursing services component rate in effect on September 30, 1998, less therapy costs, plus any exceptional care offsets as reported on the cost report, adjusted for economic trends and conditions as provided in RCW 74.46.431. A facility shall receive the higher of the two rates.

(ii) Between July 1, 2000, and June 30, 2002, the department shall compare each facility's direct care component rate allocation calculated under (h) of this subsection with the facility's direct care component rate in effect on June 30, 2000. A facility shall receive the higher of the two rates. Between July 1, 2001, and June 30, 2002, if during any quarter a facility whose rate paid under (h) of this subsection is greater than either the direct care rate in effect on June 30, 2000, or than that facility's allowable direct care cost per case mix unit calculated in (d) of this subsection multiplied by that facility's medicaid average case mix index from the applicable quarter specified in RCW 74.46.501(7)(c), the facility shall be paid in that and each subsequent quarter pursuant to (h) of this subsection and shall not be entitled to the greater of the two rates.

(iii) Effective July 1, 2002, all direct care component rate allocations shall be as determined under (h) of this subsection.

(6) The direct care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

(7) Payments resulting from increases in direct care component rates, granted under authority of RCW 74.46.508(1) for a facility's exceptional care residents, shall be offset against the facility's examined, allowable direct care costs, for each report year or partial period such increases are paid.

Such reductions in allowable direct care costs shall be for rate setting, settlement, and other purposes deemed appropriate by the department. [2001 1st sp.s. c 8 § 10. Prior: 1999 c 353 § 5; 1999 c 181 § 1; 1998 c 322 § 25.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.508 Direct care component rate allocation—Increases—Rules. (1) The department is authorized to increase the direct care component rate allocation calculated under RCW 74.46.506(5) for residents who have unmet exceptional care needs as determined by the department in rule. The department may, by rule, establish criteria, patient categories, and methods of exceptional care payment.

(2) The department may by July 1, 2003, adopt rules and implement a system of exceptional care payments for therapy care.

(a) Payments may be made on behalf of facility residents who are under age sixty-five, not eligible for medicare, and can achieve significant progress in their functional status if provided with intensive therapy care services.

(b) Payments may be made only after approval of a rehabilitation plan of care for each resident on whose behalf a payment is made under this subsection, and each resident's progress must be periodically monitored. [2003 1st sp.s. c 6 § 1; 1999 c 181 § 2.]

74.46.511 Therapy care component rate allocation—Determination. (1) The therapy care component rate allocation corresponds to the provision of medicaid one-on-one therapy provided by a qualified therapist as defined in this chapter, including therapy supplies and therapy consultation, for one day for one medicaid resident of a nursing facility. The therapy care component rate allocation for October 1, 1998, through June 30, 2001, shall be based on adjusted therapy costs and days from calendar year 1996. The therapy component rate allocation for July 1, 2001, through June 30, 2004, shall be based on adjusted therapy costs and days from calendar year 1999. The therapy care component rate shall be adjusted for economic trends and conditions as specified in RCW 74.46.431(5)(b), and shall be determined in accordance with this section.

(2) In rebasing, as provided in RCW 74.46.431(5)(a), the department shall take from the cost reports of facilities the following reported information:

(a) Direct one-on-one therapy charges for all residents by payer including charges for supplies;

(b) The total units or modules of therapy care for all residents by type of therapy provided, for example, speech or physical. A unit or module of therapy care is considered to be fifteen minutes of one-on-one therapy provided by a qualified therapist or support personnel; and

(c) Therapy consulting expenses for all residents.

(3) The department shall determine for all residents the total cost per unit of therapy for each type of therapy by dividing the total adjusted one-on-one therapy expense for each type by the total units provided for that therapy type.

(4) The department shall divide medicaid nursing facilities in this state into two peer groups:

(a) Those facilities located within urban counties; and

(b) Those located within nonurban counties.

The department shall array the facilities in each peer group from highest to lowest based on their total cost per unit of therapy for each therapy type. The department shall determine the median total cost per unit of therapy for each therapy type and add ten percent of median total cost per unit of therapy. The cost per unit of therapy for each therapy type at a nursing facility shall be the lesser of its cost per unit of therapy for each therapy type or the median total cost per unit plus ten percent for each therapy type for its peer group.

(5) The department shall calculate each nursing facility's therapy care component rate allocation as follows:

(a) To determine the allowable total therapy cost for each therapy type, the allowable cost per unit of therapy for each type of therapy shall be multiplied by the total therapy units for each type of therapy;

(b) The medicaid allowable one-on-one therapy expense shall be calculated taking the allowable total therapy cost for each therapy type times the medicaid percent of total therapy charges for each therapy type;

(c) The medicaid allowable one-on-one therapy expense for each therapy type shall be divided by total adjusted medicaid days to arrive at the medicaid one-on-one therapy cost per patient day for each therapy type;

(d) The medicaid one-on-one therapy cost per patient day for each therapy type shall be multiplied by total adjusted patient days for all residents to calculate the total allowable one-on-one therapy expense. The lesser of the total allowable therapy consultant expense for the therapy type or a reasonable percentage of allowable therapy consultant expense for each therapy type, as established in rule by the department, shall be added to the total allowable one-on-one therapy expense to determine the allowable therapy cost for each therapy type;

(e) The allowable therapy cost for each therapy type shall be added together, the sum of which shall be the total allowable therapy expense for the nursing facility;

(f) The total allowable therapy expense will be divided by the greater of adjusted total patient days from the cost report on which the therapy expenses were reported, or patient days at eighty-five percent occupancy of licensed beds. The outcome shall be the nursing facility's therapy care component rate allocation.

(6) The therapy care component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421.

(7) The therapy care component rate shall be suspended for medicaid residents in qualified nursing facilities designated by the department who are receiving therapy paid by the department outside the facility daily rate under RCW 74.46.508(2). [2001 1st sp.s. c 8 § 11. Prior: 1999 c 353 § 6; 1999 c 181 § 3; 1998 c 322 § 26.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.515 Support services component rate allocation—Determination. (1) The support services component rate allocation corresponds to the provision of food, food preparation, dietary, housekeeping, and laundry services for one resident for one day.

(2) Beginning October 1, 1998, the department shall determine each medicaid nursing facility's support services component rate allocation using cost report data specified by RCW 74.46.431(6).

(3) To determine each facility's support services component rate allocation, the department shall:

(a) Array facilities' adjusted support services costs per adjusted resident day for each facility from facilities' cost reports from the applicable report year, for facilities located within urban counties, and for those located within nonurban counties and determine the median adjusted cost for each peer group;

(b) Set each facility's support services component rate at the lower of the facility's per resident day adjusted support services costs from the applicable cost report period or the adjusted median per resident day support services cost for that facility's peer group, either urban counties or nonurban counties, plus ten percent; and

(c) Adjust each facility's support services component rate for economic trends and conditions as provided in RCW 74.46.431(6).

(4) The support services component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2001 1st sp.s. c 8 § 12; 1999 c 353 § 7; 1998 c 322 § 27.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.521 Operations component rate allocation—Determination. (1) The operations component rate allocation corresponds to the general operation of a nursing facility for one resident for one day, including but not limited to management, administration, utilities, office supplies, accounting and bookkeeping, minor building maintenance, minor equipment repairs and replacements, and other supplies and services, exclusive of direct care, therapy care, support services, property, financing allowance, and variable return.

(2) Beginning October 1, 1998, the department shall determine each medicaid nursing facility's operations component rate allocation using cost report data specified by RCW 74.46.431(7)(a). Effective July 1, 2002, operations component rates for all facilities except essential community providers shall be based upon a minimum occupancy of ninety percent of licensed beds, and no operations component rate shall be revised in response to beds banked on or after May 25, 2001, under chapter 70.38 RCW.

(3) To determine each facility's operations component rate the department shall:

(a) Array facilities' adjusted general operations costs per adjusted resident day for each facility from facilities' cost reports from the applicable report year, for facilities located within urban counties and for those located within nonurban counties and determine the median adjusted cost for each peer group;

(b) Set each facility's operations component rate at the lower of:

(i) The facility's per resident day adjusted operations costs from the applicable cost report period adjusted if necessary to a minimum occupancy of eighty-five percent of

licensed beds before July 1, 2002, and ninety percent effective July 1, 2002; or

(ii) The adjusted median per resident day general operations cost for that facility's peer group, urban counties or non-urban counties; and

(c) Adjust each facility's operations component rate for economic trends and conditions as provided in RCW 74.46.431(7)(b).

(4) The operations component rate allocations calculated in accordance with this section shall be adjusted to the extent necessary to comply with RCW 74.46.421. [2001 1st sp.s. c 8 § 13; 1999 c 353 § 8; 1998 c 322 § 28.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Effective dates—1999 c 353: See note following RCW 74.46.020.

74.46.531 Department may adjust component rates—Contractor may request—Errors or omissions.

(1) The department may adjust component rates for errors or omissions made in establishing component rates and determine amounts either overpaid to the contractor or underpaid by the department.

(2) A contractor may request the department to adjust its component rates because of:

(a) An error or omission the contractor made in completing a cost report; or

(b) An alleged error or omission made by the department in determining one or more of the contractor's component rates.

(3) A request for a rate adjustment made on incorrect cost reporting must be accompanied by the amended cost report pages prepared in accordance with the department's written instructions and by a written explanation of the error or omission and the necessity for the amended cost report pages and the rate adjustment.

(4) The department shall review a contractor's request for a rate adjustment because of an alleged error or omission, even if the time period has expired in which the contractor must appeal the rate when initially issued, pursuant to rules adopted by the department under RCW 74.46.780. If the request is received after this time period, the department has the authority to correct the rate if it agrees an error or omission was committed. However, if the request is denied, the contractor shall not be entitled to any appeals or exception review procedure that the department may adopt under RCW 74.46.780.

(5) The department shall notify the contractor of the amount of the overpayment to be recovered or additional payment to be made to the contractor reflecting a rate adjustment to correct an error or omission. The recovery from the contractor of the overpayment or the additional payment to the contractor shall be governed by the reconciliation, settlement, security, and recovery processes set forth in this chapter and by rules adopted by the department in accordance with this chapter.

(6) Component rate adjustments approved in accordance with this section are subject to the provisions of RCW 74.46.421. [1998 c 322 § 31.]

74.46.535 Quality maintenance fee. (Contingent expiration date.) The department of social and health services

(2004 Ed.)

shall prospectively add the medicaid cost of the quality maintenance fee under RCW 82.71.020 to the nursing facility component rate allocation calculated after application of all other provisions of RCW 74.46.521. [2003 1st sp.s. c 16 § 5.]

Contingent expiration date—Severability—Effective date—2003 1st sp.s. c 16: See notes following RCW 82.71.020.

**PART F
BILLING/PAYMENT**

74.46.600 Billing period. A contractor shall bill the department for care provided to medical care recipients from the first through the last day of each calendar month. [1980 c 177 § 60.]

74.46.610 Billing procedure—Rules. (1) A contractor shall bill the department each month by completing and returning a facility billing statement as provided by the department. The statement shall be completed and filed in accordance with rules established by the department.

(2) A facility shall not bill the department for service provided to a recipient until an award letter of eligibility of such recipient under rules established under chapter 74.09 RCW has been received by the facility. However a facility may bill and shall be reimbursed for all medical care recipients referred to the facility by the department prior to the receipt of the award letter of eligibility or the denial of such eligibility.

(3) Billing shall cover the patient days of care. [1998 c 322 § 32; 1983 1st ex.s. c 67 § 33; 1980 c 177 § 61.]

74.46.620 Payment. (1) The department will pay a contractor for service rendered under the facility contract and billed in accordance with RCW 74.46.610.

(2) The amount paid will be computed using the appropriate rates assigned to the contractor.

(3) For each recipient, the department will pay an amount equal to the appropriate rates, multiplied by the number of medicaid resident days each rate was in effect, less the amount the recipient is required to pay for his or her care as set forth by RCW 74.46.630. [1998 c 322 § 33; 1980 c 177 § 62.]

74.46.625 Supplemental payments. To the extent the federal government approves such payments under the state's plan for medical assistance, and only to the extent that funds are specifically appropriated for this purpose in the biennial appropriations act, the department shall make supplemental payments to nursing facilities operated by public hospital districts. The payments shall be calculated and distributed in accordance with the terms and conditions specified in the biennial appropriations act. The payments shall be supplemental to the component rate allocations calculated in accordance with part E of this chapter, and neither the provisions of part E of this chapter nor the provisions of part C of this chapter apply to these supplemental payments. [1999 c 392 § 1.]

74.46.630 Charges to patients. (1) The department will notify a contractor of the amount each medical care

recipient is required to pay for care provided under the contract and the effective date of such required contribution. It is the contractor's responsibility to collect that portion of the cost of care from the patient, and to account for any authorized reduction from his or her contribution in accordance with rules established by the department.

(2) If a contractor receives documentation showing a change in the income or resources of a recipient which will mean a change in his or her contribution toward the cost of care, this shall be reported in writing to the department within seventy-two hours and in a manner specified by rules established by the department. If necessary, appropriate corrections will be made in the next facility statement, and a copy of documentation supporting the change will be attached. If increased funds for a recipient are received by a contractor, an amount determined by the department shall be allowed for clothing and personal and incidental expense, and the balance applied to the cost of care.

(3) The contractor shall accept the payment rates established by the department as full compensation for all services provided under the contract, certification as specified by Title XIX, and licensure under chapter 18.51 RCW. The contractor shall not seek or accept additional compensation from or on behalf of a recipient for any or all such services. [1998 c 322 § 34; 1980 c 177 § 63.]

74.46.640 Suspension of payments. (1) Payments to a contractor may be withheld by the department in each of the following circumstances:

(a) A required report is not properly completed and filed by the contractor within the appropriate time period, including any approved extension. Payments will be released as soon as a properly completed report is received;

(b) State auditors, department auditors, or authorized personnel in the course of their duties are refused access to a nursing facility or are not provided with existing appropriate records. Payments will be released as soon as such access or records are provided;

(c) A refund in connection with a settlement or rate adjustment is not paid by the contractor when due. The amount withheld will be limited to the unpaid amount of the refund and any accumulated interest owed to the department as authorized by this chapter;

(d) Payment for the final sixty days of service prior to termination or assignment of a contract will be held in the absence of adequate alternate security acceptable to the department pending settlement of all periods when the contract is terminated or assigned; and

(e) Payment for services at any time during the contract period in the absence of adequate alternate security acceptable to the department, if a contractor's net medicaid overpayment liability for one or more nursing facilities or other debt to the department, as determined by settlement, civil fines imposed by the department, third-party liabilities or other source, reaches or exceeds fifty thousand dollars, whether subject to good faith dispute or not, and for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Payments will be released as soon as practicable after acceptable security is provided or refund to the department is made.

(2) No payment will be withheld until written notification of the suspension is provided to the contractor, stating the reason for the withholding, except that neither a timely filed request to pursue any administrative appeals or exception procedure that the department may establish by rule nor commencement of judicial review, as may be available to the contractor in law, shall delay suspension of payment. [1998 c 322 § 35; 1995 1st sp.s. c 18 § 112; 1983 1st ex.s. c 67 § 34; 1980 c 177 § 64.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.46.650 Termination of payments. All payments to a contractor will end no later than sixty days after any of the following occurs:

(1) A contract is terminated, assigned, or is not renewed;

(2) A facility license is revoked; or

(3) A facility is decertified as a Title XIX facility; except that, in situations where the department determines that residents must remain in such facility for a longer period because of the resident's health or safety, payments for such residents shall continue. [1998 c 322 § 36; 1980 c 177 § 65.]

PART G ADMINISTRATION

74.46.660 Conditions of participation. In order to participate in the nursing facility medicaid payment system established by this chapter, the person or legal entity responsible for operation of a facility shall:

(1) Obtain a state certificate of need and/or federal capital expenditure review (section 1122) approval pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR where required;

(2) Hold the appropriate current license;

(3) Hold current Title XIX certification;

(4) Hold a current contract to provide services under this chapter;

(5) Comply with all provisions of the contract and all applicable regulations, including but not limited to the provisions of this chapter; and

(6) Obtain and maintain medicare certification, under Title XVIII of the social security act, 42 U.S.C. Sec. 1395, as amended, for a portion of the facility's licensed beds. [1998 c 322 § 37; 1992 c 215 § 1; 1991 sp.s. c 8 § 13; 1980 c 177 § 66.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

74.46.680 Change of ownership—Assignment of department's contract. (1) On the effective date of a change of ownership the department's contract with the old owner shall be automatically assigned to the new owner, unless: (a) The new owner does not desire to participate in medicaid as a nursing facility provider; (b) the department elects not to continue the contract with the new owner for good cause; or (c) the new owner elects not to accept assignment and requests certification and a new contract. The old owner shall give the department sixty days' written notice of such intent to change ownership and assign. When certificate of need and/or section 1122 approval is required pursuant to chapter 70.38 RCW and Part 100, Title 42 CFR, for the new

owner to acquire the facility, and the new owner wishes to continue to provide service to recipients without interruption, certificate of need and/or section 1122 approval shall be obtained before the old owner submits a notice of intent to change ownership and assign.

(2) If the new owner desires to participate in the nursing facility medicaid payment system, it shall meet the conditions specified in RCW 74.46.660. The facility contract with the new owner shall be effective as of the date of the change of ownership. [1998 c 322 § 38; 1985 c 361 § 2; 1980 c 177 § 68.]

Effective date—1998 c 322 §§ 38 and 39: "Sections 38 and 39 of this act take effect October 1, 1998." [1998 c 322 § 59.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.690 Change of ownership—Final reports—Settlement. (1) When there is a change of ownership for any reason, final reports shall be submitted as required by RCW 74.46.040.

(2) Upon a notification of intent to change ownership, the department shall determine by settlement or reconciliation the amount of any overpayments made to the assigning or terminating contractor, including overpayments disputed by the assigning or terminating contractor. If settlements are unavailable for any period up to the date of assignment or termination, the department shall make a reasonable estimate of any overpayment or underpayments for such periods. The reasonable estimate shall be based upon prior period settlements, available audit findings, the projected impact of prospective rates, and other information available to the department. The department shall also determine and add in the total of all other debts and potential debts owed to the department regardless of source, including, but not limited to, interest owed to the department as authorized by this chapter, civil fines imposed by the department, or third-party liabilities.

(3) For all cost reports filed after December 31, 1997, the assigning or terminating contractor shall provide security, in a form deemed adequate by the department, equal to the total amount of determined and estimated overpayments and all debts and potential debts from any source, whether or not the overpayments are the subject of good faith dispute including but not limited to, interest owed to the department, civil fines imposed by the department, and third-party liabilities. Security shall consist of one or more of the following:

- (a) Withheld payments due the assigning or terminating contractor under the contract being assigned or terminated;
- (b) An assignment of funds to the department;
- (c) The new contractor's assumption of liability for the prior contractor's debt or potential debt;
- (d) An authorization to withhold payments from one or more medicaid nursing facilities that continue to be operated by the assigning or terminating contractor;
- (e) A promissory note secured by a deed of trust; or
- (f) Other collateral or security acceptable to the department.

(4) An assignment of funds shall:

- (a) Be at least equal to the amount of determined or estimated debt or potential debt minus withheld payments or other security provided; and
- (b) Provide that an amount equal to any recovery the department determines is due from the contractor from any

source of debt to the department, but not exceeding the amount of the assigned funds, shall be paid to the department if the contractor does not pay the debt within sixty days following receipt of written demand for payment from the department to the contractor.

(5) The department shall release any payment withheld as security if alternate security is provided under subsection (3) of this section in an amount equivalent to the determined and estimated debt.

(6) If the total of withheld payments and assigned funds is less than the total of determined and estimated debt, the unsecured amount of such debt shall be a debt due the state and shall become a lien against the real and personal property of the contractor from the time of filing by the department with the county auditor of the county where the contractor resides or owns property, and the lien claim has preference over the claims of all unsecured creditors.

(7) A properly completed final cost report shall be filed in accordance with the requirements of RCW 74.46.040, which shall be examined by the department in accordance with the requirements of RCW 74.46.100.

(8) Security held pursuant to this section shall be released to the contractor after all debts, including accumulated interest owed the department, have been paid by the old owner.

(9) If, after calculation of settlements for any periods, it is determined that overpayments exist in excess of the value of security held by the state, the department may seek recovery of these additional overpayments as provided by law.

(10) Regardless of whether a contractor intends to change ownership, if a contractor's net medicaid overpayments and erroneous payments for one or more settlement periods, and for one or more nursing facilities, combined with debts due the department, reaches or exceeds a total of fifty thousand dollars, as determined by settlement, civil fines imposed by the department, third-party liabilities or by any other source, whether such amounts are subject to good faith dispute or not, the department shall demand and obtain security equivalent to the total of such overpayments, erroneous payments, and debts and shall obtain security for each subsequent increase in liability reaching or exceeding twenty-five thousand dollars. Such security shall meet the criteria in subsections (3) and (4) of this section, except that the department shall not accept an assumption of liability. The department shall withhold all or portions of a contractor's current contract payments or impose liens, or both, if security acceptable to the department is not forthcoming. The department shall release a contractor's withheld payments or lift liens, or both, if the contractor subsequently provides security acceptable to the department.

(11) Notwithstanding the application of security measures authorized by this section, if the department determines that any remaining debt of the old owner is uncollectible from the old owner, the new owner is liable for the unsatisfied debt in all respects. If the new owner does not accept assignment of the contract and the contingent liability for all debt of the prior owner, a new certification survey shall be done and no payments shall be made to the new owner until the department determines the facility is in substantial compliance for the purposes of certification.

(12) Medicaid provider contracts shall only be assigned if there is a change of ownership, and with approval by the department. [1998 c 322 § 39; 1995 1st sp.s. c 18 § 113; 1985 c 361 § 3; 1983 1st ex.s. c 67 § 36; 1980 c 177 § 69.]

Effective date—1998 c 322 §§ 38 and 39: See note following RCW 74.46.680.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Savings—1985 c 361: See note following RCW 74.46.020.

PART H PATIENT TRUST FUNDS

74.46.700 Resident personal funds—Records—Rules. Each nursing home shall establish and maintain, as a service to the resident, a bookkeeping system incorporated into the business records for all resident moneys entrusted to the contractor and received by the facility for the resident.

The department shall adopt rules to ensure that resident personal funds handled by the facility are maintained by each nursing home in a manner that is, at a minimum, consistent with federal requirements. [1991 sp.s. c 8 § 19; 1980 c 177 § 70.]

Effective date—1991 sp.s. c 8: See note following RCW 18.51.050.

74.46.711 Resident personal funds—Conveyance upon death of resident. Upon the death of a resident with a personal fund deposited with the facility, the facility must convey within thirty days the resident's funds, and a final accounting of those funds, to the individual or probate jurisdiction administering the resident's estate; but in the case of a resident who received long-term care services paid in whole or in part by the department, the funds and accounting shall be sent to the state of Washington, department of social and health services, office of financial recovery. The department shall establish a release procedure for use for burial expenses. [2001 1st sp.s. c 8 § 14; 1995 1st sp.s. c 18 § 69.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

PART I MISCELLANEOUS

74.46.770 Contractor appeals—Challenges of laws, rules, or contract provisions—Challenge based on federal law. (1) If a contractor wishes to contest the way in which a rule relating to the medicaid payment system was applied to the contractor by the department, it shall pursue any appeals or exception procedure that the department may establish in rule authorized by RCW 74.46.780.

(2) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision or wishes to bring a challenge based in whole or in part on federal law, any appeals or exception procedure that the department may establish in rule may not be used for these purposes. This prohibition shall apply regardless of whether the contractor wishes to obtain a decision or ruling on an issue of validity or federal compliance or wishes only to make a record for the purpose of subsequent judicial review.

(3) If a contractor wishes to challenge the legal validity of a statute, rule, or contract provision relating to the medicaid payment rate system, or wishes to bring a challenge based in whole or in part on federal law, it must bring such action de novo in a court of proper jurisdiction as may be provided by law. [1998 c 322 § 40; 1995 1st sp.s. c 18 § 114; 1983 1st ex.s. c 67 § 39; 1980 c 177 § 77.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

74.46.780 Appeals or exception procedure. The department shall establish in rule, consistent with federal requirements for nursing facilities participating in the medicaid program, an appeals or exception procedure that allows individual nursing care providers an opportunity to submit additional evidence and receive prompt administrative review of payment rates with respect to such issues as the department deems appropriate. [1998 c 322 § 41; 1995 1st sp.s. c 18 § 115; 1989 c 175 § 159; 1983 1st ex.s. c 67 § 40; 1980 c 177 § 78.]

Conflict with federal requirements—Severability—Effective date—1995 1st sp.s. c 18: See notes following RCW 74.39A.030.

Effective date—1989 c 175: See note following RCW 34.05.010.

74.46.790 Denial, suspension, or revocation of license or provisional license—Penalties. The department is authorized to deny, suspend, or revoke a license or provisional license or, in lieu thereof or in addition thereto, assess monetary penalties of a civil nature not to exceed one thousand dollars per violation in any case in which it finds that the licensee, or any partner, officer, director, owner of five percent or more of the assets of the nursing home, or managing employee:

(1) Failed or refused to comply with the requirements of this chapter or the rules and regulations established hereunder; or

(2) Has knowingly or with reason to know made a false statement of a material fact in any record required by this chapter; or

(3) Refused to allow representatives or agents of the department to inspect all books, records, and files required by this chapter to be maintained or any portion of the premises of the nursing home; or

(4) Wilfully prevented, interfered with, or attempted to impede in any way the work of any duly authorized representative of the department and the lawful enforcement of any provision of this chapter; or

(5) Wilfully prevented or interfered with any representative of the department in the preservation of evidence of any violation of any of the provisions of this chapter or the rules and regulations promulgated hereunder. [1980 c 177 § 79.]

74.46.800 Rule-making authority. (1) The department shall have authority to adopt, amend, and rescind such administrative rules and definitions as it deems necessary to carry out the policies and purposes of this chapter and to resolve issues and develop procedures that it deems necessary to implement, update, and improve the case mix elements of the nursing facility medicaid payment system.

(2) Nothing in this chapter shall be construed to require the department to adopt or employ any calculations, steps,

tests, methodologies, alternate methodologies, indexes, formulas, mathematical or statistical models, concepts, or procedures for medicaid rate setting or payment that are not expressly called for in this chapter. [1998 c 322 § 42; 1980 c 177 § 80.]

74.46.803 Certificate of capital authorization—

Rules. The department shall establish rules for issuing a certificate of capital authorization. Applications for a certificate of capital authorization shall be submitted and approved on a biennial basis. The rules for a certificate of capital authorization shall be consistent with the following principles:

(1) The certificate of capital authorization shall be approved on a first-come, first-served basis.

(2) Those projects that do not receive approval in one authorization period shall have priority the following biennium should the project be resubmitted.

(3) The department shall have the authority to give priority for a project that is necessitated by an emergency situation even if the project is not submitted in a timely fashion. The department shall establish rules for determining what constitutes an emergency.

(4) The department shall establish deadlines for progress and the department shall have the authority to withdraw the certificate of capital authorization where the holder of the certificate has not complied with those deadlines in a good faith manner. [2001 1st sp.s. c 8 § 16.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

74.46.807 Capital authorization—Determination.

The total capital authorization available for any biennial period shall be specified in the biennial appropriations act and shall be calculated on an annual basis. When setting the capital authorization level, the legislature shall consider both the need for, and the cost of, new and replacement beds. [2001 1st sp.s. c 8 § 15.]

Severability—Effective dates—2001 1st sp.s. c 8: See notes following RCW 74.46.020.

74.46.820 Public disclosure. (1) Cost reports and their final audit reports filed by the contractor shall be subject to public disclosure pursuant to the requirements of chapter 42.17 RCW.

(2) Subsection (1) of this section does not prevent a contractor from having access to its own records or from authorizing an agent or designee to have access to the contractor's records.

(3) Regardless of whether any document or report submitted to the secretary pursuant to this chapter is subject to public disclosure, copies of such documents or reports shall be provided by the secretary, upon written request, to the legislature and to state agencies or state or local law enforcement officials who have an official interest in the contents thereof. [1998 c 322 § 43; 1985 c 361 § 14; 1983 1st ex.s. c 67 § 41; 1980 c 177 § 82.]

Savings—1985 c 361: See note following RCW 74.46.020.

74.46.835 AIDS pilot nursing facility—Payment for direct care. (1) Payment for direct care at the pilot nursing

(2004 Ed.)

facility in King county designed to meet the service needs of residents living with AIDS, as defined in RCW 70.24.017, and as specifically authorized for this purpose under chapter 9, Laws of 1989 1st ex. sess., shall be exempt from case mix methods of rate determination set forth in this chapter and shall be exempt from the direct care metropolitan statistical area peer group cost limitation set forth in this chapter.

(2) Direct care component rates at the AIDS pilot facility shall be based on direct care reported costs at the pilot facility, utilizing the same three-year, rate-setting cycle prescribed for other nursing facilities, and as supported by a staffing benchmark based upon a department-approved acuity measurement system.

(3) The provisions of RCW 74.46.421 and all other rate-setting principles, cost lids, and limits, including settlement as provided in RCW 74.46.165 shall apply to the AIDS pilot facility.

(4) This section applies only to the AIDS pilot nursing facility. [1998 c 322 § 46.]

74.46.840 Conflict with federal requirements. If any part of this chapter or RCW 18.51.145 or 74.09.120 is found by an agency of the federal government to be in conflict with federal requirements that are a prescribed condition to the receipts of federal funds to the state, the conflicting part of this chapter or RCW 18.51.145 or 74.09.120 is declared inoperative solely to the extent of the conflict and with respect to the agencies directly affected, and such finding or determination shall not affect the operation of the remainder of this chapter or RCW 18.51.145 or 74.09.120 in its application to the agencies concerned. In the event that any portion of this chapter or RCW 18.51.145 or 74.09.120 is found to be in conflict with federal requirements that are a prescribed condition to the receipt of federal funds, the secretary, to the extent that the secretary finds it to be consistent with the general policies and intent of chapters 18.51, 74.09, and 74.46 RCW, may adopt such rules as to resolve a specific conflict and that do meet minimum federal requirements. In addition, the secretary shall submit to the next regular session of the legislature a summary of the specific rule changes made and recommendations for statutory resolution of the conflict. [1998 c 322 § 44; 1983 1st ex.s. c 67 § 42; 1980 c 177 § 92.]

74.46.900 Severability—1980 c 177. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1980 c 177 § 93.]

74.46.901 Effective dates—1983 1st ex.s. c 67; 1980 c 177. (1) Sections 2, 7, 83, 85, 86, and 91 of chapter 177, Laws of 1980 are necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions, and shall take effect on April 4, 1980.

(2) Section 27 of chapter 177, Laws of 1980 shall take effect on July 1, 1980.

(3) RCW 74.46.300, 74.46.360, *74.46.510, and *74.46.530 shall take effect on January 1, 1985.

(4) All other sections of chapter 74.46 RCW, except those which took effect before July 1, 1983, shall take effect on July 1, 1983, which shall be "the effective date of this act" where that term is used in chapter 177, Laws of 1980. [1983 1st ex.s. c 67 § 49; 1981 1st ex.s. c 2 § 10; 1980 c 177 § 94.]

***Reviser's note:** RCW 74.46.510 and 74.46.530 were repealed by 1995 1st sp.s. c 18 § 98, effective June 30, 1998.

Effective dates—1983 1st ex.s. c 67: "This act is necessary for the immediate preservation of the public peace, health, and safety, the support of the state government and its existing public institutions and shall take effect on July 1, 1983, with the exception of section 28 of this act, which shall take effect on January 1, 1985." [1983 1st ex.s. c 67 § 51.]

Severability—Effective dates—1981 1st ex.s. c 2: See notes following RCW 18.51.010.

74.46.902 Section captions—1980 c 177. Section captions as used in this act do not constitute any part of the law. [1980 c 177 § 89.]

74.46.905 Severability—1983 1st ex.s. c 67. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1983 1st ex.s. c 67 § 43.]

74.46.906 Effective date—1998 c 322 §§ 1-37, 40-49, and 52-54. Sections 1 through 37, 40 through 49, and 52 through 54 of this act take effect July 1, 1998. [1998 c 322 § 55.]

74.46.907 Severability—1998 c 322. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1998 c 322 § 56.]

Chapter 74.50 RCW

ALCOHOLISM AND DRUG ADDICTION TREATMENT AND SUPPORT

Sections

| | |
|-----------|--|
| 74.50.010 | Legislative findings. |
| 74.50.011 | Additional legislative findings. |
| 74.50.035 | Shelter services—Eligibility. |
| 74.50.040 | Client assessment, treatment, and support services. |
| 74.50.050 | Treatment services. |
| 74.50.055 | Treatment services—Eligibility. |
| 74.50.060 | Shelter assistance program. |
| 74.50.070 | County multipurpose diagnostic center or detention center. |
| 74.50.080 | Rules—Discontinuance of service. |
| 74.50.900 | Short title. |

Alcoholism, intoxication, and drug addiction treatment: Chapters 70.96 and 70.96A RCW.

Applicability of chapter 74.08 RCW: RCW 74.08.900.

74.50.010 Legislative findings. The legislature finds:

- (1) There is a need for reevaluation of state policies and programs regarding indigent alcoholics and drug addicts;
- (2) The practice of providing a cash grant may be causing rapid caseload growth and attracting transients to the state;

(3) Many chronic public inebriates have been recycled through county detoxification centers repeatedly without apparent improvement;

(4) The assumption that all individuals will recover through treatment has not been substantiated;

(5) The state must modify its policies and programs for alcoholics and drug addicts and redirect its resources in the interests of these individuals, the community, and the taxpayers; and

(6) Treatment resources should be focused on persons willing to commit to rehabilitation; and

(7) It is the intent of the legislature that, to the extent possible, shelter services be developed under this chapter that do not result in the displacement of existing emergency shelter beds. To the extent that shelter operators do not object, it is the intent of the legislature that any vacant shelter beds contracted for under this chapter be made available to provide emergency temporary shelter to homeless individuals. [1988 c 163 § 1; 1987 c 406 § 2.]

74.50.011 Additional legislative findings. The legislature recognizes that alcoholism and drug addiction are treatable diseases and that most persons with this illness can recover. For this reason, this chapter provides a range of substance abuse treatment services. In addition, the legislature recognizes that when these diseases have progressed to the stage where a person's alcoholism or drug addiction has resulted in physiological or organic damage or cognitive impairment, shelter services may be appropriate. The legislature further recognizes that distinguishing alcoholics and drug addicts from persons incapacitated due to physical disability or mental illness is necessary in order to provide an incentive for alcoholics and drug addicts to seek appropriate treatment and in order to avoid use of programs that are not oriented toward their conditions. [1989 1st ex.s. c 18 § 1.]

Study and report—1989 1st ex.s. c 18: "The department of social and health services shall:

(1) Collect and maintain relevant demographic data regarding persons receiving or awaiting treatment services under this chapter;

(2) Collect and maintain utilization data on inpatient treatment, outpatient treatment, shelter services, and medical services;

(3) Monitor contracted service providers to ensure conformance with the omnibus appropriations act and the treatment priorities established in this chapter;

(4) Report the results of the data collection and monitoring provided for in this section to appropriate committees of the legislature on or before December 1, 1989, and December 1, 1990." [1989 1st ex.s. c 18 § 7.]

Severability—1989 1st ex.s. c 18: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1989 1st ex.s. c 18 § 9.]

Effective date—1989 1st ex.s. c 18: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1989." [1989 1st ex.s. c 18 § 10.]

74.50.035 Shelter services—Eligibility. A person is eligible for shelter services under this chapter only if he or she:

(1) Meets the financial eligibility requirements contained in RCW 74.04.005;

(2) Is incapacitated from gainful employment due to a condition contained in subsection (3) of this section, which

incapacity will likely continue for a minimum of sixty days; and

(3)(a) Suffers from active addiction to alcohol or drugs manifested by physiological or organic damage resulting in functional limitation, based on documented evidence from a physician, psychologist, or alcohol or drug treatment professional who is determined by the department to be qualified to make this finding; or

(b) Suffers from active addiction to alcohol or drugs to the extent that impairment of the applicant's cognitive ability will not dissipate with sobriety or detoxification, based on documented evidence from a physician, psychologist, or alcohol or drug treatment professional who is determined by the department to be qualified to make this finding. [1989 1st ex.s. c 18 § 2.]

Study and report—Severability—Effective date—1989 1st ex.s. c 18: See notes following RCW 74.50.011.

74.50.040 Client assessment, treatment, and support services. (1) The department shall provide client assessment, treatment, and support services. The assessment services shall include diagnostic evaluation and arranging for admission into treatment or supported living programs.

(2) The department shall assist clients in making application for supplemental security benefits and in obtaining the necessary documentation required by the federal social security administration for such benefits. [1987 c 406 § 5.]

74.50.050 Treatment services. (1) The department shall establish a treatment program to provide, within available funds, alcohol and drug treatment services for indigent persons eligible under this chapter. The treatment services may include but are not limited to:

(a) Intensive inpatient treatment services;

(b) Recovery house treatment;

(c) Outpatient treatment and counseling, including assistance in obtaining employment, and including a living allowance while undergoing outpatient treatment. The living allowance may not be used to provide shelter to clients in a dormitory setting that does not require sobriety as a condition of residence. The living allowance shall be administered on the clients' behalf by the outpatient treatment facility or other social service agency designated by the department. The department is authorized to pay the facility a fee for administering this allowance.

(2) The department may require an applicant or recipient selecting treatment to complete inpatient and recovery house treatment when, in the judgment of a designated assessment center, such treatment is necessary prior to providing the outpatient program. [2002 c 64 § 1; 1989 1st ex.s. c 18 § 5; 1988 c 163 § 3; 1987 c 406 § 6.]

Study and report—Severability—Effective date—1989 1st ex.s. c 18: See notes following RCW 74.50.011.

74.50.055 Treatment services—Eligibility. (1) A person shall not be eligible for treatment services under this chapter unless he or she:

(a) Meets the financial eligibility requirements contained in RCW 74.04.005; and

(b) Is incapacitated from gainful employment, which incapacity will likely continue for a minimum of sixty days.

(2004 Ed.)

(2) First priority for receipt of treatment services shall be given to pregnant women and parents of young children.

(3) In order to rationally allocate treatment services, the department may establish by rule caseload ceilings and additional eligibility criteria, including the setting of priorities among classes of persons for the receipt of treatment services. Any such rules shall be consistent with any conditions or limitations contained in any appropriations for treatment services. [1989 1st ex.s. c 18 § 4.]

Study and report—Severability—Effective date—1989 1st ex.s. c 18: See notes following RCW 74.50.011.

74.50.060 Shelter assistance program. (1) The department shall establish a shelter assistance program to provide, within available funds, shelter for persons eligible under this chapter. "Shelter," "shelter support," or "shelter assistance" means a facility under contract to the department providing room and board in a supervised living arrangement, normally in a group or dormitory setting, to eligible recipients under this chapter. This may include supervised domiciliary facilities operated under the auspices of public or private agencies. No facility under contract to the department shall allow the consumption of alcoholic beverages on the premises. The department may contract with counties and cities for such shelter services. To the extent possible, the department shall not displace existing emergency shelter beds for use as shelter under this chapter. In areas of the state in which it is not feasible to develop shelters, due to low numbers of people needing shelter services, or in which sufficient numbers of shelter beds are not available, the department may provide shelter through an intensive protective payee program, unless the department grants an exception on an individual basis for less intense supervision.

(2) Persons continuously eligible for the general assistance—unemployable program since July 25, 1987, who transfer to the program established by this chapter, have the option to continue their present living situation, but only through a protective payee. [1989 1st ex.s. c 18 § 3; 1988 c 163 § 4; 1987 c 406 § 7.]

Study and report—Severability—Effective date—1989 1st ex.s. c 18: See notes following RCW 74.50.011.

74.50.070 County multipurpose diagnostic center or detention center. (1) If a county elects to establish a multipurpose diagnostic center or detention center, the alcoholism and drug addiction assessment service under RCW 74.50.040 may be integrated into the services provided by such a center.

(2) The center may be financed from funds made available by the department for alcoholism and drug addiction assessments under this chapter and funds contained in the department's budget for detoxification, involuntary detention, and involuntary treatment under chapters 70.96A and 71.05 RCW. The center may be operated by the county or pursuant to contract between the county and a qualified organization. [1987 c 406 § 8.]

74.50.080 Rules—Discontinuance of service. The department by rule may establish procedures for the administration of the services provided by this chapter. Any rules shall be consistent with any conditions or limitations on appropriations provided for these services. If funds provided

for any service under this chapter have been fully expended, the department shall immediately discontinue that service. [1989 1st ex.s. c 18 § 6; 1989 c 3 § 2.]

Study and report—Severability—Effective date—1989 1st ex.s. c 18: See notes following RCW 74.50.011.

74.50.900 Short title. This chapter may be cited as the alcoholism and drug addiction treatment and support act. [1987 c 406 § 1.]

Chapter 74.55 RCW CHILDREN'S SYSTEM OF CARE

Sections

| | |
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| 74.55.010 | Demonstration sites—Selection criteria—Definition. |
| 74.55.020 | Goals. |
| 74.55.030 | Collaboration contract or memorandum of understanding. |
| 74.55.050 | Funding—Report. |

74.55.010 Demonstration sites—Selection criteria—Definition. (1) The secretary shall establish demonstration sites for statewide implementation of a children's system of care. The demonstration sites shall be selected using the following criteria:

(a) The system administrator must be the recipient of funding by the federal center for mental health services for the purpose of developing a system of care for children with emotional and behavioral disorders;

(b) The system administrator must have established a process for ongoing input and coordination from the public health and safety network or networks established in the catchment area of the project; and

(c) The system administrator may be a project site under a Title IV-E waiver.

(2) For the purposes of this section, "children's system of care" means a centralized community care coordination system representing a philosophy about the way services should be delivered to children and their families, using existing resources of various child-serving agencies addressing the problems of children with emotional and behavioral disorders. The agencies represented may include providers of mental health services, drug and alcohol services, services for the developmentally disabled, county juvenile justice and state juvenile rehabilitation, child welfare, and special education. [2002 c 309 § 1.]

74.55.020 Goals. The goals of the children's system of care are to:

(1) Maintain a multiagency collaborative planning and system management mechanism at the state and local levels through the establishment of an oversight committee at the local level in accordance with the principles and program requirements associated with the federal center for children's mental health services;

(2) Recommend and make necessary financing changes to support individualized and flexible home and community-based services and supports that are child centered, family driven, strength based, and culturally competent;

(3) Support a common screening tool and integrated care coordination system;

[Title 74 RCW—page 194]

(4) Recommend and make necessary changes in contracting to support integrated service delivery;

(5) Promote and increase the expansion of system capacity for children and their families in each demonstration site community;

(6) Develop the capacity of family members to provide support for one another and to strengthen the family voice in system implementation through the utilization of a citizens' advisory board as described in *RCW 74.55.040 and through other outreach activities;

(7) Conduct research and draw on outside consultation to identify best practices to inform system development and refinement; and

(8) Demonstrate cost-effectiveness by creating system efficiencies that generate savings from the current level of expenditures for children being served by the participating agencies. These savings must be used to provide more services to the children involved in the project, or to serve more children. [2002 c 309 § 2.]

*Reviser's note: RCW 74.55.040 expired January 1, 2004.

74.55.030 Collaboration contract or memorandum of understanding. The secretary shall assure collaboration with each demonstration site by child-serving entities operated directly by the department or by departmental contractors. A collaboration contract or memorandum of understanding shall be developed by the demonstration site and the secretary for that purpose. [2002 c 309 § 3.]

74.55.050 Funding—Report. Funding for children's system of care projects following the expiration of the federal grant shall be determined using the process established in RCW 74.14A.060 and funded children's system of care projects shall be included in the annual report required by that section. [2002 c 309 § 5.]

Chapter 74.98 RCW CONSTRUCTION

Sections

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|-----------|--|
| 74.98.010 | Continuation of existing law. |
| 74.98.020 | Title, chapter, section headings not part of law. |
| 74.98.030 | Invalidity of part of title not to affect remainder. |
| 74.98.040 | Purpose—1959 c 26. |
| 74.98.050 | Repeals and saving. |
| 74.98.060 | Emergency—1959 c 26. |

74.98.010 Continuation of existing law. The provisions of this title insofar as they are substantially the same as statutory provisions repealed by this chapter, and relating to the same subject matter, shall be construed as restatements and continuations, and not as new enactments. [1959 c 26 § 74.98.010.]

74.98.020 Title, chapter, section headings not part of law. Title headings, chapter headings, and section or subsection headings, as used in this title do not constitute any part of the law. [1959 c 26 § 74.98.020.]

74.98.030 Invalidity of part of title not to affect remainder. If any provision of this title, or its application to

(2004 Ed.)

any person or circumstance is held invalid, the remainder of the title, the application of the provision to other persons or circumstances is not affected. [1959 c 26 § 74.98.030.]

74.98.040 Purpose—1959 c 26. It is the purpose and intent of this title to provide for the public welfare by making available, in conjunction with federal matching funds, such public assistance as is necessary to insure to recipients thereof a reasonable subsistence compatible with decency and health. [1959 c 26 § 74.98.040.]

74.98.050 Repeals and saving. See 1959 c 26 § 74.98.050.

74.98.060 Emergency—1959 c 26. This act is necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. [1959 c 26 § 74.98.060.]

Title 76

FORESTS AND FOREST PRODUCTS

Chapters

- 76.01** General provisions.
- 76.04** Forest protection.
- 76.06** Forest insect and disease control.
- 76.09** Forest practices.
- 76.10** Surface mining.
- 76.13** Stewardship of nonindustrial forests and woodlands.
- 76.14** Forest rehabilitation.
- 76.15** Community and urban forestry.
- 76.36** Marks and brands.
- 76.42** Wood debris—Removal from navigable waters.
- 76.44** Institute of forest resources.
- 76.48** Specialized forest products.
- 76.52** Cooperative forest management services act.
- 76.56** Center for international trade in forest products.

Access roads to public and state forest lands: Chapter 79.38 RCW.

County timber: Chapter 36.34 RCW.

Easements over public lands: Chapter 79.36 RCW.

Exchange of state lands to facilitate marketing of forest products or to consolidate state lands: RCW 79.17.010.

Excise tax on conveyance of standing timber: Chapter 82.45 RCW.

Forest management, major line at state universities: RCW 28B.10.115, 28B.20.060.

Forest roads, county: RCW 36.82.140.

Infractions: Chapter 7.84 RCW.

Lien for labor and services on timber and lumber: Chapter 60.24 RCW.

Limitation on liability of forest landowner for injuries to recreation users: RCW 4.24.210.

Logging railroads: Title 81 RCW.

Logging trucks, special permits for use of roads and highways: RCW 46.44.047.

Logs on county highways and bridges: RCW 36.86.090.

Measurement of timber and wood products, fraud, penalty: RCW 9.45.122 through 9.45.126.

Motor vehicle size, weight and load: Chapter 46.44 RCW.

National forests, jurisdiction: Chapter 37.08 RCW.

Pest control compact: Chapter 17.34 RCW.

Reservation of timber on sale of county tax-title lands: RCW 36.35.120.

Safety supervisor: RCW 43.22.040.

Sustained yield plan and cooperative agreements: Chapter 79.10 RCW.

Taxation and/or assessment of lands lying both within fire protection district and forest protection assessment area: RCW 52.16.170.

Transportation of forest products, applicability of public utility tax: RCW 82.16.020.

University demonstration forest and experiment station: RCW 79.17.030.

Chapter 76.01 RCW GENERAL PROVISIONS

Sections

- 76.01.080 Lacey compound—Light industrial facilities/land—Sale or exchange.
- 76.01.090 Proposal for exchange or sale—Lacey compound site.

(2004 Ed.)

76.01.080 Lacey compound—Light industrial facilities/land—Sale or exchange. Except as provided in RCW 76.01.090, the department of natural resources may sell or exchange the light industrial facilities and land in Thurston county, known as the Lacey compound, which was acquired as an administrative site. This land and the facilities may be sold or exchanged for other lands and facilities in Thurston county, or counties adjacent to Thurston county, for use as an administrative site. The property may be exchanged for public or private property. The department is authorized to accept cash or expend cash from appropriated funds in order to balance a proposed exchange. Alternatively, the department may sell the Lacey compound at public auction or under *RCW 79.01.009. The sale or exchange must be for at least market value. Transactions involving the construction of improvements must be conducted pursuant to Title 39 RCW, as applicable, and must comply with all other applicable laws and rules. Proceeds received from the sale or exchange of the Lacey compound must be deposited into the park land trust revolving fund to be used to acquire a replacement administrative site. Funds received from the exchange or sale that are not used to either replace or construct, or both, the administrative site must be deposited pursuant to **RCW 76.01.030 or into the appropriate trust account as determined by the department. [2001 c 189 § 1.]

Reviser's note: *(1) RCW 79.01.009 was recodified as RCW 79.17.200 pursuant to 2003 c 334 § 560.

** (2) RCW 76.01.030 was repealed by 2003 c 334 § 235.

76.01.090 Proposal for exchange or sale—Lacey compound site. Before proceeding with an exchange or sale of the Lacey compound site, the department of natural resources shall submit a proposal for an exchange or sale to the office of financial management for review and approval. The proposal shall include:

- (1) A determination of the ownership by trust of the Lacey compound site;
- (2) A determination of the market value of the Lacey compound site;
- (3) A determination of prospective proportional use of the future site based on function and an assessment of the financial responsibility for the new site based on the functional analysis; and
- (4) A financing plan for the future site based on prospective use.

The location of a future site is subject to the approval of the board of natural resources and the state capitol committee.

Any additional funding requirements shall be submitted for approval by the legislature by January 1, 2002. [2001 c 189 § 2.]

Chapter 76.04 RCW
FOREST PROTECTION

Sections

ADMINISTRATION

- 76.04.005 Definitions.
76.04.015 Fire protection powers and duties of department—Enforcement—Investigation—Administration.
76.04.016 Fire prevention and suppression capacity—Duties owed to public in general—Legislative intent.
76.04.025 Federal funds.
76.04.035 Wardens—Appointment—Duties.
76.04.045 Rangers—Appointment—Ex officio rangers—Compensation.
76.04.055 Service of notices.
76.04.065 Arrests without warrants.
76.04.075 Rules—Penalty.
76.04.085 Penalty for violations.
76.04.095 Cooperative protection.
76.04.105 Contracts for protection and development.
76.04.115 Articles of incorporation—Requirements.
76.04.125 Requisites of contract.
76.04.135 Cooperative agreements—Public agencies.
76.04.145 Forest fire advisory board.
76.04.155 Fire fighting—Employment—Assistance.
76.04.165 Legislative declaration—Forest protection zones.
76.04.167 Legislative declaration—Equitable sharing of forest fire protection costs—Coordinated forest fire protection and suppression.
76.04.175 Fire suppression equipment—Comparison of costs.
76.04.177 Fire suppression equipment—Requirement to utilize private equipment.

PERMITS

- 76.04.205 Burning permits.
76.04.215 Burning mill wood waste—Arresters.
76.04.235 Dumping mill waste, forest debris—Penalty.
76.04.246 Use of blasting fuse.

CLOSURES/SUSPENSIONS

- 76.04.305 Closed to entry—Designation.
76.04.315 Suspension of burning permits/privileges.
76.04.325 Closure of forest operations or forest lands.

FIRE PROTECTION REGULATION

- 76.04.405 Steam, internal combustion, or electrical engines and other spark-emitting equipment regulated.
76.04.415 Penalty for violations—Work stoppage notice.
76.04.425 Unauthorized entry into sealed fire tool box.
76.04.435 Deposit of fire or live coals.
76.04.445 Reports of fire.
76.04.455 Lighted material, etc.—Receptacles in conveyances.
76.04.465 Certain snags to be felled currently with logging.
76.04.475 Reimbursement for costs of suppression action.
76.04.486 Escaped slash burns—Obligations.
76.04.495 Negligent starting of fires or allowance of extreme fire hazard or debris—Liability—Recovery of reasonable expenses—Lien.

ASSESSMENTS, OBLIGATIONS, FUNDS

- 76.04.600 Owners to protect forests.
76.04.610 Forest fire protection assessment.
76.04.620 State funds—Loans—Recovery of funds from the landowner contingency forest fire suppression account.
76.04.630 Landowner contingency forest fire suppression account—Expenditures—Assessments.

HAZARD ABATEMENT

- 76.04.650 Disposal of forest debris—Permission to allow trees to fall on another's land.
76.04.660 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs.

FIRE REGULATION

- 76.04.700 Failure to extinguish campfire.
76.04.710 Wilful setting of fire.
76.04.720 Removal of notices.
76.04.730 Negligent fire—Spread.
76.04.740 Reckless burning.

- 76.04.750 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs.
76.04.900 Captions—1986 c 100.

Burning permits within fire protection districts: RCW 52.12.101.

Christmas trees—Cutting, breaking, removing: RCW 79.02.340 and 79.02.350.

Excessive steam in boilers, penalty: RCW 70.54.080.

Steam boilers and pressure vessels, construction, installation, inspection, and certification: Chapter 70.79 RCW.

Treble damages for removal of trees: RCW 64.12.030 and 79.02.320.

ADMINISTRATION

76.04.005 Definitions. As used in this chapter, the following terms have the meanings indicated unless the context clearly requires otherwise.

(1) "Additional fire hazard" means a condition existing on any land in the state covered wholly or in part by forest debris which is likely to further the spread of fire and thereby endanger life or property. The term "additional fire hazard" does not include green trees or snags left standing in upland or riparian areas under the provisions of RCW 76.04.465 or chapter 76.09 RCW.

(2) "Closed season" means the period between April 15 and October 15, unless the department designates different dates because of prevailing fire weather conditions.

(3) "Department" means the department of natural resources, or its authorized representatives, as defined in chapter 43.30 RCW.

(4) "Department protected lands" means all lands subject to the forest protection assessment under RCW 76.04.610 or covered under contract or agreement pursuant to RCW 76.04.135 by the department.

(5) "Emergency fire costs" means those costs incurred or approved by the department for emergency forest fire suppression, including the employment of personnel, rental of equipment, and purchase of supplies over and above costs regularly budgeted and provided for nonemergency fire expenses for the biennium in which the costs occur.

(6) "Forest debris" includes forest slash, chips, and any other vegetative residue resulting from activities on forest land.

(7) "Forest fire service" includes all wardens, rangers, and other persons employed especially for preventing or fighting forest fires.

(8) "Forest land" means any unimproved lands which have enough trees, standing or down, or flammable material, to constitute in the judgment of the department, a fire menace to life or property. Sagebrush and grass areas east of the summit of the Cascade mountains may be considered forest lands when such areas are adjacent to or intermingled with areas supporting tree growth. Forest land, for protection purposes, does not include structures.

(9) "Forest landowner," "owner of forest land," "landowner," or "owner" means the owner or the person in possession of any public or private forest land.

(10) "Forest material" means forest slash, chips, timber, standing or down, or other vegetation.

(11) "Landowner operation" means every activity, and supporting activities, of a forest landowner and the landowner's agents, employees, or independent contractors or permittees in the management and use of forest land subject

to the forest protection assessment under RCW 76.04.610 for the primary benefit of the owner. The term includes, but is not limited to, the growing and harvesting of forest products, the development of transportation systems, the utilization of minerals or other natural resources, and the clearing of land. The term does not include recreational and/or residential activities not associated with these enumerated activities.

(12) "Participating landowner" means an owner of forest land whose land is subject to the forest protection assessment under RCW 76.04.610.

(13) "Slash" means organic forest debris such as tree tops, limbs, brush, and other dead flammable material remaining on forest land as a result of a landowner operation.

(14) "Slash burning" means the planned and controlled burning of forest debris on forest lands by broadcast burning, underburning, pile burning, or other means, for the purposes of silviculture, hazard abatement, or reduction and prevention or elimination of a fire hazard.

(15) "Suppression" means all activities involved in the containment and control of forest fires, including the patrolling thereof until such fires are extinguished or considered by the department to pose no further threat to life or property.

(16) "Unimproved lands" means those lands that will support grass, brush and tree growth, or other flammable material when such lands are not cleared or cultivated and, in the opinion of the department, are a fire menace to life and property. [1992 c 52 § 24; 1986 c 100 § 1.]

76.04.015 Fire protection powers and duties of department—Enforcement—Investigation—Administration.

(1) The department may, at its discretion, appoint trained personnel possessing the necessary qualifications to carry out the duties and supporting functions of the department and may determine their respective salaries.

(2) The department shall have direct charge of and supervision of all matters pertaining to the forest fire service of the state.

(3) The department shall:

(a) Enforce all laws within this chapter;

(b) Be empowered to take charge of and direct the work of suppressing forest fires;

(c) Investigate the origin and cause of all forest fires to determine whether either a criminal act or negligence by any person, firm, or corporation caused the starting, spreading, or existence of the fire. In conducting investigations, the department shall work cooperatively, to the extent possible, with utilities, property owners, and other interested parties to identify and preserve evidence. Except as provided otherwise in this subsection, the department in conducting investigations is authorized, without court order, to take possession or control of relevant evidence found in plain view and belonging to any person, firm, or corporation. To the extent possible, the department shall notify the person, firm, or corporation of its intent to take possession or control of the evidence. The person, firm, or corporation shall be afforded reasonable opportunity to view the evidence and, before the department takes possession or control of the evidence, also shall be afforded reasonable opportunity to examine, document, and photograph it. If the person, firm, or corporation objects in writing to the department's taking possession or control of the evidence, the department must either return the evidence within

seven days after the day on which the department is provided with the written objections or obtain a court order authorizing the continued possession or control.

Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of the owner of the evidence if: (i) The evidence is used by the owner in conducting a business or in providing an electric utility service; and (ii) the department's taking possession or control of the evidence would substantially and materially interfere with the operation of the business or provision of electric utility service.

Absent a court order authorizing otherwise, the department may not take possession or control of evidence over the objection of an electric utility when the evidence is not owned by the utility but has caused damage to property owned by the utility. However, this paragraph does not apply if the department has notified the utility of its intent to take possession or control of the evidence and provided the utility with reasonable time to examine, document, and photograph the evidence.

Only personnel qualified to work on electrical equipment may take possession or control of evidence owned or controlled by an electric utility;

(d) Furnish notices or information to the public calling attention to forest fire dangers and the penalties for violation of this chapter;

(e) Be familiar with all timbered and cut-over areas of the state; and

(f) Regulate and control the official actions of its employees, the wardens, and the rangers.

(4) The department may:

(a) Authorize all needful and proper expenditures for forest protection;

(b) Adopt rules for the prevention, control, and suppression of forest fires as it considers necessary including but not limited to: Fire equipment and materials; use of personnel; and fire prevention standards and operating conditions including a provision for reducing these conditions where justified by local factors such as location and weather;

(c) Remove at will the commission of any ranger or suspend the authority of any warden;

(d) Inquire into:

(i) The extent, kind, value, and condition of all timber lands within the state;

(ii) The extent to which timber lands are being destroyed by fire and the damage thereon.

(5) When the department considers it to be in the best interest of the state, it may cooperate with any agency of another state, the United States or any agency thereof, the Dominion of Canada or any agency or province thereof, and any county, town, corporation, individual, or Indian tribe within the state of Washington in forest fire fighting and patrol. [1993 c 196 § 3; 1986 c 100 § 2.]

76.04.016 Fire prevention and suppression capacity—Duties owed to public in general—Legislative intent.

The department when acting, in good faith, in its statutory capacity as a fire prevention and suppression agency, is carrying out duties owed to the public in general and not to any individual person or class of persons separate and apart from the public. Nothing contained in this title, including but not

limited to any provision dealing with payment or collection of forest protection or fire suppression assessments, may be construed to evidence a legislative intent that the duty to prevent and suppress forest fires is owed to any individual person or class of persons separate and apart from the public in general. This section does not alter the department's duties and responsibilities as a landowner. [1993 c 196 § 1.]

76.04.025 Federal funds. The department shall receive and disburse any and all moneys contributed, allotted, or paid by the United States under the authority of any act of Congress for use in cooperation with the state of Washington in protecting and developing forests. [1986 c 100 § 3.]

76.04.035 Wardens—Appointment—Duties. (1) The department may appoint any of its employees as wardens, at the times and localities as it considers the public welfare demands, within any area of the state where there is forest land requiring protection.

(2) The duties of wardens shall be:

- (a) To provide forest fire prevention and protection information to the public;
- (b) To investigate discovered or reported fires on forest lands and take appropriate action;
- (c) To patrol their areas as necessary;
- (d) To visit all parts of their area, and frequented places and camps as far as possible, and warn campers or other users and visitors of fire hazards;
- (e) To see that all locomotives and all steam, internal combustion, and other spark-emitting equipment are provided with spark arresters and adequate devices for preventing the escape of fire or sparks in accordance with the law;
- (f) To see that operations or activities on forest land have all required fire prevention and suppression equipment or devices as required by law;
- (g) To extinguish wildfires;
- (h) To set back-fires to control fires;
- (i) To summons, impress, and employ help in controlling wildfires;
- (j) To see that all laws for the protection of forests are enforced;
- (k) To investigate, arrest, and initiate prosecution of all offenders of this chapter or other chapters as allowed by law; and
- (l) To perform all other duties as prescribed by law and as the department directs.

(3) All wardens and rangers shall render reports to the department on blanks or forms, or in the manner and at the times as may be ordered, giving a summary of how employed, the area visited, expenses incurred, and other information as required by the department.

(4) The department may suspend the authority of any warden who may be incompetent or unwilling to discharge properly the duties of the office.

(5) The department shall determine the placement of the wardens and, upon its request to the county commissioners of any county, the county commissioners shall designate and furnish the wardens with suitably equipped office quarters in the county courthouse.

(6) The authority of the wardens regarding the prevention, suppression, and control of forest fires, summoning, impressing, or employing help, or making arrests for violations of this chapter may extend to any part of the state. [1986 c 100 § 4.]

76.04.045 Rangers—Appointment—Ex officio rangers—Compensation. (1) All Washington state patrol officers, fish and wildlife officers, deputy state fire marshals, and state park rangers, while in their respective jurisdictions, shall be ex officio rangers.

(2) Employees of the United States forest service, when recommended by their forest supervisor, and citizens of the state advantageously located may, at the discretion of the department, be commissioned as rangers and vested with the certain powers and duties of wardens as specified in this chapter and as directed by the department.

(3) Rangers shall receive no compensation for their services except when employed in cooperation with the state and under the provisions of this chapter and shall not create any indebtedness or incur any liability on behalf of the state: PROVIDED, That rangers actually engaged in extinguishing or preventing the spread of fire on forest land or elsewhere that may endanger forest land shall, when their accounts for such service have been approved by the department, be entitled to receive compensation for such services at a rate to be fixed by the department.

(4) The department may cancel the commission of any ranger or authority granted to any ex officio ranger who may be incompetent or unwilling to discharge properly the duties of the office. [2001 c 253 § 9; 1986 c 100 § 5.]

76.04.055 Service of notices. Any notice required by law to be served by the department, warden, or ranger shall be sufficient if a written or printed copy thereof is delivered, mailed, telegraphed, or electronically transmitted by the department, warden, or ranger to the person to receive the notice or to his or her responsible agent. If the name or address of the person or agent is unknown and cannot be obtained by reasonable diligence, the notice may be served by posting the copy in a conspicuous place upon the premises concerned by the notice. [1986 c 100 § 6.]

76.04.065 Arrests without warrants. Department employees appointed as wardens, persons commissioned as rangers, and all police officers may arrest persons violating this chapter, without warrant, as prescribed by law. [1986 c 100 § 7.]

76.04.075 Rules—Penalty. Any person who violates any of the orders or rules adopted under this chapter for the protection of forests from fires is guilty of a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021, unless another penalty is provided. [1986 c 100 § 8.]

76.04.085 Penalty for violations. Unless specified otherwise, violations of the provisions of this chapter shall be a misdemeanor and subject to the penalties for a misdemeanor under RCW 9A.20.021. [1986 c 100 § 9.]

76.04.095 Cooperative protection. When any responsible protective agency or agencies composed of timber owners other than the state agrees to undertake systematic forest protection in cooperation with the state and such cooperation appears to the department to be more advantageous to the state than the state-provided forest fire services, the department may designate suitable areas to be official cooperative districts and substitute cooperative services for the state-provided services. The department may cooperate in the compensation for expenses of preventing and controlling fire in cooperative districts to the extent it considers equitable on behalf of the state. [1986 c 100 § 10.]

76.04.105 Contracts for protection and development. The department may enter into contracts and undertakings with private corporations for the protection and development of the forest lands within the state, subject to the provisions of this chapter. [1986 c 100 § 11.]

76.04.115 Articles of incorporation—Requirements. Before any private corporation may enter into any contract under RCW 76.04.105, there shall be incorporated into the articles of incorporation or charter of such corporation a provision requiring that the corporation, out of its earnings or earned surplus, and in a manner satisfactory to the department, annually set apart funds to discharge any contract entered into between such corporation and the department. [1986 c 100 § 12.]

76.04.125 Requisites of contract. Any undertaking for the protection and development of the forest lands of the state under RCW 76.04.105 shall be regulated and controlled by a contract to be entered into between the private corporation and the department. The contract shall outline the lands involved and the conditions and details of the undertaking, including an exact specification of the amount of funds to be made available by the corporation and the time and manner of disbursement. Before entering into any such contract, the department shall be satisfied that the private corporation is financially solvent and will be able to carry out the project outlined in the contract. The department shall have charge of the project for the protection and development of the forest lands described in the contract, and any expense incurred by the department under any such contract shall be payable solely by the corporation from the funds provided by it for these purposes. The state of Washington shall not in any event be responsible to any person, firm, company, or corporation for any indebtedness created by any corporation under a contract pursuant to RCW 76.04.105. [1986 c 100 § 13.]

76.04.135 Cooperative agreements—Public agencies. (1) For the purpose of promoting and facilitating cooperation between fire protection agencies and to more adequately protect life, property, and the natural resources of the state, the department may enter into a contract or agreement with a municipality, county, state, or federal agency to provide fire detection, prevention, presuppression, or suppression services on property which they are responsible to protect.

(2) Contracts or agreements under subsection (1) of this section may contain provisions for the exchange of services

on a cooperative basis or services in return for cash payment or other compensation.

(3) No charges may be made when the department determines that under a cooperative contract or agreement the assistance received from a municipality, county, or federal agency on state protected lands equals that provided by the state on municipal, county, or federal lands. [1986 c 100 § 14.]

76.04.145 Forest fire advisory board. (1) There is hereby created a forest fire advisory board, consisting of seven members who shall represent private and public forest landowners and other interested segments of the public. The members shall be appointed by the commissioner of public lands and shall serve at the commissioner's pleasure, without compensation.

(2) The duties of the forest fire advisory board shall be strictly advisory and shall include, but not necessarily be limited to:

(a) Reviewing forest fire prevention and suppression policies of the department;

(b) Monitoring expenditures from and recoveries for the landowner contingency forest fire suppression account;

(c) Recommending appropriate assessments and allocations for establishment and replenishment of the account based upon the proportionate expenditures necessitated by participating landowner operations in western and eastern Washington;

(d) Recommending to the department appropriate rules or amendments to existing rules and reviewing nonemergency rules affecting the protection of forest lands from fire, including reasonable alternative means or procedures for the abatement, isolation, or reduction of forest fire hazards.

(3) Except where an emergency exists, all rules concerning matters listed in subsection (2)(d) of this section shall be adopted by the department after consultation with the forest fire advisory board. [1986 c 100 § 15.]

76.04.155 Fire fighting—Employment—Assistance. (1) The department may employ a sufficient number of persons to extinguish or prevent the spreading of any fire that may be in danger of damaging or destroying any timber or other property on department protected lands. The department may provide needed tools and supplies and may provide transportation when necessary for persons so employed.

(2) Every person so employed is entitled to compensation at a rate to be fixed by the department. The department shall, upon request, show the person the number of hours worked by that person and the rate established for payment. After approval of the department, that person is entitled to receive payment from the state.

(3) It is unlawful to fail to render assistance when called upon by the department to aid in guarding or extinguishing any fire. [1986 c 100 § 16.]

76.04.165 Legislative declaration—Forest protection zones. (1) The legislature finds and declares that forest lands within the state are increasingly being used for residential purposes; that the risk to life and property is increasing from forest fires which may destroy developed property; that,

based on the primary missions for the respective fire control agencies established in this chapter, adjustment of the geographic areas of responsibility has not kept pace with the increasing use of forest lands for residential purposes; and that the department should work with the state's other fire control agencies to define geographic areas of responsibility that are more consistent with their respective primary missions.

(2) To accomplish the purposes of subsection (1) of this section, the department shall establish a procedure to clarify its geographic areas of responsibility. The areas of department protection shall be called forest protection zones. The forest protection zones shall include all forest land which the department is obligated to protect but shall not include forest land within rural fire districts or municipal fire districts which affected local fire control agencies agree, by mutual consent with the department, is not appropriate for department protection. Forest land not included within a forest protection zone established by mutual agreement of the department and a rural fire district or a municipal fire district shall not be assessed under RCW 76.04.610 or 76.04.630.

(3) After the department and any affected local fire protection agencies have agreed on the boundary of a forest protection zone, the department shall establish the boundary by rule under chapter 34.05 RCW.

(4) Except by agreement of the affected parties, the establishment of forest protection zones shall not alter any mutual aid agreement. [1995 c 151 § 2; 1988 c 273 § 2.]

76.04.167 Legislative declaration—Equitable sharing of forest fire protection costs—Coordinated forest fire protection and suppression. (1) The legislature hereby finds and declares that:

(a) Forest wild fires are a threat to public health and safety and can cause catastrophic damage to public and private resources, including clean air, clean water, fish and wildlife habitat, timber resources, forest soils, scenic beauty, recreational opportunities, economic and employment opportunities, structures, and other improvements;

(b) Forest landowners and the public have a shared interest in protecting forests and forest resources by preventing and suppressing forest wild fires;

(c) A recent independent analysis of the state fire program considered it imperative to restore a more equitable split between the general fund and forest protection assessments;

(d) Without a substantial increase in forest protection funds, the state's citizens will be paying much more money for emergency fire suppression; and

(e) It is therefore the intent of the legislature that the costs of fire protection be equitably shared between the forest protection assessment account and state contributions to ensure that there will be sufficient fire fighters who are equipped and trained to respond quickly to fires in order to keep fires small and manage those large fires that do occur. In recognition of increases in landowner assessments, the legislature declares its intent that increases in the state's share for forest protection should be provided to stabilize the funding for the forest protection program, and that sufficient state funds should be committed to the forest protection program

so that the recommendations contained in the 1997 tridata report can be implemented on an equitable basis.

(2) The legislature hereby finds and declares that it is in the public interest to establish and maintain a complete, cooperative, and coordinated forest fire protection and suppression program for the state; that, second only to saving lives, the primary mission of the department is protecting forest resources and suppressing forest wild fires; that a primary mission of rural fire districts and municipal fire departments is protecting improved property and suppressing structural fires; and that the most effective way to protect structures is for the department to focus its efforts and resources on aggressively suppressing forest wild fires.

(3) The legislature also acknowledges the natural role of fire in forest ecosystems, and finds and declares it in the public interest to use fire under controlled conditions to prevent wild fires by maintaining healthy forests and eliminating sources of fuel. [2001 c 279 § 1; 1995 c 151 § 1.]

76.04.175 Fire suppression equipment—Comparison of costs. (1) The department shall, by June 1 of each year, establish a list of fire suppression equipment, such as portable showers, kitchens, water tanks, dozers, and hauling equipment, provided by the department so that the cost by unit or category can be determined and can be compared to the expense of utilizing private vendors.

(2) The department shall establish a roster of quotes by vendors who are able to provide equipment to respond to incidents involving wildfires on department-protected lands. The department shall use these quotes from private vendors to make a comparison with the costs established in subsection (1) of this section. The department shall utilize the most effective and efficient resource available for responding to wildfires. [1995 c 113 § 2.]

Finding—Intent—1995 c 113: "The legislature finds that it is frequently in the best interest of the state to utilize fire suppression equipment from private vendors whenever possible in responding to incidents involving wildfires on department-protected lands. It is the intent of the legislature to encourage the department of natural resources to utilize kitchen, shower, and other fire suppression equipment from private vendors as allowed in RCW 76.04.015(4)(b), when such utilization will be most effective and efficient." [1995 c 113 § 1.]

76.04.177 Fire suppression equipment—Requirement to utilize private equipment. Before constructing or purchasing any equipment listed in RCW 76.04.175(1) for wildfire suppression, the department shall compare the per use cost of the equipment to be purchased or constructed with the per use cost of utilizing private equipment. If utilizing private equipment is more effective and efficient, the department may not construct or purchase the equipment but shall utilize the equipment from the lowest responsive bidder. [1995 c 113 § 3.]

Finding—Intent—1995 c 113: See note following RCW 76.04.175.

PERMITS

76.04.205 Burning permits. (1) Except in certain areas designated by the department or as permitted under rules adopted by the department, a person shall have a valid written burning permit obtained from the department to burn:

(a) Any flammable material on any lands under the protection of the department; or

(b) Refuse or waste forest material on forest lands protected by the department.

(2) To be valid a permit must be signed by both the department and the permittee. Conditions may be imposed in the permit for the protection of life, property, or air quality and [the department] may suspend or revoke the permits when conditions warrant. A permit shall be effective only under the conditions and for the period stated therein. Signing of the permit shall indicate the permittee's agreement to and acceptance of the conditions of the permit.

(3) The department may inspect or cause to be inspected the area involved and may issue a burning permit if:

(a) All requirements relating to fire fighting equipment, the work to be done, and precautions to be taken before commencing the burning have been met;

(b) No unreasonable danger will result; and

(c) Burning will be done in compliance with air quality standards established by chapter 70.94 RCW.

(4) The department, authorized employees thereof, or any warden or ranger may refuse, revoke, or postpone the use of permits to burn when necessary for the safety of adjacent property or when necessary in their judgment to prevent air pollution as provided in chapter 70.94 RCW. [1986 c 100 § 17.]

76.04.215 Burning mill wood waste—Arresters. (1) It is unlawful for anyone manufacturing lumber or shingles, or other forest products, to destroy wood waste material by burning within one-fourth of one mile of any forest material without properly confining the place of the burning and without further safeguarding the surrounding property against danger from the burning by such additional devices as the department may require.

(2) It is unlawful for anyone to destroy any wood waste material by fire within any burner or destructor operated within one-fourth of one mile of any forest material, or to operate any power-producing plant using in connection therewith any smokestack, chimney, or other spark-emitting outlet, without installing and maintaining on such burner, or destructor, or on such smokestack, chimney, or other spark-emitting outlet, a safe and suitable device for arresting sparks. [1986 c 100 § 18.]

76.04.235 Dumping mill waste, forest debris—Penalty. (1) No person may dump mill waste from forest products, or forest debris of any kind, in quantities that the department declares to constitute a forest fire hazard on or threatening forest lands located in this state without first obtaining a written permit issued by the department on such terms and conditions determined by the department pursuant to rules enacted to protect forest lands from fire. The permit is in addition to any other permit required by law.

(2) Any person who dumps such mill waste, or forest debris, without a permit, or in violation of a permit is guilty of a gross misdemeanor and subject to the penalties for a gross misdemeanor under RCW 9A.20.021 and may further be required to remove all materials dumped. [1986 c 100 § 19.]

76.04.246 Use of blasting fuse. It is unlawful to use fuse for blasting on any area of logging slash or area of actual logging operation without a permit during the closed season. Upon the issuance of a written permit by the department or warden or ranger, fuse may be used during the closed season under the conditions specified in the permit. [1986 c 100 § 20.]

CLOSURES/SUSPENSIONS

76.04.305 Closed to entry—Designation. (1) When, in the opinion of the department, any forest land is particularly exposed to fire danger, the department may designate such land as a region of extra fire hazard subject to closure, and the department shall adopt rules for the protection thereof.

(2) All such rules shall be published in such newspapers of general circulation in the counties wherein such region is situated and for such length of time as the department may determine.

(3) When in the opinion of the department it becomes necessary to close the region to entry, posters carrying the wording "Region of extra fire hazard-CLOSED TO ENTRY-except as provided by RCW 76.04.305" and indicating the beginning and ending dates of the closures shall be posted on the public highways entering the regions.

(4) The rules shall be in force from the time specified therein, but when in the opinion of the department such forest region continues to be exposed to fire danger, or ceases to be so exposed, the department may extend, suspend, or terminate the closure by proclamation.

(5) This section does not authorize the department to prohibit the conduct of industrial operations, public work, or access of permanent residents to their own property within the closed area, but no one legally entering the region of extra fire hazard may use the area for recreational purposes which are prohibited to the general public under the terms of this section. [1986 c 100 § 21.]

76.04.315 Suspension of burning permits/privileges. In times and localities of unusual fire danger, the department may issue an order suspending any or all burning permits or privileges authorized by RCW 76.04.205 and may prohibit absolutely the use of fire in such locations. [1986 c 100 § 22.]

76.04.325 Closure of forest operations or forest lands. (1) When in the opinion of the department weather conditions arise which present an extreme fire hazard, whereby life and property may be endangered, the department may issue an order shutting down all logging, land clearing, or other industrial operations which may cause a fire to start. The shutdown shall be for the periods and regions designated in the order. During shutdowns, all persons are excluded from logging operating areas and areas of logging slash, except those present in the interest of fire protection.

(2) When in the opinion of the department extreme fire weather exists, whereby forest lands may be endangered, the department may issue an order restricting access to and activities on forest lands. The order shall describe the regions and extent of restrictions necessary to protect forest lands. During the period in which the order is in effect, all persons may be

excluded from the regions described, except those persons present in the interest of fire protection.

(3) Each day's violation of an order under this section shall constitute a separate offense. [1986 c 100 § 23.]

FIRE PROTECTION REGULATION

76.04.405 Steam, internal combustion, or electrical engines and other spark-emitting equipment regulated. It is unlawful during the closed season for any person to operate any steam, internal combustion, or electric engine, or any other spark-emitting equipment or device, on any forest land or in any place where, in the opinion of the department, fire could spread to forest land, without first complying with the requirements as may be established by the department by rule pursuant to this chapter. [1986 c 100 § 24.]

76.04.415 Penalty for violations—Work stoppage notice. (1) Every person upon receipt of written notice issued by the department that such person has or is violating any of the provisions of RCW 76.04.215, 76.04.305, 76.04.405, or 76.04.650 or any rule adopted by the department concerning fire prevention and fire suppression preparedness shall cease operations until compliance with the provisions of the sections or rules specified in such notice.

(2) The department may specify in the notice of violation the special conditions and precautions under which the operation would be allowed to continue until the end of that working day. [1986 c 100 § 25.]

76.04.425 Unauthorized entry into sealed fire tool box. It is unlawful to enter into a sealed fire tool box without authorization. [1986 c 100 § 26.]

76.04.435 Deposit of fire or live coals. No person operating a railroad may permit to be deposited by any employee, and no one may deposit fire or live coals, upon the right of way within one-fourth of one mile of any forest material, during the closed season, unless the fire or live coals are immediately extinguished. [1986 c 100 § 27.]

76.04.445 Reports of fire. (1) Any person engaged in any activity on forest lands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on forest lands.

(2) Railroad companies and other public carriers operating on or through forest lands shall immediately report to the department, in person or by radio, telephone, or telegraph, any fires on or adjacent to their right of way or route. [1986 c 100 § 28.]

76.04.455 Lighted material, etc.—Receptacles in conveyances. (1) It is unlawful during the closed season for any person to throw away any lighted tobacco, cigars, cigarettes, matches, fireworks, charcoal, or other lighted material or to discharge any tracer or incendiary ammunition in any forest, brush, range, or grain areas.

(2) It is unlawful during the closed season for any individual to smoke any flammable material when in forest or

brush areas except on roads, cleared landings, gravel pits, or any similar area free of flammable material.

(3) Every conveyance operated through or above forest, range, brush, or grain areas shall be equipped in each compartment with a suitable receptacle for the disposition of lighted tobacco, cigars, cigarettes, matches, or other flammable material.

(4) Every person operating a public conveyance through or above forest, range, brush, or grain areas shall post a copy of this section in a conspicuous place within the smoking compartment of the conveyance; and every person operating a saw mill or a logging camp in any such areas shall post a copy of this section in a conspicuous place upon the ground or buildings of the milling or logging operation. [1986 c 100 § 29.]

76.04.465 Certain snags to be felled currently with logging. Standing dead trees constitute a substantial deterrent to effective fire control action in forest areas, but are also an important and essential habitat for many species of wildlife. To insure continued existence of these wildlife species and continued forest growth while minimizing the risk of destruction by conflagration, only certain snags must be felled currently with the logging. The department shall adopt rules relating to effective fire control action to require that only certain snags be felled, taking into consideration the need to protect the wildlife habitat. [1986 c 100 § 30.]

76.04.475 Reimbursement for costs of suppression action. Any person, firm, or corporation, public or private, obligated to take suppression action on any forest fire is entitled to reimbursement for reasonable costs incurred, subject to the following:

(1) No reimbursement is allowed under this section to a person, firm, or corporation whose negligence is responsible for the starting or existence of any fire for which costs may be recoverable pursuant to law. Reimbursement for fires resulting from slash burns are subject to RCW 76.04.486.

(2) If the fire is started in the course of or as a result of land clearing operations, right of way clearing, or a land-owner operation, the person, firm, or corporation conducting the operation shall supply:

(a) At no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that are requested by the department and are reasonably available until midnight of the day on which the fire started; and

(b) After midnight of the day on which the fire started, at no cost to the department, all equipment and able-bodied persons under contract, control, employment, or ownership that were within a one-half mile radius of the fire at the time of discovery, until the fire is declared out by the department. In no case may the person, firm, or corporation provide less than one suitable bulldozer and five able-bodied persons, or other equipment accepted by the department as equivalent, unless the department determines less is needed for the purpose of suppressing the fire; and

(c) If the person, firm, or corporation has no personnel or equipment within one-half mile of the fire, payment shall be made to the department for the minimum requirement of one

suitable bulldozer and five able-bodied persons, for the duration of the fire; and

(d) If, after midnight of the day on which the fire started, additional personnel and equipment are requested by the department, the person, firm, or corporation shall supply the personnel and equipment under contract, control, employment, or ownership outside the one-half mile radius, if reasonably available, but shall be reimbursed for such personnel and equipment as provided in subsection (4) of this section.

(3) When a fire which occurred in the course of or as a result of land clearing operations, right of way clearing, or a landowner operation, which had previously been suppressed, rekindles, the person, firm, or corporation shall supply the same personnel and equipment, under the same conditions, as were required at the time of the original fire.

(4) Claims for reimbursement shall be submitted within a reasonable time to the department which shall upon verifying the amounts therein and the necessity thereof authorize payment at such rates as established by the department for wages and equipment rental. [1986 c 100 § 31.]

76.04.486 Escaped slash burns—Obligations. (1) All personnel and equipment required by the burning permit issued for a slash burn may be required by the department, at the permittee's expense, for suppression of a fire resulting from the slash burn until the fire is declared out by the department. In no case may the permittee provide less than one suitable bulldozer and five persons capable of taking suppression action. In addition, if a slash burn becomes an uncontrolled fire the department may recover from the landowner the actual costs incurred in suppressing the fire. The amount collected from the landowner shall be limited to and calculated at the rate of one dollar per acre for the landowner's total forest lands protected by the department, up to a maximum charge of fifty thousand dollars per escaped slash burn.

(2) The landowner contingency forest fire suppression account shall be used to pay and the permittee shall not be responsible for fire suppression expenditures greater than fifty thousand dollars or the total amount calculated for forest lands owned as determined in subsection (1) of this section for each escaped slash burn.

(3) All expenses incurred in suppressing a fire resulting from a slash burn in which negligence was involved shall be the obligation of the landowner. [1986 c 100 § 32.]

76.04.495 Negligent starting of fires or allowance of extreme fire hazard or debris—Liability—Recovery of reasonable expenses—Lien. (1) Any person, firm, or corporation: (a) Whose negligence is responsible for the starting or existence of a fire which spreads on forest land; or (b) who creates or allows an extreme fire hazard under RCW 76.04.660 to exist and which hazard contributes to the spread of a fire; or (c) who allows forest debris subject to RCW 76.04.650 to exist and which debris contributes to the spread of fire, shall be liable for any reasonable expenses made necessary by (a), (b), or (c) of this subsection. The state, a municipality, a forest protective association, or any fire protection agency of the United States may recover such reasonable expenses in fighting the fire, together with costs of investigation and litigation including reasonable attorneys' fees and

taxable court costs, if the expense was authorized or subsequently approved by the department. The authority granted under this subsection allowing the recovery of reasonable expenses incurred by fire protection agencies of the United States shall apply only to such expenses incurred after June 30, 1993.

(2) The department or agency incurring such expense shall have a lien for the same against any property of the person, firm, or corporation liable under subsection (1) of this section by filing a claim of lien naming the person, firm, or corporation, describing the property against which the lien is claimed, specifying the amount expended on the lands on which the fire fighting took place and the period during which the expenses were incurred, and signing the claim with post office address. No claim of lien is valid unless filed, with the county auditor of the county in which the property sought to be charged is located, within a period of ninety days after the expenses of the claimant are incurred. The lien may be foreclosed in the same manner as a mechanic's lien is foreclosed under the statutes of the state of Washington. [1993 c 196 § 2; 1986 c 100 § 33.]

ASSESSMENTS, OBLIGATIONS, FUNDS

76.04.600 Owners to protect forests. Every owner of forest land in the state of Washington shall furnish or provide, during the season of the year when there is danger of forest fires, adequate protection against the spread of fire thereon or therefrom which shall meet with the approval of the department. [1986 c 100 § 34.]

76.04.610 Forest fire protection assessment. (1) If any owner of forest land within a forest protection zone neglects or fails to provide adequate fire protection as required by RCW 76.04.600, the department shall provide such protection and shall annually impose the following assessments on each parcel of such land: (a) A flat fee assessment of fourteen dollars and fifty cents; and (b) twenty-five cents on each acre exceeding fifty acres. Assessors may, at their option, collect the assessment on tax exempt lands. If the assessor elects not to collect the assessment, the department may bill the landowner directly.

(2) An owner who has paid assessments on two or more parcels, each containing fewer than fifty acres and each within the same county, may obtain the following refund:

(a) If all the parcels together contain less than fifty acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) fourteen dollars and (ii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

(b) If all the parcels together contain fifty or more acres, then the refund is equal to the flat fee assessments paid, reduced by the total of (i) fourteen dollars, (ii) twenty-five cents for each acre exceeding fifty acres, and (iii) the total of the amounts retained by the county from such assessments under subsection (5) of this section.

Applications for refunds shall be submitted to the department on a form prescribed by the department and in the same year in which the assessments were paid. The department may not provide refunds to applicants who do not provide

verification that all assessments and property taxes on the property have been paid. Applications may be made by mail.

In addition to the procedures under this subsection, property owners with multiple parcels in a single county who qualify for a refund under this section may apply to the department on an application listing all the parcels owned in order to have the assessment computed on all parcels but billed to a single parcel. Property owners with the following number of parcels may apply to the department in the year indicated:

| | |
|---------------------|--------------------|
| Year | Number of Parcels |
| 2002 | 10 or more parcels |
| 2003 | 8 or more parcels |
| 2004 and thereafter | 6 or more parcels |

The department must compute the correct assessment and allocate one parcel in the county to use to collect the assessment. The county must then bill the forest fire protection assessment on that one allocated identified parcel. The landowner is responsible for notifying the department of any changes in parcel ownership.

(3) Beginning January 1, 1991, under the administration and at the discretion of the department up to two hundred thousand dollars per year of this assessment shall be used in support of those rural fire districts assisting the department in fire protection services on forest lands.

(4) For the purpose of this chapter, the department may divide the forest lands of the state, or any part thereof, into districts, for fire protection and assessment purposes, may classify lands according to the character of timber prevailing, and the fire hazard existing, and place unprotected lands under the administration of the proper district. Amounts paid or contracted to be paid by the department for protection of forest lands from funds at its disposal shall be a lien upon the property protected, unless reimbursed by the owner within ten days after October 1st of the year in which they were incurred. The department shall be prepared to make statement thereof, upon request, to a forest owner whose own protection has not been previously approved as to its adequacy, the department shall report the same to the assessor of the county in which the property is situated. The assessor shall extend the amounts upon the tax rolls covering the property, and upon authorization from the department shall levy the forest protection assessment against the amounts of unimproved land as shown in each ownership on the county assessor's records. The assessor may then segregate on the records to provide that the improved land and improvements thereon carry the millage levy designed to support the rural fire protection districts as provided for in RCW 52.16.170.

(5) The amounts assessed shall be collected at the time, in the same manner, by the same procedure, and with the same penalties attached that general state and county taxes on the same property are collected, except that errors in assessments may be corrected at any time by the department certifying them to the treasurer of the county in which the land involved is situated. Assessments shall be known and designated as assessments of the year in which the amounts became reimbursable. Upon the collection of assessments the county treasurer shall place fifty cents of the total assessments paid on a parcel for fire protection into the county current expense fund to defray the costs of listing, billing, and

collecting these assessments. The treasurer shall then transmit the balance to the department. Collections shall be applied against expenses incurred in carrying out the provisions of this section, including necessary and reasonable administrative costs incurred by the department in the enforcement of these provisions. The department may also expend sums collected from owners of forest lands or received from any other source for necessary administrative costs in connection with the enforcement of RCW 76.04.660.

(6) When land against which forest protection assessments are outstanding is acquired for delinquent taxes and sold at public auction, the state shall have a prior lien on the proceeds of sale over and above the amount necessary to satisfy the county's delinquent tax judgment. The county treasurer, in case the proceeds of sale exceed the amount of the delinquent tax judgment, shall immediately remit to the department the amount of the outstanding forest protection assessments.

(7) All nonfederal public bodies owning or administering forest land included in a forest protection zone shall pay the forest protection assessments provided in this section and the special forest fire suppression account assessments under RCW 76.04.630. The forest protection assessments and special forest fire suppression account assessments shall be payable by nonfederal public bodies from available funds within thirty days following receipt of the written notice from the department which is given after October 1st of the year in which the protection was provided. Unpaid assessments are not a lien against the nonfederal publicly owned land but shall constitute a debt by the nonfederal public body to the department and are subject to interest charges at the legal rate.

(8) A public body, having failed to previously pay the forest protection assessments required of it by this section, which fails to suppress a fire on or originating from forest lands owned or administered by it, is liable for the costs of suppression incurred by the department or its agent and is not entitled to reimbursement of costs incurred by the public body in the suppression activities.

(9) The department may adopt rules to implement this section, including, but not limited to, rules on levying and collecting forest protection assessments. [2004 c 216 § 1; 2001 c 279 § 2; 1993 c 36 § 1; 1989 c 362 § 1; 1988 c 273 § 3; 1986 c 100 § 35.]

Effective date—1993 c 36: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [April 15, 1993]." [1993 c 36 § 3.]

76.04.620 State funds—Loans—Recovery of funds from the landowner contingency forest fire suppression account. Biennial general fund appropriations to the department of natural resources normally provide funds for the purpose of paying the emergency fire costs and expenses incurred and/or approved by the department in forest fire suppression or in reacting to any potential forest fire situation. When a determination is made that the fire started in the course of or as a result of a landowner operation, moneys expended from such appropriations in the suppression of the fire shall be recovered from the landowner contingency forest fire suppression account. The department shall transmit to the

state treasurer for deposit in the general fund any such moneys which are later recovered. Moneys recovered during the biennium in which they are expended may be spent for purposes set forth in this section during the same biennium, without reappropriation. Loans between the general fund and the landowner contingency forest fire suppression account are authorized for emergency fire suppression. The loans shall not exceed the amount appropriated for emergency forest fire suppression costs and shall bear interest at the then current rate of interest as determined by the state treasurer. [1986 c 100 § 36.]

76.04.630 Landowner contingency forest fire suppression account—Expenditures—Assessments. There is created a landowner contingency forest fire suppression account in the state treasury. Moneys in the account may be spent only as provided in this section. Disbursements from the account shall be on authorization of the commissioner of public lands or the commissioner's designee. The account is subject to the allotment procedure provided under chapter 43.88 RCW, but no appropriation is required for disbursements.

The department may expend from this account the amounts as may be available and as it considers appropriate for the payment of emergency fire costs resulting from a participating landowner fire. The department may, when moneys are available from the landowner contingency forest fire suppression account, expend moneys for summarily abating, isolating, or reducing an extreme fire hazard under RCW 76.04.660. All moneys recovered as a result of the department's actions, from the owner or person responsible, under RCW 76.04.660 shall be deposited in the landowner contingency forest fire suppression account.

When a determination is made that the fire was started by other than a landowner operation, moneys expended from this account in the suppression of such fire shall be recovered from the general fund appropriations as may be available for emergency fire suppression costs. The department shall deposit in the landowner contingency forest fire suppression account moneys paid out of the account which are later recovered, less reasonable costs of recovery.

This account shall be established and renewed by an annual special forest fire suppression account assessment paid by participating landowners at a rate to be established by the department. In establishing assessments, the department shall seek to establish and thereafter reestablish a balance in the account of three million dollars. The department may establish a flat fee assessment of no more than seven dollars and fifty cents for participating landowners owning parcels of fifty acres or less. For participating landowners owning parcels larger than fifty acres, the department may charge the flat fee assessment plus a per acre assessment for every acre over fifty acres. The per acre assessment established by the department may not exceed fifteen cents per acre per year. The assessments may differ to equitably distribute the assessment based on emergency fire suppression cost experience necessitated by landowner operations. Amounts assessed for this account shall be a lien upon the forest lands with respect to which the assessment is made and may be collected as directed by the department in the same manner as forest protection assessments. Payment of emergency costs from this

account shall in no way restrict the right of the department to recover costs pursuant to RCW 76.04.495 or other laws.

When the department determines that a forest fire was started in the course of or as a result of a landowner operation, it shall notify the forest fire advisory board of the determination. The determination shall be final, unless, within ninety days of the notification, the forest fire advisory board or an interested party serves a request for a hearing before the department. The hearing shall constitute an adjudicative proceeding under chapter 34.05 RCW, the administrative procedure act, and an appeal shall be in accordance with RCW 34.05.510 through 34.05.598. [1993 c 36 § 2; 1991 sp.s. c 13 § 31. Prior: 1989 c 362 § 2; 1989 c 175 § 162; 1986 c 100 § 37.]

Effective date—1993 c 36: See note following RCW 76.04.610.

Effective dates—Severability—1991 sp.s. c 13: See notes following RCW 18.08.240.

Effective date—1989 c 175: See note following RCW 34.05.010.

HAZARD ABATEMENT

76.04.650 Disposal of forest debris—Permission to allow trees to fall on another's land. Everyone clearing land or clearing right of way for railroad, public highway, private road, ditch, dike, pipe or wire line, or for any other transmission, or transportation utility right of way, shall pile and burn or dispose of by other satisfactory means, all forest debris cut thereon, as rapidly as the clearing or cutting progresses, or at such other times as the department may specify, and if during the closed season, in compliance with the law requiring burning permits.

No person clearing any land or right of way, or in cutting or logging timber for any purpose, may fell, or permit to be felled, any trees so that they may fall onto land owned by another without first obtaining permission from the owner in addition to complying with the terms of this section for the disposal of refuse. All the terms of this section and other forest laws of the state shall be observed in all clearings of right of way or other land on behalf of the state itself or any county thereof, either directly or by contract, and, unless unavoidable emergency prevents, provision shall be made by all officials directing the work for withholding a sufficient portion of the payment therefor until the disposal is completed, to insure the completion of the disposal in compliance with this section. [1986 c 100 § 38.]

76.04.660 Additional fire hazards—Extreme fire hazard areas—Abatement, isolation or reduction—Summary action—Recovery of costs. (1) The owner of land which is an additional fire hazard and the person responsible for the existence of an additional fire hazard shall take reasonable measures to reduce the danger of fire spreading from the area and may abate the hazard by burning or other satisfactory means.

(2) The department shall adopt rules defining areas of extreme fire hazard that the owner and person responsible shall abate. The areas shall include but are not limited to high risk areas such as where life or buildings may be endangered, areas adjacent to public highways, and areas of frequent public use.

(3) The department may adopt rules, after consultation with the forest fire advisory board, defining other conditions of extreme fire hazard with a high potential for fire spreading to lands in other ownerships. The department may prescribe additional measures that shall be taken by the owner and person responsible to isolate or reduce the extreme fire hazard.

(4) The owner or person responsible for the existence of the extreme fire hazard is required to abate, isolate, or reduce the hazard. The duty to abate, isolate, or reduce, and liability under this chapter, arise upon creation of the extreme fire hazard. Liability shall include but not be limited to all fire suppression expenses incurred by the department, regardless of fire cause.

(5) If the owner or person responsible for the existence of the extreme fire hazard or forest debris subject to RCW 76.04.650 refuses, neglects, or unsuccessfully attempts to abate, isolate, or reduce the same, the department may summarily abate, isolate, or reduce the hazard as required by this chapter and recover twice the actual cost thereof from the owner or person responsible. Landowner contingency forest fire suppression account moneys may be used by the department, when available, for this purpose. Moneys recovered by the department pursuant to this section shall be returned to the landowner contingency forest fire suppression account.

(6) Such costs shall include all salaries and expenses of people and equipment incurred therein, including those of the department. All such costs shall also be a lien upon the land enforceable in the same manner with the same effect as a mechanic's lien.

(7) The summary action may be taken only after ten days' notice in writing has been given to the owner or reputed owner of the land on which the extreme fire hazard or forest debris subject to RCW 76.04.650 exists. The notice shall include a suggested method of abatement and estimated cost thereof. The notice shall be by personal service or by registered or certified mail addressed to the owner or reputed owner at the owner's last known place of residence. [1986 c 100 § 39.]

FIRE REGULATION

76.04.700 Failure to extinguish campfire. It is unlawful for any person to start any fire upon any camping ground and upon leaving the camping ground fail to extinguish the fire. [1986 c 100 § 40.]

76.04.710 Wilful setting of fire. It is unlawful for any person to wilfully start a fire, whether on his or her land or the land of another, whereby forest lands or the property of another is endangered, under circumstances not amounting to arson in either the first or second degree or reckless burning in either the first or second degree. [1986 c 100 § 41.]

76.04.720 Removal of notices. It is unlawful for any person to wilfully and without authorization deface or remove any warning notice posted under the requirements of this chapter. [1986 c 100 § 42.]

76.04.730 Negligent fire—Spread. It is unlawful for any person to negligently allow fire originating on the per-

son's own property to spread to the property of another. [1986 c 100 § 43.]

76.04.740 Reckless burning. (1) It is unlawful to knowingly cause a fire or explosion and thereby place forest lands in danger of destruction or damage.

(2) This section does not apply to acts amounting to reckless burning in the first degree under RCW 9A.48.040.

(3) Terms used in this section shall have the meanings given to them in Title 9A RCW.

(4) A violation of this section shall be punished as a gross misdemeanor under RCW 9A.20.021. [1986 c 100 § 44.]

76.04.750 Uncontrolled fire a public nuisance—Suppression—Duties—Summary action—Recovery of costs.

Any fire on or threatening any forest land burning uncontrolled and without proper action being taken to prevent its spread, notwithstanding the origin of the fire, is a public nuisance by reason of its menace to life and property. Any person engaged in any activity on such lands, having knowledge of the fire, notwithstanding the origin or subsequent spread thereof on his or her own or other forest lands, and the landowner, shall make every reasonable effort to suppress the fire. If the person has not suppressed the fire and the fire is on or threatening forest land within a forest protection zone, the department shall summarily suppress the fire. If the owner, lessee, other possessor of such land, or an agent or contractor of the owner, lessee, or possessor, having knowledge of the fire, has not made a reasonable effort to suppress the fire, the cost thereof may be recovered from the owner, lessee, or other possessor of the land and the cost of the work shall also constitute a lien upon the real property or chattels under the person's ownership. The lien may be filed by the department in the office of the county auditor and foreclosed in the same manner provided by law for the foreclosure of mechanics' liens. The prosecuting attorney shall bring the action to recover the cost or foreclose the lien, upon the request of the department. In the absence of negligence, no costs, other than those provided in RCW 76.04.475, shall be recovered from any landowner for lands subject to the forest protection assessment with respect to the land on which the fire burns.

When a fire occurs in a land clearing, right of way clearing, or landowner operation it shall be fought to the full limit of the available employees and equipment, and the fire fighting shall be continued with the necessary crews and equipment in such numbers as are, in the opinion of the department, sufficient to suppress the fire. The fire shall not be left without a fire fighting crew or fire patrol until authority has been granted in writing by the department. [1988 c 273 § 4; 1986 c 100 § 45.]

76.04.900 Captions—1986 c 100. As used in this act subchapter and section captions constitute no part of the law. [1986 c 100 § 60.]

Chapter 76.06 RCW

FOREST INSECT AND DISEASE CONTROL

Sections

76.06.010 Forest insects and tree diseases are public nuisance.
 76.06.020 Definitions.
 76.06.030 Administration.
 76.06.040 Owner must control pests and diseases.
 76.06.050 Infestation control district—Creation—Notice to owners.
 76.06.060 Department to control pests and diseases if owner fails.
 76.06.070 Lien for costs of control—Collection.
 76.06.080 Owner complying with notice is exempt.
 76.06.090 Dissolution of infestation control district.
 76.06.110 Deposit of moneys in general fund—Allotment as unanticipated receipts.
 76.06.130 Exotic forest insect or disease control—Department's authority and duties—Declaration of forest health emergency.
 76.06.140 Forest health problems—Findings.
 76.06.150 Forest health—Commissioner of public land designated as state's lead—Report to legislature.

76.06.010 Forest insects and tree diseases are public nuisance. The legislature finds and declares that:

(1) Forest insects and forest tree diseases which threaten the permanent timber production of the forested areas of the state of Washington are a public nuisance.

(2) Exotic forest insects or diseases, even in small numbers, can constitute serious threats to native forests. Native tree species may lack natural immunity. There are often no natural control agents such as diseases, predators, or parasites to limit populations of exotic forest insects or diseases. Exotic forest insects or diseases can also outcompete, displace, or destroy habitat of native species. It is in the public interest to identify, control, and eradicate outbreaks of exotic forest insects or diseases that threaten the diversity, abundance, and survivability of native forest trees and the environment. [2003 c 314 § 1; 1951 c 233 § 1.]

Findings—2003 c 314: See note following RCW 17.24.220.

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

(1) "Agent" means the recognized legal representative, representatives, agent, or agents for any owner.

(2) "Department" means the department of natural resources.

(3) "Owner" means and includes persons or their agents.

(4) "Timber land" means any land on which there is a sufficient number of trees, standing or down, to constitute, in the judgment of the department, a forest insect or forest disease breeding ground of a nature to constitute a menace, injurious and dangerous to permanent forest growth in the district under consideration.

(5) "Commissioner" means the commissioner of public lands.

(6) "Exotic" means not native to forest lands in Washington state.

(7) "Forest land" means any land on which there are sufficient numbers and distribution of trees and associated species to, in the judgment of the department, contribute to the spread of forest insect or forest disease outbreaks that could be injurious to forest health.

(8) "Forest health" means the condition of a forest being sound in ecological function, sustainable, resilient, and resis-

tant to insects, diseases, fire, and other disturbance, and having the capacity to meet landowner objectives.

(9) "Forest health emergency" means the introduction of, or an outbreak of, an exotic forest insect or disease that poses an imminent danger of damage to the environment by threatening the survivability of native tree species.

(10) "Forest insect or disease" means a living stage of an insect, other invertebrate animal, or disease-causing organism or agent that can directly or indirectly injure or cause disease or damage in trees, or parts of trees, or in processed or manufactured wood, or other products of trees.

(11) "Integrated pest management" means a strategy that uses various combinations of pest control methods, including biological, cultural, and chemical methods, in a compatible manner to achieve satisfactory control and ensure favorable economic and environmental consequences.

(12) "Native" means having populated Washington's forested lands prior to European settlement.

(13) "Outbreak" means a rapidly expanding population of insects or diseases with potential to spread.

(14) "Person" means any individual, partnership, private, public, or municipal corporation, county, federal, state, or local governmental agency, tribes, or association of individuals of whatever nature. [2003 c 314 § 2; 2000 c 11 § 2; 1988 c 128 § 15; 1951 c 233 § 2.]

Findings—2003 c 314: See note following RCW 17.24.220.

76.06.030 Administration. This chapter shall be administered by the department. [1988 c 128 § 16; 1951 c 233 § 3.]

76.06.040 Owner must control pests and diseases.

Every owner of timber lands, or his agent, shall make every reasonable effort to control, destroy and eradicate such forest insect pests and forest tree diseases which threaten the existence of any stand of timber or provide for the same to be done on timber lands owned by him or under his control. In the event he fails, neglects, or is unable to accomplish such control, the action may be performed as provided for in this chapter. [1951 c 233 § 4.]

76.06.050 Infestation control district—Creation—

Notice to owners. Whenever the department finds timber lands threatened by infestations of forest insects or forest tree diseases, and if it finds that such infestation is of such character as to threaten destruction of timber stands, the department shall declare and certify an infestation control district and fix and declare the boundaries thereof, so as to definitely describe such district. Said district may include timber lands threatened by the infestation as well as those timber lands already infested.

Thereafter the department shall at once serve written notice to all owners of timber lands or their agents within the said district to proceed under the provisions of this chapter without delay to control, destroy and eradicate the said forest insect pests or forest tree diseases as provided herein. The said notice may be made by personal service, or by mail addressed to the last known place or address of such owner or agent. Said notice shall list and describe the method or methods of action that will be acceptable to the department if the

owner or agent elects to control, destroy and eradicate said insects or diseases on his own property.

Said notice when published for five consecutive days in at least one daily newspaper or in two consecutive issues of a weekly newspaper, either paper having a general circulation in said district will serve as the written notice to owners of noncommercial timber lands. [1988 c 128 § 17; 1961 c 72 § 1; 1951 c 233 § 5.]

76.06.060 Department to control pests and diseases if owner fails. If the owner or agent so notified shall fail, refuse, neglect or is unable to comply with the requirements of said notice, within a period of thirty days after the date thereof, it shall be the duty of the department or its agents, using such funds as have been, or hereafter may be, made available to proceed with the control, eradication and destruction of such forest pests or forest tree diseases with or without the cooperation of the owner involved in a manner approved by the department. [1988 c 128 § 18; 1951 c 233 § 6.]

76.06.070 Lien for costs of control—Collection. Upon the completion of the work directed, authorized and performed under the provisions of this chapter, the department shall prepare a verified statement of the expenses necessarily incurred in performing the work of controlling, eradicating and destroying said forest insects or forest tree diseases. The balance of such expenses after deducting such amounts as may be contributed to the control costs by the state, by the federal government, or by any other agencies, companies, corporations or individuals, shall be a lien to be prorated per acre upon the property, or properties involved: PROVIDED, That the amount of said lien shall not exceed twenty-five percent of the total costs incurred on such owner's lands including necessary buffer strips. Said lien shall be reported by the department to the county assessor of the county in which said lands are situated, and shall be levied and collected with the next taxes on such lands in the same manner and with the same interest, penalty and cost charges as apply to ad valorem property taxes in this state: PROVIDED FURTHER, Such report and levy shall be made only on commercial timber lands. The assessor shall extend the amounts on the assessment roll in a separate column, and the procedure provided by law for the collection of taxes and delinquent taxes shall be applicable thereto, and, upon the collection thereof, the county treasurer shall repay the same to the department to be applied to the expenses incurred in carrying out the provisions of this chapter. [1988 c 128 § 19; 1951 c 233 § 7.]

76.06.080 Owner complying with notice is exempt. Every owner, and all owners or representatives, who upon receiving notice as provided in RCW 76.06.050, shall proceed and continue in good faith to control, eradicate and destroy said forest insects and forest tree diseases in accordance with standards established by the department shall be exempt from the provisions hereof as to the lands upon which he or they are so proceeding. [1988 c 128 § 20; 1951 c 233 § 11.]

76.06.090 Dissolution of infestation control district. Whenever the department shall determine that insect control work within the designated district of infestation is no longer necessary or feasible, the department may dissolve said district. [1988 c 128 § 21; 1951 c 233 § 12.]

76.06.110 Deposit of moneys in general fund—Allotment as unanticipated receipts. All moneys collected under the provisions of RCW 76.06.070, together with such moneys as may be contributed by the federal government or by any owner or agent, shall be deposited in the state general fund for the purposes of this chapter.

Any additional revenue earmarked for the purposes of this chapter which was not anticipated in the budget adopted by the legislature may be deposited in the general fund and allotted as unanticipated receipts pursuant to RCW 43.79.270 through 43.79.282 as now existing or hereafter amended. [1979 ex.s. c 67 § 12; 1951 c 233 § 9.]

Effective date—1979 ex.s. c 67: "Sections 12, 13, and 19 of this 1979 act shall take effect on July 1, 1981." [1979 ex.s. c 67 § 21.]

Severability—1979 ex.s. c 67: See note following RCW 19.28.351.

76.06.130 Exotic forest insect or disease control—Department's authority and duties—Declaration of forest health emergency. The department is authorized to contribute resources and expertise to assist the department of agriculture in control or eradication efforts authorized under chapter 17.24 RCW in order to protect forest lands of the state.

If either the department of agriculture has not taken action under chapter 17.24 RCW or the commissioner finds that additional efforts are required to control or prevent an outbreak of an exotic forest insect or disease which has not become so habituated that it can no longer be eradicated and that poses an imminent danger of damage to the forested environment by threatening the diversity, abundance, and survivability of native tree species, or both, the commissioner may declare a forest health emergency.

Upon declaration of a forest health emergency, the department must delineate the area at risk and determine the most appropriate integrated pest management methods to control the outbreak, in consultation with other interested agencies, affected tribes, and affected forest landowners. The department must notify affected forest landowners of its intent to conduct control operations.

Upon declaration of a forest health emergency by the commissioner, the department is authorized to enter into agreements with forest landowners, companies, individuals, tribal entities, and federal, state, and local agencies to accomplish control of exotic forest insects or diseases on any affected forest lands using such funds as have been, or may be, made available.

The department must proceed with the control of the exotic forest insects or diseases on affected nonfederal and nontribal forest lands with or without the cooperation of the owner. The department may reimburse cooperating forest landowners and agencies for actual cost of equipment, labor, and materials utilized in cooperative exotic forest insect or disease control projects, as agreed to by the department.

A forest health emergency no longer exists when the department finds that the exotic forest insect or disease has

been controlled or eradicated, that the imminent threat no longer exists, or that there is no longer good likelihood of effective control.

Nothing under this chapter diminishes the authority and responsibility of the department of agriculture under chapter 17.24 RCW. [2003 c 314 § 3.]

Findings—2003 c 314: See note following RCW 17.24.220.

76.06.140 Forest health problems—Findings. (1) The legislature finds that Washington faces serious forest health problems where forests are overcrowded or trees are infested with or susceptible to insects, diseases, wind, ice storms, and fire. The causes and contributions to these susceptible conditions include fire suppression, past timber harvesting and silvicultural practices, and the amplified risks that occur when the urban interface penetrates forest land.

(2) The legislature further finds that forest health problems may exist on forest land regardless of ownership, and the state should explore all possible avenues for working in collaboration with the federal government to address common health deficiencies.

(3) The legislature further finds that healthy forests benefit not only the economic interests that rely on forest products but also provide environmental benefits, such as improved water quality and habitat for fish and wildlife. [2004 c 218 § 1.]

Effective date—2004 c 218: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [March 29, 2004]." [2004 c 218 § 11.]

76.06.150 Forest health—Commissioner of public land designated as state's lead—Report to legislature. (1) The commissioner of public lands is designated as the state of Washington's lead for all forest health issues.

(2) The commissioner of public lands shall strive to promote communications between the state and the federal government regarding forest land management decisions that potentially affect the health of forests in Washington and will allow the state to have an influence on the management of federally owned land in Washington. Such government-to-government cooperation is vital if the condition of the state's public and private forest lands are to be protected. These activities may include, when deemed by the commissioner to be in the best interest of the state:

(a) Representing the state's interest before all appropriate local, state, and federal agencies;

(b) Assuming the lead state role for developing formal comments on federal forest management plans that may have an impact on the health of forests in Washington; and

(c) Pursuing in an expedited manner any available and appropriate cooperative agreements, including cooperating agency status designation, with the United States forest service and the United States bureau of land management that allow for meaningful participation in any federal land management plans that could affect the department's strategic plan for healthy forests and effective fire prevention and suppression, including the pursuit of any options available for giving effect to the cooperative philosophy contained within the national environmental policy act of 1969 (42 U.S.C. Sec. 4331).

(2004 Ed.)

(3) The commissioner of public lands shall report to the chairs of the appropriate standing committees of the legislature every year on progress under this section, including the identification, if deemed appropriate by the commissioner, of any needed statutory changes, policy issues, or funding needs. [2004 c 218 § 2.]

Effective date—2004 c 218: See note following RCW 76.06.140.

Chapter 76.09 RCW FOREST PRACTICES

Sections

- 76.09.010 Legislative finding and declaration.
- 76.09.020 Definitions.
- 76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff.
- 76.09.040 Forest practices rules—Adoption—Review of proposed rules—Hearings—Riparian open space program.
- 76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver.
- 76.09.055 Findings—Emergency rule making authorized.
- 76.09.060 Applications for forest practices—Form—Contents—Conversion of forest land to other use—Six-year moratorium—New applications—Approval—Emergencies.
- 76.09.063 Forest practices permit—Habitat incentives agreement.
- 76.09.065 Forest practices application or notification—Fee.
- 76.09.067 Application for forest practices—Owner of perpetual timber rights.
- 76.09.070 Reforestation—Requirements—Procedures—Notification on sale or transfer.
- 76.09.080 Stop work orders—Grounds—Contents—Procedure—Appeals.
- 76.09.090 Notice of failure to comply—Contents—Procedures—Appeals—Hearing—Final order—Limitations on actions.
- 76.09.100 Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition.
- 76.09.110 Final orders or final decisions binding upon all parties.
- 76.09.120 Failure of owner to take required course of action—Notice of cost—Department authorized to complete course of action—Liability of owner for costs—Lien.
- 76.09.130 Failure to obey stop work order—Departmental action authorized—Liability of owner or operator for costs.
- 76.09.140 Enforcement.
- 76.09.150 Inspection—Right of entry.
- 76.09.160 Right of entry by department of ecology.
- 76.09.170 Violations—Conversion to nontimber operation—Penalties—Remission or mitigation—Appeals—Lien.
- 76.09.180 Disposition of moneys received as penalties, reimbursement for damages.
- 76.09.190 Additional penalty, gross misdemeanor.
- 76.09.210 Forest practices appeals board—Created—Membership—Terms—Vacancies—Removal.
- 76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chair—Office—Quorum—Powers and duties—Jurisdiction—Review.
- 76.09.230 Forest practices appeals board—Mediation—Appeal procedure—Judicial review.
- 76.09.240 Class IV forest practices—Counties and cities adopt standards—Administration and enforcement of regulations—Restrictions upon local political subdivisions or regional entities—Exceptions and limitations.
- 76.09.250 Policy for continuing program of orientation and training.
- 76.09.260 Department to represent state's interest—Cooperation with other public agencies—Grants and gifts.
- 76.09.270 Annual determination of state's research needs—Recommendations.
- 76.09.280 Removal of log and debris jams from streams.
- 76.09.285 Water quality standards affected by forest practices.
- 76.09.290 Inspection of lands—Reforestation.
- 76.09.300 Mass earth movements and fluvial processes—Program to correct hazardous conditions on sites associated with roads and railroad grades—Hazard-reduction plans.
- 76.09.305 Advisory committee to review hazard-reduction plans authorized—Compensation, travel expenses.

- 76.09.310 Hazard-reduction program—Notice to landowners within areas selected for review—Proposed plans—Objections to plan, procedure—Final plans—Appeal.
- 76.09.315 Implementation of hazard-reduction measures—Election—Notice and application for cost-sharing funds—Inspection—Letter of compliance—Limitations on liability.
- 76.09.320 Implementation of hazard-reduction program—Cost sharing by department—Limitations.
- 76.09.330 Legislative findings—Liability from naturally falling trees required to be left standing.
- 76.09.340 Certain forest practices exempt from rules and policies under this chapter.
- 76.09.350 Long-term multispecies landscape management plans—Pilot projects, selection—Plan approval, elements—Notice of agreement recorded—Memorandums of agreements—Report, evaluation.
- 76.09.360 Single multiyear permit.
- 76.09.368 Intent—Small forest landowners—Alternate plan processes/alternate harvest restrictions—Report to the legislature.
- 76.09.370 Findings—Forests and fish report—Adoption of rules.
- 76.09.380 Report to the legislature—Emergency rules—Permanent rules.
- 76.09.390 Sale of land or timber rights with continuing obligations—Notice—Failure to notify—Exemption.
- 76.09.400 Forests and fish account—Created.
- 76.09.410 Road maintenance and abandonment plans—Fish passage barriers.
- 76.09.420 Road maintenance and abandonment plans—Rules—Checklist—Report to the legislature—Emergency rules.
- 76.09.430 Application to RCW 76.13.150.
- 76.09.440 Small forest landowner—Fish passage barriers.
- 76.09.450 Small forest landowner—Defined.
- 76.09.900 Short title.
- 76.09.905 Air pollution laws not modified.
- 76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions.
- 76.09.915 Repeal and savings.
- 76.09.920 Application for extension of prior permits.
- 76.09.925 Effective dates—1974 ex.s. c 137.
- 76.09.935 Severability—1974 ex.s. c 137.

Chapter 76.09 RCW to be used to satisfy federal water pollution act requirements: RCW 90.48.425.

76.09.010 Legislative finding and declaration. (1)

The legislature hereby finds and declares that the forest land resources are among the most valuable of all resources in the state; that a viable forest products industry is of prime importance to the state's economy; that it is in the public interest for public and private commercial forest lands to be managed consistent with sound policies of natural resource protection; that coincident with maintenance of a viable forest products industry, it is important to afford protection to forest soils, fisheries, wildlife, water quantity and quality, air quality, recreation, and scenic beauty.

(2) The legislature further finds and declares it to be in the public interest of this state to create and maintain through the adoption of this chapter a comprehensive statewide system of laws and forest practices rules which will achieve the following purposes and policies:

(a) Afford protection to, promote, foster and encourage timber growth, and require such minimum reforestation of commercial tree species on forest lands as will reasonably utilize the timber growing capacity of the soil following current timber harvest;

(b) Afford protection to forest soils and public resources by utilizing all reasonable methods of technology in conducting forest practices;

(c) Recognize both the public and private interest in the profitable growing and harvesting of timber;

(d) Promote efficiency by permitting maximum operating freedom consistent with the other purposes and policies stated herein;

(e) Provide for regulation of forest practices so as to avoid unnecessary duplication in such rules;

(f) Provide for interagency input and intergovernmental and tribal coordination and cooperation;

(g) Achieve compliance with all applicable requirements of federal and state law with respect to nonpoint sources of water pollution from forest practices;

(h) To consider reasonable land use planning goals and concepts contained in local comprehensive plans and zoning regulations;

(i) Foster cooperation among managers of public resources, forest landowners, Indian tribes and the citizens of the state; and

(j) Develop a watershed analysis system that addresses the cumulative effect of forest practices on, at a minimum, the public resources of fish, water, and public capital improvements of the state and its political subdivisions.

(3) The legislature further finds and declares that it is also in the public interest of the state to encourage forest landowners to undertake corrective and remedial action to reduce the impact of mass earth movements and fluvial processes.

(4) The legislature further finds and declares that it is in the public interest that the applicants for state forest practices permits should assist in paying for the cost of review and permitting necessary for the environmental protection of these resources. [1999 sp.s. c 4 § 901; 1993 c 443 § 1; 1987 c 95 § 1; 1974 ex.s. c 137 § 1.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1993 c 443: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [May 15, 1993]." [1993 c 443 § 6.]

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

(1) "Adaptive management" means reliance on scientific methods to test the results of actions taken so that the management and related policy can be changed promptly and appropriately.

(2) "Appeals board" means the forest practices appeals board created by RCW 76.09.210.

(3) "Aquatic resources" includes water quality, salmon, other species of the vertebrate classes Cephalaspidomorphi and Osteichthyes identified in the forests and fish report, the Columbia torrent salamander (*Rhyacotriton kezeri*), the Cascade torrent salamander (*Rhyacotriton cascadae*), the Olympic torrent salamander (*Rhyacotriton olympian*), the Dunn's salamander (*Plethodon dunni*), the Van Dyke's salamander (*Plethodon vandyke*), the tailed frog (*Ascaphus truei*), and their respective habitats.

(4) "Commissioner" means the commissioner of public lands.

(5) "Contiguous" means land adjoining or touching by common corner or otherwise. Land having common owner-

ship divided by a road or other right of way shall be considered contiguous.

(6) "Conversion to a use other than commercial timber operation" means a bona fide conversion to an active use which is incompatible with timber growing and as may be defined by forest practices rules.

(7) "Department" means the department of natural resources.

(8) "Fish passage barrier" means any artificial instream structure that impedes the free passage of fish.

(9) "Forest land" means all land which is capable of supporting a merchantable stand of timber and is not being actively used for a use which is incompatible with timber growing. Forest land does not include agricultural land that is or was enrolled in the conservation reserve enhancement program by contract if such agricultural land was historically used for agricultural purposes and the landowner intends to continue to use the land for agricultural purposes in the future. As it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, the term "forest land" excludes:

(a) Residential home sites, which may include up to five acres; and

(b) Cropfields, orchards, vineyards, pastures, feedlots, fish pens, and the land on which appurtenances necessary to the production, preparation, or sale of crops, fruit, dairy products, fish, and livestock exist.

(10) "Forest landowner" means any person in actual control of forest land, whether such control is based either on legal or equitable title, or on any other interest entitling the holder to sell or otherwise dispose of any or all of the timber on such land in any manner. However, any lessee or other person in possession of forest land without legal or equitable title to such land shall be excluded from the definition of "forest landowner" unless such lessee or other person has the right to sell or otherwise dispose of any or all of the timber located on such forest land.

(11) "Forest practice" means any activity conducted on or directly pertaining to forest land and relating to growing, harvesting, or processing timber, including but not limited to:

- (a) Road and trail construction;
- (b) Harvesting, final and intermediate;
- (c) Precommercial thinning;
- (d) Reforestation;
- (e) Fertilization;
- (f) Prevention and suppression of diseases and insects;
- (g) Salvage of trees; and
- (h) Brush control.

"Forest practice" shall not include preparatory work such as tree marking, surveying and road flagging, and removal or harvesting of incidental vegetation from forest lands such as berries, ferns, greenery, mistletoe, herbs, mushrooms, and other products which cannot normally be expected to result in damage to forest soils, timber, or public resources.

(12) "Forest practices rules" means any rules adopted pursuant to RCW 76.09.040.

(13) "Forest road," as it applies to the operation of the road maintenance and abandonment plan element of the forest practices rules on small forest landowners, means a road or road segment that crosses land that meets the definition of forest land, but excludes residential access roads.

(14) "Forest trees" does not include hardwood trees cultivated by agricultural methods in growing cycles shorter than fifteen years if the trees were planted on land that was not in forest use immediately before the trees were planted and before the land was prepared for planting the trees. "Forest trees" includes Christmas trees, but does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(15) "Forests and fish report" means the forests and fish report to the board dated April 29, 1999.

(16) "Application" means the application required pursuant to RCW 76.09.050.

(17) "Operator" means any person engaging in forest practices except an employee with wages as his or her sole compensation.

(18) "Person" means any individual, partnership, private, public, or municipal corporation, county, the department or other state or local governmental entity, or association of individuals of whatever nature.

(19) "Public resources" means water, fish and wildlife, and in addition shall mean capital improvements of the state or its political subdivisions.

(20) "Small forest landowner" has the same meaning as defined in RCW 76.09.450.

(21) "Timber" means forest trees, standing or down, of a commercial species, including Christmas trees. However, "timber" does not include Christmas trees that are cultivated by agricultural methods, as that term is defined in RCW 84.33.035.

(22) "Timber owner" means any person having all or any part of the legal interest in timber. Where such timber is subject to a contract of sale, "timber owner" shall mean the contract purchaser.

(23) "Board" means the forest practices board created in RCW 76.09.030.

(24) "Unconfined avulsing channel migration zone" means the area within which the active channel of an unconfined avulsing stream is prone to move and where the movement would result in a potential near-term loss of riparian forest adjacent to the stream. Sizeable islands with productive timber may exist within the zone.

(25) "Unconfined avulsing stream" means generally fifth order or larger waters that experience abrupt shifts in channel location, creating a complex flood plain characterized by extensive gravel bars, disturbance species of vegetation of variable age, numerous side channels, wall-based channels, oxbow lakes, and wetland complexes. Many of these streams have dikes and levees that may temporarily or permanently restrict channel movement. [2003 c 311 § 3; 2002 c 17 § 1. Prior: 2001 c 102 § 1; 2001 c 97 § 2; 1999 sp.s. c 4 § 301; 1974 ex.s. c 137 § 2.]

Findings—2003 c 311: "(1) The legislature finds that chapter 4, Laws of 1999 sp. sess. strongly encouraged the forest practices board to adopt administrative rules that were substantially similar to the recommendations presented to the legislature in the form of the forests and fish report. The rules adopted pursuant to the 1999 legislation require all forest landowners to complete a road maintenance and abandonment plan, and those rules cannot be changed by the forest practices board without either a final order from a court, direct instructions from the legislature, or a recommendation from the adaptive management process. In the time since the enactment of chapter 4, Laws of 1999 sp. sess., it has become clear that both the planning aspect and the implementation aspect of the road maintenance and abandonment plan requirement may cause an unforeseen and unintended disproportionate

financial hardship on small forest landowners.

(2) The legislature further finds that the commissioner of public lands and the governor have explored solutions that minimize the hardship caused to small forest landowners by the forest road maintenance and abandonment requirements of the forests and fish law, while maintaining protection for public resources. This act represents recommendations stemming from that process.

(3) The legislature further finds that it is in the state's interest to help small forest landowners comply with the requirements of the forest practices rules in a way that does not require the landowner to spend unreasonably high and unpredictable amounts of money to complete road maintenance and abandonment plan preparation and implementation. Small forest landowners provide significant wildlife habitat and serve as important buffers between urban development and Washington's public forest land holdings." [2003 c 311 § 1.]

Effective date—2003 c 311: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect immediately [May 14, 2003]." [2003 c 311 § 13.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.030 Forest practices board—Created—Membership—Terms—Vacancies—Meetings—Compensation, travel expenses—Staff. (1) There is hereby created the forest practices board of the state of Washington as an agency of state government consisting of members as follows:

(a) The commissioner of public lands or the commissioner's designee;

(b) The director of the department of community, trade, and economic development or the director's designee;

(c) The director of the department of agriculture or the director's designee;

(d) The director of the department of ecology or the director's designee;

(e) The director of the department of fish and wildlife or the director's designee;

(f) An elected member of a county legislative authority appointed by the governor: PROVIDED, That such member's service on the board shall be conditioned on the member's continued service as an elected county official; and

(g) Six members of the general public appointed by the governor, one of whom shall be an owner of not more than five hundred acres of forest land, and one of whom shall be an independent logging contractor.

(2) The director of the department of fish and wildlife's service on the board may be terminated two years after August 18, 1999, if the legislature finds that after two years the department has not made substantial progress toward integrating the laws, rules, and programs governing forest practices, chapter 76.09 RCW, and the laws, rules, and programs governing hydraulic projects, chapter 77.55 RCW. Such a finding shall be based solely on whether the department of fish and wildlife makes substantial progress as defined in this subsection, and will not be based on other actions taken as a member of the board. Substantial progress shall include recommendations to the legislature for closer integration of the existing rule-making authorities of the board and the department of fish and wildlife, and closer integration of the forest practices and hydraulics permitting processes, including exploring the potential for a consolidated permitting process. These recommendations shall be designed to resolve problems currently associated with the existing dual regulatory and permitting processes.

(3) The members of the initial board appointed by the governor shall be appointed so that the term of one member shall expire December 31, 1975, the term of one member shall expire December 31, 1976, the term of one member shall expire December 31, 1977, the terms of two members shall expire December 31, 1978, and the terms of two members shall expire December 31, 1979. Thereafter, each member shall be appointed for a term of four years. Vacancies on the board shall be filled in the same manner as the original appointments. Each member of the board shall continue in office until his or her successor is appointed and qualified. The commissioner of public lands or the commissioner's designee shall be the chairman of the board.

(4) The board shall meet at such times and places as shall be designated by the chairman or upon the written request of the majority of the board. The principal office of the board shall be at the state capital.

(5) Members of the board, except public employees and elected officials, shall be compensated in accordance with RCW 43.03.250. Each member shall be entitled to reimbursement for travel expenses incurred in the performance of their duties as provided in RCW 43.03.050 and 43.03.060.

(6) The board may employ such clerical help and staff pursuant to chapter 41.06 RCW as is necessary to carry out its duties. [2003 c 39 § 32; 1999 sp.s. c 4 § 1001; 1995 c 399 § 207; 1993 c 257 § 1; 1987 c 330 § 1301; 1985 c 466 § 70; 1984 c 287 § 108; 1975-'76 2nd ex.s. c 34 § 173; 1975 1st ex.s. c 200 § 1; 1974 ex.s. c 137 § 3.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

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

Effective date—Severability—1985 c 466: See notes following RCW 43.31.125.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

76.09.040 Forest practices rules—Adoption—Review of proposed rules—Hearings—Riparian open space program. (1) Where necessary to accomplish the purposes and policies stated in RCW 76.09.010, and to implement the provisions of this chapter, the board shall adopt forest practices rules pursuant to chapter 34.05 RCW and in accordance with the procedures enumerated in this section that:

(a) Establish minimum standards for forest practices;

(b) Provide procedures for the voluntary development of resource management plans which may be adopted as an alternative to the minimum standards in (a) of this subsection if the plan is consistent with the purposes and policies stated in RCW 76.09.010 and the plan meets or exceeds the objectives of the minimum standards;

(c) Set forth necessary administrative provisions;

(d) Establish procedures for the collection and administration of forest practice fees as set forth by this chapter; and

(e) Allow for the development of watershed analyses.

Forest practices rules pertaining to water quality protection shall be adopted by the board after reaching agreement with the director of the department of ecology or the direc-

tor's designee on the board with respect thereto. All other forest practices rules shall be adopted by the board.

Forest practices rules shall be administered and enforced by either the department or the local governmental entity as provided in this chapter. Such rules shall be adopted and administered so as to give consideration to all purposes and policies set forth in RCW 76.09.010.

(2) The board shall prepare proposed forest practices rules. In addition to any forest practices rules relating to water quality protection proposed by the board, the department of ecology may submit to the board proposed forest practices rules relating to water quality protection.

Prior to initiating the rule making process, the proposed rules shall be submitted for review and comments to the department of fish and wildlife and to the counties of the state. After receipt of the proposed forest practices rules, the department of fish and wildlife and the counties of the state shall have thirty days in which to review and submit comments to the board, and to the department of ecology with respect to its proposed rules relating to water quality protection. After the expiration of such thirty day period the board and the department of ecology shall jointly hold one or more hearings on the proposed rules pursuant to chapter 34.05 RCW. At such hearing(s) any county may propose specific forest practices rules relating to problems existing within such county. The board may adopt and the department of ecology may approve such proposals if they find the proposals are consistent with the purposes and policies of this chapter.

(3) The board shall establish by rule a riparian open space program that includes acquisition of a fee interest in, or at the landowner's option, a conservation easement on lands within unconfined avulsing channel migration zones. Once acquired, these lands may be held and managed by the department, transferred to another state agency, transferred to an appropriate local government agency, or transferred to a private nonprofit nature conservancy corporation, as defined in RCW 64.04.130, in fee or transfer of management obligation. The board shall adopt rules governing the acquisition by the state or donation to the state of such interest in lands including the right of refusal if the lands are subject to unacceptable liabilities. The rules shall include definitions of qualifying lands, priorities for acquisition, and provide for the opportunity to transfer such lands with limited warranties and with a description of boundaries that does not require full surveys where the cost of securing the surveys would be unreasonable in relation to the value of the lands conveyed. The rules shall provide for the management of the lands for ecological protection or fisheries enhancement. Because there are few, if any, comparable sales of forest land within unconfined avulsing channel migration zones, separate from the other lands or assets, these lands are likely to be extraordinarily difficult to appraise and the cost of a conventional appraisal often would be unreasonable in relation to the value of the land involved. Therefore, for the purposes of voluntary sales under this section, the legislature declares that these lands are presumed to have a value equal to: (a) The acreage in the sale multiplied by the average value of commercial forest land in the region under the land value tables used for property tax purposes under *RCW 84.33.120; plus (b) the cruised volume of any timber located within the channel

migration multiplied by the appropriate quality code stumpage value for timber of the same species shown on the appropriate table used for timber harvest excise tax purposes under RCW 84.33.091. For purposes of this section, there shall be an eastside region and a westside region as defined in the forests and fish report as defined in RCW 76.09.020.

(4) Subject to appropriations sufficient to cover the cost of such an acquisition program and the related costs of administering the program, the department is directed to purchase a fee interest or, at the owner's option, a conservation easement in land that an owner tenders for purchase; provided that such lands have been taxed as forest lands and are located within an unconfined avulsing channel migration zone. Lands acquired under this section shall become riparian open space. These acquisitions shall not be deemed to trigger the compensating tax of chapters 84.33 and 84.34 RCW.

(5) Instead of offering to sell interests in qualifying lands, owners may elect to donate the interests to the state.

(6) Any acquired interest in qualifying lands by the state under this section shall be managed as riparian open space. [2000 c 11 § 3; 1999 sp.s. c 4 § 701; 1997 c 173 § 1; 1994 c 264 § 48; 1993 c 443 § 2; 1988 c 36 § 46; 1987 c 95 § 8; 1974 ex.s. c 137 § 4.]

***Reviser's note:** RCW 84.33.120 was amended by 2001 c 305 § 1 and by 2001 c 185 § 3 and also repealed by 2001 c 249 § 16. RCW 84.33.120 was subsequently repealed by 2003 c 170 § 7.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1993 c 443: See note following RCW 76.09.010.

76.09.050 Rules establishing classes of forest practices—Applications for classes of forest practices—Approval or disapproval—Notifications—Procedures—Appeals—Waiver. (1) The board shall establish by rule which forest practices shall be included within each of the following classes:

Class I: Minimal or specific forest practices that have no direct potential for damaging a public resource and that may be conducted without submitting an application or a notification except that when the regulating authority is transferred to a local governmental entity, those Class I forest practices that involve timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, are processed as Class IV forest practices, but are not subject to environmental review under chapter 43.21C RCW;

Class II: Forest practices which have a less than ordinary potential for damaging a public resource that may be conducted without submitting an application and may begin five calendar days, or such lesser time as the department may determine, after written notification by the operator, in the manner, content, and form as prescribed by the department, is received by the department. However, the work may not begin until all forest practice fees required under RCW 76.09.065 have been received by the department. Class II shall not include forest practices:

(a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW or on lands that have or are being converted to another use;

(b) Which require approvals under the provisions of the hydraulics act, RCW 77.55.100;

(c) Within "shorelines of the state" as defined in RCW 90.58.030;

(d) Excluded from Class II by the board; or

(e) Including timber harvesting or road construction within "urban growth areas," designated pursuant to chapter 36.70A RCW, which are Class IV;

Class III: Forest practices other than those contained in Class I, II, or IV. A Class III application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department;

Class IV: Forest practices other than those contained in Class I or II: (a) On lands platted after January 1, 1960, as provided in chapter 58.17 RCW, (b) on lands that have or are being converted to another use, (c) on lands which, pursuant to RCW 76.09.070 as now or hereafter amended, are not to be reforested because of the likelihood of future conversion to urban development, (d) involving timber harvesting or road construction on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except where the forest landowner provides: (i) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or (ii) a conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the application, and/or (e) which have a potential for a substantial impact on the environment and therefore require an evaluation by the department as to whether or not a detailed statement must be prepared pursuant to the state environmental policy act, chapter 43.21C RCW. Such evaluation shall be made within ten days from the date the department receives the application: PROVIDED, That nothing herein shall be construed to prevent any local or regional governmental entity from determining that a detailed statement must be prepared for an action pursuant to a Class IV forest practice taken by that governmental entity concerning the land on which forest practices will be conducted. A Class IV application must be approved or disapproved by the department within thirty calendar days from the date the department receives the application, unless the department determines that a detailed statement must be made, in which case the application must be approved or disapproved by the department within sixty calendar days from the date the department receives the application, unless the commissioner of public lands, through the promulgation of a formal order, determines that the process cannot be completed within such period. However, the applicant may not begin work on that forest practice until all forest practice fees required under RCW 76.09.065 have been received by the department.

Forest practices under Classes I, II, and III are exempt from the requirements for preparation of a detailed statement under the state environmental policy act.

(2) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, no Class II, Class III, or Class IV forest practice shall be commenced or continued after January 1, 1975, unless the

department has received a notification with regard to a Class II forest practice or approved an application with regard to a Class III or Class IV forest practice containing all information required by RCW 76.09.060 as now or hereafter amended. However, in the event forest practices regulations necessary for the scheduled implementation of this chapter and RCW 90.48.420 have not been adopted in time to meet such schedules, the department shall have the authority to regulate forest practices and approve applications on such terms and conditions consistent with this chapter and RCW 90.48.420 and the purposes and policies of RCW 76.09.010 until applicable forest practices regulations are in effect.

(3) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, if a notification or application is delivered in person to the department by the operator or the operator's agent, the department shall immediately provide a dated receipt thereof. In all other cases, the department shall immediately mail a dated receipt to the operator.

(4) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, forest practices shall be conducted in accordance with the forest practices regulations, orders and directives as authorized by this chapter or the forest practices regulations, and the terms and conditions of any approved applications.

(5) Except for those forest practices being regulated by local governmental entities as provided elsewhere in this chapter, the department of natural resources shall notify the applicant in writing of either its approval of the application or its disapproval of the application and the specific manner in which the application fails to comply with the provisions of this section or with the forest practices regulations. Except as provided otherwise in this section, if the department fails to either approve or disapprove an application or any portion thereof within the applicable time limit, the application shall be deemed approved and the operation may be commenced: PROVIDED, That this provision shall not apply to applications which are neither approved nor disapproved pursuant to the provisions of subsection (7) of this section: PROVIDED, FURTHER, That if seasonal field conditions prevent the department from being able to properly evaluate the application, the department may issue an approval conditional upon further review within sixty days: PROVIDED, FURTHER, That the department shall have until April 1, 1975, to approve or disapprove an application involving forest practices allowed to continue to April 1, 1975, under the provisions of subsection (2) of this section. Upon receipt of any notification or any satisfactorily completed application the department shall in any event no later than two business days after such receipt transmit a copy to the departments of ecology and fish and wildlife, and to the county, city, or town in whose jurisdiction the forest practice is to be commenced. Any comments by such agencies shall be directed to the department of natural resources.

(6) For those forest practices regulated by the board and the department, if the county, city, or town believes that an application is inconsistent with this chapter, the forest practices regulations, or any local authority consistent with RCW 76.09.240 as now or hereafter amended, it may so notify the department and the applicant, specifying its objections.

(7) For those forest practices regulated by the board and the department, the department shall not approve portions of applications to which a county, city, or town objects if:

(a) The department receives written notice from the county, city, or town of such objections within fourteen business days from the time of transmittal of the application to the county, city, or town, or one day before the department acts on the application, whichever is later; and

(b) The objections relate to lands either:

(i) Platted after January 1, 1960, as provided in chapter 58.17 RCW; or

(ii) On lands that have or are being converted to another use.

The department shall either disapprove those portions of such application or appeal the county, city, or town objections to the appeals board. If the objections related to subparagraphs (b)(i) and (ii) of this subsection are based on local authority consistent with RCW 76.09.240 as now or hereafter amended, the department shall disapprove the application until such time as the county, city, or town consents to its approval or such disapproval is reversed on appeal. The applicant shall be a party to all department appeals of county, city, or town objections. Unless the county, city, or town either consents or has waived its rights under this subsection, the department shall not approve portions of an application affecting such lands until the minimum time for county, city, or town objections has expired.

(8) For those forest practices regulated by the board and the department, in addition to any rights under the above paragraph, the county, city, or town may appeal any department approval of an application with respect to any lands within its jurisdiction. The appeals board may suspend the department's approval in whole or in part pending such appeal where there exists potential for immediate and material damage to a public resource.

(9) For those forest practices regulated by the board and the department, appeals under this section shall be made to the appeals board in the manner and time provided in RCW 76.09.220(8). In such appeals there shall be no presumption of correctness of either the county, city, or town or the department position.

(10) For those forest practices regulated by the board and the department, the department shall, within four business days notify the county, city, or town of all notifications, approvals, and disapprovals of an application affecting lands within the county, city, or town, except to the extent the county, city, or town has waived its right to such notice.

(11) For those forest practices regulated by the board and the department, a county, city, or town may waive in whole or in part its rights under this section, and may withdraw or modify any such waiver, at any time by written notice to the department.

(12) Notwithstanding subsections (2) through (5) of this section, forest practices applications or notifications are not required for exotic insect and disease control operations conducted in accordance with RCW 76.09.060(8) where eradication can reasonably be expected. [2003 c 314 § 4; 2002 c 121 § 1; 1997 c 173 § 2; 1994 c 264 § 49; 1993 c 443 § 3; 1990 1st ex.s. c 17 § 61; 1988 c 36 § 47; 1987 c 95 § 9; 1975 1st ex.s. c 200 § 2; 1974 ex.s. c 137 § 5.]

Findings—2003 c 314: See note following RCW 17.24.220.

(2004 Ed.)

Effective date—1993 c 443: See note following RCW 76.09.010.

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

76.09.055 Findings—Emergency rule making authorized. (1) The legislature finds that the levels of fish stocks throughout much of the state require immediate action to be taken to help these fish runs where possible. The legislature also recognizes that federal and state agencies, tribes, county representatives, and private timberland owners have spent considerable effort and time to develop the forests and fish report. Given the agreement of the parties, the legislature believes that the immediate adoption of emergency rules is appropriate in this particular instance. These rules can implement many provisions of the forests and fish report to protect the economic well-being of the state, and to minimize the risk to the state and landowners to legal challenges. This authority is not designed to set any precedents for the forest practices board in future rule making or set any precedents for other rule-making bodies of the state.

(2) The forest practices board is authorized to adopt emergency rules amending the forest practices rules with respect to the protection of aquatic resources, in accordance with RCW 34.05.350, except: (a)(i) That the rules adopted under this section may remain in effect until permanent rules are adopted, or until June 30, 2001, whichever is sooner; (ii) that the rules adopted under RCW 76.09.420(5) must remain in effect until permanent rules are adopted; (b) notice of the proposed rules must be published in the Washington State Register as provided in RCW 34.05.320; (c) at least one public hearing must be conducted with an opportunity to provide oral and written comments; and (d) a rule-making file must be maintained as required by RCW 34.05.370. In adopting emergency rules consistent with this section, the board is not required to prepare a small business economic impact statement under chapter 19.85 RCW, prepare a statement indicating whether the rules constitute a significant legislative rule under RCW 34.05.328, prepare a significant legislative rule analysis under RCW 34.05.328, or follow the procedural requirements of the state environmental policy act, chapter 43.21C RCW. Except as provided in RCW 76.09.420, the forest practices board may only adopt recommendations contained in the forests and fish report as emergency rules under this section. [2003 c 311 § 5; 2000 c 11 § 4; 1999 sp.s. c 4 § 201.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

Effective date—1999 sp.s. c 4 §§ 201, 202, and 203: "Sections 201, 202, and 203 of this act are necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and take effect immediately [June 7, 1999]." [1999 sp.s. c 4 § 1405.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.060 Applications for forest practices—Form—Contents—Conversion of forest land to other use—Six-year moratorium—New applications—Approval—Emergencies. The following shall apply to those forest practices administered and enforced by the department and for which the board shall promulgate regulations as provided in this chapter:

[Title 76 RCW—page 21]

(1) The department shall prescribe the form and contents of the notification and application. The forest practices rules shall specify by whom and under what conditions the notification and application shall be signed or otherwise certified as acceptable. The application or notification shall be delivered in person to the department, sent by first class mail to the department or electronically filed in a form defined by the department. The form for electronic filing shall be readily convertible to a paper copy, which shall be available to the public pursuant to chapter 42.17 RCW. The information required may include, but is not limited to:

- (a) Name and address of the forest landowner, timber owner, and operator;
 - (b) Description of the proposed forest practice or practices to be conducted;
 - (c) Legal description and tax parcel identification numbers of the land on which the forest practices are to be conducted;
 - (d) Planimetric and topographic maps showing location and size of all lakes and streams and other public waters in and immediately adjacent to the operating area and showing all existing and proposed roads and major tractor roads;
 - (e) Description of the silvicultural, harvesting, or other forest practice methods to be used, including the type of equipment to be used and materials to be applied;
 - (f) Proposed plan for reforestation and for any revegetation necessary to reduce erosion potential from roadsides and yarding roads, as required by the forest practices rules;
 - (g) Soil, geological, and hydrological data with respect to forest practices;
 - (h) The expected dates of commencement and completion of all forest practices specified in the application;
 - (i) Provisions for continuing maintenance of roads and other construction or other measures necessary to afford protection to public resources;
 - (j) An affirmation that the statements contained in the notification or application are true; and
 - (k) All necessary application or notification fees.
- (2) Long range plans may be submitted to the department for review and consultation.

(3) The application for a forest practice or the notification of a Class II forest practice is subject to the three-year reforestation requirement.

(a) If the application states that any such land will be or is intended to be so converted:

- (i) The reforestation requirements of this chapter and of the forest practices rules shall not apply if the land is in fact so converted unless applicable alternatives or limitations are provided in forest practices rules issued under RCW 76.09.070 as now or hereafter amended;
- (ii) Completion of such forest practice operations shall be deemed conversion of the lands to another use for purposes of chapters 84.33 and 84.34 RCW unless the conversion is to a use permitted under a current use tax agreement permitted under chapter 84.34 RCW;
- (iii) The forest practices described in the application are subject to applicable county, city, town, and regional governmental authority permitted under RCW 76.09.240 as now or hereafter amended as well as the forest practices rules.

(b) Except as provided elsewhere in this section, if the application or notification does not state that any land cov-

ered by the application or notification will be or is intended to be so converted:

(i) For six years after the date of the application the county, city, town, and regional governmental entities shall deny any or all applications for permits or approvals, including building permits and subdivision approvals, relating to nonforestry uses of land subject to the application;

(A) The department shall submit to the local governmental entity a copy of the statement of a forest landowner's intention not to convert which shall represent a recognition by the landowner that the six-year moratorium shall be imposed and shall preclude the landowner's ability to obtain development permits while the moratorium is in place. This statement shall be filed by the local governmental entity with the county recording officer, who shall record the documents as provided in chapter 65.04 RCW, except that lands designated as forest lands of long-term commercial significance under chapter 36.70A RCW shall not be recorded due to the low likelihood of conversion. Not recording the statement of a forest landowner's conversion intention shall not be construed to mean the moratorium is not in effect.

(B) The department shall collect the recording fee and reimburse the local governmental entity for the cost of recording the application.

(C) When harvesting takes place without an application, the local governmental entity shall impose the six-year moratorium provided in (b)(i) of this subsection from the date the unpermitted harvesting was discovered by the department or the local governmental entity.

(D) The local governmental entity shall develop a process for lifting the six-year moratorium, which shall include public notification, and procedures for appeals and public hearings.

(E) The local governmental entity may develop an administrative process for lifting or waiving the six-year moratorium for the purposes of constructing a single-family residence or outbuildings, or both, on a legal lot and building site. Lifting or waiving of the six-year moratorium is subject to compliance with all local ordinances.

(F) The six-year moratorium shall not be imposed on a forest practices application that contains a conversion option harvest plan approved by the local governmental entity unless the forest practice was not in compliance with the approved forest practice permit. Where not in compliance with the conversion option harvest plan, the six-year moratorium shall be imposed from the date the application was approved by the department or the local governmental entity;

(ii) Failure to comply with the reforestation requirements contained in any final order or decision shall constitute a removal of designation under the provisions of RCW 84.33.140, and a change of use under the provisions of RCW 84.34.080, and, if applicable, shall subject such lands to the payments and/or penalties resulting from such removals or changes; and

(iii) Conversion to a use other than commercial forest product operations within six years after approval of the forest practices without the consent of the county, city, or town shall constitute a violation of each of the county, municipal city, town, and regional authorities to which the forest practice operations would have been subject if the application had so stated.

(c) The application or notification shall be signed by the forest landowner and accompanied by a statement signed by the forest landowner indicating his or her intent with respect to conversion and acknowledging that he or she is familiar with the effects of this subsection.

(4) Whenever an approved application authorizes a forest practice which, because of soil condition, proximity to a water course or other unusual factor, has a potential for causing material damage to a public resource, as determined by the department, the applicant shall, when requested on the approved application, notify the department two days before the commencement of actual operations.

(5) Before the operator commences any forest practice in a manner or to an extent significantly different from that described in a previously approved application or notification, there shall be submitted to the department a new application or notification form in the manner set forth in this section.

(6) Except as provided in RCW 76.09.350(4), the notification to or the approval given by the department to an application to conduct a forest practice shall be effective for a term of two years from the date of approval or notification and shall not be renewed unless a new application is filed and approved or a new notification has been filed. At the option of the applicant, an application or notification may be submitted to cover a single forest practice or a number of forest practices within reasonable geographic or political boundaries as specified by the department. An application or notification that covers more than one forest practice may have an effective term of more than two years. The board shall adopt rules that establish standards and procedures for approving an application or notification that has an effective term of more than two years. Such rules shall include extended time periods for application or notification approval or disapproval. On an approved application with a term of more than two years, the applicant shall inform the department before commencing operations.

(7) Notwithstanding any other provision of this section, no prior application or notification shall be required for any emergency forest practice necessitated by fire, flood, windstorm, earthquake, or other emergency as defined by the board, but the operator shall submit an application or notification, whichever is applicable, to the department within forty-eight hours after commencement of such practice or as required by local regulations.

(8) Forest practices applications or notifications are not required for forest practices conducted to control exotic forest insect or disease outbreaks, when conducted by or under the direction of the department of agriculture in carrying out an order of the governor or director of the department of agriculture to implement pest control measures as authorized under chapter 17.24 RCW, and are not required when conducted by or under the direction of the department in carrying out emergency measures under a forest health emergency declaration by the commissioner of public lands as provided in RCW 76.06.130.

(a) For the purposes of this subsection, exotic forest insect or disease has the same meaning as defined in RCW 76.06.020.

(b) In order to minimize adverse impacts to public resources, control measures must be based on integrated pest

management, as defined in RCW 17.15.010, and must follow forest practices rules relating to road construction and maintenance, timber harvest, and forest chemicals, to the extent possible without compromising control objectives.

(c) Agencies conducting or directing control efforts must provide advance notice to the appropriate regulatory staff of the department of the operations that would be subject to exemption from forest practices application or notification requirements.

(d) When the appropriate regulatory staff of the department are notified under (c) of this subsection, they must consult with the landowner, interested agencies, and affected tribes, and assist the notifying agencies in the development of integrated pest management plans that comply with forest practices rules as required under (b) of this subsection.

(e) Nothing under this subsection relieves agencies conducting or directing control efforts from requirements of the federal clean water act as administered by the department of ecology under RCW 90.48.260.

(f) Forest lands where trees have been cut as part of an exotic forest insect or disease control effort under this subsection are subject to reforestation requirements under RCW 76.09.070.

(g) The exemption from obtaining approved forest practices applications or notifications does not apply to forest practices conducted after the governor, the director of the department of agriculture, or the commissioner of public lands have declared that an emergency no longer exists because control objectives have been met, that there is no longer an imminent threat, or that there is no longer a good likelihood of control. [2003 c 314 § 5. Prior: 1997 c 290 § 3; 1997 c 173 § 3; 1993 c 443 § 4; 1992 c 52 § 22; 1990 1st ex.s. c 17 § 62; 1975 1st ex.s. c 200 § 3; 1974 ex.s. c 137 § 6.]

Findings—2003 c 314: See note following RCW 17.24.220.

Effective date—1993 c 443: See note following RCW 76.09.010.

Effective date—1992 c 52 § 22: "Section 22 of this act shall take effect August 1, 1992." [1992 c 52 § 27.]

Severability—Part, section headings not law—1990 1st ex.s. c 17: See RCW 36.70A.900 and 36.70A.901.

76.09.063 Forest practices permit—Habitat incentives agreement. When a private landowner is applying for a forest practices permit under this chapter and that landowner has entered into a habitat incentives agreement with the department and the department of fish and wildlife as provided in RCW 77.55.300, the department shall comply with the terms of that agreement when evaluating the permit application. [2003 c 39 § 33; 1997 c 425 § 5.]

Finding—Intent—1997 c 425: See note following RCW 77.55.300.

76.09.065 Forest practices application or notification—Fee. (1) Effective July 1, 1997, an applicant shall pay an application fee and a recording fee, if applicable, at the time an application or notification is submitted to the department or to the local governmental entity as provided in this chapter.

(2) For applications and notifications submitted to the department, the application fee shall be fifty dollars for class II, III, and IV forest practices applications or notifications relating to the commercial harvest of timber. However, the fee shall be five hundred dollars for class IV forest practices

applications on lands being converted to other uses or on lands which are not to be reforested because of the likelihood of future conversion to urban development or on lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except the fee shall be fifty dollars on those lands where the forest landowner provides:

(a) A written statement of intent signed by the forest landowner not to convert to a use other than commercial forest product operations for ten years, accompanied by either a written forest management plan acceptable to the department or documentation that the land is enrolled under the provisions of chapter 84.33 RCW; or

(b) A conversion option harvest plan approved by the local governmental entity and submitted to the department as part of the forest practices application.

All money collected from fees under this subsection shall be deposited in the state general fund.

(3) For applications submitted to the local governmental entity, the fee shall be five hundred dollars for class IV forest practices on lands being converted to other uses or lands that are contained within "urban growth areas," designated pursuant to chapter 36.70A RCW, except as otherwise provided in this section, unless a different fee is otherwise provided by the local governmental entity.

(4) Recording fees shall be as provided in chapter 36.18 RCW.

(5) An application fee under subsection (2) of this section shall be refunded or credited to the applicant if either the application or notification is disapproved by the department or the application or notification is withdrawn by the applicant due to restrictions imposed by the department. [2000 c 11 § 5; 1997 c 173 § 4; 1993 c 443 § 5.]

Effective date—1993 c 443: See note following RCW 76.09.010.

76.09.067 Application for forest practices—Owner of perpetual timber rights. Notwithstanding any other provision of this chapter to the contrary, for the purposes of RCW 76.09.050(1), 76.09.060(3) (b)(i)(A) and (c), and 76.09.065(2)(a), where timber rights have been transferred by deed to a perpetual owner who is different from the forest landowner, the owner of perpetual timber rights may sign the forest practices application and the statement of intent not to convert for a set period of time. The forest practices application is not complete until the holder of perpetual timber rights has submitted evidence to the department that the signed forest practices application and the signed statement of intent have been served on the forest landowner. [1998 c 100 § 1.]

76.09.070 Reforestation—Requirements—Procedures—Notification on sale or transfer. After the completion of a logging operation, satisfactory reforestation as defined by the rules and regulations promulgated by the board shall be completed within three years: PROVIDED, That: (1) A longer period may be authorized if seed or seedlings are not available; (2) a period of up to five years may be allowed where a natural regeneration plan is approved by the department; and (3) the department may identify low-productivity lands on which it may allow for a period of up to ten years for natural regeneration. Upon the completion of a reforestation operation a report on such operation shall be

filed with the department of natural resources. Within twelve months of receipt of such a report the department shall inspect the reforestation operation, and shall determine either that the reforestation operation has been properly completed or that further reforestation and inspection is necessary.

Satisfactory reforestation is the obligation of the owner of the land as defined by forest practices regulations, except the owner of perpetual rights to cut timber owned separately from the land is responsible for satisfactory reforestation. The reforestation obligation shall become the obligation of a new owner if the land or perpetual timber rights are sold or otherwise transferred.

Prior to the sale or transfer of land or perpetual timber rights subject to a reforestation obligation, the seller shall notify the buyer of the existence and nature of the obligation and the buyer shall sign a notice of reforestation obligation indicating the buyer's knowledge thereof. The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights. If the seller fails to notify the buyer about the reforestation obligation, the seller shall pay the buyer's costs related to reforestation, including all legal costs which include reasonable attorneys' fees, incurred by the buyer in enforcing the reforestation obligation against the seller. Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to reforestation, that the seller did not notify the buyer of the reforestation obligation prior to sale.

The forest practices regulations may provide alternatives to or limitations on the applicability of reforestation requirements with respect to forest lands being converted in whole or in part to another use which is compatible with timber growing. The forest practices regulations may identify classifications and/or areas of forest land that have the likelihood of future conversion to urban development within a ten year period. The reforestation requirements may be modified or eliminated on such lands: PROVIDED, That such identification and/or such conversion to urban development must be consistent with any local or regional land use plans or ordinances. [1987 c 95 § 10; 1982 c 173 § 1; 1975 1st ex.s. c 200 § 4; 1974 ex.s. c 137 § 7.]

Effective date—1982 c 173: "This act shall take effect July 1, 1982." [1982 c 173 § 2.]

76.09.080 Stop work orders—Grounds—Contents—Procedure—Appeals. (1) The department shall have the authority to serve upon an operator a stop work order which shall be a final order of the department if:

(a) There is any violation of the provisions of this chapter or the forest practices regulations; or

(b) There is a deviation from the approved application; or

(c) Immediate action is necessary to prevent continuation of or to avoid material damage to a public resource.

(2) The stop work order shall set forth:

(a) The specific nature, extent, and time of the violation, deviation, damage, or potential damage;

(b) An order to stop all work connected with the violation, deviation, damage, or potential damage;

(c) The specific course of action needed to correct such violation or deviation or to prevent damage and to correct and/or compensate for damage to public resources which has resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence; and

(d) The right of the operator to a hearing before the appeals board.

The department shall immediately file a copy of such order with the appeals board and mail a copy thereof to the timber owner and forest land owner at the addresses shown on the application. The operator, timber owner, or forest land owner may commence an appeal to the appeals board within fifteen days after service upon the operator. If such appeal is commenced, a hearing shall be held not more than twenty days after copies of the notice of appeal were filed with the appeals board. Such proceeding shall be an adjudicative proceeding within the meaning of chapter 34.05 RCW, the Administrative Procedure Act. The operator shall comply with the order of the department immediately upon being served, but the appeals board if requested shall have authority to continue or discontinue in whole or in part the order of the department under such conditions as it may impose pending the outcome of the proceeding. [1989 c 175 § 163; 1975 1st ex.s. c 200 § 5; 1974 ex.s. c 137 § 8.]

Effective date—1989 c 175: See note following RCW 34.05.010.

76.09.090 Notice of failure to comply—Contents—Procedures—Appeals—Hearing—Final order—Limitations on actions. If a violation, a deviation, material damage or potential for material damage to a public resource has occurred and the department determines that a stop work order is unnecessary, then the department shall issue and serve upon the operator or land owner a notice, which shall clearly set forth:

(1)(a) The specific nature, extent, and time of failure to comply with the approved application; or identifying the damage or potential damage; and/or

(b) The relevant provisions of this chapter or of the forest practice regulations relating thereto;

(2) The right of the operator or land owner to a hearing before the department; and

(3) The specific course of action ordered by the department to be followed by the operator to correct such failure to comply and to prevent, correct and/or compensate for material damage to public resources which resulted from any violation, unauthorized deviation, or willful or negligent disregard for potential damage to a public resource; and/or those courses of action necessary to prevent continuing damage to public resources where the damage is resulting from the forest practice activities but has not resulted from any violation, unauthorized deviation, or negligence.

The department shall mail a copy thereof to the forest land owner and the timber owner at the addresses shown on the application, showing the date of service upon the operator. Such notice to comply shall become a final order of the

(2004 Ed.)

department: PROVIDED, That no direct appeal to the appeals board will be allowed from such final order. Such operator shall undertake the course of action so ordered by the department unless, within fifteen days after the date of service of such notice to comply, the operator, forest land owner, or timber owner, shall request the department in writing to schedule a hearing. If so requested, the department shall schedule a hearing on a date not more than twenty days after receiving such request. Within ten days after such hearing, the department shall issue a final order either withdrawing its notice to comply or clearly setting forth the specific course of action to be followed by such operator. Such operator shall undertake the course of action so ordered by the department unless within thirty days after the date of such final order, the operator, forest land owner, or timber owner appeals such final order to the appeals board.

No person shall be under any obligation under this section to prevent, correct, or compensate for any damage to public resources which occurs more than one year after the date of completion of the forest practices operations involved exclusive of reforestation, unless such forest practices were not conducted in accordance with forest practices rules and regulations: PROVIDED, That this provision shall not relieve the forest land owner from any obligation to comply with forest practices rules and regulations pertaining to providing continuing road maintenance. No action to recover damages shall be taken under this section more than two years after the date the damage involved occurs. [1975 1st ex.s. c 200 § 6; 1974 ex.s. c 137 § 9.]

76.09.100 Failure to comply with water quality protection—Department of ecology authorized to petition appeals board—Action on petition. If the department of ecology determines that a person has failed to comply with the forest practices regulations relating to water quality protection, and that the department of natural resources has not issued a stop work order or notice to comply, the department of ecology shall inform the department thereof. If the department of natural resources fails to take authorized enforcement action within twenty-four hours under RCW 76.09.080, 76.09.090, 76.09.120, or 76.09.130, the department of ecology may petition to the chairman of the appeals board, who shall, within forty-eight hours, either deny the petition or direct the department of natural resources to immediately issue a stop work order or notice to comply, or to impose a penalty. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department of natural resources. [1975 1st ex.s. c 200 § 7; 1974 ex.s. c 137 § 10.]

76.09.110 Final orders or final decisions binding upon all parties. Unless declared invalid on appeal, a final order of the department or a final decision of the appeals board shall be binding upon all parties. [1974 ex.s. c 137 § 11.]

76.09.120 Failure of owner to take required course of action—Notice of cost—Department authorized to complete course of action—Liability of owner for costs—

Lien. If an operator fails to undertake and complete any course of action with respect to a forest practice, as required by a final order of the department or a final decision of the appeals board or any court pursuant to RCW 76.09.080 and 76.09.090, the department may determine the cost thereof and give written notice of such cost to the operator, the timber owner and the owner of the forest land upon or in connection with which such forest practice was being conducted. If such operator, timber owner, or forest land owner fails within thirty days after such notice is given to undertake such course of action, or having undertaken such course of action fails to complete it within a reasonable time, the department may expend any funds available to undertake and complete such course of action and such operator, timber owner, and forest land owner shall be jointly and severally liable for the actual, direct cost thereof, but in no case more than the amount set forth in the notice from the department. If not paid within sixty days after the department completes such course of action and notifies such forest land owner in writing of the amount due, such amount shall become a lien on such forest land and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens. [1974 ex.s. c 137 § 12.]

76.09.130 Failure to obey stop work order—Departmental action authorized—Liability of owner or operator for costs. When the operator has failed to obey a stop work order issued under the provisions of RCW 76.09.080 the department may take immediate action to prevent continuation of or avoid material damage to public resources. If a final order or decision fixes liability with the operator, timber owner, or forest land owner, they shall be jointly and severally liable for such emergency costs which may be collected in the manner provided for in RCW 76.09.120. [1974 ex.s. c 137 § 13.]

76.09.140 Enforcement. (1) The department of natural resources may take any necessary action to enforce any final order or final decision, and may disapprove any forest practices application or notification submitted by any person who has failed to comply with a final order or final decision or has failed to pay any civil penalties as provided in RCW 76.09.170, for up to one year from the issuance of a notice of intent to disapprove notifications and applications under this section or until the violator pays all outstanding civil penalties and complies with all validly issued and outstanding notices to comply and stop work orders, whichever is longer. For purposes of chapter 482, Laws of 1993, the terms "final order" and "final decision" shall mean the same as set forth in RCW 76.09.080, 76.09.090, and 76.09.110. The department shall provide written notice of its intent to disapprove an application or notification under this subsection. The department shall forward copies of its notice of intent to disapprove to any affected landowner. The disapproval period shall run from thirty days following the date of actual notice or when all administrative and judicial appellate processes, if any, have been exhausted. Any person provided the notice may seek review from the appeals board by filing a request for review within thirty days of the date of the notice of intent. While the notice of intent to disapprove is in effect, the viola-

tor may not serve as a person in charge of, be employed by, manage, or otherwise participate to any degree in forest practices.

(2) On request of the department, the attorney general may take action necessary to enforce this chapter, including, but not limited to: Seeking penalties, interest, costs, and attorneys' fees; enforcing final orders or decisions; and seeking civil injunctions, show cause orders, or contempt orders.

(3) A county may bring injunctive, declaratory, or other actions for enforcement for forest practice activities within its jurisdiction in the superior court as provided by law against the department, the forest landowner, timber owner or operator to enforce the forest practices rules or any final order of the department, or the appeals board. No civil or criminal penalties shall be imposed for past actions or omissions if such actions or omissions were conducted pursuant to an approval or directive of the department. Injunctions, declaratory actions, or other actions for enforcement under this subsection may not be commenced unless the department fails to take appropriate action after ten days written notice to the department by the county of a violation of the forest practices rules or final orders of the department or the appeals board.

(4)(a) The department may require financial assurance prior to the conduct of any further forest practices from an operator or landowner who within the preceding three-year period has:

(i) Operated without an approved forest practices application, other than an unintentional operation in connection with an approved application outside the approved boundary of such an application;

(ii) Continued to operate in breach of, or failed to comply with, the terms of an effective stop work order or notice to comply; or

(iii) Failed to pay any civil or criminal penalty.

(b) The department may deny any application for failure to submit financial assurances as required. [2000 c 11 § 6; 1999 sp.s. c 4 § 801; 1993 c 482 § 1; 1975 1st ex.s. c 200 § 8; 1974 ex.s. c 137 § 14.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.150 Inspection—Right of entry. (1) The department shall make inspections of forest lands, before, during and after the conducting of forest practices as necessary for the purpose of ensuring compliance with this chapter and the forest practices rules and to ensure that no material damage occurs to the natural resources of this state as a result of such practices.

(2) Any duly authorized representative of the department shall have the right to enter upon forest land at any reasonable time to enforce the provisions of this chapter and the forest practices rules.

(3) The department or the department of ecology may apply for an administrative inspection warrant to either Thurston county superior court, or the superior court in the county in which the property is located. An administrative inspection warrant may be issued where:

(a) The department has attempted an inspection of forest lands under this chapter to ensure compliance with this chapter and the forest practices rules or to ensure that no potential or actual material damage occurs to the natural resources of

this state, and access to all or part of the forest lands has been actually or constructively denied; or

(b) The department has reasonable cause to believe that a violation of this chapter or of rules adopted under this chapter is occurring or has occurred.

(4) In connection with any watershed analysis, any review of a pending application by an identification team appointed by the department, any compliance studies, any effectiveness monitoring, or other research that has been agreed to by a landowner, the department may invite representatives of other agencies, tribes, and interest groups to accompany a department representative and, at the landowner's election, the landowner, on any such inspections. Reasonable efforts shall be made by the department to notify the landowner of the persons being invited onto the property and the purposes for which they are being invited. [2000 c 11 § 7; 1999 sp.s. c 4 § 802; 1974 ex.s. c 137 § 15.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.160 Right of entry by department of ecology.

Any duly authorized representative of the department of ecology shall have the right to enter upon forest land at any reasonable time to administer the provisions of this chapter and RCW 90.48.420. [1974 ex.s. c 137 § 16.]

76.09.170 Violations—Conversion to nontimber operation—Penalties—Remission or mitigation—Appeals—Lien.

(1) Every person who violates any provision of RCW 76.09.010 through 76.09.280 or of the forest practices rules, or who converts forest land to a use other than commercial timber operation within three years after completion of the forest practice without the consent of the county, city, or town, shall be subject to a penalty in an amount of not more than ten thousand dollars for every such violation. Each and every such violation shall be a separate and distinct offense. In case of a failure to comply with a stop work order, every day's continuance shall be a separate and distinct violation. Every person who through an act of commission or omission procures, aids or abets in the violation shall be considered to have violated the provisions of this section and shall be subject to the penalty in this section. No penalty shall be imposed under this section upon any governmental official, an employee of any governmental department, agency, or entity, or a member of any board or advisory committee created by this chapter for any act or omission in his or her duties in the administration of this chapter or of any rule adopted under this chapter.

(2) The department shall develop and recommend to the board a penalty schedule to determine the amount to be imposed under this section. The board shall adopt by rule, pursuant to chapter 34.05 RCW, such penalty schedule to be effective no later than January 1, 1994. The schedule shall be developed in consideration of the following:

- (a) Previous violation history;
 - (b) Severity of the impact on public resources;
 - (c) Whether the violation of this chapter or its rules was intentional;
 - (d) Cooperation with the department;
 - (e) Repairability of the adverse effect from the violation;
- and

(f) The extent to which a penalty to be imposed on a forest landowner for a forest practice violation committed by another should be reduced because the owner was unaware of the violation and has not received substantial economic benefits from the violation.

(3) The penalty in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department describing the violation with reasonable particularity. Within fifteen days after the notice is received, the person incurring the penalty may apply in writing to the department for the remission or mitigation of such penalty. Upon receipt of the application, that department may remit or mitigate the penalty upon whatever terms that department in its discretion deems proper, provided the department deems such remission or mitigation to be in the best interests of carrying out the purposes of this chapter. The department shall have authority to ascertain the facts regarding all such applications in such reasonable manner and under such rule as it may deem proper.

(4) Any person incurring a penalty under this section may appeal the penalty to the forest practices appeals board. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When such an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the department setting forth the disposition of the application for remission or mitigation.

(5) The penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When such an application for remission or mitigation is made, any penalty incurred under this section shall become due and payable thirty days after receipt of notice setting forth the disposition of such application unless an appeal is filed from such disposition. Whenever an appeal of the penalty incurred is filed, the penalty shall become due and payable only upon completion of all administrative and judicial review proceedings and the issuance of a final decision confirming the penalty in whole or in part.

(6) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the department, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty, interest, costs, and attorneys' fees. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. In addition to or as an alternative to seeking enforcement of penalties in superior court, the department may bring an action in district court as provided in Title 3 RCW, to collect penalties, interest, costs, and attorneys' fees.

(7) Penalties imposed under this section for violations associated with a conversion to a use other than commercial timber operation shall be a lien upon the real property of the person assessed the penalty and the department may collect such amount in the same manner provided in chapter 60.04 RCW for mechanics' liens.

(8) Any person incurring a penalty imposed under this section is also responsible for the payment of all costs and attorneys' fees incurred in connection with the penalty and interest accruing on the unpaid penalty amount. [1999 sp.s. c 4 § 803; 1993 c 482 § 2; 1975 1st ex.s. c 200 § 9; 1974 ex.s. c 137 § 17.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Effective date—1993 c 482 § 2(1) and (3) through (7): "The following portions of this act shall take effect on January 1, 1994: Subsections (1) and (3) through (7) of section 2 of this act." [1993 c 482 § 3.]

76.09.180 Disposition of moneys received as penalties, reimbursement for damages. All penalties received or recovered by state agency action for violations as prescribed in RCW 76.09.170 shall be deposited in the state general fund. All such penalties recovered as a result of local government action shall be deposited in the local government general fund. Any funds recovered as reimbursement for damages pursuant to RCW 76.09.080 and 76.09.090 shall be transferred to that agency with jurisdiction over the public resource damaged, including but not limited to political subdivisions, the department of fish and wildlife, the department of ecology, the department of natural resources, or any other department that may be so designated: PROVIDED, That nothing herein shall be construed to affect the provisions of RCW 90.48.142. [1994 c 264 § 50; 1988 c 36 § 48; 1974 ex.s. c 137 § 18.]

76.09.190 Additional penalty, gross misdemeanor. In addition to the penalties imposed pursuant to RCW 76.09.170, any person who conducts any forest practice or knowingly aids or abets another in conducting any forest practice in violation of any provisions of RCW 76.09.010 through 76.09.280 or 90.48.420, or of the regulations implementing RCW 76.09.010 through 76.09.280 or 90.48.420, shall be guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not less than one hundred dollars nor more than one thousand dollars, or by imprisonment for a term of not more than one year or by both fine and imprisonment for each separate violation. Each day upon which such violation occurs shall constitute a separate violation. [1974 ex.s. c 137 § 19.]

76.09.210 Forest practices appeals board—Created—Membership—Terms—Vacancies—Removal. (1) There is hereby created within the environmental hearings office under RCW 43.21B.005 the forest practices appeals board of the state of Washington.

(2) The forest practices appeals board shall consist of three members qualified by experience and training in pertinent matters pertaining to the environment, and at least one member of the appeals board shall have been admitted to the practice of law in this state and shall be engaged in the legal profession at the time of his appointment. The appeals board shall be appointed by the governor with the advice and consent of the senate, and no more than two of the members at the time of appointment or during their term shall be members of the same political party.

(3) Members shall be appointed for a term of six years and shall serve until their successors are appointed and have

qualified. In case of a vacancy, it shall be filled by appointment by the governor for the unexpired portion of the term in which such vacancy occurs. The terms of the first three members of the appeals board shall be staggered so that their terms shall expire after two, four, and six years.

(4) Any member may be removed for inefficiency, malfeasance or misfeasance in office, upon specific written charges filed by the governor, who shall transmit such written charges to the member accused and to the chief justice of the supreme court. The chief justice shall thereupon designate a tribunal composed of three judges of the superior court to hear and adjudicate the charges. Such tribunal shall fix the time of the hearing, which shall be public, and the procedure for the hearing, and the decision of such tribunal shall be final and not subject to review by the supreme court. Removal of any member by the tribunal shall disqualify such member for reappointment.

(5) Each member of the appeals board:

(a) Shall not be a candidate for nor hold any other public office or trust, and shall not engage in any occupation or business interfering with or inconsistent with his duty as a member, nor shall he serve on or under any committee of any political party; and

(b) Shall not for a period of one year after the termination of his membership, act in a representative capacity before the appeals board on any matter. [1979 ex.s. c 47 § 4; 1974 ex.s. c 137 § 21.]

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

76.09.220 Forest practices appeals board—Compensation—Travel expenses—Chair—Office—Quorum—Powers and duties—Jurisdiction—Review. (1) The appeals board shall operate on either a part-time or a full-time basis, as determined by the governor. If it is determined that the appeals board shall operate on a full-time basis, each member shall receive an annual salary to be determined by the governor. If it is determined that the appeals board shall operate on a part-time basis, each member shall be compensated in accordance with RCW 43.03.250. The director of the environmental hearings office shall make the determination, required under RCW 43.03.250, as to what statutorily prescribed duties, in addition to attendance at a hearing or meeting of the board, shall merit compensation. This compensation shall not exceed ten thousand dollars in a fiscal year. Each member shall receive reimbursement for travel expenses incurred in the discharge of his or her duties in accordance with the provisions of RCW 43.03.050 and 43.03.060.

(2) The appeals board shall as soon as practicable after the initial appointment of the members thereof, meet and elect from among its members a chair, and shall at least biennially thereafter meet and elect or reelect a chair.

(3) The principal office of the appeals board shall be at the state capital, but it may sit or hold hearings at any other place in the state. A majority of the appeals board shall constitute a quorum for making orders or decisions, adopting rules necessary for the conduct of its powers and duties, or transacting other official business, and may act though one position on the board be vacant. One or more members may hold hearings and take testimony to be reported for action by

the board when authorized by rule or order of the board. The appeals board shall perform all the powers and duties granted to it in this chapter or as otherwise provided by law.

(4) The appeals board shall make findings of fact and prepare a written decision in each case decided by it, and such findings and decision shall be effective upon being signed by two or more members and upon being filed at the appeals board's principal office, and shall be open to public inspection at all reasonable times.

(5) The appeals board shall either publish at its expense or make arrangements with a publishing firm for the publication of those of its findings and decisions which are of general public interest, in such form as to assure reasonable distribution thereof.

(6) The appeals board shall maintain at its principal office a journal which shall contain all official actions of the appeals board, with the exception of findings and decisions, together with the vote of each member on such actions. The journal shall be available for public inspection at the principal office of the appeals board at all reasonable times.

(7) The forest practices appeals board shall have exclusive jurisdiction to hear appeals arising from an action or determination by the department, and the department of fish and wildlife, and the department of ecology with respect to management plans provided for under RCW 76.09.350.

(8)(a) Any person aggrieved by the approval or disapproval of an application to conduct a forest practice or the approval or disapproval of any landscape plan or permit or watershed analysis may, except as otherwise provided in chapter 43.21L RCW, seek review from the appeals board by filing a request for the same within thirty days of the approval or disapproval. Concurrently with the filing of any request for review with the board as provided in this section, the requestor shall file a copy of his or her request with the department and the attorney general. The attorney general may intervene to protect the public interest and ensure that the provisions of this chapter are complied with.

(b) The review proceedings authorized in (a) of this subsection are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. [2003 c 393 § 20; 1999 sp.s. c 4 § 902; 1999 c 90 § 1. Prior: 1997 c 423 § 2; 1997 c 290 § 5; 1989 c 175 § 164; 1984 c 287 § 109; 1979 ex.s. c 47 § 5; 1975-'76 2nd ex.s. c 34 § 174; 1975 1st ex.s. c 200 § 10; 1974 ex.s. c 137 § 22.]

Implementation—Effective date—2003 c 393: See RCW 43.21L.900 and 43.21L.901.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

Finding—1997 c 423: "The legislature finds that the functions of the forest practices appeals board have overriding sensitivity and are of importance to the public welfare and operation of state government." [1997 c 423 § 1.]

Effective date—1997 c 423: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and takes effect July 1, 1997." [1997 c 423 § 3.]

Effective date—1989 c 175: See note following RCW 34.05.010.

Legislative findings—Severability—Effective date—1984 c 287: See notes following RCW 43.03.220.

Intent—1979 ex.s. c 47: See note following RCW 43.21B.005.

Effective date—Severability—1975-'76 2nd ex.s. c 34: See notes following RCW 2.08.115.

(2004 Ed.)

76.09.230 Forest practices appeals board—Mediation—Appeal procedure—Judicial review. (1) In all appeals over which the appeals board has jurisdiction, upon request of one or more parties and with the consent of all parties, the appeals board shall promptly schedule a conference for the purpose of attempting to mediate the case. The mediation conference shall be held prior to the hearing on not less than seven days' advance written notice to all parties. All other proceedings pertaining to the appeal shall be stayed until completion of mediation, which shall continue so long as all parties consent: PROVIDED, That this shall not prevent the appeals board from deciding motions filed by the parties while mediation is ongoing: PROVIDED, FURTHER, That discovery may be conducted while mediation is ongoing if agreed to by all parties. Mediation shall be conducted by an administrative appeals judge or other duly authorized agent of the appeals board who has received training in dispute resolution techniques or has a demonstrated history of successfully resolving disputes, as determined by the appeals board. A person who mediates in a particular appeal shall not participate in a hearing on that appeal or in writing the decision and order in the appeal. Documentary and other physical evidence presented and evidence of conduct or statements made during the course of mediation shall be treated by the mediator and the parties in a confidential manner and shall not be admissible in subsequent proceedings in the appeal except in accordance with the provisions of the Washington rules of evidence pertaining to compromise negotiations.

(2) In all appeals the appeals board shall have all powers relating to administration of oaths, issuance of subpoenas, and taking of depositions, but such powers shall be exercised in conformity with chapter 34.05 RCW.

(3) In all appeals the appeals board, and each member thereof, shall be subject to all duties imposed upon and shall have all powers granted to, an agency by those provisions of chapter 34.05 RCW relating to adjudicative proceedings.

(4) All proceedings before the appeals board or any of its members shall be conducted in accordance with such rules of practice and procedure as the board may prescribe. The appeals board shall publish such rules and arrange for the reasonable distribution thereof.

(5) Judicial review of a decision of the appeals board may be obtained only pursuant to RCW 34.05.510 through 34.05.598. [1994 c 253 § 9; 1992 c 52 § 23; 1989 c 175 § 165; 1974 ex.s. c 137 § 23.]

Effective date—1989 c 175: See note following RCW 34.05.010.

76.09.240 Class IV forest practices—Counties and cities adopt standards—Administration and enforcement of regulations—Restrictions upon local political subdivisions or regional entities—Exceptions and limitations. (1) By December 31, 2005, each county and each city shall adopt ordinances or promulgate regulations setting standards for those Class IV forest practices regulated by local government. The regulations shall: (a) Establish minimum standards for Class IV forest practices; (b) set forth necessary administrative provisions; and (c) establish procedures for the collection and administration of forest practices and recording fees as set forth in this chapter.

[Title 76 RCW—page 29]

(2) Class IV forest practices regulations shall be administered and enforced by the counties and cities that promulgate them.

(3) The forest practices board shall continue to promulgate regulations and the department shall continue to administer and enforce the regulations promulgated by the board in each county and each city for all forest practices as provided in this chapter until such time as, in the opinion of the department, the county or city has promulgated forest practices regulations that meet the requirements as set forth in this section and that meet or exceed the standards set forth by the board in regulations in effect at the time the local regulations are adopted. Regulations promulgated by the county or city thereafter shall be reviewed in the usual manner set forth for county or city rules or ordinances. Amendments to local ordinances must meet or exceed the forest practices rules at the time the local ordinances are amended.

(a) Department review of the initial regulations promulgated by a county or city shall take place upon written request by the county or city. The department, in consultation with the department of ecology, may approve or disapprove the regulations in whole or in part.

(b) Until January 1, 2006, the department shall provide technical assistance to all counties or cities that have adopted forest practices regulations acceptable to the department and that have assumed regulatory authority over all Class IV forest practices within their jurisdiction.

(c) Decisions by the department approving or disapproving the initial regulations promulgated by a county or city may be appealed to the forest practices appeals board, which has exclusive jurisdiction to review the department's approval or disapproval of regulations promulgated by counties and cities.

(4) For those forest practices over which the board and the department maintain regulatory authority no county, city, municipality, or other local or regional governmental entity shall adopt or enforce any law, ordinance, or regulation pertaining to forest practices, except that to the extent otherwise permitted by law, such entities may exercise any:

(a) Land use planning or zoning authority: PROVIDED, That exercise of such authority may regulate forest practices only: (i) Where the application submitted under RCW 76.09.060 as now or hereafter amended indicates that the lands have been or will be converted to a use other than commercial forest product production; or (ii) on lands which have been platted after January 1, 1960, as provided in chapter 58.17 RCW: PROVIDED, That no permit system solely for forest practices shall be allowed; that any additional or more stringent regulations shall not be inconsistent with the forest practices regulations enacted under this chapter; and such local regulations shall not unreasonably prevent timber harvesting;

(b) Taxing powers;

(c) Regulatory authority with respect to public health; and

(d) Authority granted by chapter 90.58 RCW, the "Shoreline Management Act of 1971". [2002 c 121 § 2; 1997 c 173 § 5; 1975 1st ex.s. c 200 § 11; 1974 ex.s. c 137 § 24.]

76.09.250 Policy for continuing program of orientation and training. The board shall establish a policy for a

continuing program of orientation and training to be conducted by the department with relation to forest practices and the regulation thereof pursuant to RCW 76.09.010 through 76.09.280. [1974 ex.s. c 137 § 25.]

76.09.260 Department to represent state's interest—Cooperation with other public agencies—Grants and gifts. The department shall represent the state's interest in matters pertaining to forestry and forest practices, including federal matters, and may consult with and cooperate with the federal government and other states, as well as other public agencies, in the study and enhancement of forestry and forest practices. The department is authorized to accept, receive, disburse, and administer grants or other funds or gifts from any source, including private individuals or agencies, the federal government, and other public agencies for the purposes of carrying out the provisions of this chapter.

Nothing in this chapter shall modify the designation of the department of ecology as the agency representing the state for all purposes of the Federal Water Pollution Control Act. [1974 ex.s. c 137 § 26.]

76.09.270 Annual determination of state's research needs—Recommendations. The department, along with other affected agencies and institutions, shall annually determine the state's needs for research in forest practices and the impact of such practices on public resources and shall recommend needed projects to the governor and the legislature. [1974 ex.s. c 137 § 27.]

76.09.280 Removal of log and debris jams from streams. Forest land owners shall permit reasonable access requested by appropriate agencies for removal from stream beds abutting their property of log and debris jams accumulated from upstream ownerships. Any owner of logs in such jams in claiming or removing them shall be required to remove all unmerchantable material from the stream bed in accordance with the forest practices regulations. Any material removed from stream beds must also be removed in compliance with all applicable laws administered by other agencies. [1974 ex.s. c 137 § 28.]

76.09.285 Water quality standards affected by forest practices. See RCW 90.48.420.

76.09.290 Inspection of lands—Reforestation. The department shall inspect, or cause to be inspected, deforested lands of the state and ascertain if the lands are valuable chiefly for agriculture, timber growing, or other purposes, with a view to reforestation. [1986 c 100 § 49.]

76.09.300 Mass earth movements and fluvial processes—Program to correct hazardous conditions on sites associated with roads and railroad grades—Hazard-reduction plans. (1) Mass earth movements and fluvial processes can endanger public resources and public safety. In some cases, action can be taken which has a probability of reducing the danger to public resources and public safety. In other cases it may be best to take no action. In order to determine where and what, if any, actions should be taken on for-

est lands, the department shall develop a program to correct hazardous conditions on identified sites associated with roads and railroad grades constructed on private and public forest lands prior to January 1, 1987. The first priority treatment shall be accorded to those roads and railroad grades constructed before the effective date of the forest practices act of 1974.

(2) This program shall be designed to accomplish the purposes and policies set forth in RCW 76.09.010. For each geographic area studied, the department shall produce a hazard-reduction plan which shall consist of the following elements:

(a) Identification of sites where the department determines that earth movements or fluvial processes pose a significant danger to public resources or public safety: PROVIDED, That no liability shall attach to the state of Washington or the department for failure to identify such sites;

(b) Recommendations for the implementation of any appropriate hazard-reduction measures on the identified sites, which minimize interference with natural processes and disturbance to the environment;

(c) Analysis of the costs and benefits of each of the hazard-reduction alternatives, including a no-action alternative.

(3) In developing these plans, it is intended that the department utilize appropriate scientific expertise including a geomorphologist, a forest hydrologist, and a forest engineer.

(4) In developing these plans, the department shall consult with affected tribes, landowners, governmental agencies, and interested parties.

(5) Unless requested by a forest landowner under RCW 76.09.320, the department shall study geographic areas for participation in the program only to the extent that funds have been appropriated for cost sharing of hazard-reduction measures under RCW 76.09.320. [1987 c 95 § 2.]

76.09.305 Advisory committee to review hazard-reduction plans authorized—Compensation, travel expenses. The forest practices board may, upon request of the department or at its own discretion, appoint an advisory committee consisting of not more than five members qualified by appropriate experience and training to review and comment upon such draft hazard reduction plans prepared by the department as the department submits for review.

If an advisory committee is established, and within ninety days following distribution of a draft plan, the advisory committee shall prepare a written report on each hazard reduction plan submitted to it. The report, which shall be kept on file by the department, shall address each of those elements described in RCW 76.09.300(2).

Final authority for each plan is vested in the department, and advisory committee comments and decisions shall be advisory only. The exercise by advisory committee members of their authority to review and comment shall not imply or create any liability on their part. Advisory committee members shall be compensated as provided for in RCW 43.03.250 and shall receive reimbursement for travel expenses as provided by RCW 43.03.050 and 43.03.060. [1987 c 95 § 3.]

76.09.310 Hazard-reduction program—Notice to landowners within areas selected for review—Proposed

(2004 Ed.)

plans—Objections to plan, procedure—Final plans—Appeal. (1) The department shall send a notice to all forest landowners, both public and private, within the geographic area selected for review, stating that the department intends to study the area as part of the hazard-reduction program.

(2) The department shall prepare a proposed plan for each geographic area studied. The department shall provide the proposed plan to affected landowners, Indian tribes, interested parties, and to the advisory committee, if established pursuant to RCW 76.09.305.

(3) Any aggrieved landowners, agencies, tribes, and other persons who object to any or all of the proposed hazard-reduction plan may, within thirty days of issuance of the plan, request the department in writing to schedule a conference. If so requested, the department shall schedule a conference on a date not more than thirty days after receiving such request.

(4) Within ten days after such a conference, the department shall either amend the proposed plan or respond in writing indicating why the objections were not incorporated into the plan.

(5) Within one hundred twenty days following the issuance of the proposed plan as provided in subsection (2) of this section, the department shall distribute a final hazard-reduction plan designating those sites for which hazard-reduction measures are recommended and those sites where no action is recommended. For each hazard-reduction measure recommended, a description of the work and cost estimate shall be provided.

(6) Any aggrieved landowners, agencies, tribes, and other persons are entitled to appeal the final hazard-reduction plan to the forest practices appeals board if, within thirty days of the issuance of the final plan, the party transmits a notice of appeal to the forest practices appeals board and to the department.

(7) A landowner's failure to object to the recommendations or to appeal the final hazard-reduction plan shall not be deemed an admission that the hazard-reduction recommendations are appropriate.

(8) The department shall provide a copy of the final hazard-reduction plan to the department of ecology and to each affected county. [1987 c 95 § 4.]

76.09.315 Implementation of hazard-reduction measures—Election—Notice and application for cost-sharing funds—Inspection—Letter of compliance—Limitations on liability. (1) When a forest landowner elects to implement the recommended hazard-reduction measures, the landowner shall notify the department and apply for cost-sharing funds. Upon completion, the department shall inspect the remedial measures undertaken by the forest landowner. If, in the department's opinion, the remedial measures have been properly implemented, the department shall promptly transmit a letter to the landowner stating that the landowner has complied with the hazard-reduction measures.

(2) Forest landowners, public and private, of hazard-reduction sites reviewed by the department and who have complied with the department's recommendations for sites which require action shall not be liable for any personal injuries or property damage, occurring on or off the property reviewed, arising from mass earth movements or fluvial processes associated with the hazard-reduction site reviewed.

The limitation on liability contained in this subsection shall also cover personal injuries or property damage arising from mass earth movements or fluvial processes which are associated with those areas disturbed by activities required to acquire site access and to execute the plan when such activities are approved as part of a hazard-reduction plan. Notwithstanding the foregoing provisions of this subsection, a landowner may be liable when the landowner had actual knowledge of a dangerous artificial latent condition on the property that was not disclosed to the department.

(3) The exercise by the department of its authority, duties, and responsibilities provided for developing and implementing the hazard-reduction program and plans shall not imply or create any liability in the state of Washington or the department except that the department may be liable if the department is negligent in making a final hazard-reduction plan or in approving the implementation of specific hazard-reduction measures. [1987 c 95 § 5.]

76.09.320 Implementation of hazard-reduction program—Cost sharing by department—Limitations. (1) Subject to the availability of appropriated funds, the department shall pay fifty percent of the cost of implementing the hazard-reduction program, except as provided in subsection (2) of this section.

(2) In the event department funds described in subsection (1) of this section are not available for all or a portion of a forest landowner's property, the landowner may request application of the hazard-reduction program to the owner's lands, provided the landowner funds one hundred percent of the cost of implementation of the department's recommended actions on his property.

(3) No cost-sharing funds may be made available for sites where the department determines that the hazardous condition results from a violation of then-prevailing standards as established by statute or rule. [1987 c 95 § 6.]

76.09.330 Legislative findings—Liability from naturally falling trees required to be left standing. The legislature hereby finds and declares that riparian ecosystems on forest lands in addition to containing valuable timber resources, provide benefits for wildlife, fish, and water quality. The legislature further finds and declares that leaving riparian areas unharvested and leaving snags and green trees for large woody debris recruitment for streams and rivers provides public benefits including but not limited to benefits for threatened and endangered salmonids, other fish, amphibians, wildlife, and water quality enhancement. The legislature further finds and declares that leaving upland areas unharvested for wildlife and leaving snags and green trees for future snag recruitment provides benefits for wildlife. Forest landowners may be required to leave trees standing in riparian and upland areas to benefit public resources. It is recognized that these trees may blow down or fall into streams and that organic debris may be allowed to remain in streams. This is beneficial to riparian dependent and other wildlife species. Further, it is recognized that trees may blow down, fall onto, or otherwise cause damage or injury to public improvements, private property, and persons. Notwithstanding any statutory provision, rule, or common law doctrine to the contrary, the

landowner, the department, and the state of Washington shall not be held liable for any injury or damages resulting from these actions, including but not limited to wildfire, erosion, flooding, personal injury, property damage, damage to public improvements, and other injury or damages of any kind or character resulting from the trees being left. [1999 sp.s. c 4 § 602; 1992 c 52 § 5; 1987 c 95 § 7.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.340 Certain forest practices exempt from rules and policies under this chapter. Forest practices consistent with a habitat conservation plan approved prior to March 25, 1996, by the secretary of the interior or commerce under 16 U.S.C. Sec. 1531 et seq., and the endangered species act of 1973 as amended, are exempt from rules and policies under this chapter, provided the proposed forest practices indicated in the application are in compliance with the plan, and provided this exemption applies only to rules and policies adopted primarily for the protection of one or more species, including unlisted species, covered by the plan. Such forest practices are deemed not to have the potential for a substantial impact on the environment but may be found to have the potential for a substantial impact on the environment due to other reasons under RCW 76.09.050.

Nothing in this section is intended to limit the board's rule-making authority under this chapter. [1996 c 136 § 1.]

Effective date—1996 c 136: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect immediately [March 25, 1996]." [1996 c 136 § 2.]

76.09.350 Long-term multispecies landscape management plans—Pilot projects, selection—Plan approval, elements—Notice of agreement recorded—Memorandums of agreements—Report, evaluation. The legislature recognizes the importance of providing the greatest diversity of habitats, particularly riparian, wetland, and old growth habitats, and of assuring the greatest diversity of species within those habitats for the survival and reproduction of enough individuals to maintain the native wildlife of Washington forest lands. The legislature also recognizes the importance of long-term habitat productivity for natural and wild fish, for the protection of hatchery water supplies, and for the protection of water quality and quantity to meet the needs of people, fish, and wildlife. The legislature recognizes the importance of maintaining and enhancing fish and wildlife habitats capable of sustaining the commercial and noncommercial uses of fish and wildlife. The legislature further recognizes the importance of the continued growth and development of the state's forest products industry which has a vital stake in the long-term productivity of both the public and private forest land base.

The development of a landscape planning system would help achieve these goals. Landowners and resource managers should be provided incentives to voluntarily develop long-term multispecies landscape management plans that will provide protection to public resources. Because landscape planning represents a departure from the use of standard baseline rules and may result in unintended consequences to both the affected habitats and to a landowner's

economic interests, the legislature desires to establish up to seven experimental pilot programs to gain experience with landscape planning that may prove useful in fashioning legislation of a more general application.

(1) Until December 31, 2000, the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, is granted authority to select not more than seven pilot projects for the purpose of developing individual landowner multispecies landscape management plans.

(a) Pilot project participants must be selected by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, no later than October 1, 1997.

(b) The number and the location of the pilot projects are to be determined by the department in cooperation with the department of fish and wildlife, and the department of ecology when relating to water quality protection, and should be selected on the basis of risk to the habitat and species, variety and importance of species and habitats in the planning area, geographic distribution, surrounding ownership, other ongoing landscape and watershed planning activities in the area, potential benefits to water quantity and quality, financial and staffing capabilities of participants, and other factors that will contribute to the creation of landowner multispecies landscape planning efforts.

(c) Each pilot project shall have a landscape management plan with the following elements:

(i) An identification of public resources selected for coverage under the plan and measurable objectives for the protection of the selected public resources;

(ii) A termination date of not later than 2050;

(iii) A general description of the planning area including its geographic location, physical and biological features, habitats, and species known to be present;

(iv) An identification of the existing forest practices rules that will not apply during the term of the plan;

(v) Proposed habitat management strategies or prescriptions;

(vi) A projection of the habitat conditions likely to result from the implementation of the specified management strategies or prescriptions;

(vii) An assessment of habitat requirements and the current habitat conditions of representative species included in the plan;

(viii) An assessment of potential or likely impacts to representative species resulting from the prescribed forest practices;

(ix) A description of the anticipated benefits to those species or other species as a result of plan implementation;

(x) A monitoring plan;

(xi) Reporting requirements including a schedule for review of the plan's performance in meeting its objectives;

(xii) Conditions under which a plan may be modified, including a procedure for adaptive management;

(xiii) Conditions under which a plan may be terminated;

(xiv) A procedure for adaptive management that evaluates the effectiveness of the plan to meet its measurable public resources objectives, reflects changes in the best available science, and provides changes to its habitat management strategies, prescriptions, and hydraulic project standards to

the extent agreed to in the plan and in a timely manner and schedule;

(xv) A description of how the plan relates to publicly available plans of adjacent federal, state, tribal, and private timberland owners; and

(xvi) A statement of whether the landowner intends to apply for approval of the plan under applicable federal law.

(2) Until December 31, 2000, the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, shall approve a landscape management plan and enter into a binding implementation agreement with the landowner when such departments find, based upon the best scientific data available, that:

(a) The plan contains all of the elements required under this section including measurable public resource objectives;

(b) The plan is expected to be effective in meeting those objectives;

(c) The landowner has sufficient financial resources to implement the management strategies or prescriptions to be implemented by the landowner under the plan;

(d) The plan will:

(i) Provide better protection than current state law for the public resources selected for coverage under the plan considered in the aggregate; and

(ii) Compared to conditions that could result from compliance with current state law:

(A) Not result in poorer habitat conditions over the life of the plan for any species selected for coverage that is listed as threatened or endangered under federal or state law, or that has been identified as a candidate for such listing, at the time the plan is approved; and

(B) Measurably improve habitat conditions for species selected for special consideration under the plan;

(e) The plan shall include watershed analysis or provide for a level of protection that meets or exceeds the protection that would be provided by watershed analysis, if the landowner selects fish or water quality as a public resource to be covered under the plan. Any alternative process to watershed analysis would be subject to timely peer review;

(f) The planning process provides for a public participation process during the development of the plan, which shall be developed by the department in cooperation with the landowner.

The management plans must be submitted to the department and the department of fish and wildlife, and the department of ecology when the landowner elects to cover water quality in the plan, no later than March 1, 2000. The department shall provide an opportunity for public comment on the proposed plan. The comment period shall not be less than forty-five days. The department shall approve or reject plans within one hundred twenty days of submittal by the landowner of a final plan. The decision by the department, in agreement with the department of fish and wildlife, and the department of ecology when the landowner has elected to cover water quality in the plan, to approve or disapprove the management plan is subject to the environmental review process of chapter 43.21C RCW, provided that any public comment period provided for under chapter 43.21C RCW shall run concurrently with the public comment period provided in this subsection (2).

(3) After a landscape management plan is adopted:

(a) Forest practices consistent with the plan need not comply with:

(i) The specific forest practices rules identified in the plan; and

(ii) Any forest practice rules and policies adopted after the approval of the plan to the extent that the rules:

(A) Have been adopted primarily for the protection of a public resource selected for coverage under the plan; or

(B) Provide for procedural or administrative obligations inconsistent with or in addition to those provided for in the plan with respect to those public resources; and

(b) If the landowner has selected fish as one of the public resources to be covered under the plan, the plan shall serve as the hydraulic project approval for the life of the plan, in compliance with RCW 77.55.100.

(4) The department is authorized to issue a single landscape level permit valid for the life of the plan to a landowner who has an approved landscape management plan and who has requested a landscape permit from the department. Landowners receiving a landscape level permit shall meet annually with the department and the department of fish and wildlife, and the department of ecology where water quality has been selected as a public resource to be covered under the plan, to review the specific forest practices activities planned for the next twelve months and to determine whether such activities are in compliance with the plan. The departments will consult with the affected Indian tribes and other interested parties who have expressed an interest in connection with the review. The landowner is to provide ten calendar days' notice to the department prior to the commencement of any forest practices authorized under a landscape level permit. The landscape level permit will not impose additional conditions relating to the public resources selected for coverage under the plan beyond those agreed to in the plan. For the purposes of chapter 43.21C RCW, forest practices conducted in compliance with an approved plan are deemed not to have the potential for a substantial impact on the environment as to any public resource selected for coverage under the plan.

(5) Except as otherwise provided in a plan, the agreement implementing the landscape management plan is an agreement that runs with the property covered by the approved landscape management plan and the department shall record notice of the plan in the real property records of the counties in which the affected properties are located. Prior to its termination, no plan shall permit forest land covered by its terms to be withdrawn from such coverage, whether by sale, exchange, or other means, nor to be converted to nonforestry uses except to the extent that such withdrawal or conversion would not measurably impair the achievement of the plan's stated public resource objectives. If a participant transfers all or part of its interest in the property, the terms of the plan still apply to the new landowner for the plan's stated duration unless the plan is terminated under its terms or unless the plan specifies the conditions under which the terms of the plan do not apply to the new landowner.

(6) The departments of natural resources, fish and wildlife, and ecology shall seek to develop memorandums of agreements with federal agencies and affected Indian tribes relating to tribal issues in the landscape management plans.

The departments shall solicit input from affected Indian tribes in connection with the selection, review, and approval of any landscape management plan. If any recommendation is received from an affected Indian tribe and is not adopted by the departments, the departments shall provide a written explanation of their reasons for not adopting the recommendation.

(7) The department is directed to report to the forest practices board annually through the year 2000, but no later than December 31st of each year, on the status of each pilot project. The department is directed to provide to the forest practices board, no later than December 31, 2000, an evaluation of the pilot projects including a determination if a permanent landscape planning process should be established along with a discussion of what legislative and rule modifications are necessary. [2003 c 39 § 34; 1997 c 290 § 1.]

76.09.360 Single multiyear permit. The department together with the department of fish and wildlife, and the department of ecology relating to water quality protection, shall develop a suitable process to permit landowners to secure all permits required for the conduct of forest practices in a single multiyear permit to be jointly issued by the departments and the departments shall report their findings to the legislature not later than December 31, 2000. [1997 c 290 § 2.]

76.09.368 Intent—Small forest landowners—Alternate plan processes/alternate harvest restrictions—Report to the legislature. The legislature intends that small forest landowners have access to alternate plan processes or alternate harvest restrictions, or both if necessary, that meet the public resource protection standard set forth in RCW 76.09.370(3), but which also lowers the overall cost of regulation to small forest landowners including, but not limited to, timber value forgone, layout costs, and operating costs. The forest practices board shall consult with the small forest landowner office advisory committee in developing these alternate approaches. By July 1, 2003, the forest practices board shall provide the legislature with a written report that describes the board's progress in developing alternate plan processes or alternate harvest restrictions, or both if necessary, that meet legislative intent.

As used in this section, "small forest landowner" has the same meaning as defined in RCW 76.13.120(2). [2002 c 120 § 4.]

76.09.370 Findings—Forests and fish report—Adoption of rules. (1) The legislature finds that the process that produced the forests and fish report was instigated by the forest practices board, the report is the product of considerable negotiations between several diverse interest groups, and the report has the support of key federal agencies. When adopting permanent rules under this section, the forest practices board is strongly encouraged to follow the recommendations of the forests and fish report, but may include other alternatives for protection of aquatic resources. If the forest practices board chooses to adopt rules under this section that are not consistent with the recommendations contained in the forests and fish report, the board must notify the appropriate

legislative committees of the proposed deviations, the reasons for the proposed deviations, and whether the parties to the forests and fish report still support the agreement. The board shall defer final adoption of such rules for sixty days of the legislative session to allow for the opportunity for additional public involvement and legislative oversight.

(2) The forest practices board shall follow the regular rules adoption process contained in the administrative procedure act, chapter 34.05 RCW, when adopting permanent rules pertaining to forest practices and the protection of aquatic resources except as limited by subsection (1) of this section. The permanent rules must accomplish the policies stated in RCW 76.09.010 without jeopardizing the economic viability of the forest products industry.

(3) The rules adopted under this section should be as specific as reasonably possible while also allowing an applicant to propose alternate plans in response to site-specific physical features. Alternate plans should provide protection to public resources at least equal in overall effectiveness by alternate means.

(4) Rule making under subsection (2) of this section shall be completed by June 30, 2001.

(5) The board should consider coordinating any environmental review process under chapter 43.21C RCW relating to the adoption of rules under subsection (2) of this section with any review of a related proposal under the national environmental policy act (42 U.S.C. Sec. 4321, et seq.).

(6) After the board has adopted permanent rules under subsection (2) of this section, changes to those rules and any new rules covering aquatic resources may be adopted by the board but only if the changes or new rules are consistent with recommendations resulting from the scientifically based adaptive management process established by a rule of the board. Any new rules or changes under this subsection need not be based upon the recommendations of the adaptive management process if: (a) The board is required to adopt or modify rules by the final order of any court having jurisdiction thereof; or (b) future state legislation directs the board to adopt or modify the rules.

(7) In adopting permanent rules, the board shall incorporate the scientific-based adaptive management process described in the forests and fish report which will be used to determine the effectiveness of the new forest practices rules in aiding the state's salmon recovery effort. The purpose of an adaptive management process is to make adjustments as quickly as possible to forest practices that are not achieving the resource objectives. The adaptive management process shall incorporate the best available science and information, include protocols and standards, regular monitoring, a scientific and peer review process, and provide recommendations to the board on proposed changes to forest practices rules to meet timber industry viability and salmon recovery. [1999 sp.s. c 4 § 204.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.380 Report to the legislature—Emergency rules—Permanent rules. Prior to the adoption of permanent rules as required by chapter 4, Laws of 1999 sp. sess. and no later than January 1, 2000, the board shall report to the appropriate legislative committees regarding the substance of

(2004 Ed.)

emergency rules that have been adopted under chapter 4, Laws of 1999 sp. sess. In addition, the report shall include information on changes made to the forests and fish report after April 29, 1999, and an update on the status of the adoption of permanent rules, including the anticipated substance of the rules and the anticipated date of final adoption. The board shall additionally provide a report to the appropriate legislative committees by January 1, 2001.

On January 1, 2006, the board shall provide a summary to the appropriate legislative committees regarding modifications made to the forests and fish report made after January 1, 2000, and to the permanent rules according to the adaptive management process as set forth in the forests and fish report. [1999 sp.s. c 4 § 205.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.390 Sale of land or timber rights with continuing obligations—Notice—Failure to notify—Exemption.

(1) Except as provided in subsection (2) of this section, prior to the sale or transfer of land or perpetual timber rights subject to continuing forest land obligations under the forest practices rules adopted under RCW 76.09.370, as specifically identified in the forests and fish report the seller shall notify the buyer of the existence and nature of such a continuing obligation and the buyer shall sign a notice of continuing forest land obligation indicating the buyer's knowledge thereof. The notice shall be on a form prepared by the department and shall be sent to the department by the seller at the time of sale or transfer of the land or perpetual timber rights and retained by the department. If the seller fails to notify the buyer about the continuing forest land obligation, the seller shall pay the buyer's costs related to such continuing forest land obligation, including all legal costs and reasonable attorneys' fees, incurred by the buyer in enforcing the continuing forest land obligation against the seller. Failure by the seller to send the required notice to the department at the time of sale shall be prima facie evidence, in an action by the buyer against the seller for costs related to the continuing forest land obligation, that the seller did not notify the buyer of the continuing forest land obligation prior to sale.

(2) Subsection (1) of this section does not apply to checklist road maintenance and abandonment plans created by RCW 76.09.420. [2003 c 311 § 6; 1999 sp.s. c 4 § 707.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.400 Forests and fish account—Created. The forests and fish account is created in the state treasury. Receipts from appropriations, federal grants, and gifts from private organizations and individuals or other sources may be deposited into the account. Moneys in the account may be spent only after appropriation. Expenditures from the account may only be used for the establishment and operation of the small forest landowner office under RCW 76.13.110, the purchase of easements under RCW 76.13.120, the purchase of lands under RCW 76.09.040, or other activities necessary to implement chapter 4, Laws of 1999 sp. sess. [1999 sp.s. c 4 § 1402.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.09.410 Road maintenance and abandonment plans—Fish passage barriers. (1) The state may not require a small forest landowner to invest in upgrades, replacements, or other engineering of a forest road, and any fish passage barriers that are a part of the road, that do not threaten public resources or create a barrier to the passage of fish.

(2) Participation in the forests and fish agreement provides a benefit to both the landowner in terms of federal assurances, and the public in terms of aquatic habitat preservation and water quality enhancement; therefore, if conditions do threaten public resources or create a fish passage barrier, the road maintenance and abandonment planning process may not require a small forest landowner to take a positive action that will result in high cost without a significant portion of that cost being shared by the public.

(3) Some fish passage barriers are more of a threat to public resources than others; therefore, no small forest landowner should be required to repair a fish passage barrier until higher priority fish passage barriers on other lands in the watershed have been repaired.

(4) If an existing fish passage barrier on land owned by a small forest landowner was installed under an approved forest practices application or notification, and hydraulics approval, and that fish passage barrier becomes a high priority for fish passage based on the watershed ranking in *RCW 76.13.150, one hundred percent public funding shall be provided.

(5) The preparation of a road maintenance and abandonment plan can require technical expertise that may require large expenditures before the time that the landowner plans to conduct any revenue-generating operations on his or her land; therefore, small forest landowners should be allowed to complete a simplified road maintenance and abandonment plan checklist, that does not require professional engineering or forestry expertise to complete, and that does not need to be submitted until the time that the landowner submits a forest practices application or notification for final or intermediate harvesting, or for salvage of trees. Chapter 311, Laws of 2003 is intended to provide an alternate way for small forest landowners to comply with the road maintenance and abandonment plan goals identified in the forest practices rules. [2003 c 311 § 2.]

***Reviser's note:** The reference to RCW 76.13.150 appears to be erroneous. Reference to RCW 77.12.755 was apparently intended.

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.420 Road maintenance and abandonment plans—Rules—Checklist—Report to the legislature—Emergency rules. (1) The board must amend the forest practices rules relating to road maintenance and abandonment plans that exist on May 14, 2003, to reflect the following:

(a) A forest landowner who owns a total of eighty acres or less of forest land in Washington is not required to submit a road maintenance and abandonment plan for any block of forest land that is twenty contiguous acres or less in area;

(b) A landowner who satisfies the definition of a small forest landowner, but who does not qualify under (a) of this subsection, is only required to submit a checklist road maintenance and abandonment plan with the abbreviated content requirements provided for in subsection (3) of this section, and is not required to comply with annual reporting and review requirements; and

(c) Existing forest roads must be maintained only to the extent necessary to prevent damage to public resources.

(2) The department must provide a landowner who is either exempted from submitting a road maintenance and abandonment plan under subsection (1)(a) of this section, or who qualifies for a checklist road maintenance and abandonment plan under subsection (1)(b) of this section, with an educational brochure outlining road maintenance standards and requirements. In addition, the department must develop a series of nonmandatory educational workshops on the rules associated with road construction and maintenance.

(3)(a) A landowner who qualifies for a checklist road maintenance and abandonment plan under subsection (1)(b) of this section is only required to submit a checklist, designed by the department in consultation with the small forest landowner office advisory committee created in RCW 76.13.110, that confirms that the landowner is applying the checklist criteria to forest roads covered or affected by a forest practices application or notification. When developing the checklist road maintenance and abandonment plan, the department shall ensure that the checklist does not exceed current state law. Nothing in this subsection increases or adds to small forest landowners' duties or responsibilities under any other section of the forest practices rules or any other state law or rule.

(b) A landowner who qualifies for the checklist road maintenance and abandonment plan is not required to submit the checklist before the time that he or she submits a forest practices application or notification for final or intermediate harvesting, or for salvage of trees. The department may encourage and accept checklists prior to the time that they are due.

(4) The department must monitor the extent of the checklist road maintenance and abandonment plan approach and report its findings to the appropriate committees of the legislature by December 31, 2008, and December 31, 2013.

(5) The board shall adopt emergency rules under RCW 34.05.090 by October 31, 2003, to implement this section. The emergency rules shall remain in effect until permanent rules can be adopted. The forest practices rules that relate to road maintenance and abandonment plans shall remain in effect as they existed on May 14, 2003, until emergency rules have been adopted under this section.

(6) This section is only intended to relate to the board's duties as they relate to the road maintenance and abandonment plan element of the forests and fish report. Nothing in this section alters any forest landowner's duties and responsibilities under any other section of the forest practices rules, or any other state law or rule. [2003 c 311 § 4.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.430 Application to RCW 76.13.150. RCW 76.13.150 applies to road maintenance and abandonment plans under this chapter. [2003 c 311 § 8.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.440 Small forest landowner—Fish passage barriers. The department shall not disapprove a forest practices application filed by a small forest landowner on the basis that fish passage barriers have not been removed or replaced if the small forest landowner filing the application has committed to participate in the program established in RCW 76.13.150 for all fish passage barriers existing on the block of forest land covered by the forest practices application, and the fish passage barriers existing on the block of forest land covered by the forest practices application are lower on the funding order list established for the program than the current projects that are capable of being funded by the program. [2003 c 311 § 9.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.450 Small forest landowner—Defined. For the purposes of this chapter and RCW 76.13.150 and 77.12.755, "small forest landowner" means an owner of forest land who, at the time of submission of required documentation to the department, has harvested from his or her own lands in this state no more than an average timber volume of two million board feet per year during the three years prior to submitting documentation to the department and who certifies that he or she does not expect to harvest from his or her own lands in the state more than an average timber volume of two million board feet per year during the ten years following the submission of documentation to the department. However, any landowner who exceeded the two million board feet annual average timber harvest threshold from their land in the three years prior to submitting documentation to the department, or who expects to exceed the threshold during any of the following ten years, shall still be deemed a "small forest landowner" if he or she establishes to the department's reasonable satisfaction that the harvest limits were, or will be, exceeded in order to raise funds to pay estate taxes or for an equally compelling and unexpected obligation, such as for a court-ordered judgment or for extraordinary medical expenses. [2003 c 311 § 11.]

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.09.900 Short title. Sections 1 through 28 of this 1974 act shall be known and may be cited as the "Forest Practices Act of 1974". [1974 ex.s. c 137 § 29.]

76.09.905 Air pollution laws not modified. Nothing in RCW 76.09.010 through 76.09.280 or 90.48.420 shall modify chapter 70.94 RCW or any other provision of law relating to the control of air pollution. [1974 ex.s. c 137 § 31.]

76.09.910 Shoreline management act, hydraulics act, other statutes and ordinances not modified—Exceptions. Nothing in RCW 76.09.010 through 76.09.280 as now or hereafter amended shall modify any requirements to comply

(2004 Ed.)

with the Shoreline Management Act of 1971 except as limited by RCW 76.09.240 as now or hereafter amended, or the hydraulics act (RCW 77.55.100), other state statutes in effect on January 1, 1975, and any local ordinances not inconsistent with RCW 76.09.240 as now or hereafter amended. [2003 c 39 § 35; 1975 1st ex.s. c 200 § 12; 1974 ex.s. c 137 § 32.]

76.09.915 Repeal and savings. (1) The following acts or parts of acts are each repealed:

(a) Section 2, chapter 193, Laws of 1945, section 1, chapter 218, Laws of 1947, section 1, chapter 44, Laws of 1953, section 1, chapter 79, Laws of 1957, section 10, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.010;

(b) Section 1, chapter 193, Laws of 1945 and RCW 76.08.020;

(c) Section 3, chapter 193, Laws of 1945, section 2, chapter 218, Laws of 1947, section 1, chapter 115, Laws of 1955 and RCW 76.08.030;

(d) Section 4, chapter 193, Laws of 1945, section 3, chapter 218, Laws of 1947, section 2, chapter 79, Laws of 1957 and RCW 76.08.040;

(e) Section 5, chapter 193, Laws of 1945, section 4, chapter 218, Laws of 1947, section 3, chapter 79, Laws of 1957, section 11, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.050;

(f) Section 6, chapter 193, Laws of 1945, section 5, chapter 218, Laws of 1947, section 2, chapter 44, Laws of 1953, section 12, chapter 207, Laws of 1971 ex. sess. and RCW 76.08.060;

(g) Section 7, chapter 193, Laws of 1945 and RCW 76.08.070;

(h) Section 8, chapter 193, Laws of 1945, section 6, chapter 218, Laws of 1947, section 3, chapter 44, Laws of 1953, section 2, chapter 115, Laws of 1955, section 1, chapter 40, Laws of 1961 and RCW 76.08.080; and

(i) Section 9, chapter 193, Laws of 1945, section 4, chapter 44, Laws of 1953 and RCW 76.08.090.

(2) Notwithstanding the foregoing repealer, obligations under such sections or permits issued thereunder and in effect on the effective date of this section shall continue in full force and effect, and no liability thereunder, civil or criminal, shall be in any way modified. [1974 ex.s. c 137 § 34.]

76.09.920 Application for extension of prior permits.

Permits issued by the department under the provisions of RCW 76.08.030 during 1974 shall be effective until April 1, 1975 if an application has been submitted under the provisions of RCW 76.09.050 prior to January 1, 1975. [1974 ex.s. c 137 § 35.]

76.09.925 Effective dates—1974 ex.s. c 137. RCW 76.09.030, 76.09.040, 76.09.050, 76.09.060, 76.09.200, 90.48.420, and 76.09.935 are necessary for the immediate preservation of the public peace, health and safety, the support of the state government and its existing public institutions, and shall take effect immediately. RCW 76.09.010, 76.09.020, 76.09.070, 76.09.080, 76.09.090, 76.09.100, 76.09.110, 76.09.120, 76.09.130, 76.09.140, 76.09.150, 76.09.160, 76.09.170, 76.09.180, 76.09.190, 76.09.210, 76.09.220, 76.09.230, 76.09.240, 76.09.250, 76.09.260,

76.09.270, 76.09.280, 76.09.900, 76.09.905, 76.09.910, 76.09.930, 76.09.915, and 76.09.920 shall take effect January 1, 1975. [1974 ex.s. c 137 § 37.]

76.09.935 Severability—1974 ex.s. c 137. If any provision of this 1974 act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provisions to other persons or circumstances shall not be affected. [1974 ex.s. c 137 § 36.]

Chapter 76.10 RCW SURFACE MINING

Reviser's note: Chapter 64, Laws of 1970 ex. sess. has been codified as chapter 78.44 RCW, "Mines, minerals, and petroleum" although section 1 of the act states "Sections 2 through 25 of this act shall constitute a new chapter in Title 76 RCW." As the act pertains solely to surface mining, the change in placement has been made to preserve the subject matter arrangement of the code.

Chapter 76.13 RCW STEWARDSHIP OF NONINDUSTRIAL FORESTS AND WOODLANDS

Sections

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|-----------|--|
| 76.13.005 | Finding. |
| 76.13.007 | Purpose. |
| 76.13.010 | Definitions. |
| 76.13.020 | Authority. |
| 76.13.030 | Funding sources—Fees—Contracts. |
| 76.13.100 | Findings. |
| 76.13.110 | Small forest landowner office—Establishment—Duties—Advisory committee—Report to the legislature. |
| 76.13.120 | Findings—Definitions—Forestry riparian easement program. |
| 76.13.130 | Small parcels—Alternative management plans. |
| 76.13.140 | Small forest landowners—Value of buffer trees. |
| 76.13.150 | Fish passage barriers—Cost-sharing program. |
| 76.13.160 | Qualifying small forest landowner—Review of certain records. |

76.13.005 Finding. The legislature hereby finds and declares that:

(1) Over half of the private forest and woodland acreage in Washington is owned by landowners with less than five thousand acres who are not in the business of industrial handling or processing of timber products.

(2) Nonindustrial forests and woodlands are absorbing more demands and impacts on timber, fish, wildlife, water, recreation, and aesthetic resources, due to population growth and a shrinking commercial forest land base.

(3) Nonindustrial forests and woodlands provide valuable habitat for many of the state's numerous fish, wildlife, and plant species, including some threatened and endangered species, and many habitats can be protected and improved through knowledgeable forest resource stewardship.

(4) Providing for long-term stewardship of nonindustrial forests and woodlands in growth areas and rural areas is an important factor in maintaining Washington's special character and quality of life.

(5) In order to encourage and maintain nonindustrial forests and woodlands for their present and future benefit to all citizens, Washington's nonindustrial forest and woodland owners' long-term commitments to stewardship of forest resources must be recognized and supported by the citizens of Washington state. [1991 c 27 § 1.]

76.13.007 Purpose. The purpose of this chapter is to:

(1) Promote the coordination and delivery of services with federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries and environmental organizations to nonindustrial forest and woodland owners.

(2) Facilitate the production of forest products, enhancement of wildlife and fisheries, protection of streams and wetlands, culturing of special plants, availability of recreation opportunities and the maintenance of scenic beauty for the enjoyment and benefit of nonindustrial forest and woodland owners and the citizens of Washington by meeting the landowners' stewardship objectives. [1991 c 27 § 2.]

76.13.010 Definitions. Unless the context clearly requires otherwise, the definitions in this section apply to RCW 76.13.005, 76.13.007, 76.13.020, and 76.13.030.

(1) "Cooperating organization" means federal, state, and local agencies, colleges and universities, landowner assistance organizations, consultants, forest resource-related industries, and environmental organizations which promote and maintain programs designed to provide information and technical assistance services to nonindustrial forest and woodland owners.

(2) "Department" means the department of natural resources.

(3) "Landowner" means an individual, partnership, private, public or municipal corporation, Indian tribe, state agency, county, or local government entity, educational institution, or association of individuals of whatever nature that own nonindustrial forests and woodlands.

(4) "Nonindustrial forests and woodlands" are those suburban acreages and rural lands supporting or capable of supporting trees and other flora and fauna associated with a forest ecosystem, comprised of total individual land ownerships of less than five thousand acres and not directly associated with wood processing or handling facilities.

(5) "Stewardship" means managing by caring for, promoting, protecting, renewing, or reestablishing or both, forests and associated resources for the benefit of the landowner, the natural resources and the citizens of Washington state, in accordance with each landowner's objectives, best management practices, and legal requirements. [2000 c 11 § 11; 1999 sp.s. c 4 § 502; 1991 c 27 § 3.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.13.020 Authority. In order to accomplish the purposes stated in RCW 76.13.007, the department may:

(1) Establish and maintain a nonindustrial forest and woodland owner assistance program, and through such a program, assist nonindustrial forest and woodland owners in meeting their stewardship objectives.

(2) Provide direct technical assistance through development of management plans, advice, and information to nonindustrial forest land owners to meet their stewardship objectives.

(3) Assist and facilitate efforts of cooperating organizations to provide stewardship education, information, technical assistance, and incentives to nonindustrial forest and woodland owners.

- (4) Provide financial assistance to landowners and cooperating organizations.
- (5) Appoint a stewardship advisory committee to assist in establishing and operating this program.
- (6) Loan or rent surplus equipment to assist cooperating organizations and nonindustrial forest and woodland owners.
- (7) Work with local governments to explain the importance of maintaining nonindustrial forests and woodlands.
- (8) Take such other steps as are necessary to carry out the purposes of this chapter. [1991 c 27 § 4.]

76.13.030 Funding sources—Fees—Contracts. The department may:

- (1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter.
- (2) Receive such gifts, grants, bequests, and endowments and donations of moneys, labor, material, seedlings, and equipment from public or private sources as may be made for the purpose of carrying out the provisions of this chapter and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources according to their terms.
- (3) Charge fees for attendance at workshops and conferences, for various publications and other materials which the department may prepare.
- (4) Enter into contracts with cooperating organizations having responsibility to carry out programs of similar purposes to this chapter. [1991 c 27 § 5.]

76.13.100 Findings. (1) The legislature finds that increasing regulatory requirements continue to diminish the economic viability of small forest landowners. The concerns set forth in RCW 77.85.180 about the importance of sustaining forestry as a viable land use are particularly applicable to small landowners because of the location of their holdings, the expected complexity of the regulatory requirements, and the need for significant technical expertise not readily available to small landowners. The further reduction in harvestable timber owned by small forest landowners as a result of the rules to be adopted under RCW 76.09.055 will further erode small landowners' economic viability and willingness or ability to keep the lands in forestry use and, therefore, reduce the amount of habitat available for salmon recovery and conservation of other aquatic resources, as defined in RCW 76.09.020.

(2) The legislature finds that the concerns identified in subsection (1) of this section should be addressed by establishing within the department of natural resources a small forest landowner office that shall be a resource and focal point for small forest landowner concerns and policies. The legislature further finds that a forestry riparian easement program shall be established to acquire easements from small landowners along riparian and other areas of value to the state for protection of aquatic resources. The legislature further finds that small forest landowners should have the option of alternate management plans or alternate harvest restrictions on smaller harvest units that may have a relatively low impact on aquatic resources. The small forest landowner office should be responsible for assisting small landowners in the develop-

ment and implementation of these plans or restrictions. [2003 c 39 § 36; 1999 sp.s. c 4 § 501.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.13.110 Small forest landowner office—Establishment—Duties—Advisory committee—Report to the legislature. (1) The department of natural resources shall establish and maintain a small forest landowner office. The small forest landowner office shall be a resource and focal point for small forest landowner concerns and policies, and shall have significant expertise regarding the management of small forest holdings, governmental programs applicable to such holdings, and the forestry riparian easement program.

(2) The small forest landowner office shall administer the provisions of the forestry riparian easement program created under RCW 76.13.120.

(3) The small forest landowner office shall assist in the development of small landowner options through alternate management plans or alternate harvest restrictions appropriate to small landowners. The small forest landowner office shall develop criteria to be adopted by the forest practices board in rules and a manual for alternate management plans or alternate harvest restrictions. These alternate plans or alternate harvest restrictions shall meet riparian functions while requiring less costly regulatory prescriptions. At the landowner's option, alternate plans or alternate harvest restrictions may be used to further meet riparian functions.

The small forest landowner office shall evaluate the cumulative impact of such alternate management plans or alternate harvest restrictions on essential riparian functions at the subbasin or watershed level. The small forest landowner office shall adjust future alternate management plans or alternate harvest restrictions in a manner that will minimize the negative impacts on essential riparian functions within a subbasin or watershed.

(4) An advisory committee is established to assist the small forest landowner office in developing policy and recommending rules to the forest practices board. The advisory committee shall consist of seven members, including a representative from the department of ecology, the department of fish and wildlife, and a tribal representative. Four additional committee members shall be small forest landowners who shall be appointed by the commissioner of public lands from a list of candidates submitted by the board of directors of the Washington farm forestry association or its successor organization. The association shall submit more than one candidate for each position. The commissioner shall designate two of the initial small forest landowner appointees to serve five-year terms and the other two small forest landowner appointees to serve four-year terms. Thereafter, appointees shall serve for a term of four years. The small forest landowner office shall review draft rules or rule concepts with the committee prior to recommending such rules to the forest practices board. The office shall reimburse nongovernmental committee members for reasonable expenses associated with attending committee meetings as provided in RCW 43.03.050 and 43.03.060.

(5) By December 1, 2002, the small forest landowner office shall provide a report to the board and the legislature containing:

(a) Estimates of the amounts of nonindustrial forests and woodlands in holdings of twenty acres or less, twenty-one to one hundred acres, one hundred to one thousand acres, and one thousand to five thousand acres, in western Washington and eastern Washington, and the number of persons having total nonindustrial forest and woodland holdings in those size ranges;

(b) Estimates of the number of parcels of nonindustrial forests and woodlands held in contiguous ownerships of twenty acres or less, and the percentages of those parcels containing improvements used: (i) As primary residences for half or more of most years; (ii) as vacation homes or other temporary residences for less than half of most years; and (iii) for other uses;

(c) The watershed administrative units in which significant portions of the riparian areas or total land area are nonindustrial forests and woodlands;

(d) Estimates of the number of forest practices applications and notifications filed per year for forest road construction, silvicultural activities to enhance timber growth, timber harvest not associated with conversion to nonforest land uses, with estimates of the number of acres of nonindustrial forests and woodlands on which forest practices are conducted under those applications and notifications; and

(e) Recommendations on ways the board and the legislature could provide more effective incentives to encourage continued management of nonindustrial forests and woodlands for forestry uses in ways that better protect salmon, other fish and wildlife, water quality, and other environmental values.

(6) By December 1, 2004, and every four years thereafter, the small forest landowner office shall provide to the board and the legislature an update of the report described in subsection (5) of this section, containing more recent information and describing:

(a) Trends in the items estimated under subsection (5)(a) through (d) of this section;

(b) Whether, how, and to what extent the forest practices act and rules contributed to those trends; and

(c) Whether, how, and to what extent: (i) The board and legislature implemented recommendations made in the previous report; and (ii) implementation of or failure to implement those recommendations affected those trends. [2002 c 120 § 1; 2001 c 280 § 1; 2000 c 11 § 12; 1999 sp.s. c 4 § 503.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.13.120 Findings—Definitions—Forestry riparian easement program. (1) The legislature finds that the state should acquire easements along riparian and other sensitive aquatic areas from small forest landowners willing to sell or donate such easements to the state provided that the state will not be required to acquire such easements if they are subject to unacceptable liabilities. The legislature therefore establishes a forestry riparian easement program.

(2) The definitions in this subsection apply throughout this section and RCW 76.13.100 and 76.13.110 unless the context clearly requires otherwise.

(a) "Forestry riparian easement" means an easement covering qualifying timber granted voluntarily to the state by a small forest landowner.

(b) "Qualifying timber" means those trees covered by a forest practices application that the small forest landowner is required to leave unharvested under the rules adopted under RCW 76.09.055 and 76.09.370 or that is made uneconomic to harvest by those rules, and for which the small landowner is willing to grant the state a forestry riparian easement. "Qualifying timber" is timber within or bordering a commercially reasonable harvest unit as determined under rules adopted by the forest practices board, or timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules.

(c) "Small forest landowner" means a landowner meeting all of the following characteristics: (i) A forest landowner as defined in RCW 76.09.020 whose interest in the land and timber is in fee or who has rights to the timber to be included in the forestry riparian easement that extend at least fifty years from the date the forest practices application associated with the easement is submitted; (ii) an entity that has harvested from its own lands in this state during the three years prior to the year of application an average timber volume that would qualify the owner as a small harvester under RCW 84.33.035; and (iii) an entity that certifies at the time of application that it does not expect to harvest from its own lands more than the volume allowed by RCW 84.33.035 during the ten years following application. If a landowner's prior three-year average harvest exceeds the limit of RCW 84.33.035, or the landowner expects to exceed this limit during the ten years following application, and that landowner establishes to the department of natural resources' reasonable satisfaction that the harvest limits were or will be exceeded to raise funds to pay estate taxes or equally compelling and unexpected obligations such as court-ordered judgments or extraordinary medical expenses, the landowner shall be deemed to be a small forest landowner.

For purposes of determining whether a person qualifies as a small forest landowner, the small forest landowner office, created in RCW 76.13.110, shall evaluate the landowner under this definition, pursuant to RCW 76.13.160, as of the date that the forest practices application is submitted or the date the landowner notifies the department that the harvest is to begin with which the forestry riparian easement is associated. A small forest landowner can include an individual, partnership, corporate, or other nongovernmental legal entity. If a landowner grants timber rights to another entity for less than five years, the landowner may still qualify as a small forest landowner under this section. If a landowner is unable to obtain an approved forest practices application for timber harvest for any of his or her land because of restrictions under the forest practices rules, the landowner may still qualify as a small forest landowner under this section.

(d) "Completion of harvest" means that the trees have been harvested from an area and that further entry into that area by mechanized logging or slash treating equipment is not expected.

(3) The department of natural resources is authorized and directed to accept and hold in the name of the state of Washington forestry riparian easements granted by small forest landowners covering qualifying timber and to pay compensation to such landowners in accordance with subsections (6) and (7) of this section. The department of natural resources

may not transfer the easements to any entity other than another state agency.

(4) Forestry riparian easements shall be effective for fifty years from the date the forest practices application associated with the qualifying timber is submitted to the department of natural resources, unless the easement is terminated earlier by the department of natural resources voluntarily, based on a determination that termination is in the best interest of the state, or under the terms of a termination clause in the easement.

(5) Forestry riparian easements shall be restrictive only, and shall preserve all lawful uses of the easement premises by the landowner that are consistent with the terms of the easement and the requirement to protect riparian functions during the term of the easement, subject to the restriction that the leave trees required by the rules to be left on the easement premises may not be cut during the term of the easement. No right of public access to or across, or any public use of the easement premises is created by this statute or by the easement. Forestry riparian easements shall not be deemed to trigger the compensating tax of or otherwise disqualify land from being taxed under chapter 84.33 or 84.34 RCW.

(6) Upon application of a small forest landowner for a riparian easement that is associated with a forest practices application and the landowner's marking of the qualifying timber on the qualifying lands, the small forest landowner office shall determine the compensation to be offered to the small forest landowner as provided for in this section. The small forest landowner office shall also determine the compensation to be offered to a small forest landowner for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules. The legislature recognizes that there is not readily available market transaction evidence of value for easements of this nature, and thus establishes the following methodology to ascertain the value for forestry riparian easements. Values so determined shall not be considered competent evidence of value for any other purpose.

The small forest landowner office shall establish the volume of the qualifying timber. Based on that volume and using data obtained or maintained by the department of revenue under RCW 84.33.074 and 84.33.091, the small forest landowner office shall attempt to determine the fair market value of the qualifying timber as of the date the forest practices application associated with the qualifying timber was submitted or the date the landowner notifies the department that the harvest is to begin. Removal of any qualifying timber before the expiration of the easement must be in accordance with the forest practices rules and the terms of the easement. There shall be no reduction in compensation for reentry.

(7) Except as provided in subsection (8) of this section, the small forest landowner office shall, subject to available funding, offer compensation to the small forest landowner in the amount of fifty percent of the value determined in subsection (6) of this section, plus the compliance and reimbursement costs as determined in accordance with RCW 76.13.140. If the landowner accepts the offer for qualifying timber that will be harvested pursuant to an approved forest practices application, the department of natural resources shall pay the compensation promptly upon (a) completion of

harvest in the area covered by the forestry riparian easement; (b) verification that there has been compliance with the rules requiring leave trees in the easement area; and (c) execution and delivery of the easement to the department of natural resources. If the landowner accepts the offer for qualifying timber for which an approved forest practices application for timber harvest cannot be obtained because of restrictions under the forest practices rules, the department of natural resources shall pay the compensation promptly upon (i) verification that there has been compliance with the rules requiring leave trees in the easement area; and (ii) execution and delivery of the easement to the department of natural resources. Upon donation or payment of compensation, the department of natural resources may record the easement.

(8) For approved forest practices applications where the regulatory impact is greater than the average percentage impact for all small landowners as determined by the department of natural resources analysis under the regulatory fairness act, chapter 19.85 RCW, the compensation offered will be increased to one hundred percent for that portion of the regulatory impact that is in excess of the average. Regulatory impact includes trees left in buffers, special management zones, and those rendered uneconomic to harvest by these rules. A separate average or high impact regulatory threshold shall be established for western and eastern Washington. Criteria for these measurements and payments shall be established by the small forest landowner office.

(9) The forest practices board shall adopt rules under the administrative procedure act, chapter 34.05 RCW, to implement the forestry riparian easement program, including the following:

(a) A standard version or versions of all documents necessary or advisable to create the forestry riparian easements as provided for in this section;

(b) Standards for descriptions of the easement premises with a degree of precision that is reasonable in relation to the values involved;

(c) Methods and standards for cruises and valuation of forestry riparian easements for purposes of establishing the compensation. The department of natural resources shall perform the timber cruises of forestry riparian easements required under this chapter and chapter 76.09 RCW. Any rules concerning the methods and standards for valuations of forestry riparian easements shall apply only to the department of natural resources, small forest landowners, and the small forest landowner office;

(d) A method to determine that a forest practices application involves a commercially reasonable harvest, and adopt criteria for entering into a forest riparian easement where a commercially reasonable harvest is not possible or a forest practices application that has been submitted cannot be approved because of restrictions under the forest practices rules;

(e) A method to address blowdown of qualified timber falling outside the easement premises;

(f) A formula for sharing of proceeds in relation to the acquisition of qualified timber covered by an easement through the exercise or threats of eminent domain by a federal or state agency with eminent domain authority, based on the present value of the department of natural resources' and the landowner's relative interests in the qualified timber;

(g) High impact regulatory thresholds;

(h) A method to determine timber that is qualifying timber because it is rendered uneconomic to harvest by the rules adopted under RCW 76.09.055 and 76.09.370; and

(i) A method for internal department of natural resources review of small forest landowner office compensation decisions under subsection (7) of this section. [2004 c 102 § 1; 2002 c 120 § 2; 2001 c 280 § 2; 2000 c 11 § 13; 1999 sp.s. c 4 § 504.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.13.130 Small parcels—Alternative management plans. On parcels of twenty contiguous acres or less, landowners with a total parcel ownership of less than eighty acres shall not be required to leave riparian buffers adjacent to streams according to forest practices rules adopted under the forests and fish report as defined in RCW 76.09.020. These landowners shall be subject to the permanent forest practices rules in effect as of January 1, 1999, but may additionally be required to leave timber adjacent to streams that is equivalent to no greater than fifteen percent of a volume of timber contained in a stand of well managed fifty-year old commercial timber covering the harvest area. The additional fifteen percent leave tree level shall be computed as a rotating stand volume and shall be regulated through flexible forest practices as the stream buffer is managed over time to meet riparian functions.

On parcels of twenty contiguous acres or less the small forest landowner office shall work with landowners with a total parcel ownership of less than eighty acres to develop alternative management plans for riparian buffers. Such alternative plans shall provide for the removal of leave trees as other new trees grow in order to ensure the most effective protection of critical riparian function. The office may recommend reasonable modifications in alternative management plans of such landowners to further reduce risks to public resources and endangered species so long as the anticipated operating costs are not unreasonably increased and the landowner is not required to leave a greater volume than the threshold level. To qualify for the provisions of this section, parcels must be twenty acres or less in contiguous ownership, and owners cannot have ownership interests in a total of more than eighty acres of forest lands within the state. [1999 sp.s. c 4 § 505.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.13.140 Small forest landowners—Value of buffer trees. In order to assist small forest landowners to remain economically viable, the legislature intends that the small forest landowners be able to net fifty percent of the value of the trees left in the buffer areas. The amount of compensation offered in RCW 76.13.120 shall also include the compliance costs for participation in the riparian easement program. For purposes of this section, "compliance costs" includes the cost of preparing and recording the easement, and any business and occupation tax and real estate excise tax imposed because of entering into the easement. The office may contract with private consultants that the office finds qualified to perform timber cruises of forestry riparian easements or to lay out

streamside buffers and comply with other forest and fish regulatory requirements related to the forest riparian easement program. The department shall reimburse small forest landowners for the actual costs incurred for laying out the streamside buffers and marking the qualifying timber once a contract has been executed for the forestry riparian easement program. Reimbursement is subject to the work being acceptable to the department. The small forest landowner office shall determine how the reimbursement costs will be calculated. [2002 c 120 § 3; 2001 c 280 § 3.]

76.13.150 Fish passage barriers—Cost-sharing program. (1) The legislature finds that a state-led cost-sharing program is necessary to assist small forest landowners with removing and replacing fish passage barriers that were added to their land prior to May 14, 2003, to help achieve the goals of the forests and fish report, and to assist small forest landowners in complying with the state's fish passage requirements.

(2) The small forest landowner office must, in cooperation with the department of fish and wildlife, establish a program designed to assist small forest landowners with repairing or removing fish passage barriers and assist lead entities in acquiring the data necessary to fill any gaps in fish passage barrier information. The small forest landowner office and the department of fish and wildlife must work closely with lead entities or other local watershed groups to make maximum use of current information regarding the location and priority of current fish passage barriers. Where additional fish passage barrier inventories are necessary, funding will be sought for the collection of this information. Methods, protocols, and formulas for data gathering and prioritizing must be developed in consultation with the department of fish and wildlife. The department of fish and wildlife must assist in the training and management of fish passage barrier location data collection.

(3) The small forest landowner office must actively seek out funding for the program authorized in this section. The small forest landowner office must work with consenting landowners to identify and secure funding from local, state, federal, tribal, or nonprofit habitat restoration organizations and other private sources, including the salmon recovery funding board, the United States department of agriculture, the United States department of transportation, the Washington state department of transportation, the United States department of commerce, and the federal highway administration.

(4)(a) Except as otherwise provided in this subsection, the small forest landowner office, in implementing the program established in this section, must provide the highest proportion of public funding available for the removal or replacement of any fish passage barrier.

(b) In no case shall a small forest landowner be required to pay more than the lesser of either: (i) Twenty-five percent of any costs associated with the removal or replacement of a particular fish passage barrier; or (ii) five thousand dollars for the removal or replacement of a particular fish passage barrier. No small forest landowner shall be required to pay more than the maximum total annual costs in (c) of this subsection.

(c) The portion of the total cost of removing or replacing fish passage barriers that a small forest landowner must pay

in any calendar year shall be determined based on the average annual timber volume harvested from the landowner's lands in this state during the three preceding calendar years, and whether the fish passage barrier is in eastern or western Washington.

(i) In western Washington (west of the Cascade Crest), a small forest landowner who has harvested an average annual timber volume of less than five hundred thousand board feet shall not be required to pay more than a total of eight thousand dollars during that calendar year, a small forest landowner who has harvested an annual average timber volume between five hundred thousand and nine hundred ninety-nine thousand board feet shall not be required to pay more than a total of sixteen thousand dollars during that calendar year, a small forest landowner who has harvested an average annual timber volume between one million and one million four hundred ninety-nine thousand board feet shall not be required to pay more than a total of twenty-four thousand dollars during that calendar year, and a small forest landowner who has harvested an average annual timber volume greater than or equal to one million five hundred thousand board feet shall not be required to pay more than a total of thirty-two thousand dollars during that calendar year, regardless of the number of fish passage barriers removed or replaced on the landowner's lands during that calendar year.

(ii) In eastern Washington (east of the Cascade Crest), a small forest landowner who has harvested an average annual timber volume of less than five hundred thousand board feet shall not be required to pay more than a total of two thousand dollars during that calendar year, a small forest landowner who has harvested an annual average timber volume between five hundred thousand and nine hundred ninety-nine thousand board feet shall not be required to pay more than a total of four thousand dollars during that calendar year, a small forest landowner who has harvested an average annual timber volume between one million and one million four hundred ninety-nine thousand board feet shall not be required to pay more than a total of twelve thousand dollars during that calendar year, and a small forest landowner who has harvested an average annual timber volume greater than or equal to one million five hundred thousand board feet shall not be required to pay more than a total of sixteen thousand dollars during that calendar year, regardless of the number of fish passage barriers removed or replaced on the landowner's lands during that calendar year.

(iii) Maximum total annual costs for small forest landowners with fish passage barriers in both western and eastern Washington shall be those specified under (c)(i) and (ii) of this subsection.

(d) If an existing fish passage barrier on land owned by a small forest landowner was installed under an approved forest practices application or notification, and hydraulics approval, and that fish passage barrier becomes a high priority for fish passage based on the watershed ranking in *RCW 76.13.150, one hundred percent public funding shall be provided.

(5) If a small forest landowner is required to contribute a portion of the funding under the cost-share program established in this section, that landowner may satisfy his or her required proportion by providing either direct monetary contributions or in-kind services to the project. In-kind services

(2004 Ed.)

may include labor, equipment, materials, and other landowner-provided services determined by the department to have an appropriate value to the removal of a particular fish passage barrier.

(6)(a) The department, using fish passage barrier assessments and ranked inventory information provided by the department of fish and wildlife and the appropriate lead entity as delineated in RCW 77.12.755, must establish a prioritized list for the funding of fish passage barrier removals on property owned by small forest landowners that ensures that funding is provided first to the known fish passage barriers existing on forest land owned by small forest landowners that cause the greatest harm to public resources.

(b) As the department collects information about the presence of fish passage barriers from submitted checklists, it must share this information with the department of fish and wildlife and the technical advisory groups established in RCW 77.85.070. If the addition of the information collected in the checklists or any other changes to the scientific instruments described in RCW 77.12.755 alter the analysis conducted under RCW 77.12.755, the department must alter the funding order appropriately to reflect the new information.

(7) The department may accept commitments from small forest landowners that they will participate in the program to remove fish passage barriers from their land at any time, regardless of the funding order given to the fish passage barriers on a particular landowner's property. [2003 c 311 § 7.]

***Reviser's note:** The reference to RCW 76.13.150 appears to be erroneous. Reference to RCW 77.12.755 was apparently intended.

Findings—Effective date—2003 c 311: See notes following RCW 76.09.020.

76.13.160 Qualifying small forest landowner—Review of certain records. When establishing a forest riparian easement program applicant's status as a qualifying small forest landowner pursuant to RCW 76.13.120, the department shall not review the applicant's timber harvest records, or any other tax-related documents, on file with the department of revenue. The department of revenue may confirm or deny an applicant's status as a small forest landowner at the request of the department; however, for the purposes of this section, the department of revenue may not disclose more information than whether or not the applicant has reported a harvest or harvests totaling greater than or less than the qualifying thresholds established in RCW 76.13.120. Nothing in this section, or RCW 84.33.280, prohibits the department from reviewing aggregate or general information provided by the department of revenue. [2004 c 102 § 2.]

**Chapter 76.14 RCW
FOREST REHABILITATION**

Sections

| | |
|-----------|--|
| 76.14.010 | Definitions. |
| 76.14.020 | Yacolt burn designated high hazard area—Rehabilitation required. |
| 76.14.030 | Administration. |
| 76.14.040 | Duties. |
| 76.14.050 | Firebreaks—Powers of department—Grazing lands. |
| 76.14.051 | Firebreaks—Preexisting agreements not altered. |
| 76.14.060 | Powers and duties—Private lands. |
| 76.14.070 | Powers and duties—Expenditure of public funds. |
| 76.14.080 | Fire protection projects—Assessments—Payment. |

| | |
|-----------|--|
| 76.14.090 | Fire protection projects—Notice—Hearing. |
| 76.14.100 | Fire protection projects—Collection of assessments. |
| 76.14.110 | Fire protection projects—Credit on assessment for private expenditure. |
| 76.14.120 | Landowner's responsibility under other laws. |
| 76.14.130 | Lands not to be included in project. |

76.14.010 Definitions. As used in this chapter:

(1) "Department" means the department of natural resources;

(2) "Forest land" means any lands considered best adapted for the growing of trees; and

(3) The term "owner" means and includes individuals, partnerships, corporations, associations, federal land managing agencies, state of Washington, counties, municipalities, and other forest landowners. [2000 c 11 § 14; 1988 c 128 § 37; 1953 c 74 § 2.]

76.14.020 Yacolt burn designated high hazard area—Rehabilitation required. The Yacolt burn situated in Clark, Skamania, and Cowlitz counties in townships 2, 3, 4, 5, 6 and 7 north, ranges 3, 4, 5, 6, 7, 7 1/2 and 8 east is hereby designated a high hazard forest area requiring rehabilitation by the establishment of extensive protection facilities and by the restocking of denuded areas artificially to restore the productivity of the land. [1953 c 74 § 1.]

76.14.030 Administration. This chapter shall be administered by the department. [1988 c 128 § 38; 1953 c 74 § 3.]

76.14.040 Duties. The department shall use funds placed at its disposal to map, survey, fell snags, build firebreaks and access roads, increase forest protection activities and do all work deemed necessary to protect forest lands from fire in the rehabilitation zone, and to perform reforestation and do other improvement work on state lands in the rehabilitation zone. [1988 c 128 § 39; 1955 c 171 § 1; 1953 c 74 § 4.]

76.14.050 Firebreaks—Powers of department—Grazing lands. The department is authorized to cooperate with owners of land located in the area described in RCW 76.14.020 in establishing firebreaks in their most logical position regardless of land ownership. The department may by gift, purchase, condemnation or otherwise acquire easements for road rights of way and land or interests therein located in the high hazard forest area described in RCW 76.14.020 for any purpose deemed necessary for access for forest protection, reforestation, development and utilization, and for access to state owned lands within the area described in RCW 76.14.020 for all other purposes, and the department shall have authority to regulate the use thereof. When the landowner is using the land for agricultural grazing purposes the state shall maintain gates or adequate cattle guards at each place the road enters upon the private landowner's fenced lands. [1988 c 128 § 40; 1975 1st ex.s. c 101 § 1; 1955 c 171 § 2; 1953 c 74 § 5.]

76.14.051 Firebreaks—Preexisting agreements not altered. Nothing in the provisions of RCW 76.14.050 as now or hereafter amended shall be construed to otherwise

alter the terms of any existing agreements heretofore entered into by the state and private parties under the authority of RCW 76.14.050 as now or hereafter amended. [1975 1st ex.s. c 101 § 2.]

76.14.060 Powers and duties—Private lands. The department shall have authority to acquire the right by purchase, condemnation or otherwise to cause snags on private land to be felled, slash to be disposed of, and to take such other measures on private land necessary to carry out the objectives of this chapter. [1988 c 128 § 41; 1955 c 171 § 3.]

76.14.070 Powers and duties—Expenditure of public funds. The department shall have authority to expend public money for the purposes and objectives provided in this chapter. [1988 c 128 § 42; 1955 c 171 § 4.]

76.14.080 Fire protection projects—Assessments—Payment. The department shall develop fire protection projects within the high hazard forest area and shall determine the boundaries thereof in accordance with the lands benefited thereby and shall assess one-sixth of the cost of such projects equally upon all forest lands within the project on an acreage basis. Such assessment shall not, however, exceed twenty-five cents per acre annually nor more than one dollar and fifty cents per acre in the aggregate and shall constitute a lien upon any forest products harvested therefrom. The landowner may by written notice to the department elect to pay his assessment on a deferred basis at a rate of ten cents per thousand board feet and/or one cent per Christmas tree when these products are harvested from the lands for commercial use until the assessment plus two percent interest from the date of completion of each project has been paid for each acre. Payments under the deferred plan shall be credited by forty acre tracts and shall be first applied to payment of the assessment against the forty acre tract from which the funds were derived and secondly to other forty acre tracts held and designated by the payor. In the event total ownership is less than forty acres then payment shall be applied on an undivided basis to the entire areas as to which the assessment remains unpaid. The landowner who elects to pay on deferred basis may pay any unpaid assessment and interest at any time. [1988 c 128 § 43; 1955 c 171 § 5.]

76.14.090 Fire protection projects—Notice—Hearing. Notice of each project, the estimated assessment per acre and a description of the boundaries thereof shall be given by publication in a local newspaper of general circulation thirty days in advance of commencing work. Any person owning land within the project may within ten days after publication of notice demand a hearing before the department in Olympia and present any reasons why he feels the assessment should not be made upon his land. Thereafter, the department may change the boundaries of said project to eliminate land from the project which it determines in its discretion will not be benefited by the project. [1988 c 128 § 44; 1955 c 171 § 6.]

76.14.100 Fire protection projects—Collection of assessments. Except when the owner has notified the depart-

ment in writing that he will make payment on the deferred plan, the assessment shall be collected by the department reporting the same to the county assessor of the county in which the property is situated upon completion of the work in that project and the assessor shall annually extend the amounts upon the tax rolls covering the property, and the amounts shall be collected in the same manner, by the same procedure, and with the same penalties attached as the next general state and county taxes on the same property are collected. Errors in assessments may be corrected at any time by the department by certifying them to the treasurer of the county in which the land involved is situated. Upon the collection of such assessments the county treasurer shall transmit them to the department. Payment on the deferred plan shall be made directly to the department. Such payment must be made by January 31st for any timber or Christmas trees harvested during the previous calendar year and must be accompanied by a statement of the amount of timber or number of Christmas trees harvested and the legal description of the property from which they were harvested. Whenever an owner paying on the deferred plan desires to pay any unpaid balance or portion thereof, he may make direct payment to the department. [1988 c 128 § 45; 1955 c 171 § 7.]

Collection of taxes: Chapter 84.56 RCW.

76.14.110 Fire protection projects—Credit on assessment for private expenditure. Where the department finds that a portion of the work in any project, except road building, has been done by private expenditures for fire protection purposes only and that the work was not required by other forestry laws having general application, then the department shall appraise the work on the basis of what it would have cost the state and shall credit the amount of the appraisal toward payment of any sums assessed against lands contained in the project and owned by the person or his predecessors in title making the expenditure. Such appraisal shall be added to the cost of the project for purposes of determining the general assessment. [1988 c 128 § 46; 1955 c 171 § 8.]

76.14.120 Landowner's responsibility under other laws. This chapter shall not relieve the landowner of providing adequate fire protection for forest land pursuant to RCW 76.04.610 or, in lieu thereof, of paying the forest fire protection assessment specified, but shall be deemed as providing solely for extra fire protection needed in the extrahazardous fire area. [1986 c 100 § 56; 1955 c 171 § 9.]

76.14.130 Lands not to be included in project. Projects pursuant to RCW 76.14.080 shall not be developed to include lands outside the following described boundary within the high hazard forest areas: Beginning at a point on the east boundary of section 24, township 4 north, range 4 east 1/4 mile south of the northeast corner; thence west 1/4 mile; south 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; south 1/8 mile; west 1/4 mile; south 1/8 mile; west 1/2 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/8 mile; south 1/16 mile; west 1/2 mile; south 1/16 mile; west 3/4 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1/2 mile; north 1/16 mile; west 1/4 mile; north 1/16 mile; west 1 3/4 miles to the west quarter corner of

section 19, township 4 north, range 4 east. Thence north 1/4 mile; west 1/4 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 1/16 mile; north 1/4 mile; west 1/16 mile; north 1/8 mile; west 1/8 mile; north 1/8 mile; west 3/16 mile; south 1/8 mile; west 3/16 mile; south 1/8 mile; east 3/16 mile; south 1/4 mile; west 2 3/16 miles; south 1/8 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; east 1/8 mile; south 1/16 mile; east 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/16 mile; east 3/16 mile; south 7/16 mile; west 3/16 mile; south 1/4 mile; west 3/16 mile; south 1/4 mile; east 15/16 mile; south 1/4 mile; east 1/4 mile; south 1/4 mile; east 1/4 mile; south 3/4 mile; to the southwest corner of section 36, township 4 north, range 3 east. Thence west 3/8 mile; south 1/8 mile; east 1/8 mile; south 1/2 mile; west 1/8 mile; south 3/8 mile; west 1/8 mile; south 1/4 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 3/8 mile; south 7/16 mile; west 1/4 mile; south 1/16 mile; west 1/4 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 1/8 mile; south 1/16 mile; west 1/4 mile; east 1/8 mile; south 1/2 mile; west 1/8 mile; south 1/4 mile; east 1/2 mile; south 3/16 mile; east 1/4 mile; south 1/16 mile; east 7/16 mile; south 3/16 mile; east 9/16 mile; south 1/4 mile; east 1/16 mile; south 1/4 mile; east 1/16 mile; south 1/8 mile; east 1/8 mile; south 1/8 mile; west 1/16 mile; south 5/8 mile; west 3/16 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/8 mile; south 3/16 mile; west 1/8 mile; south 1/16 mile; west 11/16 mile; south 3/16 mile; east 15/16 mile, being 1/16 mile north of the southeast corner of section 36, township 3 north, range 3 east. Thence east 1 mile; south 1/16 mile; west 7/8 mile; south 1/8 mile; east 1/4 mile; south 1/4 mile; west 1/8 mile; south 1/8 mile; west 3/16 mile; south 1/4 mile; west 7/16 mile; north 1/8 mile; west 1/8 mile; south 1/8 mile; west 5/16 mile; south 1/4 mile; west 3/16 mile; south 1/16 mile; east 1/2 mile; north 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 1/8 mile being the southeast corner of section 1, township 2 north, range 3 east. Thence south 1/4 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/16 mile; east 1/4 mile; south 1/8 mile; east 1/8 mile; north 1/8 mile; east 3/8 mile; south 1/8 mile; east 1/16 mile; north 1/4 mile; east 7/16 mile; north 1/8 mile; east 9/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/8 mile; south 1/8 mile; west 1/16 mile; south 1/4 mile; west 1/16 mile; south 1/8 mile; west 1/8 mile; south 1/16 mile; west 1/4 mile; south 5/16 mile; to the center of section 17, township 2 north, range 4 east. Thence east 1 mile; south 1/16 mile; east 2 miles; north 1/16 mile; east 1 1/2 miles; to the east quarter corner of section 13, township 2 north, range 4 east. Thence easterly 9 miles following Bonneville Power Administration's power transmission line through sections 18, 17, 16, 15, 14 and 13, township 2 north, range 5 east and sections 18, 17 and 16, township 2 north, range 6 east to the southeast corner of section 16, township 2 north, range 6 east. Thence easterly 3 3/4 miles; north 1 1/4 miles; east 1/4 mile; north 2 1/4 miles; west 3/4 mile; north 1 1/2 miles; east 3/4 mile; north 1/2 mile; east 1 mile; north 1/2 mile; east 1 mile; north 1 mile; east 2 miles; south 1 mile; east 1 mile; north 3 miles; to the northeast corner of section 1, township 3 north, range 7 east. Thence west 4 miles; south 1 mile; west 2 miles; north 1/2 mile; west 2 miles; south 1/2 mile; west 1 mile; south 1/2 mile; west 2 miles; north 1 1/2 miles; west 1 mile; south 1 mile; west 2 miles; south 1 1/2 miles; east 1 mile; south 1/2 mile; west 1

mile; south 1/2 mile; west 1/2 mile; south 1/2 mile; west 3 1/2 miles to the northwest corner of section 30, township 3 north, range 5 east. Thence north along Gifford Pinchot National Forest boundary to the point of beginning. [1955 c 171 § 10.]

Chapter 76.15 RCW

COMMUNITY AND URBAN FORESTRY

Sections

| | |
|-----------|---|
| 76.15.005 | Finding. |
| 76.15.007 | Purpose. |
| 76.15.010 | Definitions. |
| 76.15.020 | Authority. |
| 76.15.030 | Funding sources—Fees—Contracts. |
| 76.15.040 | Primary duty, department's—Cooperation. |
| 76.15.050 | Agreements for urban tree planting. |
| 76.15.060 | Urban tree planting to be encouraged. |

76.15.005 Finding. (1) Trees and other woody vegetation are a necessary and important part of community and urban environments. Community and urban forests have many values and uses including conserving energy, reducing air and water pollution and soil erosion, contributing to property values, attracting business, reducing glare and noise, providing aesthetic and historical values, providing wood products, and affording comfort and protection for humans and wildlife.

(2) As urban and community areas in Washington state grow, the need to plan for and protect community and urban forests increases. Cities and communities benefit from assistance in developing and maintaining community and urban forestry programs that also address future growth.

(3) Assistance and encouragement in establishment, retention, and enhancement of these forests and trees by local governments, citizens, organizations, and professionals are in the interest of the state based on the contributions these forests make in preserving and enhancing the quality of life of Washington's municipalities and counties while providing opportunities for economic development. [1991 c 179 § 1.]

76.15.007 Purpose. The purpose of this chapter is to:

(1) Encourage planting and maintenance and management of trees in the state's municipalities and counties and maximize the potential of tree and vegetative cover in improving the quality of the environment.

(2) Encourage the coordination of state and local agency activities and maximize citizen participation in the development and implementation of community and urban forestry-related programs.

(3) Foster healthy economic activity for the state's community and urban forestry-related businesses through cooperative and supportive contracts with the private business sector.

(4) Facilitate the creation of employment opportunities related to community and urban forestry activities including opportunities for inner city youth to learn teamwork, resource conservation, environmental appreciation, and job skills.

(5) Provide meaningful voluntary opportunities for the state's citizens and organizations interested in community and urban forestry activities. [1991 c 179 § 2.]

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

(1) "Community and urban forest" is that land in and around human settlements ranging from small communities to metropolitan areas, occupied or potentially occupied by trees and associated vegetation. Community and urban forest land may be planted or unplanted, used or unused, and includes public and private lands, lands along transportation and utility corridors, and forested watershed lands within populated areas.

(2) "Community and urban forestry" means the planning, establishment, protection, care, and management of trees and associated plants individually, in small groups, or under forest conditions within municipalities and counties.

(3) "Department" means the department of natural resources.

(4) "Municipality" means a city, town, port district, public school district, community college district, irrigation district, weed control district, park district, or other political subdivision of the state.

(5) "Person" means an individual, partnership, private or public municipal corporation, Indian tribe, state entity, county or local governmental entity, or association of individuals of whatever nature. [2000 c 11 § 15; 1991 c 179 § 3.]

76.15.020 Authority. (1) The department may establish and maintain a program in community and urban forestry to accomplish the purpose stated in RCW 76.15.007. The department may assist municipalities and counties in establishing and maintaining community and urban forestry programs and encourage persons to engage in appropriate and improved tree management and care.

(2) The department may advise, encourage, and assist municipalities, counties, and other public and private entities in the development and coordination of policies, programs, and activities for the promotion of community and urban forestry.

(3) The department may appoint a committee or council to advise the department in establishing and carrying out a program in community and urban forestry.

(4) The department may assist municipal and county tree maintenance programs by making surplus equipment available on loan where feasible for community and urban forestry programs and cooperative projects. [1991 c 179 § 4.]

76.15.030 Funding sources—Fees—Contracts. The department may:

(1) Receive and disburse any and all moneys contributed, allotted, or paid by the United States under authority of any act of congress for the purposes of this chapter.

(2) Receive such gifts, grants, bequests, and endowments and donations of labor, material, seedlings, and equipment from public or private sources as may be made for the purpose of carrying out the provisions of this chapter, and may spend the gifts, grants, bequests, endowments, and donations as well as other moneys from public or private sources.

(3) Charge fees for attendance at workshops and conferences, and for various publications and other materials that the department may prepare.

(4) Enter into agreements and contracts with persons having community and urban forestry-related responsibilities. [1991 c 179 § 5.]

76.15.040 Primary duty, department's—Cooperation. The department shall assume the primary responsibility of carrying out this chapter and shall cooperate with other private and public, state and federal persons, any agency of another state, the United States, any agency of the United States, or any agency or province of Canada. [1991 c 179 § 6.]

76.15.050 Agreements for urban tree planting. The department may enter into agreements with one or more non-profit organizations whose primary purpose is urban tree planting. The agreements shall be to further public education about and support for urban tree planting, and for obtaining voluntary activities by the local community organizations in tree planting programs. The agreements shall ensure that such programs are consistent with the purposes of the community and urban forestry program under this chapter. [1993 c 204 § 10.]

Findings—1993 c 204: See note following RCW 35.92.390.

76.15.060 Urban tree planting to be encouraged. The department shall encourage urban planting of tree varieties that are site-appropriate and provide the best combination of energy and water conservation, fire safety and other safety, wildlife habitat, and aesthetic value. The department may provide technical assistance in developing programs in tree planting for energy conservation in areas of the state where such programs are most cost-effective. [1993 c 204 § 11.]

Findings—1993 c 204: See note following RCW 35.92.390.

**Chapter 76.36 RCW
MARKS AND BRANDS**

Sections

| | |
|-----------|---|
| 76.36.010 | Definitions. |
| 76.36.020 | Forest products to be marked. |
| 76.36.035 | Registration of brands—Assignments—Fee—Rules—Penalty. |
| 76.36.060 | Impression of mark—Presumption. |
| 76.36.070 | Cancellation of registration. |
| 76.36.090 | Catch brands. |
| 76.36.100 | Right of entry to retake branded products. |
| 76.36.110 | Penalty for false branding, etc. |
| 76.36.120 | Forgery of mark, etc.—Penalty. |
| 76.36.130 | Sufficiency of mark. |
| 76.36.140 | Application of chapter to eastern Washington. |
| 76.36.160 | Deposit of fees—Use. |
| 76.36.900 | Severability—1925 ex.s. c 154. |

76.36.010 Definitions. The words and phrases herein used, unless the same be clearly contrary to or inconsistent with the context of this chapter or the section in which used, shall be construed as follows:

- (1) "Booming equipment" includes boom sticks and boom chains.
- (2) "Brand" means a unique symbol or mark placed on or in forest products for the purpose of identifying ownership.

(2004 Ed.)

(3) "Catch brand" means a mark or brand used by a person as an identifying mark placed upon forest products and booming equipment previously owned by another.

(4) "Department" means the department of natural resources.

(5) "Forest products" means logs, spars, piles, and poles, boom sticks, and shingle bolts and every form into which a fallen tree may be cut before it is manufactured into lumber or run through a sawmill, shingle mill, or tie mill, or cut into cord wood, stove wood, or hewn ties.

(6) "Person" includes the plural and all corporations, foreign and domestic, copartnerships, firms, and associations of persons.

(7) "Waters of this state" includes any and all bodies of fresh and salt water within the jurisdiction of the state capable of being used for the transportation or storage of forest products, including all rivers and lakes and their tributaries, harbors, bays, bayous, and marshes. [2000 c 11 § 16; 1984 c 60 § 1; 1925 ex.s. c 154 § 1; RRS § 8381-1.]

76.36.020 Forest products to be marked. Persons who wish to identify any of their forest products which will be stored or transported in or on the waters of the state shall place a registered mark or brand in a conspicuous place on each forest product item. Placement of the registered mark or brand is prima facie evidence of ownership over forest product items which have escaped from storage or transportation. Unbranded or unmarked stray logs or forest products become the property of the state when recovered. [1984 c 60 § 2; 1925 ex.s. c 154 § 2; RRS § 8381-2. Prior: 1890 p 110 § 1.]

76.36.035 Registration of brands—Assignments—Fee—Rules—Penalty. (1) All applications for brands, catch brands, renewals, and assignments thereof shall be submitted to and approved by the department prior to use. The department may refuse to approve any brand or catch brand which is identical to or closely resembles a registered brand or catch brand, or is in use by any other person or was not selected in good faith for the marking or branding of forest products. If approval is denied the applicant will select another brand.

(2) The registration for all existing brands or catch brands shall expire on December 31, 1984, unless renewed prior to that date. Renewals or new approved applications shall be for five-year periods or portions thereof beginning on January 1, 1985. On or before September 30, 1984, and September 30th immediately preceding the end of each successive five-year period the department shall notify by mail all registered owners of brands or catch brands of the forthcoming expiration of their brands and the requirements for renewal.

(3) A fee of fifteen dollars shall be charged by the department for registration of all brands, catch brands, renewals or assignments prior to January 1, 1985. Thereafter the fee shall be twenty-five dollars.

(4) Abandoned or canceled brands shall not be reissued for a period of at least one year. The department shall determine the right to use brands or catch brands in dispute by applicants.

(5) The department may adopt and enforce rules implementing the provisions of this chapter.

(6)(a) Except as provided in (b) of this subsection, a violation of any rule adopted by the department under this [the] authority of this section is a misdemeanor.

(b) The department may specify by rule, when not inconsistent with applicable statutes, that violation of a specific rule is an infraction under chapter 7.84 RCW. [2003 c 53 § 370; 1987 c 380 § 18; 1984 c 60 § 8.]

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

Effective date—Severability—1987 c 380: See RCW 7.84.900 and 7.84.901.

76.36.060 Impression of mark—Presumption. All forest products and booming equipment having impressed thereupon a registered mark or brand are presumed to belong to the person appearing on the records of the department as the owner of such mark or brand. All forest products having impressed thereupon a registered catch brand are presumed to belong to the owner of the registered catch brand, unless there is impressed thereupon more than one registered catch brand, in which event they are presumed to belong to the owner whose registered catch brand was placed thereupon latest in point of time. [1984 c 60 § 3; 1957 c 36 § 4; 1925 ex.s. c 154 § 6; RRS § 8381-6. Prior: 1890 p 111 § 4.]

76.36.070 Cancellation of registration. The department, upon the petition of the owner of a registered mark or brand, may cancel the registration in which case the mark or brand shall be open to registration by any person subsequently applying therefor. [1984 c 60 § 4; 1957 c 36 § 5; 1925 ex.s. c 154 § 7; RRS § 8381-7.]

76.36.090 Catch brands. A person desiring to use a catch brand as an identifying mark upon forest products or booming equipment purchased or lawfully acquired from another, shall before using it, make application for the registration thereof to the department in the manner prescribed for the registration of other marks or brands as herein required. The provisions contained in this chapter in reference to registration, certifications, assignment, and cancellation, and the fees to be paid to the department shall apply equally to catch brands. The certificate of the department shall designate the mark or brand as a catch brand, and the mark or brand selected by the applicant as a catch brand shall be inclosed in the letter C, which shall identify the mark or brand as, and shall be used only in connection with, a catch brand. [1984 c 60 § 5; 1957 c 36 § 6; 1925 ex.s. c 154 § 9; RRS § 8381-9.]

76.36.100 Right of entry to retake branded products. The owner of any mark or brand registered as herein provided, by himself or his duly authorized agent or representative, shall have a lawful right, at any time and in any peaceable manner, to enter into or upon any tidelands, marshes and beaches of this state and any mill, mill yard, mill boom, rafting or storage grounds and any forest products or raft or boom thereof, for the purpose of searching for any forest products and booming equipment having impressed thereupon or cut therein a registered mark or brand belonging to him and to retake any forest products and booming equipment so found by him. [1925 ex.s. c 154 § 10; RRS § 8381-10. Prior: 1901 c 123 § 4.]

76.36.110 Penalty for false branding, etc. Every person is guilty of a gross misdemeanor:

(1) Except boom companies organized as corporations for the purpose of catching or reclaiming and holding or disposing of forest products for the benefit of the owners, and authorized to do business under the laws of this state, who has or takes in tow or into custody or possession or under control, without the authorization of the owner of a registered mark or brand thereupon, any forest products or booming equipment having thereupon a mark or brand registered as required by the terms of this chapter, or, with or without such authorization, any forest products or booming equipment which may be branded under the terms of this chapter with a registered mark or brand and having no registered mark or brand impressed thereupon or cut therein; or,

(2) Who impresses upon or cut in any forest products or booming equipment a mark or brand that is false, forged or counterfeit; or,

(3) Who interferes with, prevents, or obstructs the owner of any registered mark or brand, or his or her duly authorized agent or representative, entering into or upon any tidelands, marshes or beaches of this state or any mill, mill site, mill yard or mill boom or rafting or storage grounds or any forest products or any raft or boom thereof for the purpose of searching for forest products and booming equipment having impressed thereupon a registered mark or brand belonging to him or her or retaking any forest products or booming equipment so found by him or her; or,

(4) Who impresses or cuts a catch brand that is not registered under the terms of this chapter upon or into any forest products or booming equipment upon which there is a registered mark or brand as authorized by the terms of this chapter or a catch brand, whether registered or not, upon any forest products or booming equipment that was not purchased or lawfully acquired by him or her from the owner. [2003 c 53 § 371; 1994 c 163 § 1; 1984 c 60 § 6; 1925 ex.s. c 154 § 11; RRS § 8381-11. Prior: 1890 p 112 § 8.]

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

76.36.120 Forgery of mark, etc.—Penalty. Every person is guilty of a class B felony punishable according to chapter 9A.20 RCW who, with an intent to injure or defraud the owner:

(1) Shall falsely make, forge or counterfeit a mark or brand registered as herein provided and use it in marking or branding forest products or booming equipment; or,

(2) Shall cut out, destroy, alter, deface, or obliterate any registered mark or brand impressed upon or cut into any forest products or booming equipment; or,

(3) Shall sell, encumber or otherwise dispose of or deal in, or appropriate to his or her own use, any forest products or booming equipment having impressed thereupon a mark or brand registered as required by the terms of this chapter; or

(4) Shall buy or otherwise acquire or deal in any forest products or booming equipment having impressed thereupon a registered mark or brand. [2003 c 53 § 372; 1925 ex.s. c 154 § 12; RRS § 8381-12. Prior: 1890 p 111 §§ 6, 7.]

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

76.36.130 Sufficiency of mark. A mark or brand cut in boom sticks with an ax or other sharp instrument shall be sufficient for the purposes of this chapter if it substantially conforms to the impression or drawing and written description on file with the department. [1988 c 128 § 47; 1957 c 36 § 7; 1925 ex.s. c 154 § 13; RRS § 8381-13.]

76.36.140 Application of chapter to eastern Washington. In view of the different conditions existing in the logging industry of this state between the parts of the state lying respectively east and west of the crest of the Cascade mountains, forest products may be put into the water of this state or shipped on common carrier railroads without having thereon a registered mark or brand, as herein required, within that portion of the state lying east of the crest of the Cascade mountains and composed of the following counties to wit: Adams, Asotin, Benton, Chelan, Columbia, Douglas, Ferry, Franklin, Garfield, Grant, Kittitas, Klickitat, Lincoln, Okanogan, Pend Oreille, Spokane, Stevens, Walla Walla, Whitman, and Yakima; and the penalties herein provided for failure to mark or brand such forest products shall not apply: PROVIDED, That any person operating within such east portion of the state may select a mark or brand and cause it to be registered with the department pursuant to the terms of this chapter, and use it for the purpose of marking or branding forest products and booming equipment, and, in the event of the registration of such mark or brand and the use of it in marking or branding forest products or booming equipment, the provisions hereof shall apply as to the forest products and booming equipment so marked or branded. [1988 c 128 § 48; 1957 c 36 § 8; 1925 ex.s. c 154 § 14; RRS § 8381-14.]

76.36.160 Deposit of fees—Use. The department shall deposit all moneys received under this chapter in the general fund to be used exclusively for the administration of this chapter by the department. [1984 c 60 § 7; 1957 c 36 § 10.]

76.36.900 Severability—1925 ex.s. c 154. If any section or provision of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole or any section, provision, or part thereof not adjudged invalid or unconstitutional. [1925 ex.s. c 154 § 15; RRS § 8381-15.]

Chapter 76.42 RCW

WOOD DEBRIS—REMOVAL FROM NAVIGABLE WATERS

Sections

| | |
|-----------|--|
| 76.42.010 | Removal of debris authorized—Enforcement of chapter—Department of natural resources. |
| 76.42.020 | Definitions. |
| 76.42.030 | Removal of wood debris—Authorized. |
| 76.42.060 | Navigable waters—Unlawful to deposit wood debris into—Exception. |
| 76.42.070 | Rules and regulations—Administration of chapter—Authority to adopt and enforce. |

Navigation and harbor improvements: Title 88 RCW.

76.42.010 Removal of debris authorized—Enforcement of chapter—Department of natural resources. This chapter authorizes the removal of wood debris from navigable

(2004 Ed.)

waters of the state of Washington. It shall be the duty of the department of natural resources to administer and enforce the provisions of this chapter. [1973 c 136 § 2.]

76.42.020 Definitions. (1) "Removal" as used in this chapter shall include all activities necessary for the collection and disposal of such wood debris: PROVIDED, That nothing herein provided shall permit removal of wood debris from private property without written consent of the owner.

(2) "Wood debris" as used in this chapter is wood that is adrift on navigable waters or has been adrift thereon and stranded on beaches, marshes, or tidal and shorelands. [2000 c 11 § 17; 1994 c 163 § 2; 1973 c 136 § 3.]

76.42.030 Removal of wood debris—Authorized. The department of natural resources may by contract, license, or permit, or other arrangements, cause such wood debris to be removed by private contractors, department of natural resources employees, or by other public bodies. Nothing contained in this chapter shall prohibit any individual from using any nonmerchandise wood debris for his own personal use. [1994 c 163 § 3; 1973 c 136 § 4.]

76.42.060 Navigable waters—Unlawful to deposit wood debris into—Exception. It shall be unlawful to dispose of wood debris by depositing such material into any of the navigable waters of this state, except as authorized by law including any discharge or deposit allowed to be made under and in compliance with chapter 90.48 RCW and any rules duly adopted thereunder or any deposit allowed to be made under and in compliance with chapter 76.09 or 77.85 RCW and any rules duly adopted under those chapters. Violation of this section shall be a misdemeanor. [2003 c 39 § 37; 1999 sp.s. c 4 § 601; 1973 c 136 § 7.]

Part headings not law—1999 sp.s. c 4: See note following RCW 77.85.180.

76.42.070 Rules and regulations—Administration of chapter—Authority to adopt and enforce. The department of natural resources shall adopt and enforce such rules and regulations as may be deemed necessary for administering this chapter. [1973 c 136 § 8.]

Chapter 76.44 RCW

INSTITUTE OF FOREST RESOURCES

Sections

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| 76.44.010 | Institute created. |
| 76.44.020 | Administration of institute. |
| 76.44.030 | Duties. |
| 76.44.040 | Dissemination of research results. |
| 76.44.050 | Contributions may be accepted. |

76.44.010 Institute created. There is hereby created the institute of forest resources of the state of Washington which shall operate under the authority of the board of regents of the University of Washington. [1979 c 50 § 1; 1947 c 177 § 1; Rem. Supp. 1947 § 10831-1.]

Severability—1979 c 50: "If any provision of this amendatory act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1979 c 50 § 8.]

76.44.020 Administration of institute. The institute of forest resources shall be administered by the dean of the college of forest resources of the University of Washington who shall also be the director of the institute. [1988 c 81 § 21; 1979 c 50 § 2; 1959 c 306 § 1; 1947 c 177 § 2; Rem. Supp. 1947 § 10831-2.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.030 Duties. The institute of forest resources shall pursue research and education related to the forest resource and its multiple use including its conservation, management and utilization; its evaluation of forest land use and the maintenance of its rural environment; the manufacture and marketing of forest products and the provision of recreation and aesthetic values.

In pursuit of these objectives, the institute of forest resources is authorized to cooperate with other universities, state and federal agencies, industrial institutions, domestic or foreign, where such cooperation advances these objectives. [1979 c 50 § 5; 1947 c 177 § 3; Rem. Supp. 1947 § 10831-3.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.040 Dissemination of research results. The results of any research undertaken by the institute or in which the institute participates shall be available to all industries and citizens of the state of Washington and the institute is authorized to disseminate such information. [1979 c 50 § 6; 1947 c 177 § 4; Rem. Supp. 1947 § 10831-4.]

Severability—1979 c 50: See note following RCW 76.44.010.

76.44.050 Contributions may be accepted. The institute is authorized to solicit and/or accept funds through grants, contracts, or institutional consulting arrangements for the prosecution of any research or education activity which it may undertake in pursuit of its objectives. [1979 c 50 § 7; 1947 c 177 § 5; Rem. Supp. 1947 § 10831-5.]

Severability—1979 c 50: See note following RCW 76.44.010.

Chapter 76.48 RCW

SPECIALIZED FOREST PRODUCTS

Sections

| | |
|-----------|---|
| 76.48.010 | Declaration of public interest. |
| 76.48.020 | Definitions. |
| 76.48.030 | Unlawful acts. |
| 76.48.040 | Agencies responsible for enforcement of chapter. |
| 76.48.050 | Specialized forest products permits—Expiration—Specifications. |
| 76.48.060 | Specialized forest products permits—Required—Forms—Filing. |
| 76.48.062 | Validation of specialized forest product permits—Authorized agents. |
| 76.48.070 | Transporting or possessing cedar or other specialized forest products—Requirements. |
| 76.48.075 | Specialized forest products from out-of-state. |
| 76.48.080 | Contents of authorization, sales invoice, or bill of lading. |
| 76.48.085 | Purchase of specialized forest products—Required records. |
| 76.48.086 | Records of buyers available for research. |
| 76.48.094 | Cedar processors—Records of purchase, possession or retention of cedar products and salvage. |
| 76.48.096 | Cedar processors—Obtaining from suppliers not having specialized forest products permit unlawful. |
| 76.48.098 | Cedar processors—Display of valid registration certificate required. |
| 76.48.100 | Exemptions. |
| 76.48.110 | Violations—Seizure and disposition of products—Disposition of proceeds. |

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| 76.48.120 | False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty. |
| 76.48.130 | Penalties. |
| 76.48.140 | Disposition of fines. |
| 76.48.200 | Assistance and training for minority groups. |
| 76.48.900 | Severability—1967 ex.s. c 47. |
| 76.48.901 | Severability—1977 ex.s. c 147. |
| 76.48.902 | Severability—1979 ex.s. c 94. |
| 76.48.910 | Saving—1967 ex.s. c 47. |

76.48.010 Declaration of public interest. It is in the public interest of this state to protect a great natural resource and to provide a high degree of protection to the landowners of the state of Washington from the theft of specialized forest products. [1967 ex.s. c 47 § 2.]

76.48.020 Definitions. Unless otherwise required by the context, as used in this chapter:

(1) "Authorization" means a properly completed pre-printed form authorizing the transportation or possession of Christmas trees which contains the information required by RCW 76.48.080, a sample of which is filed before the harvesting occurs with the sheriff of the county in which the harvesting is to occur.

(2) "Cascara bark" means the bark of a Cascara tree.

(3) "Cedar processor" means any person who purchases, takes, or retains possession of cedar products or cedar salvage for later sale in the same or modified form following removal and delivery from the land where harvested.

(4) "Cedar products" means cedar shakeboards, shake and shingle bolts, and rounds one to three feet in length.

(5) "Cedar salvage" means cedar chunks, slabs, stumps, and logs having a volume greater than one cubic foot and being harvested or transported from areas not associated with the concurrent logging of timber stands (a) under a forest practices application approved or notification received by the department of natural resources, or (b) under a contract or permit issued by an agency of the United States government.

(6) "Christmas trees" means any evergreen trees or the top thereof, commonly known as Christmas trees, with limbs and branches, with or without roots, including fir, pine, spruce, cedar, and other coniferous species.

(7) "Cut or picked evergreen foliage," commonly known as brush, means evergreen boughs, huckleberry, salal, fern, Oregon grape, rhododendron, mosses, bear grass, scotch broom (*Cytisus scoparius*), and other cut or picked evergreen products. "Cut or picked evergreen foliage" does not mean cones or seeds.

(8) "Harvest" means to separate, by cutting, prying, picking, peeling, breaking, pulling, splitting, or otherwise removing, a specialized forest product (a) from its physical connection or contact with the land or vegetation upon which it is or was growing or (b) from the position in which it is lying upon the land.

(9) "Harvest site" means each location where one or more persons are engaged in harvesting specialized forest products close enough to each other that communication can be conducted with an investigating law enforcement officer in a normal conversational tone.

(10) "Landowner" means, with regard to real property, the private owner, the state of Washington or any political subdivision, the federal government, or a person who by deed, contract, or lease has authority to harvest and sell forest

products of the property. "Landowner" does not include the purchaser or successful high bidder at a public or private timber sale.

(11) "Native ornamental trees and shrubs" means any trees or shrubs which are not nursery grown and which have been removed from the ground with the roots intact.

(12) "Permit area" means a designated tract of land that may contain single or multiple harvest sites.

(13) "Person" includes the plural and all corporations, foreign or domestic, copartnerships, firms, and associations of persons.

(14) "Processed cedar products" means cedar shakes, shingles, fence posts, hop poles, pickets, stakes, rails, or rounds less than one foot in length.

(15) "Sheriff" means, for the purpose of validating specialized forest products permits, the county sheriff, deputy sheriff, or an authorized employee of the sheriff's office or an agent of the office.

(16) "Specialized forest products" means Christmas trees, native ornamental trees and shrubs, cut or picked evergreen foliage, cedar products, cedar salvage, processed cedar products, wild edible mushrooms, and Cascara bark.

(17) "Specialized forest products permit" means a printed document in a form specified by the department of natural resources, or true copy thereof, that is signed by a landowner or his or her authorized agent or representative, referred to in this chapter as "permitters" and validated by the county sheriff and authorizes a designated person, referred to in this chapter as "permittee," who has also signed the permit, to harvest and transport a designated specialized forest product from land owned or controlled and specified by the permittor and that is located in the county where the permit is issued.

(18) "Transportation" means the physical conveyance of specialized forest products outside or off of a harvest site by any means.

(19) "True copy" means a replica of a validated specialized forest products permit as reproduced by a copy machine capable of effectively reproducing the information contained on the permittee's copy of the specialized forest products permit. A copy is made true by the permittee or the permittee and permittor signing in the space provided on the face of the copy. A true copy will be effective until the expiration date of the specialized forest products permit unless the permittee or the permittee and permittor specify an earlier date. A permittor may require the actual signatures of both the permittee and permittor for execution of a true copy by so indicating in the space provided on the original copy of the specialized forest products permit. A permittee, or, if so indicated, the permittee and permittor, may condition the use of the true copy to harvesting only, transportation only, possession only, or any combination thereof.

(20) "Wild edible mushrooms" means edible mushrooms not cultivated or propagated by artificial means. [2000 c 11 § 18; 1995 c 366 § 1; 1992 c 184 § 1; 1979 ex.s. c 94 § 1; 1977 ex.s. c 147 § 1; 1967 ex.s. c 47 § 3.]

Severability—1995 c 366: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1995 c 366 § 19.]

(2004 Ed.)

76.48.030 Unlawful acts. It is unlawful for any person to:

(1) Harvest specialized forest products as described in RCW 76.48.020, in the quantities specified in RCW 76.48.060, without first obtaining a validated specialized forest products permit;

(2) Engage in activities or phases of harvesting specialized forest products not authorized by the permit; or

(3) Harvest specialized forest products in any lesser quantities than those specified in RCW 76.48.060, as now or hereafter amended, without first obtaining permission from the landowner or his or her duly authorized agent or representative. [1995 c 366 § 2; 1979 ex.s. c 94 § 2; 1977 ex.s. c 147 § 2; 1967 ex.s. c 47 § 4.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.040 Agencies responsible for enforcement of chapter. Agencies charged with the enforcement of this chapter shall include, but not be limited to, the Washington state patrol, county sheriffs and their deputies, county or municipal police forces, authorized personnel of the United States forest service, and authorized personnel of the departments of natural resources and fish and wildlife. Primary enforcement responsibility lies in the county sheriffs' offices to enter into interlocal agreements with these other agencies in order to receive additional assistance with their enforcement responsibilities. [1995 c 366 § 3; 1994 c 264 § 51; 1988 c 36 § 49; 1979 ex.s. c 94 § 3; 1977 ex.s. c 147 § 3; 1967 ex.s. c 47 § 5.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.050 Specialized forest products permits—Expiration—Specifications. Specialized forest products permits shall consist of properly completed permit forms validated by the sheriff of the county in which the specialized forest products are to be harvested. Each permit shall be separately numbered and the permits shall be issued by consecutive numbers. All specialized forest products permits shall expire at the end of the calendar year in which issued, or sooner, at the discretion of the permittor. A properly completed specialized forest products permit form shall include:

(1) The date of its execution and expiration;

(2) The name, address, telephone number, if any, and signature of the permittor;

(3) The name, address, telephone number, if any, and signature of the permittee;

(4) The type of specialized forest products to be harvested or transported;

(5) The approximate amount or volume of specialized forest products to be harvested or transported;

(6) The legal description of the property from which the specialized forest products are to be harvested or transported, including the name of the county, or the state or province if outside the state of Washington;

(7) A description by local landmarks of where the harvesting is to occur, or from where the specialized forest products are to be transported;

(8) The number from some type of valid picture identification; and

(9) Any other condition or limitation which the permittor may specify.

Except for the harvesting of Christmas trees, the permit or true copy thereof must be carried by the permittee and available for inspection at all times. For the harvesting of Christmas trees only a single permit or true copy thereof is necessary to be available at the harvest site. [1995 c 366 § 4; 1979 ex.s. c 94 § 4; 1977 ex.s. c 147 § 4; 1967 ex.s. c 47 § 6.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.060 Specialized forest products permits—Required—Forms—Filing. A specialized forest products permit validated by the county sheriff shall be obtained by a person prior to harvesting from any lands, including his or her own, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any cedar products, cedar salvage, processed cedar products, or more than five pounds of Cascara bark, or more than three United States gallons of a single species of wild edible mushroom and more than an aggregate total of nine United States gallons of wild edible mushrooms, plus one wild edible mushroom. Specialized forest products permit forms shall be provided by the department of natural resources, and shall be made available through the office of the county sheriff to permittees or permittors in reasonable quantities. A permit form shall be completed in triplicate for each permittor's property on which a permittee harvests specialized forest products. A properly completed permit form shall be mailed or presented for validation to the sheriff of the county in which the specialized forest products are to be harvested. Before a permit form is validated by the sheriff, sufficient personal identification may be required to reasonably identify the person mailing or presenting the permit form and the sheriff may conduct other investigations as deemed necessary to determine the validity of the information alleged on the form. When the sheriff is reasonably satisfied as to the truth of the information, the form shall be validated with the sheriff's validation stamp. Upon validation, the form shall become the specialized forest products permit authorizing the harvesting, possession, or transportation of specialized forest products, subject to any other conditions or limitations which the permittor may specify. Two copies of the permit shall be given or mailed to the permittor, or one copy shall be given or mailed to the permittor and the other copy given or mailed to the permittee. The original permit shall be retained in the office of the county sheriff validating the permit. In the event a single land ownership is situated in two or more counties, a specialized forest product permit shall be completed as to the land situated in each county. While engaged in harvesting of specialized forest products, permittees, or their agents or employees, must have readily available at each harvest site a valid permit or true copy of the permit. [1995 c 366 § 5; 1992 c 184 § 2; 1979 ex.s. c 94 § 5; 1977 ex.s. c 147 § 5; 1967 ex.s. c 47 § 7.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.062 Validation of specialized forest product permits—Authorized agents. County sheriffs may contract with other entities to serve as authorized agents to validate specialized forest product permits. These entities include the

United States forest service, the bureau of land management, the department of natural resources, local police departments, and other entities as decided upon by the county sheriffs' departments. An entity that contracts with a county sheriff to serve as an authorized agent to validate specialized forest product permits may make reasonable efforts to verify the information provided on the permit form such as the section, township, and range of the area where harvesting is to occur. [1995 c 366 § 15.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.070 Transporting or possessing cedar or other specialized forest products—Requirements. (1) Except as provided in RCW 76.48.100 and 76.48.075, it is unlawful for any person (a) to possess, (b) to transport, or (c) to possess and transport within the state of Washington, subject to any other conditions or limitations specified in the specialized forest products permit by the permittor, more than five Christmas trees, more than five native ornamental trees or shrubs, more than five pounds of cut or picked evergreen foliage, any processed cedar products, or more than five pounds of Cascara bark, or more than three gallons of a single species of wild edible mushrooms and more than an aggregate total of nine gallons of wild edible mushrooms, plus one wild edible mushroom without having in his or her possession a written authorization, sales invoice, bill of lading, or specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have possession of specialized forest products being so possessed or transported.

(2) It is unlawful for any person either (a) to possess, (b) to transport, or (c) to possess and transport within the state of Washington any cedar products or cedar salvage without having in his or her possession a specialized forest products permit or a true copy thereof evidencing his or her title to or authority to have possession of the materials being so possessed or transported. [1995 c 366 § 6; 1992 c 184 § 3; 1979 ex.s. c 94 § 6; 1977 ex.s. c 147 § 6; 1967 ex.s. c 47 § 8.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.075 Specialized forest products from out-of-state. (1) It is unlawful for any person to transport or cause to be transported into this state from any other state or province specialized forest products, except those harvested from that person's own property, without: (a) First acquiring and having readily available for inspection a document indicating the true origin of the specialized forest products as being outside the state, or (b) without acquiring a specialized forest products permit as provided in subsection (4) of this section.

(2) Any person transporting or causing to be transported specialized forest products into this state from any other state or province shall, upon request of any person to whom the specialized forest products are sold or delivered or upon request of any law enforcement officer, prepare and sign a statement indicating the true origin of the specialized forest products, the date of delivery, and the license number of the vehicle making delivery, and shall leave the statement with the person making the request.

(3) It is unlawful for any person to possess specialized forest products, transported into this state, with knowledge

that the products were introduced into this state in violation of this chapter.

(4) When any person transporting or causing to be transported into this state specialized forest products elects to acquire a specialized forest products permit, the specialized forest products transported into this state shall be deemed to be harvested in the county of entry, and the sheriff of that county may validate the permit as if the products were so harvested, except that the permit shall also indicate the actual harvest site outside the state.

(5) A cedar processor shall comply with RCW 76.48.096 by requiring a person transporting specialized forest products into this state from any other state or province to display a specialized forest products permit, or true copy thereof, or other document indicating the true origin of the specialized forest products as being outside the state. The cedar processor shall make and maintain a record of the purchase, taking possession, or retention of cedar products and cedar salvage in compliance with RCW 76.48.094.

(6) If, under official inquiry, investigation, or other authorized proceeding regarding specialized forest products not covered by a valid specialized forest products permit or other acceptable document, the inspecting law enforcement officer has probable cause to believe that the specialized forest products were harvested in this state or wrongfully obtained in another state or province, the officer may take into custody and detain, for a reasonable time, the specialized forest products, all supporting documents, invoices, and bills of lading, and the vehicle in which the products were transported until the true origin of the specialized forest products can be determined. [1995 c 366 § 7; 1979 ex.s. c 94 § 15.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.080 Contents of authorization, sales invoice, or bill of lading. The authorization, sales invoice, or bill of lading required by RCW 76.48.070 shall specify:

- (1) The date of its execution.
- (2) The number and type of products sold or being transported.
- (3) The name and address of the owner, vendor, or donor of the specialized forest products.
- (4) The name and address of the vendee, donee, or receiver of the specialized forest products.
- (5) The location of origin of the specialized forest products. [1979 ex.s. c 94 § 7; 1967 ex.s. c 47 § 9.]

76.48.085 Purchase of specialized forest products—Required records. Buyers who purchase specialized forest products are required to record (1) the permit number; (2) the type of forest product purchased; (3) the permit holder's name; and (4) the amount of forest product purchased. The buyer shall keep a record of this information for a period of one year from the date of purchase and make the records available for inspection by authorized enforcement officials.

The buyer of specialized forest products must record the license plate number of the vehicle transporting the forest products on the bill of sale, as well as the seller's permit number on the bill of sale. This section shall not apply to transactions involving Christmas trees.

This section shall not apply to buyers of specialized forest products at the retail sales level. [2000 c 11 § 19; 1995 c 366 § 14.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.086 Records of buyers available for research. Records of buyers of specialized forest products collected under the requirements of RCW 76.48.085 may be made available to colleges and universities for the purpose of research. [1995 c 366 § 16.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.094 Cedar processors—Records of purchase, possession or retention of cedar products and salvage. Cedar processors shall make and maintain a record of the purchase, taking possession, or retention of cedar products and cedar salvage for at least one year after the date of receipt. The record shall be legible and shall include the date of delivery, the license number of the vehicle delivering the products, the driver's name, and the specialized forest products permit number or the information provided for in RCW 76.48.075(5). The record must be made at the time each delivery is made. [1979 ex.s. c 94 § 9; 1977 ex.s. c 147 § 11.]

76.48.096 Cedar processors—Obtaining from suppliers not having specialized forest products permit unlawful. It is unlawful for any cedar processor to purchase, take possession, or retain cedar products or cedar salvage subsequent to the harvesting and prior to the retail sale of the products, unless the supplier thereof displays a specialized forest products permit, or true copy thereof that appears to be valid, or obtains the information under RCW 76.48.075(5). [1995 c 366 § 8; 1979 ex.s. c 94 § 10; 1977 ex.s. c 147 § 12.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.098 Cedar processors—Display of valid registration certificate required. Every cedar processor shall prominently display a valid registration certificate, or copy thereof, obtained from the department of revenue under RCW 82.32.030 at each location where the processor receives cedar products or cedar salvage.

Permittees shall sell cedar products or cedar salvage only to cedar processors displaying registration certificates which appear to be valid. [1995 c 366 § 9; 1979 ex.s. c 94 § 11; 1977 ex.s. c 147 § 13.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.100 Exemptions. The provisions of this chapter do not apply to:

- (1) Nursery grown products.
- (2) Logs (except as included in the definition of "cedar salvage" under RCW 76.48.020), poles, pilings, or other major forest products from which substantially all of the limbs and branches have been removed, and cedar salvage when harvested concurrently with timber stands (a) under an approved forest practices application or notification, or (b) under a contract or permit issued by an agency of the United States government.

(3) The activities of a landowner, his or her agent, or representative, or of a lessee of land in carrying on noncommer-

cial property management, maintenance, or improvements on or in connection with the land of the landowner or lessee. [1995 c 366 § 10; 1979 ex.s. c 94 § 12; 1977 ex.s. c 147 § 7; 1967 ex.s. c 47 § 11.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.110 Violations—Seizure and disposition of products—Disposition of proceeds. Whenever any law enforcement officer has probable cause to believe that a person is harvesting or is in possession of or transporting specialized forest products in violation of the provisions of this chapter, he or she may, at the time of making an arrest, seize and take possession of any specialized forest products found. The law enforcement officer shall provide reasonable protection for the specialized forest products involved during the period of litigation or he or she shall dispose of the specialized forest products at the discretion or order of the court before which the arrested person is ordered to appear.

Upon any disposition of the case by the court, the court shall make a reasonable effort to return the specialized forest products to its rightful owner or pay the proceeds of any sale of specialized forest products less any reasonable expenses of the sale to the rightful owner. If for any reason, the proceeds of the sale cannot be disposed of to the rightful owner, the proceeds, less the reasonable expenses of the sale, shall be paid to the treasurer of the county in which the violation occurred. The county treasurer shall deposit the same in the county general fund. The return of the specialized forest products or the payment of the proceeds of any sale of products seized to the owner shall not preclude the court from imposing any fine or penalty upon the violator for the violation of the provisions of this chapter. [1995 c 366 § 11; 1979 ex.s. c 94 § 13; 1977 ex.s. c 147 § 8; 1967 ex.s. c 47 § 12.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.120 False, fraudulent, stolen or forged specialized forest products permit, sales invoice, bill of lading, etc.—Penalty. (1) It is unlawful for any person, upon official inquiry, investigation, or other authorized proceedings, to offer as genuine any paper, document, or other instrument in writing purporting to be a specialized forest products permit, or true copy thereof, authorization, sales invoice, or bill of lading, or to make any representation of authority to possess or conduct harvesting or transporting of specialized forest products, knowing the same to be in any manner false, fraudulent, forged, or stolen.

(2) Any person who knowingly or intentionally violates this section is guilty of a class C felony punishable by imprisonment in a state correctional institution for a maximum term fixed by the court of not more than five years or by a fine of not more than five thousand dollars, or by both imprisonment and fine.

(3) Whenever any law enforcement officer reasonably suspects that a specialized forest products permit or true copy thereof, authorization, sales invoice, or bill of lading is forged, fraudulent, or stolen, it may be retained by the officer until its authenticity can be verified. [2003 c 53 § 373; 1995 c 366 § 12; 1979 ex.s. c 94 § 14; 1977 ex.s. c 147 § 9; 1967 ex.s. c 47 § 13.]

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

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.130 Penalties. A person who violates a provision of this chapter, other than the provisions contained in RCW 76.48.120, as now or hereafter amended, is guilty of a gross misdemeanor and upon conviction thereof shall be punished by a fine of not more than one thousand dollars or by imprisonment in the county jail for not to exceed one year or by both a fine and imprisonment. [1995 c 366 § 13; 1977 ex.s. c 147 § 10; 1967 ex.s. c 47 § 14.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.140 Disposition of fines. All fines collected for violations of any provision of this chapter shall be paid into the general fund of the county treasury of the county in which the violation occurred. [1977 ex.s. c 147 § 15.]

76.48.200 Assistance and training for minority groups. Minority groups have long been participants in the specialized forest products industry. The legislature encourages agencies serving minority communities, community-based organizations, refugee centers, social service agencies, agencies and organizations with expertise in the specialized forest products industry, and other interested groups to work cooperatively to accomplish the following purposes:

(1) To provide assistance and make referrals on translation services and to assist in translating educational materials, laws, and rules regarding specialized forest products;

(2) To hold clinics to teach techniques for effective picking; and

(3) To work with both minority and nonminority permittees in order to protect resources and foster understanding between minority and nonminority permittees.

To the extent practicable within their existing resources, the commission on Asian-American affairs, the commission on Hispanic affairs, and the department of natural resources are encouraged to coordinate this effort. [1995 c 366 § 17.]

Severability—1995 c 366: See note following RCW 76.48.020.

76.48.900 Severability—1967 ex.s. c 47. If any section, provision, or part thereof of this chapter shall be adjudged to be invalid or unconstitutional, such adjudication shall not affect the validity of the chapter as a whole, or any section, provision, or part thereof not adjudged invalid or unconstitutional. [1967 ex.s. c 47 § 15.]

76.48.901 Severability—1977 ex.s. c 147. If any provision of this 1977 amendatory act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected. [1977 ex.s. c 147 § 16.]

76.48.902 Severability—1979 ex.s. c 94. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1979 ex.s. c 94 § 17.]

76.48.910 Saving—1967 ex.s. c 47. This chapter is not intended to repeal or modify any provision of existing law. [1967 ex.s. c 47 § 16.]

Chapter 76.52 RCW

COOPERATIVE FOREST MANAGEMENT SERVICES ACT

Sections

| | |
|-----------|--|
| 76.52.010 | Short title. |
| 76.52.020 | Contracts with landowners. |
| 76.52.030 | Extending department forest management services to landowners. |
| 76.52.040 | Disposition of funds from landowners. |

76.52.010 Short title. This chapter shall be known and cited as the "cooperative forest management services act." [1979 c 100 § 1.]

76.52.020 Contracts with landowners. The department of natural resources may, by agreement, make available to forest landowners, equipment, materials, and personnel for the purpose of more intensively managing or protecting the land when the department determines that such services are not otherwise available at a cost which would encourage the landowner to so avail himself, and that the use of department equipment, materials, or personnel will not jeopardize the management of state lands or other programs of the department. The department shall enter into a contractual agreement with the landowner for services rendered and shall recover the costs thereof. [1979 c 100 § 2.]

76.52.030 Extending department forest management services to landowners. The department may, by agreement, extend forest management services to private lands as a condition of carrying out such services on state lands when the private lands are adjacent to or in close proximity to the state lands being treated. The agreement shall include provisions requiring the parties to pay all costs attributable to the conducting of the services on their respective lands. [1979 c 100 § 3.]

76.52.040 Disposition of funds from landowners. Costs recovered by the department as a result of extending forest management practices to private lands shall be credited to the program or programs providing the services. The department will report by December 31 of each odd numbered year up to and including 1985 to the house and senate natural resources committees the private acres treated as a result of this chapter. [1979 c 100 § 4.]

Chapter 76.56 RCW

CENTER FOR INTERNATIONAL TRADE IN FOREST PRODUCTS

Sections

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| 76.56.010 | Center for international trade in forest products created at the University of Washington. |
| 76.56.020 | Duties. |
| 76.56.030 | Director—Appointment. |
| 76.56.040 | Use of center's programs, research, and advisory services—Schedule of fees. |

(2004 Ed.)

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| 76.56.050 | Solicitation of financial contributions and support—Annual report—Use of other funds. |
| 76.56.900 | Severability—1985 c 122. |

76.56.010 Center for international trade in forest products created at the University of Washington. There is created a center for international trade in forest products at the University of Washington in the college of forest resources, which shall be referred to in this chapter as "the center." The center shall operate under the authority of the board of regents of the University of Washington. [1985 c 122 § 1.]

76.56.020 Duties. The center shall:

(1) Coordinate the University of Washington's college of forest resources' faculty and staff expertise to assist in:

(a) The development of research and analysis for developing policies and strategies which will expand forest-based international trade, including a major focus on secondary manufacturing;

(b) The development of technology or commercialization support for manufactured products that will meet the evolving needs of international customers;

(c) The development of research and analysis on other factors critical to forest-based trade, including the quality and availability of raw wood resources; and

(d) The coordination, development, and dissemination of market and technical information relevant to international trade in forest products, including a major focus on secondary manufacturing;

(2) Further develop and maintain computer data bases on world-wide forest products production and trade in order to monitor and report on trends significant to the Northwest forest products industry and support the center's research functions; and coordinate this system with state, federal, and private sector efforts to insure a cost-effective information resource that will avoid unnecessary duplication;

(3) Monitor international forest products markets and assess the status of the state's forest products industry, including the competitiveness of small and medium-sized secondary manufacturing firms in the forest products industry, which for the purposes of this chapter shall be firms with annual revenues of twenty-five million or less, and including the increased exports of Washington-produced products of small and medium-sized secondary manufacturing firms;

(4) Provide high-quality research and graduate education and professional nondegree training in international trade in forest products in cooperation with the University of Washington's graduate school of business administration, the school of law, the Jackson school of international studies, the Northwest policy center of the graduate school of public administration, and other supporting academic units;

(5) Develop cooperative linkages with the international marketing program for agricultural commodities and trade at Washington State University, the international trade project of the United States forest service, the department of natural resources, the department of community, trade, and economic development, the small business export finance assistance center, and other state and federal agencies to avoid duplication of effort and programs;

[Title 76 RCW—page 55]

(6) Cooperate with personnel from the state's community and technical colleges in their development of wood products manufacturing and wood technology curriculum and offer periodic workshops on wood products manufacturing, wood technology, and trade opportunities to community colleges and private educators and trainers;

(7) Provide for public dissemination of research, analysis, and results of the center's programs to all groups, including direct assistance groups, through technical workshops, short courses, international and national symposia, cooperation with private sector networks and marketing associations, or other means, including appropriate publications;

(8) Establish an executive policy board, including representatives of small and medium-sized businesses, with at least fifty percent of its business members representing small businesses with one hundred or fewer employees and medium-sized businesses with one hundred to five hundred employees. The executive policy board shall also include a representative of the community and technical colleges, representatives of state and federal agencies, and a representative of a wood products manufacturing network or trade association of small and medium-sized wood product manufacturers. The executive policy board shall provide advice on: Overall policy direction and program priorities, state and federal budget requests, securing additional research funds, identifying priority areas of focus for research efforts, selection of projects for research, and dissemination of results of research efforts; and

(9) Establish advisory or technical committees for each research program area, to advise on research program area priorities, consistent with the international trade opportunities achievable by the forest products sector of the state and region, to help ensure projects are relevant to industry needs, and to advise on and support effective dissemination of research results. Each advisory or technical committee shall include representatives of forest products industries that might benefit from this research.

Service on the committees and the executive policy board established in subsections (8) and (9) of this section shall be without compensation but actual travel expenses incurred in connection with service to the center may be reimbursed from appropriated funds in accordance with RCW 43.03.050 and 43.03.060. [1994 c 282 § 1; 1992 c 121 § 1; 1987 c 195 § 16; 1985 c 122 § 2.]

Effective date—1994 c 282: "This act shall take effect July 1, 1994." [1994 c 282 § 6.]

76.56.030 Director—Appointment. The center shall be administered by a director appointed by the dean of the college of forest resources of the University of Washington. The director shall be a member of the professional staff of that college. [1985 c 122 § 3.]

76.56.040 Use of center's programs, research, and advisory services—Schedule of fees. The governor, the legislature, state agencies, and the public may use the center's programs, research, and advisory services as may be needed. The center shall establish a schedule of fees for actual services rendered. [1985 c 122 § 4.]

76.56.050 Solicitation of financial contributions and support—Annual report—Use of other funds. The center shall aggressively solicit financial contributions and support from the forest products industry, federal and state agencies, and other granting sources or through other arrangements to assist in conducting its activities. Subject to RCW 40.07.040, the center shall report annually to the governor and the legislature on its success in obtaining funding from nonstate sources and on its accomplishments in meeting the provisions of this chapter. It may also use separately appropriated funds of the University of Washington for the center's activities. [1994 c 282 § 2; 1987 c 505 § 74; 1985 c 122 § 5.]

Effective date—1994 c 282: See note following RCW 76.56.020.

76.56.900 Severability—1985 c 122. If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected. [1985 c 122 § 6.]